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JUDICIAL INDEPENDENCE AND LEGAL
EMPOWERMENT PROJECT
CA # AID-114-A-10-00008

QUARTERLY REPORT
JANUARY 1, 2012 – MARCH 31, 2012

JUDICIAL INDEPENDENCE AND LEGAL EMPOWERMENT PROJECT QUARTERLY REPORT JANUARY 1, 2012 – MARCH 31, 2012

Prepared under the USAID's Judicial Independence and Legal Empowerment Project in Georgia, Cooperative Agreement Number AID-114-A-10-00008
Period of Performance: September 24, 2010-September 24, 2014

Submitted to:

USAID/Georgia as of March 31, 2012

Implementer

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This report is made possible by the support of the American People through the United States Agency for International Development (USAID). The contents of this report are the sole responsibility of East-West Management Institute, Inc. and do not necessarily reflect the views of USAID or the United States Government.

BACKGROUND

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

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

The following is submitted as JILEP's Quarterly Report for the reporting period January 1 to March 31, 2012.

COMPONENT 1: STRENGTHEN JUDICIAL INDEPENDENCE, ACCOUNTABILITY AND PROFESSIONALISM

A. Significant Results, Accomplishments, Activities

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

Judicial Selection, Appointment, and Evaluation

At the end of last year, the HCOJ drafted amendments to the *Organic Law on the Courts* and to the HCOJ's internal guidelines that were based, at least in part, on recommendations made by JILEP and a number of its key NGO partners. The amendments to the *Organic Law* were passed by the Parliament of Georgia on March 27, 2012 and are expected to be signed into law by the president sometime next quarter. In JILEP's view, these changes will help the HCOJ become more independent from the other branches of government. (See previous quarterly report for a more detailed explanation).

During the quarter, JILEP continued working with the HCOJ to develop more fair and transparent judicial selection, appointment and evaluation processes. This work is summarized below.

Improve the Judicial Selection Process

Last year, JILEP brought U.S. Judge Timothy Baland to Georgia to conduct a "Judicial Candidates Interview and Evaluation Workshop" for HCOJ representatives and staff. During the workshop, Judge Baland helped the participants explore such topics as the need for establishing rational criteria for judging the merits of judicial candidates and creating standardized questions to use in the judicial interview process. Judge Baland also encouraged the participants to consider the advantages of using a point-based system for evaluating candidate answers to judicial interview questions. HCOJ reacted positively to Judge Baland and his advice. During the last quarter, the HCOJ drafted judicial application procedures and related forms based in part on Judge Baland's suggestions. This quarter, upon the request of HCOJ, JILEP engaged Judge Baland to provide suggestions for how HCOJ could improve its rules guiding judicial appointment as well as to draft judicial candidate application forms and questionnaires. His work on this initiative is in progress and will continue into the next quarter.

JILEP continued working with ONYX, LLC and the HCOJ to develop a software platform for judicial examinations (see previous quarterlies for more detailed description). During the reporting period, ONYX began the last phase of the software development – the testing and deployment phase, and is expected to finish its work somewhere near the middle of next quarter.

With the software platform nearly complete, HCOJ asked JILEP assistance to develop the content of the aptitude portion of the judicial examination and to help them find a way to train test question writers to write questions for the judicial exam. JILEP considers this request an opportunity to make the judicial selection process more fair and to help increase the knowledge and talent level of succeeding generations of Georgian judges. JILEP has begun its search for an organization capable of providing this sort of technical assistance.

During the reporting period, JILEP submitted policy recommendations to the Ministry of Justice-led Inter-Agency Coordination Council (IACC) aimed at improving the “Draft Strategy of the Georgian Judiciary for Year 2012.” JILEP suggested that the IACC broaden the objective provided by the strategy so that it is stated in the following way: “Increasing public confidence in the judiciary by strengthening the independence of the individual judge as well the independence of the judiciary as an institution, and by increasing the access of citizens to the courts.” JILEP provided other recommendations on the strategy to address such issues as the need to fill judicial vacancies through gradual appointment; the need for further professional development of judges and HCOJ staff; the expansion of the computer networking capacity of the courts; and the need for the courts to do more public outreach. To give a specific example of a JILEP recommendation, JILEP recommended that the legislative and executive branches ensure that the recent Constitutional changes providing life tenure to judges be transported into the *Organic Law on the Common Courts of Georgia*. In its recommendation, JILEP expressed its view that the adoption of some form of life tenure for judges would be an important step toward establishing a truly independent judiciary. A working group of the Inter-Agency Council plans to meet next quarter to consider the draft strategy and any amendments that may be needed.

Improve the judicial evaluation system

On February 4-5, JILEP supported a judicial leader retreat in Gudauri entitled, “Judicial Evaluation for the Last Six-Month Period.” JILEP attended the retreat as did the Supreme Court Chief and his staff, the HCOJ Secretary and his staff and all of the chief judges of

Georgia's trial level courts. During the retreat, the participants reviewed judicial caseload statistics as well as the evaluations of individual judge performance for the 6-month period ending December 31, 2011. In evaluating judicial performance, the judicial leadership applied the new evaluation rules entitled "Evaluation of Efficiency of Judges' Performance" which had been adopted by the HCOJ in December 2011.

In JILEP's view, the new rules for judicial evaluation while perhaps encouraging efficient case processing, have the potential of discouraging independent judicial thought and action. Hoping to influence the HCOJ to approach the evaluation process in a way least likely to impact judicial independence, JILEP engaged a team of outside experts to review the evaluation process currently employed by the HCOJ and make recommendations as to how that process could be amended to better protect the independence of individual judges. At quarter's end, JILEP was negotiating a scope of work with an internationally recognized team of legal scholars - Richard Mohr and Francesco Contini, to provide this piece of technical assistance.

Improve the judicial disciplinary process

Last year, JILEP arranged for Victoria Henley, Chief Counsel for the California Commission on Judicial Performance, to provide her input on the recently drafted amendments to the *Law on the Disciplinary Responsibility and Disciplinary Proceedings of Judges of the Georgian Common Courts*. Some of Ms. Henley's suggestions – the suggestions aimed at increasing the transparency of disciplinary procedure outcomes, made it into the amendments to the *Law on Disciplinary Responsibility* passed by Parliament on March 27. These amendments are expected to be signed into law by the President sometime in the next quarter.

During this quarter, the HCOJ requested additional assistance from Ms Henley. They requested her input on how the HCOJ should go about determining the *proper grounds for disciplinary action* as well as how it can improve its internal processes for accepting and investigating complaints. In response, JILEP has arranged for Ms Henley to come to Georgia in May 2012 and conduct an intensive workshop for HCOJ members and staff on how to assess the grounds for disciplinary action and how to improve their internal processes for accepting and investigating complaints of judicial misconduct.

HCOJ Outreach Capacity Building

Last year, the HCOJ and JILEP working through its media and communications expert Dr. Mark West, arrived at a common agreement to take steps to develop the public communication capacity of the HCOJ. This quarter, Dr. West came to Georgia and helped the HCOJ finalize and implement a “Public Trust and Confidence Action Plan.” The plan included the scheduling of four mandatory meetings of the HCOJ in 2012. (This type of advanced scheduling had never been done before.) The HCOJ published a detailed agenda for the first such meeting (set for April 3, 2012) on its website. Dr. West also sat down with representatives of the Supreme Court and reached an agreement to help them develop an outreach strategy for the entire court. This strategy is expected to be completed by the end of April 2012.

Digital Design made the final adjustments to the HCOJ’s new website, including making the site available in both Georgian and English. The HCOJ will launch the new website and announce the creation of its Public Trust and Confidence Action Plan at a public event to be held April 10.

During the quarter, the HCOJ approached JILEP requesting support to send HCOJ member, Kakha Koberidze, to an international workshop on judicial selection and appointment sponsored by the USAID Fair Justice Project in the Ukraine. The workshop was entitled, “The Results of the First national Selection of Candidates for the Judicial Position: Experience, the Ways of Improvement and Introduction of Specialized Training of Candidates.” JILEP provided support for the trip since it gave an opportunity for a known and respected HCOJ member to learn from the experience of his European Judicial Council counterparts. On the visit, Mr. Koberidze was able to observe the Ukrainian Judicial Council in action and also learned about the operations of judicial councils in Poland, Lithuania, and Hungary.

Strengthening the High School of Justice (HSOJ)

Last quarter, following JILEP’s frequently given advice, the HSOJ published its curriculum for HSOJ judge candidate training as well as its CLE program for sitting judges on the HSOJ website. This move represented a positive development in the transparency of the HSOJ.

Prior to HSOJ posting this information on their site, the contents of the HSOJ curriculum was unknown to the public and most of the legal community.

Another possible breakthrough occurred when the HSOJ agreed to have its main judge-instructors receive training in modern teaching methodology from JILEP. On March 17-18, JILEP consultant, Professor Delaine R. Swenson, delivered a teaching methodology course entitled, “The Fundamentals of Teaching Methodology for Judges who Train Judges,” to 12 Georgian judges who teach at the HSOJ. During the training, Professor Swenson introduced the judge-trainers to principles of adult learning and the art of establishing a relationship with the audience. He explained the need to develop interactive lecturing, practical problem solving, small group discussions, and brainstorming as part of an effective teaching arsenal. He demonstrated the effectiveness of engaging students in Socratic dialogue to increase the depth and focus of the learning experience. He helped the judge-trainers draft sample lesson plans that incorporate interactive teaching methodology.



Professor Delaine R. Swenson delivers training to HSOJ judge-trainers

Strengthening the Judges Association of Georgia (JAG)

JAG Hosts Mediation Roundtable

On March 15-16, with the support of JILEP and GIZ, the Judges Association of Georgia hosted

a roundtable entitled, “Mediation and Alternative Dispute Resolution: Perspectives from Eastern Europe and Beyond.” Judges from Armenia, Estonia, Georgia, Kazakhstan, Poland and Ukraine participated in the roundtable which took place at the Supreme Court of Georgia. During the roundtable, international experts from Germany, the United Kingdom, New Zealand and the Ukraine shared their experiences with establishing court-annexed mediation in their own countries. (Please see a more detailed explanation of this initiative under Component 4.)

Monitoring and Evaluation (M & E) Indicator Results¹

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

Number of policy changes recommended by the project:

For the quarter: 3. These policy changes were in the following areas: Judicial Strategy 2012; application forms and interview questions for judicial selection/appointment; amendments to draft Code of Administration Violations (See component 2 below.);

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

For the quarter: 3 sets of recommended changes (these changes were made to three separate laws: the Organic Law on the Courts; the Law on the Disciplinary Responsibility and Disciplinary Proceedings of Judges of the Georgian Common Courts, and the Law on Transfer of Judges). All of these changes were formally adopted by the Parliament in this quarter and are expected to be signed by the President in April 2012.

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

Number of new curricula developed and training courses delivered with JILEP assistance:

For the quarter: 1 (The Fundamentals of Teaching Methodology for Judges who Train Judges)

The number of judges, judge-candidates, and court personnel trained with JILEP assistance:

For the quarter: 12 (8 men/ 4 women).

