



EVALUATION

USAID/Kosovo Performance Evaluation of the Contract Law Enforcement (CLE) program; the "Alternative Dispute Resolution Center - Increasing Capacity of American Chamber of Commerce to provide Arbitration Services" Activity (AmCham ADRC); and the "Kosovo Chamber of Commerce Permanent Arbitration Tribunal" Activity (KCC-PTA)

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USAID/KOSOVO PERFORMANCE EVALUATION OF:

- 1) THE CONTRACT LAW ENFORCEMENT (CLE) PROGRAM**
- 2) THE "ALTERNATIVE DISPUTE RESOLUTION CENTER - INCREASING CAPACITY OF AMERICAN CHAMBER OF COMMERCE TO PROVIDE ARBITRATION SERVICES" ACTIVITY (AMCHAM ADRC); AND**
- 3) THE "KOSOVO CHAMBER OF COMMERCE PERMANENT ARBITRATION TRIBUNAL" ACTIVITY (KCC PTA)**

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ACRONYMS

ACR	Agency on Civil Registry
AK	Assembly of Kosovo
ADRC	Alternative Dispute Resolution Center
AGRO	Agricultural Growth and Rural Opportunities
AmCham	American Chamber of Commerce
BCPa	Basic Court of Pristina
BCPn	Basic Court of Prizren
BCGja	Basic Court of Gjakova
BCGji	Basic Court of Gjilan
BO	Business Organization
BRO	Backlog Reduction Officer
CBK	Central Bank of Kosovo
CLE	Contract Law Enforcement Program
CPEA	Chamber of Private Enforcement Agents
CSSP	Berlin Center for Integrative Mediation
DFP- MoJ	Department on Free Professions – Ministry of Justice
DLA – MoJ	Department of Legal Affairs – Ministry of Justice
EU	European Union
FGDs	Focus Group Discussions
GoK	Government of Kosovo
KBA	Kosovo Bar Association
KBA _n	Kosovo Banks Association
KCC-PTA	Kosovo Chamber of Commerce – Permanent Tribunal of Arbitration
KEC	Kosovo Energy Corporation
KII	Key Informant Interviews
KJC	Kosovo Judicial Council
KJCS	Kosovo Judicial Council Secretariat
KJI	Kosovo Judicial Institute
MC	Mediation Center
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MOIA	Ministry of Internal Affairs
M&E	Monitoring and Evaluation
MTI	Ministry of Trade and Industry
NAPDP	National Agency for Personal Data Protection
NGO	Non-Governmental Organization
NBR _S	National Backlog Reduction Strategy
PEA	Private Enforcement Agent
PCB	ProCredit Bank
PFD	Partnership For Development-Kosovo
PRP	Property Rights Program
PTA	Permanent Arbitration Tribunal
RFP	Request for Proposal
SEAD	Systems for Enforcing Agreements and Decisions Program
SOW	Scope of Work
TAK	Tax Administration of Kosovo
ToT	Training of Trainers
UCI	University College Iliria
USAID	United States Agency for International Development
UNDP	United Nations Development Programme

EXECUTIVE SUMMARY

EVALUATION PURPOSE

This is a report on the mid-term evaluation of three inter-related USAID-funded activities in Kosovo: the Contract Law Enforcement (CLE) Program implemented by Checchi and Company Consulting, Inc. (Checchi), and two small USAID Forward initiatives - the American Chamber of Commerce Alternative Dispute Resolution Center (AmCham ADRC) Activity aimed to increase the capacity of AmCham to provide arbitration services, and the Kosovo Chamber of Commerce Permanent Arbitration Tribunal (KCC PTA) Activity, which had a similar mission as AmCham ADRC. The evaluation was conducted during the period November 2015 – December 2016, by a team assembled by Mendez, England & Associates (ME&A) with headquarters in Bethesda, Maryland. The team comprised two international and three local experts.

The purpose of the evaluation was to provide USAID/Kosovo with an objective assessment of the effectiveness, strengths and weaknesses of the management and performance of CLE, AmCham ADRC and KCC PTA activities. This included an analysis of their performance and recommended adjustments for the remaining term of the CLE Program - expected to end in May 2016 - as well as recommendations for future programming, should USAID be interested in continuing the work of CLE, AmCham ADRC and KCC PTA.

PROJECT BACKGROUND

The CLE Program and the AmCham ADRC and KCC PTA arbitration services activities were designed by USAID in an effort to increase the economic development of and foreign investment in Kosovo.

The CLE Program addresses issues that broadly affect economic development and commercial activities in Kosovo. CLE has been implemented by Checchi since May 2013 and is expected to end in May 2016. The funding for this program is \$6,256,044. A predecessor program, entitled Systems for Enforcing Agreement and Decisions (SEAD), focused on similar issues and was implemented between 2009 and 2012.

The CLE Program is centered around the following activities: 1) assisting Kosovo's institutions to improve the enforcement of civil judgments in an effective, efficient, and accountable manner by reducing the backlog of court enforcement cases; 2) implementing the new private enforcement system; 3) increasing the use and effectiveness of Alternative Dispute Resolution (ADR) mechanisms by supporting three mediation centers, increasing the caliber of mediators, and expanding the public knowledge of mediation services; 4) assisting Kosovo to harmonize its commercial law framework and systems; and 5) instilling a culture of contracts.

The two smaller activities, AmCham ADRC (\$149,916) and the KCC PTA (\$150,000), address the need to increase the quality and availability of arbitration services. Both were established by the SEAD program in 2011. In 2013, each received a grant to engage in similar activities, including: 1) providing advanced arbitration training focused on practical skills development; 2) engaging in outreach activities among its members to increase awareness of and demand for the ADR mechanism of arbitration; and 3) developing a case management tracking mechanism.

EVALUATION METHODOLOGY AND LIMITATIONS

The evaluation methodology was multidimensional and relied on a mixture of methods that complemented each other: quantitative vs. qualitative data, individual vs. group responses, in-person and phone interviews, focus group discussions (FGDs), and mini-surveys. Such techniques helped the evaluation team capture the diversity of opinions and perceptions of beneficiaries and stakeholders on the effectiveness of CLE, AmCham ADRC and KCC PTA in achieving their goals.

The CLE Program is a key USAID priority and therefore it was the main priority of the evaluation team (hereinafter the "team"). The AmCham ADRC and the KCC PTA activities were evaluated for their results as both of these activities were completed by the time the team was contracted to conduct the performance evaluation.

To implement the evaluation of all three activities, the team conducted 84 key informant interviews (KIs), four on-site visits to the Pristina, Gjiilan, Gjakova and Ferizaj basic courts; four FGDs with backlog reduction clerks and mediators; and six surveys with private enforcement agents (PEAs), mediators, businesses and arbitrators, each associated with AmCham and KCC. The team also had an opportunity to meet with other USAID donor programs and international donors, including United Nations Development Programme (UNDP) and its staff associated with two UNDP mediation centers in Ferizaj and Gjakova.

The major limitation of the evaluation pertained to its actual timing. The evaluation mission was conducted during the holiday season in Kosovo, during which many stakeholders, beneficiaries, donors, and staff associated with the three programs were not always available due to their personal holiday schedules. However, the team used email, phone, and Skype interviews and was able to gather all necessary information for the evaluation.

CLE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

EQ 1. How effective have the efforts to reduce execution backlog been and are the actual results sufficient compared to the invested efforts? What has been the impact of this activity with the KJC and the Courts and how effective has been the cooperation with the Central Bank of Kosovo (CBK)?

Findings:

1. Working closely with the KJC, basic courts and other institutions, CLE has made significant efforts to reduce the execution backlog. As a result, 87,000 cases have been removed, and the total amount of debt recovered from removal is close to 5 million Euros (\$5.5 million). The amount of recovered debt is far greater than what CLE has spent for the backlog reduction initiative and does not include debts recovered by the PEAs.
2. During KIs, CLE was credited by counterparts for being a major actor for the successful establishment of the private enforcement system hence, indirectly contributing to higher debt collection rates achieved by the PEAs, which as of January 6, 2016, was estimated to be about 42.5 million Euros.
3. Based on the team's estimates, the execution backlog would be entirely eliminated by September 2017 (considering January 2016 as the starting date when the exact number of execution cases is identified and agreed with KJC).
4. There are several challenges to the future work of the CLE and KJC in the backlog reduction which, if not addressed during the remaining life of the CLE Program, may risk the investments that USAID has made to eliminate the execution backlog in Kosovo. They include: 1) Courts are not prioritizing the unenforced decisions related to court expenses and criminal fines where the state is the creditor; 2) Court presidents and/or enforcement judges do not consider cases involving debt to commercial banks as a priority regardless of the fact that almost all judicial leaders recognized that these cases represent the highest monetary values of unenforced debt; and 3) Judges are reluctant to use the "judge may suspend" clause under the Law on Enforcement Procedure, failing to close and remove many cases which are "dead at law."
5. CLE designed and implemented a web-based case tracking application, which is currently installed in all basic courts where CLE is working, and proposed a separate statistical reporting mechanism for the KJC Statistical Department, which will enable enforcement clerks and court statistical officers to report to the KJC on a daily basis when cases are closed. However, the team noticed that there are still substantial statistical discrepancies between the CLE and KJC not only on the overall amount of the backlogged cases but also on the amount of cases removed from the backlog with CLE's assistance.
6. KJC does not demonstrate sufficient concern about the amount of cases active in the execution backlog and the real time statistics of the CLE despite the fact that it has invested significant manpower in hiring additional enforcement clerks in the basic courts. Furthermore, the leadership of the judicial system considers the backlog reduction initiative as a short-term, high impact intervention that CLE is addressing.
7. KIs with court presidents, enforcement judges, and enforcement clerks indicated that backlog reduction teams have worked very well with their colleagues to remove cases from the execution backlog and are considered as highly professional and efficient by court staff and judges. The combined efforts of the KJC

enforcement clerks and the CLE backlog reduction teams significantly increased the performance of courts in dealing with execution backlog.

Conclusions:

1. CLE backlog reduction targets have been met and exceeded. CLE's backlog reduction activities have been very effective, resulting in the removal of 87,000 cases from the backlog and the collection of about \$5.5 million of debt. This amount is at least tenfold higher than the initial invested amount of \$508,000.
2. CLE is one of the actors that has fundamentally altered the system of execution of court decisions in Kosovo through its contribution to the successful establishment of the PEA system and the introduction of rules, systems and procedures enabling mass enforcement of the backlogged cases.
3. Although, CLE has exceed the performance targets established at the outset of the project, the team's basic estimate shows that because of the high number of previously unreported cases identified during the case categorization process, the elimination of the execution backlog may take at least until September 2017.
4. Based on the current capacity of the backlog reduction teams and the increased execution trends, a very substantial amount of the backlog cases can be removed during the life of the project or shortly thereafter. However, in order for this to happen, the many challenges that exist need to be addressed, including enforcing not only judgments of unpaid utility bills but also cases involving debt to commercial banks, as well as cases where the state is the creditor; and speeding up the process dealing with cases which have already been prepared for suspension by backlog reduction officers and court enforcement clerks.
5. The overall impact of CLE's cooperation with KJC, court presidents, and other institutions has been positive and effective in enabling mass enforcement against bank accounts and wage garnishment. However, the KJC's reporting on execution cases continues to be incomplete, inaccurate, unreliable, and dependent on the execution backlog tracking tools developed by CLE.
6. KJC considers backlog reduction as a CLE task and is not doing enough to help speed up the process. This over-dependency of KJC on CLE may affect the sustainability of systems put in place by CLE.
7. CLE's work at the court level, particularly the embedded assistance offered through the backlog reduction teams, has been very effective in substantially reducing the backlog of execution cases.