¹ The M & E results reported in this Quarterly Report are based on the amended M & E Plan submitted by JILEP to USAID in 2012 that provides missing baseline information and clarifies some indicators and targets.

B. Key Issues and Challenges

JILEP considers it extremely important for all stakeholders to track the implementation of the amendments made to the *Organic Law on the Courts* suggested by the HCOJ and currently under consideration by the Georgia Parliament. JILEP will continue to encourage the HCOJ, the courts, and other state actors to maintain their cooperation with civil society to bring about additional improvements to the laws and guidelines aimed at making the judicial selection and evaluation process more fair and transparent.

Despite the positive feedback JILEP received from the HSOJ and HCOJ about the judicial training methodology course given during the quarter, the HSOJ leadership remains reticent to expand its cooperation beyond occasional, narrowly targeted courses. This posture taken by HSOJ has frustrated JILEP's larger goal of improving the HSOJ as a training institution. JILEP has come to understand that other donors such as GIZ are experiencing similar frustration but this opens up the possibility of establishing a cooperative donor approach to HSOJ assistance. JILEP will explore this possibility in the coming quarter.

C. Plans for Next Quarter

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

- Continued assistance to the HCOJ to reform the judicial selection process, including improvement of the judicial qualification exam and the interview process. JILEP expert Judge Timothy Baland will provide HCOJ with recommendations detailing how the judicial appointment process could be improved;
- Continued assistance to the HCOJ in developing judicial examination software that will help the HCOJ to select more qualified judicial candidates and reduce the opportunity for unfair or arbitrary judicial selection;
- Continued assistance to the HCOJ to improve the judicial disciplinary process. Ms. Victoria Henley will conduct intensive training for HCOJ members and key staff in determining how to assess the grounds for disciplinary action, as well as how to improve their internal processes for accepting and investigating complaints;
- Continued cooperation with the HCOJ in the area of judicial evaluation. JILEP consultants will provide HCOJ with an assessment of the system of judicial evaluation currently being used by the HCOJ as well as a set of written recommendations for

how the HCOJ can develop an evaluation system that will better protect the independence of individual judges;

- Continuation of HCOJ outreach support, including technical assistance to carry out the elements of a Public Trust and Confidence Plan that may include the development of public service announcements (PSAs) and documentary shorts;
- Provide the Supreme Court with a draft Communications Strategy for the entire court system.

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

A. Significant Results, Accomplishments, Activities

Strengthening the Georgian Bar Association (GBA)

Development of Strategic Plan

Upon the request of GBA Chairman Zaza Khatiashvili and the GBA Executive Board, JILEP assisted the GBA organize a strategic planning session, January 20 - January 22, in Bakuriani. The purpose of the session was to develop a two-year strategic plan to improve the operations of the GBA. JILEP facilitated the sessions which were attended by representatives and staff of the various governing bodies existing within the GBA: the Executive Board, the Ethics Commission, the Continuing Legal Education (CLE) Committee, and the Audit Committee. The sessions resulted in the creation of a “Strategic Plan for 2012-2013.” The GBA Executive Board approved and adopted this plan on March 14 and intends to share it with donors at a meeting to be hosted by the GBA on April 4.

During the process of developing the Strategic Plan, JILEP and the GBA identified areas of possible cooperation for the next two years. These areas include drafting legislative amendments regulating the profession of advocates in Georgia; assisting the CLE Committee develop its internal guidelines and procedures; training the CLE and Ethics Commission members and staff on successful administrative practices; supporting the Ethics Committee

establish a unified practice on issuing advisory opinions; and helping the Ethics Commission organize customer satisfaction surveys.

Supporting the GBA Ethics Committee

During the quarter, JILEP held a number of the meetings with the leadership of the Ethics Commission to determine the training needs of their members and staff. As a result of these meetings, JILEP organized a series of skills-oriented trainings for the staff. The trainings took place in February and March and were delivered by experts working for Partners Georgia, a respected Georgian consulting group. Partners Georgia taught the attendees how to develop and employ the types of effective communication and conflict resolution skills identified by the Ethics Commission as being essential to their daily work. Partners Georgia explained the distinct stages of communication, demonstrated effective questioning techniques, stressed the importance of developing both active and passive listening skills and highlighted the importance of non-verbal communication in human interaction. When it came to conflict resolution, the experts spoke to the group about the sources of conflict and the stages of conflict escalation; they also demonstrated effective strategies to manage emotion and resolve conflict.

Ethics Commission Develops Customer Satisfaction Survey

JILEP began working with the Caucasus Research Resource Center (CRRC) and the GBA Ethics Commission to determine what level of customer satisfaction was felt by those who had submitted complaints to the Commission. The Ethics Commission provided the CRRC with the information necessary to begin drafting the questionnaire and designing the survey distribution plan. The meeting between CRRC and Ethics Commission took place on March 13; the survey will be conducted and the results will be available during the next reporting period.

GBA Begins Effort to Amend the Law on Advocates

On March 14, the Executive Board of the GBA decided to establish a working group that will draft amendments to the Georgian laws regulating the legal profession dealing with the role of the advocate. The Executive Board appointed Zviad Kordzadze to be chairman of this working group. JILEP will support the working group during the drafting process by providing expert technical assistance. (JILEP identified American lawyer and bar development specialist, Alan Friedman, as the individual who will assist the GBA in this

drafting work.) The GBA plans to invite representatives of the Legal Committee of the Parliament of Georgia, the Ministry of Justice, the Supreme Court of Georgia, GYLA, Article 42 of the Constitution, and other Coalition members to attend the working group meetings.

NGO Coalition Building (EPF)

In this quarter, the work of the Coalition of Independent and Transparent Judiciary (CITJ) became more focused and productive. Some of the highlights of its work are as follows:

- The Legal Aid Group - developed an interactive “map” of 19 free legal aid providers. The Coalition uploaded the map on the Coalition’s web-site at www.coalition.org.ge.
- The Criminal Law Group - advocated for a substantial revision of the *Draft Code of Administrative Offences*. The group developed an opinion paper on the Code which they shared with broader civil society, the government, the Parliament and various international organizations.² In addition, on March 2, the Coalition sent a letter developed by the Coalition Criminal Law Group to Ms. Caterina Bolognese, Head of the Council of Europe Office (COE) in Georgia, to share its views with the COE experts who had been asked to review the Draft Code by the Georgian government.³ The purpose of the letter was to make sure that the experts were aware of civil society’s concerns over problematic provisions in the draft code.
- The Commercial Law Group - led by American Chamber of Commerce (AmCham), advocated for repealing recent amendments to the tax code and the law on enforcement proceedings which they believed to be harmful to the Georgian business environment. The Commercial Law Group included this topic with other problematic topics related to Georgian commercial legislation in the agenda of the JILEP/EPF-sponsored Coalition Public Forum held on February 21. The Forum attracted representatives of civil society, the business community, the government, and the judiciary. One of the remarkable moments of the Forum was when a representative of the National Bank of Georgia stated that the October 2011 amendments to Article 239.6 of the Tax Code and Article 82.3 of the Law on Enforcement Proceedings will be repealed. These extremely controversial amendments to the Tax Code had been

² The opinion can be found on the following web link: <http://www.coalition.org.ge/ge/menu26/Documents>.

³ The letter can be found on the web link: <http://www.coalition.org.ge/ge/menu26/Documents>.

used by the Tax Authorities in a number of high profile cases to acquire priority over the secured claims of financial institutions. This change in the National Bank's and the government's position was applauded by the Forum participants for alleviating the grave threat to the business environment which they believed the amendments represented.



Tamar Chugoshvili of GYLA addresses the CITJ Forum

In addition to the work done by the Coalition working groups, the larger organization carried on its advocacy work in other topic areas. As a follow-up to the Forum on Judicial Transparency, held on November 14, 2011, the Coalition distributed a statement on the pending legislative changes on judicial ethics, judicial discipline and judicial appointment originally initiated by the High Council of Justice.⁴ In the statement, the Coalition noted that despite several improvements, more needs to be done to foster judicial independence and impartiality.

The Coalition began to explain and promote its work through tactical use of the media. The Coalition broadcast its first Public Service Announcement (PSA) explaining the basic nature of their product via the Georgian Public Broadcaster (GPB), Batumi Chanel 25 and Radio 2. The PSA “starred” eleven representatives of the Coalition and conveyed the core message

⁴ The statement can be found on the following web-link: <http://www.coalition.org.ge/ge/menu26/Documents>.

that successful implementation of judicial reform in Georgia requires the active participation of the civil society.

Grant-supported Legal Advocacy

In addition to Coalition-led advocacy work, two JILEP grantees and eight subgrantees (receiving EPF grants) carried out advocacy to improve the law and practice related to such issues as administrative imprisonment; plea bargaining; tax administration and dispute resolution; alternative dispute resolution; free legal aid; and court transparency. This advocacy is summed up below.

Georgian Young Lawyers' Association (GYLA)

GYLA promotes legal changes aimed at greater independence and transparency of the judicial system not only as a member of the Coalition but also through its own independent action supported by a grant from JILEP.

During the reporting period, GYLA provided legal opinions on various draft laws related to its advocacy interests. It took the lead among the members of the Coalition in developing an opinion on the draft *Code of Administrative Offences*. GYLA's Parliamentary Secretary also provided opinions on the laws on State Pension, Social Welfare and the State Compensation of Academic Scholarships, as well as the Law to Combat Drug Crime. GYLA reports that its opinions on the amendments to the General Administrative Code were adopted. More specifically, the wording of amended Article 35 of the General Administrative Code now upholds a citizen's right to choose the form (printed or electronic) in which he/she receives public information from administrative bodies. GYLA's opinion on the amendments to the Criminal Code, which suggested the inclusion of sexual orientation and gender identity into the list of discriminatory motives aggravating liabilities for crimes, was also adopted. The draft was developed on the basis of recommendations made by the European Commission against Racism and Intolerance.

Transparency International (TI)

TI carries out advocacy work promoting greater independence and transparency of the judicial system. TI's representative chairs the Coalition Legal Aid Working Group, which

during the quarter developed an interactive “map” of free legal aid providers (see page 12 above).

In the last quarter TI got involved in the Criminal Law Working Group, which also works under the Coalition umbrella. The reason for TI’s involvement in this working group is its strong interest in the way the courts are dealing with the institution of plea bargaining. TI is planning to gather court statistics on plea bargaining cases from Tbilisi City Court. The results of the study will be combined with the research carried out by other members of the working group and will be developed into a joint report.

Monitoring of HCOJ (GYLA, TI)

During the reporting period, GYLA and TI, in partnership with JILEP, identified the areas of interest they intend to focus upon in their monitoring of the HCOJ. These areas include the selection, appointment, and transfer of judges; the transparency of HCOJ decision making; judicial evaluation; judicial discipline; and the submission of financial declarations by judges.

In late March, GYLA and TI representatives met with officials of the HCOJ and discussed the transparency of the HCOJ. They notified the HCOJ of their plans to monitor the HCOJ and told them the areas of activity they were going to concentrate upon. HCOJ, on its part, welcomed the initiative and pledged to cooperate along the way.

Following the timeline charted out for their HCOJ monitoring program, GYLA began studying the financial declarations of judges for 2010. When reviewing these declarations GYLA plans to identify any large fluctuations it sees in individual judicial incomes, as well as any incongruities it sees between the level of salary provided and the level of judicial experience possessed. GYLA also asked the HCOJ to provide them copies of the formal decisions made by the HCOJ in 2011, including its decisions related to judicial transfers. GYLA plans to analyze this information and then report its findings. TI and GYLA together, plan to monitor the process of judicial selection. TI also plans to monitor the level of transparency exhibited by HCOJ in such areas as the publication of HCOJ’s decisions and the publication of HCOJ meeting agendas.

Court Monitoring (GYLA, TI)

During the reporting period, GYLA and TI continued their court monitoring efforts while at the same time drafting their first pilot program reports for public release.

GYLA's first report covers the work of the Criminal Chamber of Tbilisi City Court for the period October through December 2011. During this period GYLA monitored 283 separate proceedings. These proceedings included 101 hearings on first appearance (hearings on preventive measures); 66 pre-trial hearings; 50 plea agreement hearings; and 66 main trial hearings. GYLA has continued its monitoring activities in 2012 and will produce the second report covering the period January - March 2012 sometime during the next quarter.

TI's first report will summarize the findings of its monitoring of the Administrative Chamber of the Tbilisi City Court (TCC) and the Batumi City Court (BCC) during the period October 2011 through February 2012. The report covers 108 cases (77 in TCC and 31 in BCC) in which TI monitors attended 252 hearings (174 in TCC and 78 in BCC). While the total number of hearings attended in the reporting period was 462, only data for the hearings related to admissible and finalized cases was reflected in the report. The report will be published in June.

With the view of further improving both GYLA and TI's monitoring methodology, JILEP organized a court monitoring workshop for GYLA and TI on March 12-14 where the U.S. DoJ court monitoring contractor, Ani Morgoshia, shared her program's experience and methodology. During the workshop, Ms. Morgoshia presented practical monitoring exercises and led a discussion of exercise results. GYLA and TI plan to modify their respective methodologies based upon what they learned at the workshop.

Eurasia Partner Foundation (EPF) Legal Advocacy Grants

Georgian civil society's advocacy efforts were supported not only by direct grants to GYLA and TI but also by grants with JILEP funds through EPF. In September and October 2011, EPF issued eight advocacy grants which generated the following results in the last quarter:

1) Civil Development Agency (CDA)

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

During the quarter, CDA finalized a study assessing public awareness, public access, and public perception of the quality of the services provided by the LAS's legal aid bureaus and consulting centers. The study was based on a quantitative survey of 300 respondents in the towns of Akhaltskhe, Akhalkalaki, Mtskheta, Rustavi, Telavi, and Gori; and 18 focus group involving beneficiaries of the legal aid agencies, legal practitioners, representatives of the local civil society organizations, and local government. The study which generally speaking, positively assesses the work of the LAS, calls for the geographical expansion of legal aid service bureaus as well as increased advertisement of the services currently being offered. The findings of the report were discussed with LAS management. The release of the report is planned for in April 2012. CDA also prepared a Memorandum of Understanding (MOU) to be concluded with the LAS and other NGOs which should establish better collaboration between the organizations providing legal aid in the regions. The MOU will ensure the most efficient and effective delivery of legal aid to the country's most vulnerable people. The LAS and the legal aid provider NGOs plan to sign the MoU sometime during the next quarter.

2) Article 42 of the Constitution (Article 42)

The project aims to improve the business environment in Georgia by advocating amendments be made to the Tax Code and other regulations having an impact on commerce. It also hopes to raise public awareness of important commercial law issues and provide access to justice for indigent citizens involved in commercial and tax law disputes with government entities.

Since the grant began, Article 42 has developed a comprehensive report based on in-depth interviews with experts and upon desk research, which provides an extensive analysis of some problematic issues in Georgian corporate and tax law. EPF and JILEP provided comments and suggestions on the draft. The grantee is in the process of revising the original draft to make it suitable for publication.

Article 42 launched the web portal <http://www.commerciallaw.ge> where it posts current corporate and tax legislation, including general legal information useful for small and medium-sized businesses. The web portal is interactive; interested parties are able to post questions and receive answers via the portal. Article 42 also recorded and transmitted four radio talk shows focusing on problematic issues in tax administration and tax dispute resolution. These shows were broadcast on the Georgian Public Broadcaster and Radio 1 and will later be uploaded on the web.

In keeping with the terms of the grant, Article 42 continued consulting citizens who came to them with questions and problems related to commercial law. During the quarter, Article 42 provided consultations to 14 individuals and represented seven individuals in cases before a court or administrative body. Article 42 reported an unqualified success in the case of retiree Emzar Mirvelashvili. In the case, a collection order ("inkaso" in Georgian) was applied against Mr. Mirvelashvili that froze his bank account to cover his claimed tax liabilities. Article 42 believed that this order was applied in violation of the law and assisted Mr. Mirvalashvili file a complaint at the Dispute Resolution Department of the Revenue Service. Ultimately, Article 42 lawyers were able to convince the Revenue Service to release Mr. Mirvelashvili from the claim that he owed a tax penalty of 2,400 GEL to the state.

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

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

On February 8, Sachino organized a roundtable discussion for local journalists from West Georgia to discuss the problems that journalists face while accessing public information. The roundtable discussion was covered by Rioni, the local television station. With the involvement of the Sachino, Rioni TV aired an hour-long program focusing on issues related to the access to public information from the courts. The grantee, several journalists, the chairman of Kutaisi City Court, and a Kutaisi Appellate Court judge participated in the program. Sachino is planning to organize roundtables on freedom of information issues related to the courts in various other towns of Imereti. These activities were planned to happen earlier but were delayed. During the site visit conducted by EPF, Sachino explained this delay by saying it needed time to organize meetings in the bigger cities of Batumi and Poti. EPF considered this step to be a diversion from the original proposal's plan to focus on the underserved region of Imereti and convinced Sachino to proceed according to the initial plan.

4) Georgian Small and Medium Enterprises Association (GSMEA)

GSMEA advocates for the development of a business friendly legal framework and improvement of the administration of justice in the area of tax law.

GSMEA completed a comparative study of the local and international legislation and practice of criminal sanctions for tax evasion. It also finished a comparative study on the feasibility of creating specialized tax courts in Georgia. EPF and JILEP provided comments on the drafts. GSMEA also organized four meetings with entrepreneurs and members of GSMEA to receive their feedback on both documents. GSMEA will present the reports to the broader public in April 2012.



Alexander Sukhishvili (left) and Kakha Kokhreidze presenting GSMEA Specialized Tax Court study

5) American Chamber of Commerce (AmCham)

AmCham seeks to ensure that tax disputes between the government and business are resolved in the most transparent, predictable and equitable fashion possible.

During the last two quarters, AmCham waged an advocacy campaign to reverse the October 2011 changes in the existing commercial legislation (namely, Article 239.6 of the Tax Code and the Article 83 of the Law on Enforcement Proceedings), which were used in a number of high profile cases by tax authorities to acquire priority over the secured claims of financial institutions. As part of the advocacy campaign, the grantee held extensive consultations with the executive and legislative branches of the government, as well as provided support in organizing the third public forum (see page 12 above). It was during the forum that the National Bank of Georgia announced its plans to repeal the law. It can be said with

confidence that the change in position of the government on this issue is a direct result of the AmCham advocacy supported by JILEP. AmCham will closely follow the legislative process to make sure the government follows through with its promised action.

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

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

IDFI finalized the list of assessment criteria which it applied while monitoring the websites of eight courts, namely the websites of regional courts of Telavi, Mtskheta, Gori, Khashuri, Zestaponi, Sachkhere, Zugdidi and Poti City Court. They then incorporated the monitoring results into reports that included specific recommendations on how to improve the websites and then shared these recommendations with the representatives of the abovementioned courts.

IDFI was successful in establishing cooperation with the Supreme Court. IDFI created a program which will enable the courts to better visualize statistical data through various types of charts. IDFI presented the program to the representatives of the statistics department of the Supreme Court, and these representatives indicated a strong interest in using the program to improve the Supreme Court's website.

7) Public Movement Multinational Georgia (PMMG)

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

One of PMMG's objectives is to improve the quality of translation services provided at the pre-trial and trial stages of the criminal process. To this purpose, the grantee approached the Ministry of Justice (MoJ) and the HCOJ to advocate for addressing gaps in the qualification process of interpreters they employ. As a result of PMMG advocacy, the MoJ decided to hire a qualified translation company through a competitive tender instead of hiring translators on an *ad hoc* basis. The winning company will provide translation services at the stage of pre-trial investigation. Although this seems to be a positive step, it still remains to be seen how this change will affect the quality of translation services for non-ethnic Georgian defendants. The courts (as opposed to MoJ investigators) will still continue to rely on *ad hoc* translators.

PMMG has been discussing the creation of a training program for Armenian and Azerbaijani language translators with HCOJ.

During the quarter, PMMG also completed its drafting of Georgian-Armenian and Georgian-Azeri legal dictionaries and is planning on presenting the final versions of these dictionaries in a public event next quarter. PMMG also aired a program on Radio Green Wave dedicated to exposing the wider public to problems encountered by ethnic minorities in the Georgian court system. Ms. Gvantsa Davitashvili, PMMG's legal expert, and Ms. Tamar Sulakvelidze, the Head of the HCOJ's Human Resources Department, participated in the on-air discussion.

8) Georgian Lawyers for Independent Profession (GLIP)

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

During the quarter, GLIP developed a draft report on arbitration legislation and practice in Georgia. The report includes analysis of some of the deficiencies of the current regulatory framework. GLIP continues to study the bulk of relevant court decisions, the analysis of which will also be integrated in the final version of their report. GLIP also organized a roundtable meeting on March 12, to present the preliminary findings of its report on existing arbitration legislation and practice. The meeting attracted representatives of the courts, the banking sector, members of the Parliament, and the HCOJ, and resulted in active discussion of the problematic issues in this field.

Grant-supported Free legal Aid

JILEP supports the provision of legal aid through direct grants to TI and GYLA and through five subgrants awarded through EPF. Free legal aid, which includes giving consultations and providing representation in courts and administrative bodies, mainly assists those citizens whose rights are violated by state bodies or private organizations with a dominant market power. The issues covered by legal aid grantees include human rights, property rights, labor rights, and violations in tax administration.

Georgian Young Lawyers' Association (GYLA)

GYLA's Legal Aid Centers in Tbilisi and seven regional offices continued to provide free legal assistance to citizens, journalists, non-governmental organizations and other persons. GYLA provided legal assistance face-to-face in GYLA's offices, over the telephone, through the drafting of legal documents, and by representing clients in the courts. The consultations were mostly concerned with problems in correcting civil registration documents, registering property, inheritance, and family law issues. In total, during the reporting period, GYLA issued 20,200 pieces of legal advice. 30% of the costs associated with this assistance (therefore 6,060 pieces of legal advice) were covered by JILEP.