Recommendations:

1. Any future execution backlog reduction activity should move beyond the "utility bills" priority and focus on the enforcement of all types of cases with a view at eliminating the backlog as soon as possible. Once the pressure from the large amount of backlogged utility bills dissipates, USAID should instruct CLE to work with KJC and develop an agreed plan with clear targets and goals for the functional elimination of the execution backlog, devoting more attention and resources to enforcing final civil judgments of commercial nature as well as those involving court expenses or criminal penalties where the state is the creditor.
2. CLE should work with the KCJ leadership to develop guidelines that can allow for closure of cases by judges when all enforcement actions have been taken in accordance with the law. Furthermore, CLE should continue to raise this issue with court leaders since their court management responsibilities will be significantly strengthened following the decentralization of authority from the KJC Secretariat to the court leadership.
3. In an ideal situation, the KJC and courts should lead the backlog reduction activity, monitor the results of CLE's assistance, and have a clear picture of what has been achieved and what remains to be done. Ownership of the process will increase the sustainability of CLE's interventions.
4. As the case categorization process is now complete, CLE should reinvigorate its engagement with the KJC in order to improve the statistical reporting system before the end of the project's life. This should involve close collaboration with the Committee of Court Administration to adopt new rules for unifying the procedures for capturing, processing, and reporting statistical data on the execution cases. In addition, CLE and KJC should agree on a transitional plan for moving from the paper based system of the KJC into a more sophisticated web-based tool that would enable KJC and courts to track the status of the backlogged cases into the court system, and inform the performance management process in the future.

EQ 2. What is the impact of the private enforcement system established through CLE program support? What has been the impact of this activity with the Ministry of Justice (MOJ)?

Finding:

1. CLE provided excellent assistance to the MOJ in the successful establishment of the private enforcement system by collaboratively working with local stakeholders to develop secondary legislation of the Law on Enforcement Procedure, by providing essential training to build the capacity of the PEAs as well as governmental officials overseeing PEAs, and by supporting the creation of the Disciplinary Committee of the PEAs as well as the Chamber of PEAs.

Conclusion:

1. In close collaboration with the MOJ, CLE provided excellent support in establishing the private enforcement system.

Recommendation:

1. USAID should continue providing support to the MOJ to further the sustainable development of the private enforcement system along with support to the Chamber of PEAs in order for it to become self-sustaining.

EQ 3. What has been the impact of the Contractor's work with mediation centers, and what has been the impact of this activity with the MOJ, the KJC and the courts?

Findings:

1. Working closely with the MOJ, the Mediation Commission, the KJC, and the courts, CLE has provided significant support to enhance mediation services in Kosovo, particularly through direct assistance to three mediation centers in Peja, Gjiilan, and Prizren.
2. KIs indicated that while CLE and the Berlin Center for Integrative Mediation (CSSP) collaborated very well, there was and continues to be discord between CLE and UNDP concerning several aspects of mediation. The major schism between them relates to the regulatory environment and the role the MOJ and the Mediation Commission have over mediation services.
3. Mediators from non-CLE mediation centers challenge the representation of the Mediation Association as currently constituted, have no interest in joining, and have sought to create another Mediation Association that will represent their interests.
4. The MOJ does not have the capacity or sufficient funding to continue the work of CLE, nor knowledge of or access to international experts on advanced mediation training, which MOJ believes is essential to continue enhancing the quality of mediation services in Kosovo.
5. While there are issues regarding the development of mediation services in Kosovo, USAID was highly praised for its support of mediation from the outset. However, KIs with judges revealed a serious need for greater public outreach as there is an *"insufficient awareness of mediation services by citizens, especially in the rural areas."*

Conclusions:

1. CLE has provided valuable legislative assistance to enhance mediation services in Kosovo by working closely with the MOJ and the Mediation Commission, the KJC and the Courts.
2. The current configuration of mediation centers being funded and operated by three different donors with their overlapping programmatic jurisdictions and the disparate interpretations of the Law on Mediation by CLE and UNDP has led to slower progress in enhancing mediation services in Kosovo than could have been achieved. The landscape for dispute among the donors is fertile and could continue to have a deleterious impact on strengthening mediation services in Kosovo.
3. The shortfall by MOJ, the Mediation Commission and the KJC to take a leadership role in determining which institution has authority over mediation services, combined with donors' lack of unified concept and practices of mediation centers, has resulted in the underutilization of mediation as an ADR mechanism throughout Kosovo.
4. There continues to be a need for international assistance to ensure the sustainability of mediation services in Kosovo.

5. USAID's support for the development of mediation services is highly recognized and appreciated. However, public awareness about these services, especially in rural areas, is still low.

Recommendations:

1. Donor expertise is necessary to support the regulatory environment of mediation, particularly with regard to amending the Law on Mediation following the finalization of the Concept Paper on the Law on Mediation and refining the Protocol for Referral of Cases to Mediation. It is debatable, however, given the current interplay of the three donors, whether it is in the best interests of USAID, depending upon its expectation of the return on its investment, to continue supporting mediation, unless there is a resolution by the GOK regarding the roles of the MOJ and the KJC over mediation, and of the outstanding conflicts between CLE and UNDP over the provision of mediation services.
2. With KJC controlling the work of the mediation center administrators, the functioning of the mediation centers will need to be coordinated; systematized training of judges and clerks in all basic courts will be required to ensure a higher capability of referring court cases to the mediation centers; training programs for new and experienced mediators will continue to be a necessity; an expansion of public outreach on the benefits and availability of mediation services in Kosovo is essential for the growth of mediation; and the development of a nation-wide Mediation Association.

EQ 4. How has the support provided to the GOK legislative drafting efforts [Bankruptcy, Enforcement Procedure, Mediation, Regulations for the Law on Obligational Relationships (LOR)] been perceived by counterparts? How has it made a difference? What has been the impact of this activity with the MOJ?**Findings:**

1. KILs with counterparts demonstrated that CLE has significantly supported the GoK's legislative efforts focusing on providing assistance to the MOJ and MTI on developing and/or improving the commercial law framework, including drafting of new legislation, amendments to existing laws and secondary legislation required to implement the existing laws.
2. CLE's efforts have often not produced the indented result due to elections cycles or political turmoil, which are beyond the control of the Program.

Conclusions:

1. CLE's legislative assistance efforts to the MOJ in creating the sub-legal acts for the successful establishment of the private enforcement system are considered by the beneficiary institutions as significant and delivered in a professional manner.
2. CLE's support to drafting the Bankruptcy, a new Law on Mediation, and amending the Law on Enforcement Procedure and sublegal acts implementing the Law on Obligation Relationships are still ongoing.
3. Due to delays in the adoption of several laws caused by the six month delay in the forming a government and the recent political deadlock leading to the disruption of the work in the Kosovo Assembly (August - December 2015), the CLE's work in drafting primary laws has not made a significant difference in improving the commercial law legal frameworks.

Recommendation:

1. CLE's support should continue to improve the commercial law framework but the drafting efforts should focus on the MOJ and PEA Chamber in order to strengthen the procedures for monitoring, inspecting and disciplining the enforcement system.

EQ 5. How has Checchi made a difference in the development of a culture for use and respect for contracts?**Finding:**

1. CLE promoted a "Culture of Contracts" in Kosovo, through its "Put it on Paper" activities supporting the use of contracts in the agricultural sector along with multiple campaigns targeting Kosovar businesses in majority and non-majority communities aimed at raising awareness on the importance and benefits of written contracts.

Conclusion:

1. CLE has been active in designing and executing many campaigns on fostering awareness on the rule of law and promoting a “Culture of Contracts,” specifically the usage of the written contracts. However, it is difficult to attribute all the reported higher percentages in the use of written contracts in the 2015 survey specifically to the impact of the CLE’s activities.

Recommendation:

1. No recommendation for this question

EQ 6. Is there a potential for greater Checchi and Company Consulting Inc. collaboration with other USAID and other donor projects?**Finding:**

1. CLE has been extraordinarily collaborative with other USAID projects and has been responsive to their new initiatives to provide joint assistance in the commercial law field.
2. Under CLE’s current leadership, there is a potential for an even greater collaboration with other USAID and other donor projects, which would be welcomed by CLE in order to benefit the commercial law environment in Kosovo.

Conclusion:

1. CLE’s willingness to collaborate with other USAID projects has already resulted in an increased impact on enhancing Kosovo’s commercial law environment, and with greater collaboration with other donor projects, would have an even broader impact.

Recommendation:

1. CLE should continue its effective collaboration with other USAID and other donor projects.

EQ 7. What has Checchi done to promote sustainability of reforms?**Findings:**

1. CLE has engaged in numerous activities with the MOJ, the KJC and courts to transfer skills to key personnel and develop the capacity of each institution that demonstrate best practices in enhancing the commercial law environment in Kosovo with the intention that these activities will be sustained after the termination of CLE. Unfortunately, the team found that at the KJC and at court level, the case tracking mechanism is still referred to as the “USAID system” and “CLE’s database” and has yet to be formally adopted by the Committee on Court Administration.” Therefore, its future usefulness and sustainability are in question due to KJC’s lack of full buy-in and ownership of the reforms undertaken in close collaboration with CLE.
2. While mediation is not an entirely new concept to Kosovars, the infrastructure surrounding it, particularly the Mediation Commission and the seven mediation centers, are still in a developmental stage. Further, mediation services remain relatively unknown to the general public.
3. Given the extraordinarily collaborative work between the MOJ and CLE to create the private enforcement system, and the commitment that MOJ has demonstrated to develop a regulatory framework, the sustainability of the private enforcement system seems assured. However, its nascent nature makes the system fragile.
4. With the recent creation of the Disciplinary Committee, the need to strengthen its organizational capacity continues. There is also a significant need to expand the outreach of the private enforcement system to educate all citizens throughout Kosovo about its role and importance.
5. While the MOJ recognizes the importance of training new PEAs, it admits that sufficient resources do not exist to provide the quality and duration of training that CLE has provided. The Chamber of PEAs will continue to need external financial support before it can rely solely on its members and its financial self-sustainability will be difficult to achieve until the required complement of PEAs, estimated to be over 100, are commissioned and, as members of the Chamber, pay the Chamber’s dues.

Conclusions:

1. There has been sufficient progress with many of CLE’s activities, which have been geared toward promoting sustainability of reforms in Kosovo. However, the usefulness and sustainability of the case

tracking mechanism are in question due to KJC's lack of full buy-in and ownership of the reforms undertaken in close collaboration with CLE.

2. Even with the GOK's assumption of the salaries of all mediation center managers, sustainability of the mediation centers is questionable unless donors continue to provide funding and some technical assistance.
3. Although fragile, the private enforcement system seems to be sustainable.
4. There is a need to increase awareness about the role and authority of PEAs so that compliance rather than complaints result from the work of PEAs.
5. Chamber of PEAs is in need of continued financial support from donors until it becomes self-sustainable. The MOJ also needs resources to provide training to new PEAs.

Recommendations:

1. USAID's assistance to KJC and courts should focus on improving the tracking and statistical reporting of execution backlog and ensuring KJC's buy-in and full use of the CLE enforcement case tracking mechanism. Future activities in this area should include *inter alia*, the adoption of sub-legal acts by the Committee on Court Administration, development of a clear plan for transitioning from the manually held statistical reporting into more sophisticated web-based tool that would enable KJC and courts to track the status of the backlogged cases into the court system, and inform the performance management process in the future. The transitional plan should include the location of resources that KJC needs to fully utilize and maintain the new system as well as milestones to testing and fully adopting it.
2. USAID should continue providing support to the MOJ to further the sustainable development of the private enforcement system along with support to the Chamber of PEAs in order for it to become self-sustaining.
3. Even though donors have provided significant assistance since the inception of mediation in 2008, a coordinated donor support is still needed to improve and ensure the sustainability of mediation in Kosovo. (See also EQ 3, Recommendation 1).

AMCHAM ADRC AND KCC PTA FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

EQ 1. What has been the impact of USAID-funded activities through AmCham ADRC and KCC PTA on the rule of law system in Kosovo?