GYLA lawyers provide legal consultations to clients

In this quarter, GYLA took on a number of cases where it defended the rights of citizens against the overreach of government ministries and administrative bodies. In total, GYLA took 117 new cases to the domestic general jurisdiction courts. By the end of March, GYLA was providing representation in 202 pending cases. GYLA also litigated cases in the Constitutional Court of Georgia and the European Court of Human Rights.

As just mentioned, during the reporting period GYLA took four cases to the European Court of Human Rights. It filed applications to address violations of the prohibition against torture and inhuman or degrading treatment, the right to liberty, the right to freedom of expression, and the right to privacy and family life. In its reporting, GYLA highlighted the case of *Khutsishvili v Georgia* in which it challenged the problematic way Georgian courts are

ordering preventive measures without articulating a factual basis for their decisions. This lack of substantiation makes it difficult for a detained person to challenge the detention decision made by a trial court at the appellate level.

GYLA reported a number of successfully litigated cases during the quarter. It defended a client charged with burglary in front of the Dusheti Court and achieved a rare judgment of acquittal. The defendant was charged with the crime of theft but maintained that the items the prosecution alleged he had stolen in fact belonged to him. GYLA presented witness statements supporting the defendant's claim as well as results of forensic testing. GYLA's lawyers also pointed out particularly unconvincing aspects of the prosecution witnesses' testimony and argued that the evidence presented by the prosecution failed to establish that a crime had been committed. In the end, the court not only acquitted the defendant but annulled the preventive measure (GEL 3000 in bail) and ordered the items seized from the defendant be returned to him. GYLA's representation of a former bank employee in a labor rights case resulted in the bank paying substantial damages to a former employee. GYLA was also successful in assisting a number of internally displaced persons receive the status of "IDP" which entitled them to social allowances and other benefits.

GYLA reached a remarkable outcome in a case it brought to Georgia's Constitutional Court challenging the constitutionality of Article 2, paragraph 2, of the *Law of Georgia on Operational Investigative Activities*. GYLA challenged the portion of the law that allowed the prosecution to consent to an investigative agency's request to extend electronic surveillance of a citizen. The Court sided with GYLA against the government, ruling that allowing the government to extend the period of electronic surveillance over a citizen without court approval was a violation of the right to privacy guaranteed by Georgia's Constitution.

During the reporting period, GYLA's lawyers in Tbilisi and in its regional offices represented a number of citizens who were being interrogated by representatives of the Chamber of Control of Georgia, the country's supreme tax auditing authority. During this process GYLA observed a number of grave violations of the right to lawyer and the right to prepare a defense (see Annex A Success Stories for more detail).

During the quarter, TI continued providing legal aid as part of its JILEP-supported programming. 242 individuals contacted TI's Advocacy and Legal Advising Centers (ALAC) in Tbilisi and Batumi. Of this number, 145 individuals received one-on-one consultations. TI represented 18 individuals before courts or administrative bodies. The representations were in cases involving property right disputes between citizens and such government entities as the Ministry of Economy, the Ministry of Defense, the Property Rights Declaration Commission, the Georgian Railway, and Batumi City Hall. The majority of disputes involved situations in which government entities carrying out major infrastructure projects refused to recognize ownership rights of citizens who had not registered their real property with the Public Registry.

TI used its mobile clinics to assist citizens in the regions of Georgia in which infrastructure projects were being carried out. TI sent a mobile clinic to Kharagauli because the Georgian Railway is renovating the section of railway connecting Tbilisi and Batumi that runs through Kharagauli. The Georgian Railway started registration of massive areas of land along the railway route, including parts of those land plots which local residents claim to rightfully own but have not registered. TI studied the issue in partnership with the local nongovernmental organization, Social Monitoring and Research Center, and approached the Ministry of Economy and Sustainable Development and the Georgian Railway LLC. After several meetings, the parties agreed that TI would be actively involved in the process of property registration, including monitoring the activities of "Geographic," a company that represents the interests of the Georgian Railway and leads negotiations between the Railway and citizen landowners. TI reports that as a result of its efforts, Georgian Railway revised its compensation policy, thereby ensuring compensation for those citizens whose property is not registered in the Public Registry but who present other documentation proving their rightful ownership. As a result of this intervention, several people became eligible for compensation including those who had already taken their cases to the court.

TI also began to focus its attention upon the upcoming Rustavi Road Extension Project being carried out by Ministry of Regional Development and Infrastructure and financed by the Asian Development Bank. TI was alerted to possible violations of property rights by the residents of Rustavi. TI approached both the Ministry and the Asian Development Bank and found out that the highway route had not been finalized. The Ministry and the ADB agreed however, to include TI in the exchange of information between the Ministry and the ADB-

supported the project. As soon as the route is defined, TI will visit the relevant sites and advise people of their property rights.

The following EPF grantees have been carrying out legal aid activities with JILEP funds:

1) Non-commercial Legal Entity Tbilisians' Lawyer (TL)

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

In total, TL provided consultations to 1,043 individuals and went on to represent 51 of these in court or in front of administrative bodies. TL continued to organize regular meetings with representatives of small and medium businesses at Tbilisi flea markets. During these meetings, 140 individuals received legal consultations; 76 of these individuals owned small businesses. TL provided 33 individuals free court representation. The case topics included registration of business enterprise and other corporate law related issues (32); use of cash registers (29); tax law issues (79); and customs applications (4).

In addition, TL held meetings with citizens and provided consultations at the TL offices in Tbilisi City Hall. TL organized nine public meetings to explain their services. As a result, 903 individuals came to the TL City Hall offices to receive legal consultation during the quarter. 135 of these individuals were below the poverty line; 176 were retired; 8 were disabled; and 13 were IDPs.

During the reporting period, the grantee initiated 18 court cases. The majority of these cases involved utilities, family law, enforcement of judgments, social assistance, apartment owners' associations, labor law, and administrative violations.

TL reports the illustrative case of a retired individual whose bank account was frozen by order of the Revenue Service due to unpaid taxes. TL took the case to court and argued that the bank's action was illegal because even if the court order existed, banks are not allowed to freeze more than 50% of a pension fund account. The results are pending.

2) Institute of Democracy (ID)

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

This quarter, the ID Keda office provided legal consultations to 55 individuals on the topics of family law, social benefits, property registration, and criminal law. They represented 14 clients in court. The ID Batumi office provided consultations to 50 individuals and handled 7 court cases. Furthermore, ID visited 113 Kobuleti-Khelvachauri area residents residing en route or in close proximity to the planned Choloki-Sarpi highway to prepare itself to assist these citizens negotiate with the government for fair compensation for the possible eminent domain acquisition of this property.

ID reports on an illustrative case of a Ms. Zoidze who went to the Commission of Private Property in Batumi and attempted to register a land plot she had owned since 1979. The Commission refused to allow the registration without any factual or legal grounds. With ID's assistance, Ms. Zoidze filed a case in Batumi City Court. The case is pending.



ID lawyer providing consultations to local residents of Keda

3) Human Rights House (HRH)

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

In this quarter, HRH provide 173 legal consultations of which 67 were in the area of criminal law and 106 in the area of civil law. Most of the civil law cases were related to contracts, family law, inheritance law, and landlord-tenant disputes. HRH provided free legal representation in six criminal cases and nine civil law cases.

HRH reached out to the citizens to let them know of their services by organizing all-day legal consultation sessions in Gurjaani and Tserovani, as well as Katarzis Center in Tbilisi. To further publicize its activities, HRH conducted several open door sessions to discuss such issues as how to address the court, how to fill out needed legal forms, and explained recent legislative changes related to human rights.

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

Racha aims to protect human rights and fundamental freedoms of Georgian citizens by providing free legal assistance to the population of the most underserved regions of Georgia – Racha-Lechkumi and Kvemo Svaneti.

While reviewing Racha's first quarterly report, EPF noted some performance-related issues. As a result, EPF suspended Racha's grant payment until after a site visit. The site visit, conducted by EPF program and grants managers in March, revealed that the need for free legal aid in the Ambrolauri area was much less than was initially anticipated by the grantee and that Racha had done little or no public outreach activities to let people know their services were available. These and other concerns led EPF and JILEP to revise the budget downward and amend the grant agreement. As a result, the project will continue to operate in Ambrolauri and Tsageri but with considerably less staff and funding. During the next reporting period, EPF will closely monitor grant implementation and determine appropriate next steps.

5) Justice and Liberty Association (JLA)

The project aims to protect the rights and advocate for the interests of the security sector and law enforcement personnel, current and former military servicemen, patrol officers, and

cadets in Georgia by providing free legal advice to those who need representation in relevant administrative bodies or in the courts.

The implementation of the project started in March. During the first month of the project, JLA opened a branch office in Kutaisi and hired staff for its operation. In addition, JLA organized training for the attorneys it had hired to explain the JLA approach to legal aid.

Organizational Development of NGO partners (EPF)

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

During the reporting period, EPF finalized and provided CMI reports for 11 organizations. Seven of the eleven organizations: CiDa, PMMG, Article 42, GLIP, GSMEA, and Tbilisians' Lawyers, developed and submitted proposals for organizational development to EPF. CiDA's proposal was approved before the end of quarter. EPF organizational development staff is currently reviewing the proposals of the rest of the organizations.

JILEP Institutional Assistance for Free Legal Aid Providers

Because JILEP provides financial support to so many legal aid organizations, it finds itself highly motivated and very well placed to improve the quality of the legal services these organizations are providing. In February and March, JILEP met with six nongovernmental legal aid providers in an effort to gauge their needs. These providers were GYLA, TI, Article 42, HRIDC, Civil Society Institute, and the Tbilisian's Lawyer. During the meeting, JILEP asked questions aimed at collecting information regarding the organizational structures of the organizations, their strengths and weaknesses, their quality control practices and procedures, as well as their approaches to ensuring continuing legal education for their lawyers.

JILEP determined that all of the organizations lacked policies and procedures establishing quality control mechanisms. As a result of this finding, JILEP drafted two customer satisfaction forms for the organizations to use as a first step in determining the level of satisfaction of their clients. The legal aid providers all accepted the forms and by quarter's end most had delivered the forms to their clients to be filled out and returned.

The organizations also reported that their legal aid lawyers were lacking some basic lawyering skills such as client counseling, negotiation, courtroom communication, and legal writing. They were also lacking more specialized skills such as legislative drafting and jury trial lawyering skills. Most of the organizations also expressed a strong desire to receive training in recently passed laws most affecting their work, namely, the new criminal procedure code, the new tax code and the new laws on assistance, and property rights.

Taking these findings into consideration, JILEP began developing a plan to deliver lawyering skills training to legal aid lawyers. This plan should be finalized and trainings begun next quarter. JILEP also plans to foster cooperation between various legal NGOs by encouraging them to provide legal training to one another. There is wide range of talent and expertise existing within the organizations and encouraging them to share this expertise will benefit them all.

CRRC Judicial Independence Study

On January 24, CRRC organized a presentation of the Year 1 research results showing public attitudes toward the court system.⁵ Governmental and non-governmental organizations working on justice issues were invited to the event. Hans Gutbrod, Regional Director of CRRC, presented the main findings of the research and answered follow-up questions from the audience.

The research showed that while Georgians are confident that their judicial system has improved considerably in recent years, it is also clear that there is substantial work to be done to improve it further. Most Georgians point to the elimination of bribery, as well an improvement in the competence of judges as successes, but there is also a perception that courts are influenced by the government, and are too routinely strict when handing out punishments. Opinions regarding the fairness of the court system, its trustworthiness and independence, are characterized by uncertainty and division. About a third of Georgians trust

⁵ Study can be found on the following web-link: <http://www.ewmi-jilep.org/download/20>

judges and the courts and believe them to be fair and independent. While this is more than the number who distrusts the courts, or thinks them unfair or not independent, the bulk of Georgians either does not know or cannot answer either way. Emphasizing this point is the fact that the survey takers were unsure as to whether the courts offer a remedy; most would never take a case to court, and most see verdicts as no more fair or unfair than informal means of dispute resolution. This uncertainty is underlined by a lack of awareness about the system. Most Georgians do not know how crucial aspects of the courts' work are done, and large numbers say they are uninterested in finding out, factors which are likely to contribute to the overall sense of indifference many Georgians feel about the courts.

In the days following the presentation, the analytical department of the Georgian Ministry of Justice contacted CRRC and asked to be provided the database of the nationwide survey. After consultations with the JILEP, CRRC provided the Ministry with the database and the questionnaire used in the study.

Also during the reporting period, CRRC developed its approach for a study to be done in the second year of the program that will be based on the updated assumptions document and the M&E Plan developed earlier for JILEP. The second year study will provide additional baseline information for the M&E plan of the project. CRRC developed draft interview guides and quantitative survey questionnaires for legal professionals and business leaders, documents that will be further refined with JILEP assistance during the next reporting period.



Hans Gutbrod presenting the CRRC Judicial Independence Study

Support for the State Legal Aid Service (LAS)

State Legal Aid Service Strategy and Action Plan

On January 18, JILEP hosted a meeting of donor organization to discuss the Strategy and Action Plan of the Legal Aid Service (LAS) in Georgia. Representatives of international donor organizations such as UNDP, USAID, NORLAG, UNICEF, and the ABA, as well as local NGOs such as Article 42, GYLA, and CIDA, and representatives of the MoJ's Interagency Coordination Council, the GBA and the LAS and its Monitoring Board, attended the meeting. Following the meeting, JILEP drafted comments to the Strategy and Action Plan and submitted them to the LAS and the IACC. The comments included recommendations to increase the employment security of LAS employees, expand the LAS mandate to include administrative and civil cases, and to more clearly define the role of the Monitoring Board. UNDP and NORLAG submitted similar comments. The donor community (including JILEP) requested the LAS Working Group hold a meeting soon since one had not been called in the first quarter of 2012. Despite this request, the meeting has yet to be scheduled.

Monitoring and Evaluation (M & E) Indicator Results

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

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

For quarter: 6,141

TI Georgia provided consultations or representation to 242 individuals (116 male, 100 female, 25 gender unidentified).

GYLA provided consultations or representation to 4,568 individuals (1,797 male, 2,771 female) and 724 legal persons.

EPF grantees provided consultations or representations to 1,331 individuals (573 male, 758 female).

A. Key Issues and Challenges

As mentioned above, EPF determined that there was not enough case work being done by the Racha-Leckhumi and Kvemo Svaneti Self-government Resource Center to justify its budget. After consulting JILEP, EPF reduced the Racha budget by eliminating a number of the allowable staff positions. JILEP and EPF agreed to reconsider these cuts in the budget at some later point if Racha shows a significant increase in caseload. JILEP plans to visit Racha and speak with its principals sometime during the next quarter.

JILEP's NGO partners involved in legal advocacy are doing a less than adequate job of articulating their positions - both in their written products and in their oral presentations. JILEP intends to address these deficiencies by creating programming that will provide intensive training and mentoring in written and oral advocacy. The program will aim at building the advocacy capacity of legal reform activists. It will be designed to improve: (1) basic research methodology; (2) basic data analysis; (3) written communication - including report writing; (4) public presentation skills, and (5) quality control analysis. Given the vastly different experiences and capacities of JILEP's local partners, the program will be implemented on two tracks. Staff members of less experienced organizations will participate in the very basic, introductory-level trainings. Staff of the more experienced organizations will benefit from more advanced training. These efforts will compliment EPF's CMI

process. While the CMI is focused upon developing an institution's *operational* capacity, JILEP's efforts will aim to improve the quality of the organization's *substantive* work.

With JILEP assistance, the GBA is providing mandatory trainings to all of its members in professional legal ethics. The American Bar Association (ABA) is providing training to a large number of lawyers in the criminal law. While these large-scale programs are filling some of the GBA's training needs, no one has yet developed plans to provide training in civil law topics on the same large scale. JILEP plans to work with the GBA to fill this gap in GBA CLE programming.

Plans for Next Quarter

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

- EPF will organize the fourth public forum on the draft *Code of Administrative Violations*, focusing on some of the main human rights aspects of the current and anticipated legislation;
- EPF will continue to monitor the implementation of its advocacy and legal aid grants, as well as work with them to develop organizational development plans and monitor the implementation of OD activities;
- EPF will continue to implement the project outreach campaign, including the development of PSAs;
- CRRC will continue working on its second year research and implement a telephone survey to assess the effectiveness of the GBA Ethics Commission;
- GYLA will continue to provide legal assistance to the indigent population in Tbilisi and the seven regions (Imereti, Adjara, Shida Kartli, Kvemo Kartli, Guria, Kakheti, Dusheti);
- TI will continue to provide legal consultations for ALAC clients. In addition, TI will organize mobile legal aid clinics for different regions in Georgia;
- TI and GYLA will continue court monitoring;
- TI and GYLA will continue monitoring the HCOJ;
- JILEP will meet representatives of the LAS to discuss possible cooperation. JILEP and other donors will continue their dialogue with the LAS and its Monitoring Board with the aim of helping them clarify their development plans and strategy;
- JILEP expert will provide technical advice to GBA to continue the development of their CLE program;

- GBA Ethics Commission will begin work on unifying the practice of their subunits;
- GBA Working Group on the *Law on Advocates* will meet to discuss draft amendments;
- JILEP legal ethics expert, James Moliterno, will continue his technical assistance to GBA;
- JILEP will sponsor retreat of GBA Ethics Commission to develop approach to issuing advisory opinions;
- JILEP expert will provide advice to GBA on amending the *Law on Advocates*;
- GBA Ethics Commission will complete customer satisfaction survey; and
- GBA will continue trainings in professional legal ethics. Tbilisi training dates are: April 2, 3, 4, 5, 6, 10, 11; May 1, 2, 3, 4, 8, 11; June 1, 5, 6, 7, 8; Kutaisi training dates are: May 17 and 18; June 14 and 15.

COMPONENT 3: IMPROVE LEGAL EDUCATION

A. Significant Results, Accomplishments, Activities

National Centers of Learning

JILEP continues providing technical assistance to the National Center for Alternative Dispute Resolution (NCADR) and the National Center for Commercial Law (NCCL) to help in the professional development of law professors and the creation of new courses and teaching materials. Both Centers will be increasing their level of activity according to their work plans this year and will continue to make these activities open to all Georgian law school students and professors.

*National Center for ADR (NCADR)*⁶

NCADR visit to STCL

In February and March, the Dean of TSU Law Faculty, Irakli Borduli; the Administrative Director of NCADR, Tea Imedadze; the Academic Director of the NCADR, Levan Janashia; and the Managing Editor of the ADR Journal, Giorgi Tsertsvadze; travelled to Houston,

⁶ As explained in previous quarterlies, the NCADR is a partnership between STCL, TSU and JILEP, working to promote the development of alternative dispute resolution (ADR) techniques in Georgia, teach practical lawyering skills to law students and legal professionals, and improve critical legal thinking within Georgian law schools and the Georgian legal profession.

Texas to meet with their counterparts at South Texas College of Law (STCL). The purpose of the visit was to develop activity plans for the NCADR, observe the operation and management of centers of learning at STCL, and gain insight into how the U.S. employs alternative dispute resolution in its justice system. While in Houston, the NCADR team attended classes and trainings, met with STCL faculty and students and observed trials in various courts. The NCADR team also met with state and federal judges, prosecutors and lawyers. The NCADR Academic Director and the Managing Editor of the ADR Journal were granted instant access to the STCL library and online sources and had an opportunity to collect materials for a comparative study on ADR which they hope to publish in the Fall of 2012. Some members of NCADR team also had the opportunity to undergo mediation training at the Frank Evans Center for Conflict Resolution. In addition, the NCADR team attended the opening evening of a Vis Pre Moot being held in Houston and later, Levan Janashia and Giorgi Tsertsvadze served as arbitrators (judges) at the Pre Moot.



NCADR team received by STCL Dean; left to right: Giorgi Tsertsvadze (Editor NCADR mediation law journal), Donald J. Guter (Dean South Texas College of Law), Irakli Burduli (Dean Tbilisi State University Faculty of Law), Levan Janashia (NCADR Academic Director), and Tea Imedadze (NCADR Administrative Director)

NCADR involvement in Mediation Pilot Project

The Georgian parliament recently passed an amended *Code of Civil Procedure* which, among other things, provides the legal framework for court-annexed mediation in family, neighborhood and inheritance law-related cases. In order to make the code changes come

alive and introduce actual court-annexed mediation, the HCOJ set about creating a “Court-annexed Mediation Pilot Project.” The HCOJ invited the NCADR to be part of this working group along with JILEP and the German development organization, GIZ. JILEP has taken a lead role in designing the pilot but is working in close cooperation and consultation with the NCADR and STCL. (See Component 4 for more details.)

*National Center for Commercial Law (NCCL) at Free University*⁷

Although the formal opening of the NCCL occurred March 20, 2012, the NCCL had already become operational and has engaged in the following activities during the first quarter:

a) Commercial Law Winter School on International Business Transactions

In January, Washburn University School of Law (WUSL) professor, Amy Deen Westbrook, and three Free University law professors introduced a new skills training course on international business transactions and contract drafting during a one-week, NCCL Winter School at Free Uni’s Bazaleti Training Center. Thirty-six law students from six Georgian law schools attended the course. Professor Westbrook developed the course and its teaching materials specifically for the NCCL Winter School. She designed the course to develop the skills needed to understand and draft various types of commercial documents (*e.g.*, sales contracts, bills of lading, freight contracts, and commercial letters of credit) as well as explain the importance of commercially relevant international conventions and practices (*e.g.*, the UN Convention on Contracts for the International Sale of Goods (CISG), the US Foreign Corrupt Practices Act (FCPA), the OECD Anti-bribery Convention, and Incoterms 2010). The course required the students to participate in break-out sessions and complete exercises in which they negotiated and drafted business contracts and agreements. The Free Uni professors provided the Georgian perspective and experience and led many of the teaching sessions.