Findings:

1. The activities of the AmCham ADRC and KCC PTA (training, workshops, establishment of the case management system) have been focused on internal institutional strengthening and increasing awareness among business organizations and public institutions on the use of arbitration as an important ADR mechanism to resolve disputes. However, since the establishment of the ADRC and PTA in 2011, there have been only two cases referred to the ADRC and nine cases referred to the PTA.
2. Despite the positive impact of the training programs, many arbitrators felt that they still lacked sufficient knowledge on several aspects of arbitration proceedings, particularly those involving disputes between local and foreign companies. In addition, training sessions were predominantly theoretical discussions and lacked interaction and practicality.
3. A major deterrent to the use of arbitration is that many businesses, particularly small businesses, deem the arbitration fees to be prohibitively expensive.
4. A large number of businesses are still not familiar with the arbitration proceedings; lack of awareness was cited as another obstacle to wider use of arbitration.

Conclusions:

1. Given AmCham's and KCC's activities relating to arbitration, arbitration services in Kosovo have developed to a satisfactory level. Both AmCham and KCC have engaged in sufficient groundwork to build professional arbitration centers, and have reached out to the business community regarding available arbitration services. As a result, AmCham ADRC's and KCC PTA's activities have had positive, albeit limited, impact on the rule of law in Kosovo.
2. Participants appreciate the training programs provided by AMCham ADRC but would like to see more topics offered, especially regarding arbitration proceedings. In addition, participants would like to attend

trainings that incorporate practical approaches or illustration of arbitration proceedings in an interactive manner.

3. High arbitration fees are impeding many businesses to use arbitration services.
4. Lack of awareness is another factor why arbitration services are not used by more businesses.

Recommendations:

1. USAID should continue providing support to enhance the use of arbitration to resolve the commercial disputes; the culture of arbitration still needs to be developed on a wider basis so that the advantages of arbitration are more recognizable and acceptable.
2. Future training programs should focus on increasing arbitrators' knowledge on various aspects of arbitration proceedings. In addition, training should focus less on theoretical discussions and more on practical use of concepts and methods.
3. In supporting a broader use of arbitration, USAID should focus on a serious limitation in the use of arbitration, which is the high arbitration fees that deter many businesses from seeking arbitration services.
4. Future foreign assistance should focus on institutional building and more aggressive outreach activities towards businesses. Outreach efforts should include joint activities with the KBA, the Chamber of Notaries and the Chamber of PEAs, which would have a value added in promoting arbitration.

EQ 2. What has been the impact of AmCham ADRC and KCC PTA training and outreach activities?

Findings:

1. AmCham ADRC's training of new and current arbitrators is perceived as valuable. 87.5% of surveyed arbitrators considered the quality of training as "very good." However, when asked about the impact that AmCham ADRC training has had on arbitration, in general, responses varied from satisfactory to very good. Responses on the impact of AmCham ADRC outreach activities also varied with some calling it "poor" and others "significant." KCC arbitrators that responded to the survey (2 out of 28) considered the training provided by KCC PTA as "good" and "very good," and the impact it has had on arbitration as "poor" and "good." Impact on outreach was considered satisfactory.
2. Practice and award writing, issues with contract law, taking of evidence, and special arbitration were mentioned by arbitrators of both programs as topics that should be covered and elaborated in future trainings.

Conclusions:

1. While AmCham ADRC and KCC PTA have had a positive impact on the training of arbitrators, their outreach activities, particularly those of AmCham ADRC, have had limited impact on compliance and the use of arbitration.
2. Although the training was considered of good quality, additional topics need to be offered to respond to arbitrators' needs.

Recommendations:

1. Future foreign assistance should focus on institutional building and more aggressive outreach activities towards businesses.
2. Future training programs should work more closely with arbitrators to ensure that training responds to their current and most immediate needs.

EQ 3. As currently implemented, are AmCham ADRC and KCC PTA activities likely to have a sustainable development impact after USAID funding has stopped?

Finding:

1. While both AmCham and KCC intend to continue supporting the operations of the ADRC and PTA, respectively, there is uncertainty regarding the sustainability of the activities beyond USAID funding due to lack of awareness of arbitration services and high arbitration fees.

Conclusion:

- I. In the near future, it is likely that neither the ADC nor the PTA will be sustainable if there is not continued donor support, significantly broader outreach activities to overcome the wide-spread lack of awareness of arbitraton, and a reduction of the arbitration fees.

Recommendation:

- I. Building upon the limited but promising experience of ADRC and PTA, USAID should continue providing support for wider use of commercial arbitration. In supporting a broader use of arbitration, USAID should focus on a serious limitation in the use of arbitration, which is the high arbitration fees that deter many businesses from seeking arbitration services.

I.0 EVALUATION BACKGROUND, PURPOSE AND QUESTIONS

I.1 EVALUATION BACKGROUND

This is a report on the Performance Evaluation of three inter-related activities: 1) the Contract Law Enforcement (CLE) Program; 2) the Alternative Dispute Resolution Center - Increasing Capacity of American Chamber of Commerce to Provide Arbitration Services Activity (AmCham ADRC); and 3) the Kosovo Chamber of Commerce Permanent Arbitration Tribunal Activity (KCC PTA).

CLE is being implemented by Checchi and Company Consulting, Inc., (Checchi) from May 2013 - May 2016. The program funding is \$6,256,044. AmCham ADRC was implemented by the American Chamber of Commerce (AmCham) in Kosovo during the period of September 2013 - 2015. The funding for this activity was \$149,916. KCC PTA was implemented by the Kosovo Chamber of Commerce (KCC) during the period of November 2013 - December 2015. The activity funding was \$150,000.

The evaluation of CLE, AmCham ADRC, and KCC PTA activities was conducted during the period of November – December 2015 by a team assembled by Mendez England & Associates (ME&A) located in Bethesda, Maryland. The team (team) comprised five key experts: Ms. Mary Noel Pepys (Team Leader), Dr. Roland Gjoni (Justice Sector Specialist and Co-Team Leader), and three local experts - Mr. Ilir Morina, Ms. Shkelqesa Citaku, and Mr. Arben Gashi. In addition, the team was supported by Ms. Eriola Kasemi who organized stakeholders meetings and evaluation logistics.

The findings, conclusions and recommendations in this report emanate from the collective efforts of the above-mentioned team.

I.2 EVALUATION PURPOSE

The purpose of the performance evaluation, which was originally designed to be a mid-term evaluation, was to evaluate the programmatic progress of the three above-mentioned, inter-related activities. Specifically, the evaluation was required to: 1) assess the performance of the implementers, Checchi, AmCham, and KCC; 2) identify areas where progress has not been sufficient; 3) recommend adjustments through the end of the CLE contract; and 4) provide additional recommendations for future programming.

In addition, the evaluation was required to assess: 1) the overall impact of the activities on the target institutions and the rule of law in Kosovo; 2) actual vs. planned progress in attaining the anticipated results; and 3) sustainability of reforms implemented by the programs.

The evaluation is to provide USAID/Kosovo with an objective assessment of the effectiveness, strengths and weaknesses of the management and performance of CLE, AmCham ADRC, and KCC PTA activities. This would include an analysis of their performance and recommended adjustments for the remaining term of the CLE Program, which is expected to end in May 2016, as well as recommendations for future programming, should USAID be interested in continuing the work of CLE, AmCham ADRC, and KCC PTA.

I.2 EVALUATION QUESTIONS (EQs)

In line with the Scope of Work (SOW) requirements (see Annex I), the evaluation team was tasked with answering a specific set of questions. These are highlighted below:

CLE Program:

- What has been the impact of the contractor's work with the Kosovo Judicial Council (KJC) and the Courts?
- What has been the impact of the contractor's work with the Ministry of Justice (MOJ)?
- How has Checchi made a difference in the development of a culture for use and respect for contracts?

- What is the impact of the Private Enforcement System established through CLE Program support?
- How effective have the efforts to reduce execution backlog been and are the actual results sufficient compared to the invested efforts?
- How effective has been the cooperation with the Central Bank of Kosovo (CBK)?
- How has the support provided to the Government of Kosovo (GOK) legislative drafting efforts (Bankruptcy, Enforcement Procedure, Mediation, Regulations for the Law on Obligational Relationships) been perceived by counterparts and how has it made a difference?
- What has been the impact of the contractor's work with Mediation Centers?
- What has Checchi done to promote sustainability of reforms?

AmCham ADRC:

- What has been the impact of USAID-funded activities through AmCham ADRC on the rule of law system in Kosovo?
- What has been the impact of AmCham ADRC training and outreach activities?
- As currently implemented, are AmCham ADRC activities likely to have a sustainable development impact after USAID funding has stopped?

KCC PTA:

- What has been the impact of USAID-funded activities through KCC PTA on the rule of law system in Kosovo?
- What has been the impact of KCC PTA training and outreach activities?
- As currently implemented, are KCC PTA activities likely to have a sustainable development impact after USAID funding has stopped?

2.0 PROJECT BACKGROUND AND PURPOSE

2.1 EVALUATION BACKGROUND

Given that a strong rule of law system is essential for Kosovo's stability, security, and economic development, USAID's programs have aimed to increase the independence and effectiveness of the judicial and legal systems while simultaneously increasing the public's trust and improving rule of law and governance to meet citizen's needs.

Kosovo has been focused on reforming its judiciary since 2013 but faces serious new challenges, not the least of which is the need to improve the current legal environment to support increased economic development and foreign investment. Although a legal framework regulating commercial activities exists, there are still considerable gaps and challenges that need to be addressed. One of them is strengthening the enforcement of judgments. Difficulty with the enforcement of court decisions and contracts has diminished the credibility of court rulings, affected businesses transactions, caused increased interest rates, and reduced the availability of bank and trade credit in the economy.

2.2 CLE PROGRAM

USAID designed the CLE Program to address the issues affecting economic development and commercial activities in Kosovo. A predecessor program, Systems for Enforcing Agreement and Decisions (SEAD), focused on similar tasks and was implemented between 2009 and 2012.

The CLE Program builds upon the legacy of SEAD with a focus on two main areas: 1) assisting Kosovo's institutions to improve the enforcement of civil judgments in an effective, efficient, and accountable manner by developing mechanisms to reduce the backlog of enforcement cases in the Kosovo court system; and by implementing the new enforcement system in Kosovo; and 2) assisting Kosovo in developing and harmonizing

its commercial law framework, increasing the effectiveness of ADR mechanisms, particularly mediation, and increasing the use of and respect for contracts.

Developing a cadre of backlog enforcement officers focused on reducing the sizeable backlog of court enforcement cases and supporting the creation of private enforcement agents (PEAs) to execute current court enforcement judgements are two major activities of CLE.

2.3 AMCHAM ADRC

The AmCham ADRC was established by the SEAD Program in 2011 with the purpose of providing alternative mechanisms to businesses to resolve disputes. In order to directly increase the capacity of local institutions and after evaluating the ADRC as capable to undertake an independent management, USAID granted an award to AmCham to increase the quality and awareness of arbitration services in Kosovo. The activity covered three primary goals: 1) advanced arbitration training focused on practical skills development; 2) outreach activities among AmCham members to increase awareness of and demand for ADR mechanisms; and 3) the development of a case management tracking mechanism.

2.4 KCC PTA

Similarly to the AmCham ADRC, KCC PTA was established by the SEAD Program in 2011 with the purpose of providing alternative mechanisms to businesses to resolve their disputes. In order to directly increase the capacity of local institutions and after evaluating the PTA as capable of independent management, USAID granted an award to KCC to increase the quality and awareness of arbitration services in Kosovo. The activity covered three primary goals: 1) advanced arbitration training centered on practical skills development; 2) outreach activities among KCC membership to increase awareness of and demand for ADR mechanisms; and 3) the development of a case management tracking mechanisms.