Professor Westbrook created the course and shared her teaching notes and other teaching materials with NCCL so that Georgian professors could teach this course themselves in the future. The NCCL intends to offer this course to qualified Georgian law students in future Winter or Summer Schools. The participants in this year’s Winter School provided

⁷ As explained in previous quarterlies, the NCCL is a partnership between WUSL, TSU and JILEP, working to promote the development of commercial law in Georgia, teach practical lawyering skills to law students and legal professionals, and improve critical legal thinking within Georgian law schools and the Georgian legal profession.

extremely positive feedback in their evaluations. All of the students expressed their desire to participate in other commercial law-related programs organized by NCCL in the future.



WUSL Professor Amy Westbrook teaching international commercial transactions with Free Uni Professor David Kapanadze at the NCCL Commercial Law Winter School 2012

b) Writing Competition in Business Law for Georgian Business Law Review

In November 2011, the NCCL launched a writing competition on business topics for students and legal practitioners. The NCCL received 30 abstracts out of which 12 student and six practitioner abstracts were selected for consideration. Two separate commissions evaluated the articles and ultimately identified six winning authors (two practitioners and four students). On March 20-21, during the JILEP-sponsored Commercial Law Symposium, the winners were awarded special prizes provided by five local law firms. The winning articles will be edited during the next quarter and published in the first issue of the *Georgian Business Law Review*. During the next reporting period, the winning students will work on the law review under the close supervision of NCCL staff.

c) Public Lecture Series

As indicated in the previous quarterly, the NCCL launched its Public Lecture Series in November of 2011. They continued the series in March 2012 when Patricia Judd, Professor

of Intellectual Property Law at Washburn University Law School (WUSL) spoke to approximately 21 students and faculty about problems in copyright policy in the U.S. and Europe. During the lectures, students were encouraged to draw parallels between Georgian and U.S. copyright law and make comparative reflections. The lecture included numerous written exercises allowing the students to practice what they had learned.

d) Addition of Books and Online Resources

The NCCL launched a project named “The Best 100 Books in Business Law.” The list of books was selected in cooperation with WUSL and it covered some of the major works in the business law field (this includes books in the subject areas of contracts, corporations, taxation, intellectual property, international business transactions etc.). The first 25 books on the list were either purchased by NCCL or donated by WUSL. The NCCL also used its grant resources to make the HeinOnline database available to students and faculty using the Center.

e) Sponsorship of First Commercial Law Symposium at NCCL

On March 20-21, the NCCL formally celebrated its opening at Free University of Tbilisi. The opening kicked-off a two-day “Symposium on Commercial Law,” which brought U.S. and Georgian experts together to discuss some of the most critical commercial law issues facing Georgia. USAID Deputy Mission Director Joachim Parker; Dean of Washburn University School of Law Thomas Romig; and Chairman of the Board of Trustees at Free University, Kakha Bendukidze, gave the keynote speeches. Symposium topics included: Due Diligence; Professional Ethics: Lawyers and the Media; Professional Liability Insurance for Lawyers; Responsibility of Directors; Piercing the Corporate Veil; and Recognition and Enforcement of International Arbitral Awards in Georgia. More than 100 judges, lawyers, law professors and students attended the event. The symposium was open to the public and free of charge.



Ted Jonas, Managing Partner DLA Piper- Georgia lectures on the topic of due diligence

f) Law Teaching Methods Certificate Program

On March 23, NCCL hosted a workshop on interactive teaching methodology given by WUSL Professor Michael Hunter Schwartz, a leading expert in the field of modern teaching methodology and a co-director of the Institute for Law Teaching and Learning at WUSL. The course, entitled “Introduction to Law Teaching Techniques,” covered such topics as teaching theory, cognitive learning theory and best teaching methodologies. Eighteen law instructors, representing seven Georgian law faculties, attended the training. One purpose of the training was to identify a group of instructors who could participate in a long-term teacher development program that JILEP hopes to deliver together with the NCCL in the coming year.



Professor Michael H. Schwartz demonstrating modern teaching methodology

g) Legal Writing Workshop for Georgian Lawyers

On April 22-23 at NCCL, WUSL Professor Aida Alaka conducted a half-day workshop on legal writing skills for lawyers. The workshop had been developed together with the NCCL team and was tailored to the specific needs of lawyers working in Georgian law firms. Twenty-three lawyers from six large firms, as well as from the Ministry of Justice and the Georgian Bar Association, participated in the workshop. During the workshop, Professor Alaka explained approaches to legal reasoning as well as pointed out effective legal drafting techniques. Her presentation emphasized the importance of developing a clear and concise style for office memos and client letters.



WUSL Professor Alaka explains basic principles of legal writing during NCCL legal writing workshop

(h) Willem C. Vis International Commercial Arbitration Pre-Moot

On February 25-26, NCCL hosted the first Tbilisi Pre-Moot for the Willem C. Vis International Commercial Arbitration Moot. (See Component 4 for more details.)

(i) WUSL Assists Free-Uni Constitutional Law Clinic Draft Amicus Briefs to Submit to Constitutional Court

As reported in a previous quarterly, in August of 2011, Free Uni faculty members visited WUSL. An unexpected outcome of the visit was an agreement reached between the two schools to create educational programming in the area of Constitution Law. As a part of that programming, Professor Bill Rich from WUSL assisted Free Uni students draft two *amicus curiae* briefs in cases pending before the Constitutional Court of Georgia. The first brief argued against provisions of the *Georgian Law on Real Property* which denied foreign ownership of agricultural land in Georgia. The second *amicus* brief argued that provisions of the *Georgian Law on Police* which allowed a police officer to search any person whom he felt to be suspicious, was unconstitutional. Free Uni filed the brief with the Constitutional Court - the first such brief ever submitted to the court by a Georgian law school. The case is still pending. The second brief is currently being reviewed by Free Uni professors and will

be filed during the next reporting period. Professor Rich will continue assisting the Free Uni Constitutional Law Clinic in their activities.

Also in the area of Constitutional Law, on February 4-11, Free-Uni and WUSL, in cooperation with Federalist Society, organized a Winter School on Constitutional Law called, “Constitutional Interpretation, Institutions and Legitimacy: Comparative Perspectives.” Professor Rich provided lectures at the event generally supporting the “Dworkin theory” of Constitutional interpretation (providing a counterbalance to the Federalist Society position).

Live Client Legal Clinics

The assessment of Georgian law schools conducted by JILEP in early 2011 revealed that a major gap in the learning experience provided by Georgian law schools was the lack of legal skills-related instruction through functional live-client legal clinics. In line with the earlier recommendations provided by the Public Interest Law Network (PILnet), JILEP encouraged Batumi State University (BSU), Kutaisi State University (KSU) and the Georgian-American University (GAU) to submit grant requests for projects that would improve and expand the operations of their live-client clinics.

a) Supporting KSU legal clinic

In March 2012, KSU successfully applied for a one-year JILEP grant aimed at developing the practical legal skills of KSU law students and enhancing the quality of the free legal aid services provided by KSU’s live client clinic. The grant was in the amount of \$15,940 USD. The funds will be going to support the following activities: a) hiring more professional staff to supervise skills-based teaching by professors; b) providing more operational support to assist clinic students representing clients; and c) delivering more varied educational activities for clinical students to develop their skills.

b) Supporting the BSU legal clinic

In March of 2012, BSU, like KSU, successfully applied for a one-year grant aimed at developing the practical legal skills of its law students and enhancing the quality of the free legal aid provided by its legal aid clinic. The grant was in the amount of \$16,180. The grant funds will be used to: a) recruit more professional staff, such as a Clinic Director who could be brought on as either a full-time or adjunct professor having overall responsibility for the clinic; and b) hire an additional full-time professor and an additional practicing lawyer to teach and supervise students. As a condition of its grant award, JILEP expects BSU to make the legal clinic an approved component of its law school curriculum.

c) Supporting GAU legal clinic

In March 2012, GAU applied for a JILEP grant of \$6,650 USD to be used to create a legal clinic handbook in the Georgian language. The handbook will be designed to cover the specifics of legal clinic formation and function. JILEP is currently reviewing the grant application.

d) JILEP Technical Assistance to Live Client Clinics

On February 15 and 16, JILEP delivered workshops at the BSU and KSU legal clinics designed to improve the client interviewing skills of the clinic students. JILEP legal education consultant, Professor Delaine R. Swenson of the Catholic University of Lublin (Poland), conducted the clinics. Fifteen clinical students from BSU and 12 clinical students from KSU, as well as clinical professors and supervisory staff of both schools attended the workshops. JILEP will be providing similar workshops for clinical students in April and May.



Professor Delaine Swenson prepares clinic students for client interviewing role play

During the quarter, JILEP reviewed its work with the clinics to date and determined that the clinics need assistance in the following areas: 1) clinical management and operations; 2)

supervisory skills - over both students and client matters; and 3) teaching skills. In March, JILEP drafted a scope of work that will have the Public Interest Law Network (PILnet) and Professor Swenson deliver a series of targeted workshops designed to improve the operation of the clinics in these areas. The activities will begin next quarter.

Practical Legal Skills Training

There is a movement in legal education in the U.S. and other countries to focus more effort on the teaching of lawyering skills during the law school years. Teaching lawyering skills and practical knowledge as opposed to only legal theory has been shown to improve students' understanding of the law and to better prepare them to become successful lawyers. One of JILEP's goals in the educational field is to expand the use of skills-oriented instruction in Georgia law schools. In 2011, JILEP did this by sponsoring numerous classes and workshops that included skills elements. In 2012, JILEP is increasing its effort in this area by creating a program that will provide students a firm grounding in the ethics of the legal profession and another program to teach students trial advocacy skills necessary to function in an adversarial court environment.

In February, JILEP invited representatives from a number of Georgian law school faculties to participate in an instructor development project that will not only result in a core group of instructors being created that are able to teach these subjects but also the adoption of these course topics as part of their law schools' curriculum. On March 14 and 15, JILEP conducted roundtables with representatives from nine Georgian law schools who agreed in principle to incorporate the trial skills and ethics courses into their Fall or Spring semester course offerings. In April, JILEP will recruit participating instructors and deliver the first training in teaching methodology.

West Georgian Master's Scholarship

JILEP continues its support for the West Georgia Masters Scholarship Program. The program aims to provide students, coming from diverse backgrounds and remote regions of Georgia who have limited financial means, with an opportunity to pursue Masters-level legal study at Batumi and Kutaisi State Universities. In September 2011, JILEP provided the Georgian Foundation for the Support of Legal Education (FSLE) a grant to administer the program and award up to eight scholarships to Masters-candidate students. In addition to the

scholarship, the recipients will be provided the opportunity to participate in clinical work, take part in internship programs, as well as to participate in the Debate Clubs at the Kutaisi and Batumi branches of the FSLE.