3.0 EVALUATION METHODOLOGY AND LIMITATIONS

3.1 EVALUATION METHODOLOGY

The evaluation methodology was multidimensional and relied on a mixture of methods that complemented each other: quantitative vs. qualitative data, individual vs. group responses, in-person and phone interviews, focus groups, and mini-surveys. Such techniques helped the team capture the diversity of opinions and perceptions of beneficiaries and stakeholders about the effectiveness of CLE, AmCham ADRC, and KCC PTA activities in achieving their goals. The variety of techniques also assisted in uncovering the impact of the interventions from the above activities on the targeted institutions, and validating the progress they made in achieving the results and objectives specified in their awards and their adjusted strategic plans.

In conducting the evaluation of all three activities, the evaluation team (hereinafter “the team”) began its desk review during the week of November 30, and conducted key informant interviews (KIIs) from December 7 through December 23, for a total of 84 KIIs (See Annex 2 for a list of people interviewed and Annex 3 for a list of documents reviewed). The five-member team divided into two groups, with the three local members focused on AmCham and KCC, and the two international team members focused on CLE. However, all five team members participated in discussions concerning all three activities, and in drafting and providing inputs on all 13 evaluation questions.

3.1.1 Quantitative Research and Analysis

Quantitative data collection consisted of analyzing data sourced from objective performance reports, progress reports and performance indicators; previous evaluations and assessments conducted by the projects or USAID; six surveys; and questionnaires.

The six surveys were utilized to reach a broader audience. While most survey questions were close ended, several asked for open responses thus requiring the need for translation of these responses into English. Survey questions took into consideration cultural sensitivities and clearly assured respondents that their responses would be anonymous. Surveys were conducted with mediators associated with CLE mediation centers; PEAs; and businesses associated with AmCham ADRC and with KCC PTA (see Annex 4 for survey questions).

The team also developed standardized questionnaires not only for each activity - CLE, AmCham ADRC, and KCC PTA - but also for certain beneficiaries. These questionnaires served as key guides for the KIs and ensured consistency across each activity's participants and locations. The nature of the questions for each activity varied depending on the group interviewed (i.e. justice sector employees had different issues to be explored than private business owners). The standardized questionnaires were sufficiently flexible to adapt to the backgrounds and experiences of the various stakeholder groups involved in the evaluation. The use of such questionnaires was particularly important since the team was divided into two groups.

3.1.2 Qualitative Research and Analysis

The qualitative research was conducted primarily through:

- A critical desk-top review of materials related to CLE, AmCham ADRC, and KCC PTA, as well as the many materials that were provided by USAID such as quarterly reports, annual reports, work plans, statistical reports, background materials on Kosovo's justice sector, USAID's overall justice/legal strategy, etc.
- Interviews with USAID/Kosovo's Monitoring and Evaluation Specialist, as well as with staff from the project implementers: Checchi, AmCham, and KCC.
- In depth, semi-structured KIs with selected program beneficiaries and stakeholders such as the KJC, MOJ, Mediation Commission, Kosovo Judicial Institute (KJI), Kosovo Bar Association (KBA), PEA Chamber, private businesses, judges, lawyers, etc.
- On-site visits to courts in Prishtina, Gjilan, Ferizaj, and Gjakova, and meetings with CLE backlog reduction clerks and CLE Mediation Center administrators.
- On-site visits to UNDP's mediation centers in Ferizaj and Gjakova.
- Direct observations to cross-check information.
- Review of activities' outputs against objectives and performance indicators.
- Focus Group Discussions (FGDs) to obtain qualitative information to strengthen the team's analysis and understand the relationship between each activity and the results that they have achieved. FGDs were activity-specific in order to stimulate dialogue separately on CLE, AmCham ADRC, and KCC PTA, and not confuse the participants. FGDs were conducted with the backlog reduction clerks in several courts and mediators associated with the CLE Mediation Center.

3.2 EVALUATION LIMITATIONS

The major limitation pertains to the timing of the evaluation. While time was of the essence to USAID in having the in-country evaluation work of CLE completed by the end of the year, it required the team to conduct the KIs, FGDs, surveys and site visits during the holiday season in Kosovo. Consequently, given the holiday schedules of many stakeholders and beneficiaries, certain information was difficult to obtain in country. However, the team used other methods of data collection, including email, Skype and phone interviews, and was able to collect the necessary information.

Another limitation, although it was more of a challenge, was the repetitive nature of CLE's response in its quarterly reports. It was difficult to ascertain what new activities were conducted during a specific quarter since the language within certain sections of subsequent quarterly reports was almost identical, making it difficult to determine the actual progress made during the reporting period.

Other limitations, inherent to the design of this evaluation, included:

1. Halo bias. There is a known tendency among respondents to under-report socially undesirable answers and alter their responses to approximate what they perceive as the social norm (*halo* bias). The extent to which respondents are prepared to reveal their true opinions may also vary for some questions that call upon the respondents to assess the performance of their colleagues or people on whom they depend upon for the provision of services.
2. Recall bias. Since a number of questions during the interviews dealt with issues that took place in the past, recall bias cannot be excluded. As the activities were launched in 2013, some respondents found it difficult to accurately compare access to services received 2-3 years ago.

4.0 CLE FINDINGS AND CONCLUSIONS

4.1. EQ 1: HOW EFFECTIVE HAVE THE EFFORTS TO REDUCE EXECUTION BACKLOG BEEN AND ARE THE ACTUAL RESULTS SUFFICIENT COMPARED TO THE INVESTED EFFORTS? WHAT HAS BEEN THE IMPACT OF THIS ACTIVITY WITH THE KJC AND THE COURTS AND HOW EFFECTIVE HAS BEEN THE COOPERATION WITH THE CENTRAL BANK OF KOSOVO??

FINDINGS

Working closely with the KJC, basic courts and other institutions [the Central Bank of Kosovo (CBK), Ministry of Internal Affairs (MOIA), the Agency of Civil Registration (ACR), and Tax Administration of Kosovo (TAK)], CLE has made significant efforts to enable systems, procedures, and mechanisms that are substantially reducing the execution backlog.

4.1.1. The Execution Backlog and USAID interventions

Since the establishment of the new court system by the United Nations (UN) Mission in Kosovo in 1999, the increasing execution backlog has been one of the main challenges of Kosovo's judicial system. The National Backlog Reduction Strategy adopted by the KJC in 2010 produced very limited results and execution backlog is continuously identified in national and international reports on the rule of law as one of the pressing issues of the Kosovo's judicial system.

To help Kosovar institutions address this problem, USAID/Kosovo designed the SEAD Program (September 2009-July 2012), which focused primarily on fair and effective enforcement of court judgments. In close collaboration with KJC, CBK, and TAK, SEAD made significant headways to develop rules, procedures, and mechanisms for reducing execution backlog, particularly in the area of unpaid utility bills to the Kosovo Energy Corporation (KEC), and Post-Telecommunication of Kosovo (PTK). However, SEAD eliminated only a small portion of cases in the execution backlog. Building upon lessons learned from SEAD, USAID designed the CLE program to take up this challenge. CLE's work was expected to produce significant results in reducing to a minimum or fully eradicating the execution backlog, particularly in the area of authentic documents/utility bills and debt owed to commercial banks. While achieving the backlog reduction goals, CLE was required to work closely with the KJC to improve systems of collecting and reporting statistical data on execution backlog.¹ At the beginning of the CLE project, USAID estimated an execution backlog of up to 100,000 cases among which utility bills constituted about 60% of the caseload, unpaid fixed court fees and criminal penalties were around

¹ According to CLE Scope of Work USAID expected CLE to *inter alia* achieve the following outputs in relation to the execution backlog: 1) Establish clear goals and targets with KJC for the complete reduction of the backlogged enforcement cases and support the KJC to improve the systems for collecting and reporting statistical data on execution caseload. 2) Assist the KJC and other relevant bodies and actors to develop and implement mechanism for and to achieve significant reduction of the execution backlog including but not limited to the authentic documents/utility bills and debt owed to commercial banks. 3) In collaboration with the Central Bank of Kosovo ensure implementation of the regulation "On the enforcement of Executive Titles by Debiting Clients" as maintaining and updating account information systems as well as exchanging employer information between Tax Administration and KJC. 4) Mechanism to support the execution and enforcement backlog is reduced and eradicated in accordance with targets for the number, percentages and value of backlogged cases remaining.

25%, and the remaining 10-15% included unenforced final court rulings in civil cases of a commercial nature, including bank loans, collateral, pledges and mortgage ² (see Table 1).

Table 1: Estimate of Execution Backlog Caseload by Category of Unenforced Decisions

Type of Enforced Judgements	% Backlogged Execution Cases
Authentic documents mainly unpaid utility bills	60%
Unpaid fixed court fees and court expenses	15%
Unpaid criminal penalties (2 year statute of limitations)	10%
Civil cases of a commercial nature including bank loans,	15%

The court reorganization and restructuring of January 2013, combined with the recent introduction of the private enforcement system, have relieved courts from the usual intake of execution cases. According to the new Law on Enforcement Procedure, courts are competent to deal with execution cases related to family disputes and labor disputes; all other execution cases are to be enforced by PEAs. Therefore, USAID's multifaceted intervention through CLE was intended to substantially reduce or eliminate the execution backlog, enabling courts to gradually cope with the diminishing intake of the new cases in a timely manner.

CLE's Work to Reduce the Execution Backlog

Based on the information gathered from KIIs, CLE's internal documents, and meetings with a large number of judicial sector stakeholders, the team found that the work on backlog reduction has been a multi-dimensional process involving close collaboration with the KJC and court presidents, as well as coordination with other state institutions and agencies. The purpose has been to develop and implement mechanisms for significantly reducing execution backlog including, but not limited to, authentic documents/utility bills and debt owed to commercial banks.

The main counterpart of the CLE in the backlog reduction activity has been the KJC, which is the constitutional body for overall administration of courts, including recruiting, advancing, transferring, training, disciplining, and dismissing judges.³ In 2010, the KJC adopted the first National Backlog Reduction Strategy with assistance from USAID and other donors. According to this Strategy, a court judgment that is not executed within two years after case closure is considered execution backlog. The Strategy produced insignificant results due to multiple factors, the most important of which were the lack of inter-institutional coordination and budgetary constraints within the justice institutions to make backlog reduction a priority.⁴ A second National Backlog Reduction Strategy - adopted in August 2013 - aimed to build on the lessons learned from the experience of the first Strategy, refocusing the KJC and courts activities in creating systems, procedures, and mechanism for eradicating the execution backlog.⁵

Since its inception, CLE focused on improving the systems for enforcement of judgments and reduction of backlog in enforcement cases with the two inter-related goals of achieving functional elimination of the execution backlog, and establishing a new private enforcement system to enforce court judgments. The backlog reduction efforts aimed to eliminate several types of cases, including: 1) cases that are fully collected through debt recovery either in cash, enforcement against bank accounts or wage garnishment; 2) cases that are procedurally concluded – suspended, archived (criminal cases that have passed the statute of limitations),

² USAID Scope of Work for the CLE Program, page 6

³ Under the new law on KJC, effective since 2011, KJC has four permanent committees, including the Committee for Normative Issues; the Committee for Budget, Finances and Personnel; the Committee for Court Administration; and the Disciplinary Committee. KJC's operations and decision-making processes are supported by the Kosovo Judicial Council Secretariat (KJCS), which currently consists of around 120 staff members organized into several departments – administration, budget and finance, judicial statistics, and logistics – each consisting of various offices.

⁴ CLE staff and counterparts point to several factors including but not limited to the scarcity of resources at court level to tackle a long overdue execution backlog, lack of determination by judicial leadership to prioritize enforcement of backlogged cases, a transitioning and inaccurate address system for debtor identification and location, insufficient inter-institutional coordination to facilitate execution of cases and effective debt recovery and lack of concerted efforts by KCJ and court presidents to establish clear goals and timelines to comprehensively address the backlog issue.