Since September 2011, JILEP, through FSLE, provided scholarships to four KSU Masters students. During the reporting period all four scholarship recipients participated in various activities designed to augment the education they are receiving at the university. They conducted consultations at the legal aid center of the Kutaisi branch of GYLA, prepared legislative proposals, and some of them helped train teams of students for a debate tournament organized by the FSLE. The local community devoted special attention to two public discussions led by scholarship recipient, Levan Vepkhvadze, in January and March which addressed the following topics: “The Jury Trial in Georgia – New Challenges” and “Georgia’s Integration in the North Atlantic Treaty Organization.” The public discussions engaged experts as well as the public and was broadcast by various print, audio and TV media. All four scholarship recipients passed their midterm evaluation for the project.

Unfortunately, Batumi State University has only recently received accreditation for its Masters of Law program and has not managed to make a call for applications for an LL.M program in spring 2012. For this reason, the West Georgia Master of Law Scholarship Program will have to wait for its launch at BSU in the fall of 2012.

GBA Continuing Legal Education (CLE) and Mandatory Training on Professional Ethics

With the assistance of JILEP, member of the GBA Ethics Commission and one of the trainers on professional legal ethics for lawyers, Koba Bochorishvili, conducted a model training of trainers on professional legal ethics on February 1, at the GBA office. The training materials and hypotheticals were developed with the support of the JILEP expert on professional ethics, Professor James Moliterno. The training module was approved by the GBA CLE Committee. GBA signed contracts with all 23 trainers of professional legal ethics - individuals who were trained by Professor Moliterno.

By February 10, the GBA finalized the renovation of the GBA training space. Much of the funding for the furniture and equipment used in the space was purchased with funds provided by JILEP in a grant to the GBA. The grant also provided funds for printing training materials

which include the Code of Ethics, the training questionnaires, and draft amendments to the Code of Ethics. JILEP also supported the re-print of commentaries to the Ethics code prepared by the European Union Rule of Law Project in 2011. By February 16, 3,100 GBA members had registered for the ethics training program through the GBA's on-line training registration system. This on-line training system was created with the support of JILEP.⁸

During the reporting period, the GBA Training Center conducted 24 trainings on professional legal ethics for the members of GBA. Twenty of these trainings were conducted in Tbilisi and four were conducted in Kutaisi. 736 lawyers registered for the February and March training but only 705 attended.

In order to gauge the impact of the training on bar members and their opinions on the quality of the training program, JILEP helped the GBA Training Center develop a questionnaire to hand out to those who attended the ethics training. During the reporting period, 621 trainees filled out the questionnaire disseminated at the ethics trainings. The results are as follow: 98.8% thought that the knowledge received at the training is useful for their legal practice, 97.3% gave positive evaluations of the content and organization of the training, and 77.2% said that the training on professional ethics was the first training on the topic they had ever attended.

Also during the reporting period, JILEP helped the GBA host a meeting with law school representatives to inform them of the new GBA CLE initiative and how they could become CLE credit providers for GBA lawyers. The chairman of the CLE Commission, Zviad Kordzadze, and the Director of Training Center, Tiko Karseladze, explained the new GBA CLE programming and encouraged the schools to start thinking of ways they could provide courses to lawyers that would help them meet their CLE requirements. At the meeting, Free Uni shared its experience of cooperating with the GBA and JILEP organizing and delivering the first CLE Conference on Commercial Law in December, 2011.

Monitoring & Evaluation

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

3. Number of Bar members trained with JILEP assistance

For quarter (quarterly reporting): 705 (Ethics Trainings; 336 female and 369 male)

⁸ It can be found at <http://www.gba.ge/training-registration/>.

B. Key Issues and Challenges

Although the opening of the NCADR has been officially announced and a number of activities have already taken place, no activities are taking place at the Center office. This is because the renovation of university building holding the Center is taking longer than expected. It is hoped that the renovation will be complete and the Center fully outfitted and running by the end of May 2012.

Another challenge that must be overcome is for the NCADR staff to break free of their slow start up inertia and begin delivering the activities laid out in their grant work plan. With JILEP's assistance, they need to better organize themselves and begin to focus on building and delivering their grant program pieces.

When it comes to both the centers, a continuing challenge has been to maintain a clear and fluid circle of communication between the centers, their U.S. law school partners, and JILEP. JILEP has taken special care over the course of the last quarter to address some of the gaps in this communication circle which showed themselves in the start-up phase of the program and has put in place mechanisms that should help make communication between parties better from here forward.

Although JILEP has approved the KSU and BSU clinical grants and made the first transfer of funds, neither of the two clinics have been able to access those funds. This is because both universities are legal entities of public law and according to Georgian law the funding has to go through an account with the state treasury set up especially for these grants. JILEP is hopeful that the special accounts for the clinics will be setup and functioning in May 2012.

C. Plans for Next Quarter

During the next reporting period:

- Professor Aida Alaka from WUSL will provide an advanced training in legal writing for young lawyers;
- Professor M. H. Schwartz from WUSL will provide an advanced training in interactive teaching methodology;
- NCCL will continue its lecture series on commercial law topics;
- The National Student Moot Court Competition in Business Law will be held at NCCL;

- NCCL will be contributing to the reform of Georgian private international law by providing comparative research and legal analysis;
- NCCL will publish articles in the first issue of the *Georgian Business Law Review*;
- NCCL will launch its web-site;
- NCADR will be equipped with furniture and equipment;
- NCADR will begin its lecture series on topics related to ADR;
- NCADR will launch its web-site;
- NCADR will engage three students as interns;
- NCADR will start identifying law schools who will participate at the first National Mediation Competition;
- NCADR will start developing a mediation live client clinic;
- NCADR will identify law schools who will participate in a mediation course development program;
- STCL professors will provide a basic and advanced training for Georgian law professors in mediation;
- An STCL professor will provide training for coaches of student teams for the first National Student Mediation Competition;
- Professor D. R. Swenson will conduct a seminar in teaching methodology for the teachers selected to participate in the trial advocacy and legal ethics curriculum building programs as well as for the teaching staff of the KSU, BSU and GAU live client clinics;
- The live client clinic programs at BSU and KSU will start implementing their grant projects;
- The GAU clinic will receive its grant funding;
- A PILnet expert will visit the live client clinics at GAU, BSU and KSU and train the local staff in clinical supervision and monitoring skills;
- A PILnet expert will conduct a training in client supervision skills for clinical staff of BSU, KSU and GAU live client clinics;
- A foreign expert, together with Georgian experts, will deliver a training in trial advocacy skills for the participants of the trial advocacy program; and
- A foreign expert, together with Georgian experts, will deliver training in legal ethics for the participants of the legal ethics program.

COMPONENT 4: DEVELOP COMMERCIAL LAW

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

A. Significant Results, Accomplishments, Activities

JILEP Hosts International Conference on Arbitration in Conjunction with Georgia's First Willem C. Vis International Commercial Arbitration PreMoot



Bennar Balkaya, Chairman of the European Branch of Chartered Institute of Arbitrators (CI Arb), explains role of professional associations in establishing practice standards in international arbitration

On February 24, USAID/JILEP, in cooperation with Tbilisi State University National Center for ADR (NCADR), the United Nations Commission on International Trade Law (UNCITRAL), the European Branch of the Chartered Institute of Arbitrators (CI Arb), and the ICC International Court of Arbitration, delivered a conference entitled, "Contemporary Issues in Commercial Arbitration: International and Georgian Perspectives." At the conference, international arbitration experts gave presentations and led discussions that allowed Georgian

commercial lawyers, law professors, and law students to broaden their knowledge of international commercial arbitration. The conference also gave Georgian practitioners a unique opportunity to build professional relationships with leaders in the international arbitration field.



University of Latvia v Tbilisi State University. Panel of arbitrators: Nino Suknidze (DLA Piper) center, Salome Latsabidze (DLA Piper) left, and Frederike Faitsch (Philipps-Universitaet Marburg) right.

In the two days following the conference, Free University of Tbilisi's National Center for Commercial Law (NCCL) played host to teams of university students from five different countries as part of the "First Tbilisi Willem C. Vis International Commercial Arbitration Pre-Moot." This Pre-moot was designed to prepare the students for the actual Vis competition to be held in Vienna in March. The teams were from Germany, Latvia, Kosovo, Belorussia and of course, Georgia. The competition was held in English and the arbitrators (judges) were played by practicing lawyers and law professors (and one U.S. Embassy official).

Workshop on Mediation in the Context of Investor-State Dispute Settlement

The government of Georgia has become increasingly involved in cases that require international arbitration. The international legal community has started to consider mediation as a suitable mechanism to settle or even prevent investor-state disputes without resorting to arbitration or litigation - processes which are adversarial in nature. Because of this, there is a

great deal of interest within the government and the legal community in developing mediation in the context of investor-state dispute resolution. With these interests in mind, JILEP helped the MoJ organize a workshop on the role of mediation in the context of investor-state disputes. The workshop took place at the MoJ Training Center. Representatives of MoJ, the Ministry of Finance of Georgia, the Ministry of Economy and Sustainable Development, the Georgian Investment Agency and the Ministry of Foreign Affairs of Georgia sent representatives. During the workshop, Corinne Montineri, Legal Officer in the International Trade Law Division of the United Nations Office of Legal Affairs, the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL) led the discussions which covered the following topic areas:

- the status of adoption of international trade law instruments by Georgia;
- the challenges of mediation in investment disputes; and
- the status of the current work of UNCITRAL regarding transparency in treaty-based investor-State arbitration.

Court-Annexed Mediation Pilot Project

JILEP continued its active participation in the HCOJ Mediation Working group. The Working Group is made up of representatives from the HCOJ, the Supreme Court, the NCADR, the German Society for International Cooperation (GIZ), and the Tbilisi City Court. After some discussion and occasional disagreement, the Working Group reached an understanding on a number of key elements of the planned Court-annexed Mediation Pilot. The members eventually agreed that candidates for mediation training will be selected through an open competition and that they can come from different professions; they need not be lawyers. They agreed that the selection committee will consist of members of the Working Group. They agreed that the mediation training provider could be an institution or group of individuals with experience providing such training and that the trainers would not be judges (GIZ's original idea).

JILEP conducted a search for a mediation training provider that would be acceptable to all stakeholders. At quarter's end, JILEP was negotiating with the London-based Centre for Effective Dispute Resolution (CEDR) to deliver a portion of the training program. It was also discussing with South Texas College of Law the possibility of one of its experts, Professor Kim Kovach, providing a second critical piece of the training. JILEP drafted a

Memorandum of Understanding (MOU) to be signed by all the principle stakeholders at the beginning of the next quarter.