⁵ National Backlog Reduction Strategy of August 2013, page 1

or dismissed;⁶ 3) cases withdrawn by the creditor or transferred to the newly established PEAs; and 4) cases removed from execution stage and transferred to contested procedures due to objection by debtors.

Execution Backlog and Actual Results

After reviewing CLE's documents and throughout the fieldwork, the team noted substantial discrepancies between the KJC and CLE statistical data regarding the execution backlog. During the evaluation period, the team was presented with various confusing figures on the total number of cases in the execution backlog of all Kosovo courts. The first figure of 98,123 cases was established by the KJC and was used as official data for the purpose of the National Backlog Reduction Strategies of 2010 and 2013. However, in the project reports and meetings held with the team, the CLE staff claimed that due to data limitations and alleged substantial under-reporting by the KJC, this figure is inaccurate.

To estimate the extent of the under-reporting of the backlogged cases, CLE conducted a pilot process of "case categorization" of all unenforced cases in the Basic Court of Gjilan. The case categorization included "backlog cases" defined as unenforced civil judgments two years or older, and "inventory cases" defined as cases filed in the last two years in all Kosovo courts. The pilot process of entering data for all cases in the execution backlog identified a very high rate of unreported cases (almost 10,000 in Gjilan Basic Court alone). Subsequently, CLE and KJC adjusted the figure to 107,600 cases and set this number as the baseline figure for execution backlog upon which CLE's performance is measured and reported. In June 2013, CLE established cumulative targets for removing cases from backlog at 15%, 45% and 80% respectively for Year 1, Year 2 and Year 3, using 107,600 figure as the baseline. Based on the results of the "categorization process" in the Gjilan Basic Court, CLE, in agreement with the KJC staff, decided that the most effective way of obtaining up to date statistical data on the execution backlog was to undertake the same categorization process in all Kosovo courts. As the categorization process was underway, CLE worked with the KJC, courts and other institutions to reduce the backlog based on the established targets.

The team learned that at the end of the categorization process in November 2015, CLE identified approximately 90,000 cases that were previously unreported, bringing the total number of cases in all Kosovo courts in the execution backlog - including both backlog (two years or older) and inventory (two years or less) - to a much higher figure of 201,308 cases. According to CLE, this figure represents the most up to date number of cases in the execution backlog and it is perceived to be the closest to the reality on the ground.

Interviews with the KJC and court leadership did not provide sufficient information to the team to confirm or disconfirm conclusively the accuracy and reliability of CLE's data on the overall number of execution cases identified at the end of the categorization process. The failure of the KJC to provide reliable statistics rendered any meaningful cross-checking of statistical data provided by CLE extremely difficult. This prevailing statistical discrepancies and insufficient guidance by the KJC, admittedly made the team increasingly dependent on CLE's data. Based on the new CLE figures obtained at the end of the categorization process, the number of cases in the execution backlog appears as presented in Table 2, below.

Table 2: Overall Breakdown of Execution Backlog after Categorization Process

Type of Document	Number of Cases
N/A	70
Authentic Document Case	107,560
Civil Judgment	5,235
Criminal Judgment	49,010

⁶ The CLE program has advocated for the removal of cases belonging to a 'passive closure' category which consists of a high number of cases where no further work is required but the case is kept "open". For example, when attachment of bank accounts has been ordered but no money is available in the account to permit the debt collection.

Type of Document	Number of Cases
Contract on Loans with Mortgages	7,901
Other	31,532
TOTAL	201,308

For the purpose of this evaluation, the team will refer to the 107,600 as the figure which guides CLE's performance in meeting the established targets. However, as the new amount of cases established by CLE (203,108) was not challenged by the courts and KJC leadership, the team used this figure to roughly estimate the time needed for the substantial reduction or eradication of the execution backlog, which were the stated goals of the USAID's intervention through SEAD and CLE Programs. CLE's most recent documents claim that as of December 11, 2015, of the 201,308 cases, 84,865 have been removed from backlog and about 116,843 cases remain active (see Table 3 for details).

Table 3: Overall breakdown of cases removed from backlog disaggregated by category

Type of Document	Number of Cases Removed from Execution Backlog
N/A	7
Authentic Document Case	45,837
Civil Judgment	1,353
Criminal Judgment	14,092
Contract on Loans with Mortgages	1,856
Other	21,320
TOTAL	84,465

Since this data represents the progress achieved until December 11, 2015, based on the monthly backlog reduction trends the team estimates that the total number of cases removed by December 31, 2015 will be close to 87,000. This data includes the cases where debt is being collected through debtor's bank account, which CLE considers as fully collected and closed whereas the KJC does not report them closed until final installments of the debt are paid by the debtor (see more on this issue in the section on CLE's work with KJC). Based on the CLE's performance management plan (PMP) and the actual results for each year, the Program has met and recently exceeded its established targets (see Table 4).

Table 4: Targets versus results achieved

CLE YEAR	Targets (%)	Target (cases)	Actual (%)	Result
1	15%	10.000	15.5%	Achieved
2	45%	23.000	45.5%	Achieved
3 (December 2015)	80%	53.000	85%	Exceeded

The team found it difficult to conduct a cost benefit analysis of the actual results versus the invested efforts of the KJC due to a number of external factors, which made the isolation of CLE's invested efforts in the backlog reduction activity impossible. Firstly, the CLE and KJC have jointly invested additional human resources in the special enforcement units and backlog reduction teams, which work together to reduce the execution backlog. This human resource pooling initiative is commendable and indicative of the collaborative nature of the work but it does make difficult to separate the costs of the invested efforts. Secondly, to date, about 4,000 cases have been closed procedurally as a consequence of the recently adopted Law on Public Debt Forgiveness on which CLE provided policy input based on the field experience with case categorization process. However,

the debt forgiveness law affects the time for closing the case by decreasing the number of the administrative actions needed to close such cases.⁷ Furthermore, the new Law on Enforcement Procedure has created a mix system of enforcement of court ruling through court enforcement clerks and PEAs, which allows creditors to withdraw a case from the execution backlog and submit it for execution before a PEA. This has so far resulted in more than 1,000 withdrawn cases as of December 2015, which are reported as removed with CLE's assistance.⁸

In terms of the actual results, CLE has reported the total amount of debt recovered by the removal of 87,000 cases to be close to 5 million Euros (\$5.5 million). This amount does not include debts recovered by the 25 PEAs, which as of January 6, 2016 was estimated to be about 42.5 million Euros⁹, and is obtained solely from the debt recovered by the enforced judgments primarily of unpaid utility bills, which have been enforced against bank accounts and wages enabled through the inter-institutional information exchange facilitated by CLE. Given the challenge of isolating CLE's invested efforts and the actual results, the team requested information on the CLE expenditures for all the backlog reduction activities in order to compare the actual results in terms of number of cases removed and the amount of debt recovered solely from the enforcement of cases. The documents obtained by CLE show that, since its inception, the Program has spent about \$508,000 for the backlog reduction teams, which are present in all basic courts and directly involved in the case categorization and backlog reduction efforts. This amount is inclusive of all expenditures of the CLE in a plethora of initiatives dedicated to the reduction of backlog, such as the development of the execution case tracking database, the investment on improving and updating the Unique Account Holder Registry of the CBK and other central office staff efforts, and running costs expended on activities related to backlog reduction.¹⁰

During KILs, CLE was credited by counterparts for being a major actor for the successful establishment of the private enforcement system hence, indirectly contributing to higher debt collection rates achieved by the PEAs (see EQ on PEAs for more detailed information). Therefore, the team notes that the evaluation of CLE's positive results should not be limited to the monetary values recovered through the backlog reduction initiative as CLE's most positive impact has been in establishing the rules, systems and procedures enabling mass enforcement of the backlogged cases.

Estimated time for eliminating the remaining execution backlog caseload

As of December 31, 2015, about 87,000 cases have been removed from the 107,600 baseline figure used to measure CLE's performance. This leaves around 20,000 cases to be cleared until May 6, 2016. The execution trends reported in the CLE's last two quarterly reports indicate that the number of cases that can be cleared each month is between 4,500 and 5,500 cases.¹¹ Based on this, CLE will be able to eliminate the 20,000 remaining cases in four months, starting from January 1, 2016. Accordingly, if the backlog reduction activities do not slow down significantly in the first months of 2016, the 107,600 cases should be eliminated before the end of the project in May 2016.

However, since the case categorization process determined that there are 201,308 cases in the execution backlog, a figure that is not challenged by the courts and KJC leadership, even if all 107,600 cases are removed, a large number of cases will still be left pending. Estimates based on CLE's case tracking tool put the figure of active cases at the end of the case categorization process at 116,843. This large amount will be further increased after January 1, 2016, when all unenforced cases currently in the court system are going to be more than two years old, thus defined as backlogged cases. Table 5 below is used only for illustrative purposes to understand the types of cases in the overall number of active cases in the execution backlog.

⁷ Law No. 05/L -043 on Forgiving Public Debt published in the Official Gazette No. 24 on 18 August 2015. The law forgave any public debt of 100 Euro or less incurred prior to 31 December 2008.

⁸ There are also cases which have been closed due to statute of limitations that have not yielded monetary results in term of debt recovery but are considered procedurally cleared from the execution backlog.

⁹ Based on the discussions with MOJ and PEA Chamber representatives and KILs with private enforcement agents, the total amount of debt collected may be significantly higher when the official reports for the year 2015 are submitted to the MoJ in 31 March 2016.

¹⁰ The cost of fuel is the only cost item which could not be reliably disaggregated from the total program use.

¹¹ 9th Quarterly Report reports that 16,392 were removed in three months whereas 10th Quarterly Report shows 13,382 cases have been removed in three months. Based on the aggregate amounts of six months 30,222 cases we can conclude over 5000 cases can be removed every month.

Table 5: Active Cases in the Execution Backlog as of December 2015

Type of Document	Number of
N/A	63
Authentic Document Case	61,723
Civil Judgment	3,882
Criminal Judgment	34,918
Contract on Loans with Mortgages	6,045
Other	10,212
TOTAL	116,843

Based on these figures and after interviews with judges and KJC leadership, the team deems that once the inventory and backlog cases are merged, the total number of cases left in the execution backlog will be more than 120,000. Considering this figure as the approximate number of remaining cases in the execution backlog, the team made the following calculations to estimate the time needed to eliminate the backlog, based on the KJC's standard operating procedures for enforcement clerks and the increasing execution trends of the last two quarters.

There are currently about 100 KJC enforcement clerks and CLE backlog reduction officers working on the backlog reduction initiative. Considering 60 cases as the average monthly individual performance target for each enforcement clerk, the expected number of cases to be removed from the execution backlog each month is 6,000. If this monthly estimate is even remotely accurate, about 20 additional months are needed to clear the remainder of 120,000 cases left in the execution backlog.¹² Based on these estimates, the execution backlog would be entirely eliminated by September 2017 (considering January 2016 as the starting date when the exact number of execution cases is identified and agreed with KJC).

The team observes that this is an optimistic estimate based on the progress achieved so far. KIIs indicated that there are many challenges to the future work of the CLE and KJC in the backlog reduction which, if not addressed during the remaining life of the CLE Program, may risk the investments that USAID has made to eliminate the execution backlog in Kosovo. These challenges include:

- Courts are not prioritizing the unenforced decisions related to court expenses and criminal fines where the state is the creditor. The principle of "equality under the law" requires that regardless of the fact that the state is the creditor, debtors must pay the outstanding legal debts related to court expenses and criminal/administrative fines owed to the state. Nonetheless, given the statute of limitations and other issues, other considerations should be taken into account in identifying legally sound and procedurally efficient solutions for removing these cases from execution backlog while upholding rule of law principles. Otherwise, given the current manifested disinterest of courts and KJC leadership to deal with these cases, a large amount of cases will remain unenforced thus undermining the overall results achieved by USAID through SEAD and CLE Programs.
- Enforcing backlogged cases involving debt to commercial banks is a lengthy process requiring a public auction for the sale of movable property, which debtors have used as mortgage/collateral for bank loans. Through the KIIs with judges and bank representatives, the team learned that this is one of the aspects of the backlog reduction initiative where judicial activity needs to be reinvigorated in order to achieve positive results. However, through KIIs and on-site visits in four basic courts, the team also confirmed that neither court presidents nor enforcement judges consider this type of case as a priority regardless of the fact that almost all judicial leaders recognized that these cases represent the highest monetary values of unenforced debt. The majority of the interviewees stated that judges are not very active because cases

¹² This is a very rough estimate as the banking and employment information exchange between KJC, CBK, TAK and ACR is expected to allow mass enforcement of the unpaid utility bills through attachment of bank accounts and wage garnishment thus substantially shortening the period of time required for backlog reduction.

involving debt to commercial bank are complex and sensitive and judicial leadership has not been very assertive in prioritizing the execution of these types of cases. CLE also considers these cases as time consuming and has identified them as a problem. Accordingly, it proposed modification of the legal provisions calling for two rounds of a “fixed price” public auction before the sale of immovable property, arguing that such procedures are unnecessarily delaying the enforcement of judges on immovable property.

- A certain degree of judicial passivity in dealing with cases which have been prepared for suspension by the CLE backlog reduction officers (BROs) and court enforcement clerks. These are typically cases in which two attempts to serve the enforcement notice have failed and after the lapse of six months from the second notice the case can be procedurally closed through a decision from the enforcement judge.¹³ CLE has claimed that judges have been reluctant to use the “judge may suspend” clause under the Law on Enforcement Procedure, failing to close and remove many cases which are “dead at law.”

Given the above, the 20-month timeline to clear all the cases of the execution backlog is a rough estimate based on the current level of effort and increased execution trends, and does not reflect the potential for massive purging through legal and procedural means of unpaid court expenses and criminal and administrative fines, which currently constitute about 40% of the 116,843 cases left. Another caveat to this rough estimate is that it does not differentiate between types and complexity of the unenforced cases, and treats “utility bills” cases - which are presumably the easiest to enforce at the moment - as equally enforceable with civil judgments of a commercial nature involving immovable property.¹⁴

CONCLUSIONS:

1. CLE backlog reduction targets have been met and exceeded. The CLE backlog reduction activities have been very effective resulting in the removal of 87,000 cases from the backlog and the collection of about \$5.5 million of debt. The actual results of recovering \$5.5 million of previously uncollected debt are at least tenfold higher than the invested amount of \$508,000. As such, they vastly surpass the invested efforts.
2. The positive results of CLE’s should not be limited to the monetary values recovered through the backlog reduction initiative as CLE is one of the actors that has fundamentally altered the system of execution of court decisions in Kosovo through its contribution to the successful establishment of the PEA system and the introduction of rules, systems and procedures enabling mass enforcement of the backlogged cases.
3. Although CLE has exceed the performance targets established at the outset of the project, the team’s basic estimate shows that because of the high number of previously unreported cases identified during the case categorization process, the elimination of the backlog of the execution cases may take at least until September 2017.
4. Based on the current capacity of the backlog reduction teams and the increased execution trends, a very substantial amount of the backlog cases can be removed during the life of the project or shortly thereafter. However, in order for this to happen, the many challenges that exist need to be addressed.

4.1.2 The Impact of Backlog Reduction Activity with KJC, courts and Other Institutions

FINDINGS

CLE worked with KJC and courts to improve its statistical reporting capacity and facilitated better cooperation between KJC and various institutions to create the regulatory basis and accompanying software tools necessary for the increased execution of enforcement judgments in seven basic courts.

The team found that CLE’s work with KJC, courts, and other institutions focused on at least three inter-related aspects for reducing execution backlog: 1) support the KJC and courts to improve the systems for collecting and reporting statistical data on execution caseload; 2) provide assistance to basic courts and

¹³ The suspended procedure may resume if the creditor presents new evidence within 6 months. Otherwise, the case is considered closed and can be removed from backlog.

¹⁴ The team learned that courts are not prioritizing the unenforced decision related to court expenses and criminal/administrative penalties where the state is the creditor and it would be advisable that KJC and CLE find a common agreement for massive enforcement or removal of cases based on procedural grounds and or legal interventions. Also CLE has proposed modification of the statutorily required “fixed price” public auction which is unnecessarily delaying the enforcement of judges on immovable property.

branches (with the exception of Mitrovica Basic Court branches in the K-Serb majority municipalities); and 3) facilitate better cooperation between the KJC, CBK, TAK and ACR to develop systems, procedures and mechanisms for enabling the enforcement of cases through bank accounts and wage garnishment.

CLE's work to improve KJC's capacity for statistical reporting of execution backlog

Due to the alleged inaccuracy of the KJC statistical reporting, one of the important elements of the CLE's work with courts was identification of all execution cases and their entry into a database, a process described above as the "case categorization." This process, completed in November 2015, identified over 90,000 previously unaccounted cases, which required CLE to adjust the performance targets in the light of the new execution backlog of 201,308 cases. According to its contract, CLE was also required to assist the KJC in improving its statistical reporting capacities for the execution backlog. CLE worked with KJC leadership, Kosovo Judicial Council Secretariat (KJCS) and the Statistical Department to transition from paper-based to CLE's designed electronic system, which is more accurate and allows monitoring of individual enforcement personnel performance.

To this end, CLE designed and implemented a web-based case tracking application, which is currently installed in all basic courts where CLE is working. The system is able to track the information on enforcement case closure and enforcement clerks' individual performance against the established norms, which court presidents can monitor frequently. The new system provides more sophisticated information on cases that are not enforced simply through attachment of bank accounts and wage garnishment thus giving the court leadership the ability on weighting cases of various complexity level and making the relevant management decisions.¹⁵ The case tracking mechanism was initially used by CLE staff but the programming language allowed for integration to the Case Management Information System (CMIS) that KJC is developing with assistance from the Government of Norway, expected to be launched in 2017.

Unfortunately, during the fieldwork, the team learned that CLE developed case tracking mechanism for enabling day-to-day statistical reporting by enforcement clerks and court statistical officers is not fully utilized at the KJC. The team observed that enforcement clerks in some courts considered it to be a "USAID database" and stated they had no information on how accurate it is or how is it going to be used in the future. Although enforcement clerks and CLE staff in the courts have access through individual usernames and passwords, the application is mainly used by the CLE staff. In discussions with court presidents and enforcement judges, the team learned that most interlocutors had little knowledge of the web-based application and generally referred to it as "USAID system" or "CLE database."

CLE also proposed a separate statistical reporting mechanism for the KJC Statistical Department, which will enable enforcement clerks and court statistical officers to report to the KJC on a daily basis when cases are closed. However, the team noticed that the statistical discrepancies between the CLE and KJC are substantial not only on the overall amount of the backlogged cases in the court system but also on the amount of cases removed from the backlog with CLE's assistance. Throughout the field work, the team observed that KJC is not in a position to present accurate data on the overall number of execution cases, the results achieved since May 2013 through CLE's assistance, the additional cases identified through the case categorization process, and the time and level of effort required for eradicating the backlog. The team was surprised to see how little attention this issue attracted in the discussions about the prospects of eliminating the backlog in the near future. As research progressed, the ET learned that the main source of the discrepancies between the CLE and KJC data on the number of cases removed from the backlog are the different ways that KJC and CLE report on the status of a certain case. KJC currently tracks only cases removed (cases in which all enforcement actions are completed and implemented), whereas CLE also considers as removed the cases where the debt is being collected through the attachment of bank account. For example, if a case is prepared for execution and involves an order to collect the debt through the debtor's bank account in 20 installments spread out in 20 months, the CLE reports this case as removed from the backlog since it does not require further judicial actions beyond tracking payment of installments and final closure of the case when debt is fully

¹⁵ The CLE system categorizes cases such as utility bills case, cases involving banks, cases requiring immovable property sale and provides information about the judicial actions taken or needed in each phase of the case.

collected. Although the KJC is bound by the existing rules to consider these cases as active and not report them as closed, these definitional issues lead to substantial statistical discrepancies in reporting the cases removed from backlog and do not reflect the huge amount of work that is taking place with CLE's help. In particular, the current reporting by the KJC does not reflect the progress achieved in removing cases where courts have already issued orders to collect debts and no further work is required by judges expect for the formal administrative closure. For example, CLE reports and KJC admits that enforcement of backlogged cases has been dramatically increased through the attachment of bank accounts; currently over 22,000 cases are being enforced through debtors' bank accounts. However, since the full recovery of debt is done in installments, these 22,000 cases are not reported as removed by the KJC despite the fact that the court does not need to take further action. The team learned that the continued failure to harmonize the statistical reporting system is result of the delays of the KJC to deliberate and make a decision on using the CLE developed case tracking mechanism system. The team found this system to be more sophisticated and flexible to explain the viability of the cases, inform policy decisions, and determine action plans for elimination of a wide range of execution cases.

The failure to address the discrepancy has important consequences as Kosovar institutions and international organizations regularly cite the KJC's data as the official one when evaluate Kosovo's progress in the rule of law area. For example, the EU progress reports for 2014 and 2015 refer to the KJC reported execution backlog statistical data, noting a much lower number of backlogged cases than what CLE has identified at the end of the categorization process.¹⁶ These reports issued during the life of the CLE Program have constantly noted the failure of courts to implement KJC instructions on the prioritization of backlog cases¹⁷ (cases filed before 31 December 2011).¹⁸ Also, the most recent report of the EU on feasibility of the visa liberalization for Kosovo issued on December 17, 2015, contains references of the KJC's backlog data, noting the increasing trend of the utility bills enforcement and enhanced used of the ADR but vastly under-reports the work done by the KJC through CLE's assistance.¹⁹

CLE maintains that the KJC has been slow to adopt necessary sub-legal acts to make the new procedures for collecting, utilizing, and reporting statistical data to KJC Statistical Department mandatory for all courts. CLE also noted that full implementation of the web-based case tracking mechanism will not occur until the categorization process is completed. The team understands that it may have been difficult to work on improving KJC's reporting systems while the case categorization process was ongoing. However, the adoption of streamlined procedures and methods for capturing and utilizing information related to the backlog could have been done in parallel with the case categorization as CLE already proposed to the KJC early in Year 3.

Given that the lack of accurate data creates confusion about the actual results achieved through the backlog reduction activity, the team asked the KJC about the causes for such delay.²⁰ KJC stated that it has agreed in principle to transition to the CLE developed database as a formal tool for statistical reporting for execution cases. KJC's leadership admitted the flaws in the system of collecting, maintaining, and utilizing statistical data both for case and controversy and execution purposes. Asked by the team about the prospects of elimination of the execution backlog, several KJs noted that this question could be only addressed by the CLE. Before transitioning from the current system of manually held registers to the CLE developed database, the KJC's Committee on Court Administration was expected to resolve a number of issues and decide on the best options of capturing information on the status of the backlogged cases in the court system (i.e debt collected

¹⁶ See EU Progress Report on Kosovo for 2015, pp. 16

¹⁷ See EU Progress Report on Kosovo for 2014, pp 20-21

¹⁸ EU Progress Report for 2014 notes "To reduce the backlog of cases it is essential to establish a proper database in order for the same case no to be multiplied.

¹⁹ See Third Report on Progress by Kosovo* in fulfilling the requirements of the visa liberalization roadmap, page 6. The EU figures reported are closer to the KCJ ones and very small compared to the CLE data obtained at the end of the categorization process. The EU report states that "Of the 102,009 cases that constituted a backlog in December 2011, Kosovo's courts managed to enforce some 25,275 old cases (or nearly 25 % of the backlog) in 2014. Most of these required the enforcement of verdicts concerning the payment of utility bills. The KJC plans to further reduce its backlog of enforcement by 2016, notably through alternative dispute resolution."