Mediation Roundtable hosted by the Georgian Judges Association and the Supreme Court of Georgia

On March 15-16, with the support of JILEP and GIZ, the Judges Association of Georgia (JAG) hosted a roundtable entitled, “Mediation and Alternative Dispute Resolution: Perspectives in Eastern Europe and Beyond.” Judges from Armenia, Estonia, Georgia, Kazakhstan, Poland and Ukraine participated in the roundtable which took place in the Supreme Court building. Konstantine Kublashvili, Chairman of the Supreme Court of Georgia, Zaza Meishvili, Chairman of the Judges Association of Georgia, and Susan Cowley, Democracy and Governance Office Director, USAID, welcomed the roundtable participants. International experts from Germany, UK and Ukraine shared their experiences establishing of a viable systems of a court-annexed mediation in their own countries. Questions posed by participants resulted in productive discussion on such topics as the available forms of mediation, the selection process for mediators, the training and qualification of mediators, and public outreach. In light of the fact that Georgian has just adopted changes to its *Civil Procedural Code* introducing court-annexed mediation to Georgia, this experience-sharing event was useful for Georgian judges to hear.

TSU Competes in Willem C. Vis International Commercial Arbitration Moot

JILEP supported the team from TSU to travel to Vienna to compete in the Willem C. Vis International Commercial Arbitration Moot on March 29 – April 6. The team consisted of TSU law students George Dvaladze, Mariam Jorbenadze, Ana Kostava and Bakar Palvandishvili. For the first time, two members of last year’s team, Jaba Gvelebiani and Nata Ghibradze, served as assistant coaches for the team. 282 universities from 68 countries participated in the competition. TSU went far into the tournament – making it into the round of 32 (putting them in the top 12% of participants). On its way to this placing, the TSU team competed against the following universities: Brigham Young University (Utah, USA), Federal University of Paraná (Brazil), London School of Economics (UK), Hofstra University (NY, USA), University of Belgrade (Serbia), and Bocconi University (Italy). Apart from providing immense educational benefit to TSU students and coaches, TSU’s

performance in the competition, combined with its hosting of the First Tbilisi Pre-Moot in February, has given TSU a solid international “profile” in the field of international arbitration.

Material Development in Commercial Law

Commentary on the Georgian Tax Code

The bulk of the drafting work on the Tax Code Commentary of Georgia was completed during the reporting period and the editing work is currently at an advanced stage. JILEP is now in the process of selecting a publishing house for the Commentary. According to an agreement reached between JILEP and Free Uni, Free Uni will publish an online version of the Commentary on the university’s website. JILEP also intends to advertise the Commentary through social networking sites and through websites of the relevant state authorities (e.g. Facebook, Ministry of Finance of Georgia and the Revenue Service of Georgia) in order to make the resource available for the legal and business and communities of Georgia.

Commercial Law Textbook Creation

JILEP continued its development of written teaching materials for Georgian law students and commercial law practitioners, specifically textbooks on contracts and property law. All materials developed with JILEP support will be published online and be available for law students, practitioners, academics and other interested groups. The textbooks should be completed in the fall of 2012.

During the reporting period, the selected authors for these two textbooks have been providing pieces of their work to JILEP for editing. Editing suggestions have so far been well received by the authors. The writing and editing process will continue in the next quarter.

CLE and Judge Candidate Courses for HSOJ

Last quarter, after receiving steady encouragement from JILEP to do so, the HSOJ published the judge-candidate training curriculum on their website. This marked a small step forward in terms of the transparency of the HSOJ. With the atmosphere for cooperation with the

HSOJ seeming to slightly improve, JILEP put together a list of possible commercial law-related courses it could offer to the HSOJ in future quarters. This list is different from previous lists. It includes: International Taxation, Law and Economics in Judicial Decision Making, the Convention of International Sale of Goods and Other International Trade Law, International Commercial Arbitration, Legal Method and Legal Reasoning in Court Decision Making, and the Fundamentals of Financial reporting. JILEP will find an opportune time to meet with the HSOJ leadership to offer to these courses for their sitting and/or judge candidates.

Monitoring & Evaluation Indicator Results

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

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

For quarter: 162 (roundtable on mediation, int. conference on commercial arbitration; workshop on mediation in MoJ training center); 102 – male, 58 – female

B. Key Issues and Challenges

JILEP's cooperation with key stakeholders such as TSU and GIZ within the HCOJ Mediation Working Group has been essential to moving the process forward and acquiring agreement on the basic elements of the pilot. Expectations for the pilot are high and one of the biggest challenges JILEP faces is to manage these expectations. There is much to do in coming months – select mediation training participants, contract the training organization, plan and deliver the trainings, develop written implementation guidelines and forms, draft an ethics code for mediators -- the list goes on. Building a successful court-annexed mediation system cannot be done overnight, even in a developed legal system. It will take a long time to set up and may take years before the system runs smoothly and efficiently.

C. Plans for Next Quarter

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

- Assist the HCOJ build the elements of a mediation pilot project at Tbilisi City Court;
- Define the scope of the engagement for each prospective training service provider;
- Negotiate and sign an MOU with HCOJ and other stakeholders establishing the expected obligations of the stakeholders;

- Announce selection of mediation training candidates for the mediation pilot project;
- Identify a qualified pool of mediator candidates;
- Prepare the specifics of the training program for mediator candidates;
- Support public outreach endeavors regarding mediation;
- Publish Tax Code Commentary;
- Assist textbook authors in their drafting of contract and property law textbooks; and
- Support the second GBA Commercial Law CLE Conference.

ANNEX A

Coalition Advocacy Influences Repeal of Damaging Tax Code Articles

As mentioned under Component 2 above, on February 21, the Coalition held its 3rd Public Forum on the subject of commercial law. The Forum attracted representatives of civil society, the business community, the government, the judiciary and many international organizations. Forum participants discussed the existing tax law framework and alternative dispute resolution mechanisms. One remarkable moment during the Forum was when a representative of the National Bank of Georgia announced that the highly controversial October 2011 amendments to Article 239.6 of the Tax Code and Article 82.3 of the Law on Enforcement Proceedings will be repealed. These amendments to the Code were being used by the tax authorities in a number of high profile cases to acquire priority over the secured claims of financial institutions. The American Chamber of Commerce (AmCham), supported by a JILEP/EPF grant, had led Coalition members in a sustained lobbying effort to influence the government to repeal the amendments that in their view were doing grievous harm to the business environment. An AmCham leader later reported to the U.S. Embassy that from AmCham's point of view, the element of the October amendment that gave clear priority to tax claims had been repealed and that therefore, auditors and accountants will not be forced to write highly negative opinions (which was the biggest concern) and outside investors will still be able to treat Georgian assets as collateral for loans. He credited the EPF/JILEP grant for this success.

GYLA Wins Landmark Constitutional Court Case

On February 28, the Constitutional Court of Georgia upheld a claim filed by the Georgian Young Lawyers Association (GYLA) and Tamar Khidasheli (in her capacity as citizen), that Article 8 paragraph 2 of the Law of Georgia on Operational Investigative Activities violated a citizen's right to privacy and was therefore unconstitutional. Specifically, the court found that only a judge has the authority to extend the time period of government-sponsored electronic interception of private communications and that the law that had given this extension power to law enforcement and prosecution authorities was invalid. GYLA pursued this case under its strategic litigation initiative which is funded in part by JILEP.

PMMG Changes MOJ Approach to Translation

Public Movement Multinational Georgia (PMMG) seeks to ensure the right to a fair trial for the representatives of the Armenian and Azeri ethnic minorities residing in Georgia by

reducing the language barriers they face in judicial proceedings. One of the PMMG's objectives is to improve the quality of translation services provided at the pre-trial and trial stages of the criminal trial process. To this purpose, the grantee approached the Ministry of Justice (MOJ) and the HCOJ to advocate for addressing gaps in the qualification process of interpreters they employ. As a result of PMMG advocacy, the MOJ made a decision to hire a qualified translation company through a competitive tender instead of hiring translators on an *ad hoc* basis as it had been doing. The company will provide translation services at the stage of pre-trial investigation. This should lead to higher quality translation and better protection of ethnic minority rights in the court process. This PMMG initiative was funded by an EPF/JILEP grant.

GYLA Provides Legal Assistance to Victims of Chamber of Control Overreach

On December 30, 2011, the Georgian Parliament passed a law that created a unit within the Chamber of Control of Georgia (CCG), the country's supreme tax and auditing institution, called the Party Financial Monitoring Service. According to the law, this new unit is obliged to a) collect information concerning political parties' financial activities, examine, inspect and classify it, b) ensure transparency of political parties' financing; c) provide to interested individuals consultation on party finances; and d) respond adequately to violations of regulations concerning political party financing.⁹

In March 2012, the CCG, in coordination with other organs of the government, carried out a mass administrative action against individuals suspected of being connected to opposition political parties. Starting from March 12 and continuing to the time of this writing, the CCG, claiming it was carrying out an investigation to discover illegal or fraudulent political practices, began to summon people to its offices and question them. GYLA is aware of CCG summoning at least 227 people in this manner. The individuals were members of various political parties, party volunteers, and ordinary citizens otherwise expected of having an affiliation with an opposition party. Along with their summons, the individuals received a notice that explained the rights and obligations under Article 25 of the *Administrative Code of Offenses*. The notice stated that a failure to submit the information the CCG requested was punishable by law; however, the type of punishment and the law imposing this punishment was not specified in the notification.

⁹ Regulation of the Chamber of Control, Article 7, paragraph 9, passed December 30, 2011.

Representing a type of governmental “pincer movement” those witnesses that refused to speak to the CCG were called in and questioned by investigators from the Ministry of Interior. GYLA reported that at least 21 individuals were called in for this type of questioning.

GYLA took on the representation of a large number of the people contacted by the CCG. GYLA reported that during the questioning of their clients, CCG interrogators did not inform their clients of any specific offences they were suspected of having committed; they did not tell them the subject of the administrative proceeding initiated by the CCG. To the contrary, CCG interrogators told them that they were not being called in to answer for any particular offence; the CCG wanted them to submit information showing what contributions they had made to any political party or what benefits they had received from any political party. CCG interrogators also demanded that the citizens provide information about their own incomes and political activities as well as the incomes and political activities of their family members.

GYLA’s overall assessment of the mass action taken by the Chamber of Control was that it represented a gross abuse of authority by the CCG and its functionaries and that the operation was clearly intended, in whole or in part, to frighten, intimidate and discourage political opposition.

The CCG’s abuse of authority extended to the lawyers who were trying to represent their summoned clients. GYLA’s lawyers, working in all of its offices around Georgia, reported that the CCG went to great lengths to discourage them from assisting their clients. GYLA’s lawyers were frequently refused entry to the buildings where their clients were being questioned. When they were allowed to enter, they were often forced to undergo body searches and other forms of abuse. When they were able to be present for their clients’ interviews, they were not allowed to have their complaints or comments recorded for the record. In some cases, the CCG interrogators resorted to physical and verbal menace to discourage GYLA lawyers from even trying to represent their clients or from creating a written record of complaint. In at least one case, GYLA complained to the local police about the illegal actions taken by CCG officials toward a GYLA lawyer; however GYLA has little hope that the complaint will result in meaningful action being taken by police authorities.