²⁰ The work on the backlog of execution cases is one of the aspects of the Kosovo's rule of law system monitored by the European Commission for the purpose of assessing Kosovo's compliance with the criteria for the Stabilization and Association process and the Visa Liberalization.

through bank accounts). The team learned that this Committee has not functioned properly for several months due to the lack of quorum arising from a vacancy since July 2015. The vacancy has now been filled but as of January 2016, the Committee has not yet met to resolve the issues that would enable transition into the CLE developed database. CLE is now working with KJC and the Committee to adopt the CLE database as a formal tool for statistical reporting purposes before the scheduled end of the project in May 2016.

The team observed that the KJC does not demonstrate sufficient concern about the amount of cases active in the execution backlog and the real time statistics of the CLE despite the fact that it has invested significant manpower in hiring additional enforcement clerks in the basic courts. Furthermore, the leadership of the judicial system considers the backlog reduction initiative as a short-term, high impact intervention that CLE is addressing. In addition, the fact that many of the enforcement clerks hired by the KJC will have their temporary employment contracts expire close to CLE's termination in May 2016 shows that KJC has not done sufficient research on the expected level of effort required to eradicate the execution backlog but depends on the services and guidance of CLE in implementing its backlog reduction strategies.²¹

Unfortunately, the team found the KJC to suffer from serious institutional weaknesses, which limit the KJC's capacity to utilize and effectively absorb the international technical assistance. The over-dependency of the KJC on CLE shows that instead of leading the process of execution backlog reduction, the KJC is reactively responding to the CLE's result-driven approach without paying attention to larger goals of eliminating the execution backlog and ensuring the sustainability of the CLE developed systems.

CLE's backlog reduction activity at the court level

At the court level, CLE assisted court presidents and enforcement judges to introduce more efficient procedures for enforcement, including the use of IT tools for execution backlog management.²² CLE invested a large amount of human resources, exceeding 50% of its staff who, in combination with the court enforcement clerks appointed by the KJC, entered data for all cases in the execution backlog. In early 2014, at the suggestion of CLE, KJC hired 20 additional enforcement clerks who, together with the CLE backlog reduction teams at each basic court, helped categorization of enforcement cases. As of late 2014, CLE had backlog reduction teams in all seven courts and backlog reduction coordinators working with the courts and CLE home office in Prishtina.

The team learned that the BROs are mostly working on the enforcement of unpaid utility bills belonging to the KEK and PTK, which constitute the largest category of the execution backlog cases. BROs work hand in hand with the court enforcement clerks to take the necessary administrative actions for the enforcement of court judgments, including preparing delivery of notice to debtors and cases for final enforcement by enforcement judges, and segregating cases that require archiving, suspension, or dismissal. When a case is ready for enforcement action, BROs, who are generally law graduates, also prepare the formal legal conclusions for the final endorsement and signing for the enforcement judges. Cases are closed and removed through one of the following procedural outcomes, namely: full debt recovery, archiving, suspension or dismissal, withdrawal from a creditor, or transfer of the case into a contested procedure based on the objections of parties. The actions taken are noted in the case tracking database that CLE developed. When the case is closed, it is removed from the execution backlog.

At the request of USAID, in September 2015, CLE started assisting the Prishtina Basic Court-Commercial Department to conduct a caseload inventory, as well as determine the nature of the cases by assigning five BROs in this department. The BROs completed the case categorization of 454 cases resolved with a final decision which are not enforced yet. The follow-up process of preparing cases for delivery of notices and other enforcement actions was temporarily put on hold in November 2015 due to an appellate court ruling declaring the Prishtina Basic Court Commercial Department incompetent for the execution of judgment involving debtors from other cities in Kosovo.

²¹ See National Backlog Reduction Strategy adopted on 8 November 2010. See page pp 19-20 on electronic inventory of civil cases and categorization of cases.

²² In 2015, court presidents were provided tablets enabling them to monitor performance of their enforcement personnel.

The team was informed that CLE's BROs have access (presumably through the KJC access privileges) to the banking and employment information provided to the KJC through the memoranda of understanding (MoUs) facilitated by CLE. According to CLE, access to the case file, including the banking information, is a result of the collaborative work that the KJC enforcement clerks and CLE staff are conducting on daily basis. Therefore, while the CLE BROs do not have the same privileges to access that the CBK has granted to the KJC, once a court or KJC employee determines a debtor bank account and associates it with a case, CLE's personnel sees the entire case record, including the bank account, and if there is one already associated with the case file in the database. According to CLE, this involvement of its personnel, serves as another layer of filter to prevent cases of double collection in which a debtor has already paid its obligation to the creditor but the creditor has failed to withdraw the case or inform the court about debt payment.

During site visits and KIs with both court clerks and CLE BROs, the team confirmed that the operational practices of the backlog reduction teams inevitably lead to the sharing of information on case files, including banking and/or salary information. While there is no evidence of misuse of the privileged information by the CLE staff, several counterparts of the CLE were not aware of the extent of information exchange between KJC and CLE personnel, and raised concerns about the potential violations of privacy. They argued that since CLE is not the intended beneficiary of the MoUs between the KJC, CBK and TAK, it should limit its involvement to case preparation and administrative support.

Through KIs with court presidents, enforcement judges, and enforcement clerks, the team found that backlog reduction teams have worked very well with their colleagues to remove cases from the execution backlog and are considered as highly professional and efficient by court staff and judges. The backlog reduction teams have led the case categorization process, entering data for all previously unreported cases in the CLE designed case tracking mechanism and have been very effective in conducting their work. As a senior judge noted *"The CLE team worked very hard and was essential in making it possible for our court to identify judicial files lost into the internal court system and unreported as execution backlog."*

The team also learned that the combined efforts of the KJC enforcement clerks and the CLE backlog reduction teams significantly increased the performance of courts in dealing with the execution backlog. The court leadership expressed their satisfaction with the work of the CLE backlog reduction teams in systematizing and speeding up the process of delivering notices, preparing cases for final enforcement, and segregating cases that require archiving, suspension, and dismissal. An enforcement judge noted that *"CLE backlog reduction officers are often more proactive than judges in dealing with batches of enforcement cases and I often feel bad that they prepare more cases for enforcement than I can review and sign so I feel like I am slowing them down."*

CLE's work with other institutions

From the outset of the project, CLE facilitated inter-institutional cooperation between the KJC, CBK, TAK, MOIA/ACR for creating regulatory frameworks and supported IT solutions for more effective and efficient enforcement of backlogged cases through bank accounts and wage garnishment. CLE has worked collaboratively with the CBK to create account holder information systems that would allow commercial banks to attach bank accounts. The CBK Unique Account Holder Registry (Registry) contains information for approximately 2.5 million bank accounts from all eight commercial banks operating in Kosovo. Since 2013, providing access to this Registry has enabled enforcement through bank accounts, which was not available before to court enforcement personnel. This has increased the execution trends against bank accounts and during the period under evaluation; CLE reported 22,000 cases enforced through bank accounts and over \$2 million in debt recovery.

CLE is currently funding an upgraded version of the Registry of Bank Account Holders that would enable live access to courts through KJC privileges. The project also worked with the CBK Payment Systems Department and the Legal Department to draft a Regulation on the System for the Account Holder Registry, which would formalize the system upgrade. The promulgation of the Regulation by the Board of Governors of the CBK was postponed after the State Agency for Protection of Personal Data issued a legal opinion on September 14, 2015, concluding that the operation of the Registry is not harmonized with the Law on Protection of Personal Data. After CLE wrote a legal response defending the compliance of the CBK Regulation with the Law on

Protection of Personal Data, on December 17, 2015, the Data Protection Agency concluded that the Regulation on Registry of Account Holders is not in violation of the Law on Personal Data Protection.²³

CLE has also facilitated the exchange of employment information between KJC, TAK and ACR under the MOIA to enable courts to enforce decisions through wage garnishment. This has been made possible through a CLE brokered MoU between KJC and ACR for the purpose of providing all Personal Identification Numbers (PINs) to the KJC. The matching of the employment and tax information obtained through TAK and the retrieved PINs from ACR has the potential of becoming an important mechanism for reducing execution backlog. As of December 2015, about 50,000 PINs have been made available to the KJC and about 7,000 enforcement decisions are awaiting court orders to be effectively implemented. The enforcement against wages has been less effective than enforcement against bank accounts because of the reluctance of private employers to share salary information of their employees, and judges' hesitation to order wage garnishment even when the employee information is available.

According to KIs with the CBK representatives, KJC, court staff, and bank representatives, CLE's cooperation with CBK and other institutions has been very effective and crucial to the success of the mass enforcement through bank accounts. Although CBK is one of the most reliable institutions in Kosovo and has benefited significantly from the assistance of the US Treasury Department and USAID, the team learned that without CLE's energetic engagement it would have been difficult for the KJC, courts and CBK to enable the mechanism of enforcement through banks accounts. A representative of banking sector told the team that *"Before CLE introduced some coordination and discipline in the execution of backlogged cases, the Kosovar institutions were running into circles and no one was able to figure out how to address the backlog problem and effectively recover debts."* CLE's facilitated cooperation between KJC and CBK was also commended in the most recent report of the International Monetary Fund for speeding up the work on reduction of backlog.²⁴

CONCLUSIONS:

1. CLE is one of the key actors that have fundamentally altered the enforcement system for court judgments in Kosovo through the reduction of execution backlog and support for the new private enforcement system. The overall impact of CLE's cooperation with KJC, court presidents and other institutions has been positive and effective in enabling mass enforcement against bank accounts and wage garnishment. However, the KJC's reporting on execution cases continues to be incomplete, inaccurate, unreliable, and dependent on the CLE developed execution backlog tracking tools.
2. KJC considers backlog reduction as a CLE task and is not doing enough to help speed up the process. This lack of ownership of this process may affect the sustainability of systems put in place by CLE.
3. CLE's work at the court level, particularly the embedded assistance offered through the backlog reduction teams, has been very effective in substantially reducing the backlog of execution cases.

4.2 EQ 2: WHAT IS THE IMPACT OF THE PRIVATE ENFORCEMENT SYSTEM ESTABLISHED THROUGH CLE PROGRAM SUPPORT? WHAT HAS BEEN THE IMPACT OF THIS ACTIVITY WITH THE MOJ?

FINDINGS

CLE provided excellent collaborative assistance to the MOJ in the successful establishment of the private enforcement system by collaboratively working with local stakeholders to develop secondary legislation of the Law on Enforcement Procedures, by providing essential training to build the capacity of the PEAs as well as governmental officials overseeing PEAs, and by supporting the creation of the Disciplinary Committee of the PEAs as well as the Chamber of PEAs.

In an effort to streamline the process for the enforcement of court judgments and other documents, such as mediation agreements, administrative procedure decisions, authentic documents, notarized contracts, and

²³ The ET has a copy of the email correspondence between the CBK and State Agency for the Protection of Personal Data. The conclusion that the Regulation is not in violation of the Law on Personal Data Protection is given in the text of the email without a formal reasoning.

²⁴ IMF Country Report No. 16/22 for Republic of Kosovo "First Review under the Stand-By Arrangement for Republic of Kosovo" dated 15 January 2016, see in particular pp. 40

arbitration awards, (collectively “enforcement documents”), the GOK introduced a new enforcement system for most legal disputes, except for court judgments relating to family law and labor cases, that previously required court enforcement officers. The Law on Enforcement Procedure was promulgated in December 2012 and entered partially into force in February 2013, with the remaining provisions in January 2014.

The intent of the Law on Enforcement Procedure was to establish an enforcement system that has the capacity of being efficient, fair, safe, and accountable. The Law was designed not only to clear the execution backlog but also to improve Kosovo’s efficiency in implementing enforcement documents and reducing the governmental cost in enforcing such documents.

Regulatory Framework

In accordance with the SOW, CLE assisted the MOJ in completing secondary legislation of the Law on Enforcement Procedure that focused primarily on establishing standards for timely and efficient enforcement case processing, and on creating streamlined processes by developing cooperative mechanisms between relevant bodies such as the CBK, the TAK, and the ACR.

CLE provided drafting support for numerous implementing regulations and administrative instructions for the Law on Enforcement Procedure, of which 15 have already been adopted by the MOJ, with an additional four to be adopted soon. Work on drafting the remaining four administrative instructions is ongoing and, with their adoption, the regulatory framework on the functioning of the new enforcement system will be complete. (See EQs 1 and 4 for a thorough discussion on CLE’s regulatory assistance, and Annex 8 for a list of the 15 regulations).

During the KIIs with key representatives of the MOJ, the team was told that the assistance provided by CLE was “excellent.” The MOJ credits CLE in providing essential advice and guidance, and bringing together stakeholders and international experts in working groups to present their collective input on implementing regulations and administrative instructions to establish a functioning private enforcement system.

Since the implementation of the private enforcement system in 2014, several objections have been raised by numerous stakeholders, particularly users of the system - PEAs, civil judges from all three levels, commercial banks and other creditors - regarding certain provisions of the Law on Enforcement Procedure which are vague, outdated or unnecessarily hinder the proceedings of the PEAs. Such provisions have caused delay, misunderstandings or the unnecessary rendering of decisions by governmental officials, including judges.

CLE has supported MOJ’s efforts to undertake an overall assessment of the private enforcement system and to incorporate “best practices” into amendments of the Law on Enforcement Procedure. CLE and MOJ worked together to create a Concept Document on the Law on Enforcement Procedure, which will serve as the basis for the amendment process of the Law on Enforcement Procedure. CLE solicited feedback from stakeholders and coordinated efforts in clarifying the objectionable provisions and, collectively, the working group reached a consensus on amendments to certain provisions of the Law on Enforcement Procedure.

As of December 31, 2015, it is unclear whether the Assembly will pass the amendments to the Law on Enforcement Procedure prior to the expiration of CLE’s current contract. In order to accelerate the process, CLE was unsuccessful in an attempt to encourage a fast-track process by requesting that the amendments be presented directly to the Assembly, therefore bypassing the regular legislative procedures, a move opposed by both the MOJ and USAID.

Private Enforcement Agents

PEAs are entrusted to implement enforcement documents, except for court judgments relating to family law and labor cases, which continue to be enforced by court enforcement officers. CLE has worked closely and steadfastly with the MOJ, which is responsible for qualifying, licensing, and commissioning PEAs, to urge the MOJ to appoint sufficient PEAs in order to meet the Council of Europe’s (COE) standard of one PEA per 25,000 citizens. According to Kosovo’s current population, over 100 PEAs should be appointed and become fully operational.

Despite CLE's efforts, the MOJ has been slow in recruiting PEAs. Since August 2013 when the MOJ conducted the first examination for PEAs, there have been three additional examinations and, as a result, 26 PEAs have been appointed, with one PEA having resigned.

CLE believes that the MOJ should administer no less than three examinations per year for PEA candidates, until the threshold of at least 100 PEAs is met. CLE urged the MOJ to conduct additional examinations during 2014 and 2015, but to no avail. Despite its efforts, CLE contends the political crises following the June 2014 elections in Kosovo was the major cause of the MOJ's failure to take the necessary administrative actions to administer examinations, which is refuted by the MOJ. Regardless of the cause, the number of PEAs is considerably lower than the optimum. The limited number of PEAs is also due to a new requirement that a candidate must have passed the Bar exam. According to KIs with PEAs, the low number can also be attributed to the climate of insecurity in Kosovo, and the tariffs associated with PEAs work which, reputedly, are the lowest in the region.

Training

According to the MOJ, *"enforcement actions are very sensitive and agents need to be professionally trained so they do not improperly encroach upon the rights of individuals."* Also, several KIs referred to the sensitivity of PEAs²⁵ performing a state function. There is a delicate balance with citizens having the authority to intrude into the privacy of individuals which, if unchecked, could result in an encroachment of their rights.

Once the first group of PEAs was appointed, and in accordance with the SOW, CLE began to provide trainings to build their capacity by focusing on substantive areas of the law and teaching practical skills. To date, CLE has provided trainings for 64 PEA candidates who were qualified to receive a commission from the MOJ. While all 64 PEA candidates had passed the PEA examination, not all were qualified to become PEAs, given the requirement of Bar passage. Other PEA candidates, after passing the PEA exam and receiving CLE's training, decided against pursuing a career as a PEA. Consequently, of the 64 PEAs candidates trained by CLE, only 25 are currently licensed and commissioned PEAs.

In a KI, the MOJ stated that CLE's training of PEAs was crucial as PEAs needed to learn the specific skills to avoid such intrusions into the private of individuals. Without sufficient knowledge of or experience with the private enforcement system, the MOJ admittedly did not have the capacity to provide the required trainings and is "grateful to CLE" for the trainings.

PEA Process for Implementing Enforcement Documents

While CLE had little involvement with the process for implementing enforcement documents, the team finds it worthy to describe the current process and its numerous challenges, given that many of the KIs expressed concerns over the effectiveness of the private enforcement system if these challenges were not addressed.

As currently structured, the process for implementing enforcement documents is set forth in Articles 22 to 26, and 29 of the Law on Enforcement Procedure. The PEA is required to collect the necessary documents and information from the creditor in order to ascertain grounds for the debt and render a writ of execution, which can be accepted either in whole or in part. Debtors have the right to object within seven days of receipt of the writ of enforcement.

Since the inception of PEAs' work, numerous objections against writs of enforcement have been filed by debtors under the Law on Contested Procedures. While there are several reasons, according to the KIs, over 90% of such objections are either due to delaying payment of the debt or the lack of constraints in submitting frivolous or unfounded complaints. Another interesting cause is the culture of the public, which has been accustomed to the courts' failure to recover debts if enough time has passed.

²⁵ It should be noted that the word "private" is a loaded one. PEAs are officials licensed by the MOJ to exercise public functions. In addition, they implement a public law, follow a procedure set out in the Law on Enforcement Procedure, and are regulated by the MOJ in charging fees for their services. In fact, the only private aspect of their work is their offices.

Once an objection is filed, it is considered a case or controversy for which the PEA must complete the file and submit it to the basic court for a review of the debtor's objection, the process of which is governed by both the Law on Enforcement Procedure as well as the Law on Contested Procedure. Due to the large number of objections against writs of enforcement awaiting resolution in the basic courts, and at the urging of PEAs with the support of CLE, the Supreme Court issued a Legal Opinion in July 2015 stating that courts must decide on objections against writs of execution within 15 days of receipt of the case file. According to Klls, the Legal Opinion has yet to have an impact on the courts' response time.

While several issues have arisen over the PEA process for implementing enforcement documents for which there are many complaints, Klls revealed a consensus among key informants that the work of the PEAs is a "huge achievement" in that creditors now know the debt owed to them will be paid. Some creditors consider PEAs to be "rock stars" for finally securing the funds that are owed to them and for what usually took 3-6 years to execute only takes a few months today.

Even KJC has been a debtor which, due to PEAs enforcement procedures, is now paying its debts. Similarly to KJC, there are other governmental institutions as well, which are also now paying their debts due to the private enforcement system. According to CLE's records, which represent the reports of 21 of the 25 PEAs from the period of May 5, 2014 to December 31, 2015, 17,806 cases have been filed with the PEAs, of which 3,619 cases have been resolved and have resulted in a total debt amount of 42,476,358 Euros collected. The total debt value of the pending cases is approximately 146,829,389 Euros.

While the amount of debt collection is impressive, it has come with a cost on human rights. According to the Law on Enforcement Procedure, PEAs are required to take care to protect the dignity of the debtor, and to ensure that the enforcement procedures cause as little detriment as possible to the debtors. Further, PEAs are to act with appropriate respect towards the debtor and debtor's family members. Yet, according to Klls, some of the PEAs have been too aggressive in their enforcement procedures. "PEAs think about making money, and not about the human rights of the debtors."

Disciplinary Committee of the PEAs²⁶

Given the anticipated transgressions by PEAs, many of which - according to Klls - are a result of inexperience, as well as vague legal provisions in the Law on Enforcement Procedure, rather than intentional actions, CLE was required to develop the capacity of an "Enforcement Commission or such other institution prescribed by law to efficiently, effectively and professionally perform its function to oversee and monitor the private enforcement system."

CLE worked with the MOJ to develop the capacity of the Disciplinary Committee of the PEAs (Disciplinary Committee). Created in November 2014, the Disciplinary Committee is composed of three members, two judges proposed by the KJC, and one PEA. The Department of Free Professions (DFP), established in November 2013 as part of the internal organization of the MOJ, acts as the Disciplinary Committee's Secretariat.

CLE supported the development of the Manual on the Supervision of the PEAs, which serves as a guide for the Disciplinary Committee and the DFP to supervise and monitor the work of the PEAs. While the Manual has yet to be adopted, CLE has used it as a basis in two trainings sessions with the MOJ, a Train the Trainers workshop for MOJ officials, as well as a five-day training session for MOJ personnel to enhance their own skills in providing financial and professional supervision over the PEAs.

The Disciplinary Committee has received over 20 cases against PEAs. While that seems high, there is a strong view that the number of complaints is lower than expected, considering that key informants thought there would be violence in response to the PEAs' enforcement actions particularly with the sale of movable as well as immovable property, debtors resisting bank account blockages, or family members being evicted from a home. Many of the complaints, according to a Kll, are "sour grapes," while others have merit, but all to be expected as the result of the "growing pains of a new profession."

²⁶ CLE refers to this body as the Disciplinary Commission.

According to Klls, the regulations to file a complaint against PEAs with the Disciplinary Committee are vague and need to be revised with specific language so that would only allow for valid complaints to be reviewed by the Disciplinary Committee. Additionally, in lieu of the current process, whereby all cases against PEAs are filed directly with the Disciplinary Committee, key informants suggest that an internal review should be undertaken by the MOJ staff to filter out unfounded complaints so that only those complaints with reasonable grounds are processed by the Disciplinary Committee. According to Klls, if aggressive methods of some PEAs go unchecked, the credibility and effectiveness of all PEAs could be damaged and the future of the entire private enforcement system jeopardized. Thus, PEAs themselves believe that the Disciplinary Committee needs to develop high standards in order to ensure the private enforcement system is accountable and PEAs are responsible in exercising their public duty.

Chamber of PEAs

The Chamber of PEAs was established on January 22, 2015, after having met the legal threshold of 20 operating PEAs required to establish it. The role of the Chamber is to collectively represent the members, monitor the performance and practice of PEAs, provide trainings to increase the competency of the PEAs, and publicize and raise awareness about the profession and the services of PEAs. According to the SOW, CLE is to assist in establishing and ensuring the efficient functioning of the Chamber in order to fulfill its role prescribed in the Law on Enforcement Procedure.

In its assistance to help establish the Chamber, CLE worked closely with the MOJ which, according to the Law on Enforcement Procedure, had the authority to exercise the responsibilities of the Chamber until it was established. CLE provided technical assistance to develop the Interim Statute of the Chamber of PEAs, which was adopted on February 5, 2014, and the Interim Code of Ethics of the PEAs, which was adopted on April 4, 2014.

CLE provided assistance in the registration process, in developing internal procedures for the Chamber, and in preparing its budget. Through this assistance, the Chamber, according to Klls, learned first-hand about the necessity for transparency in choosing its representatives for the Chamber's leadership. CLE has funded the rent of the Chamber's offices, provided equipment, and paid for utilities and the salary of one employee. CLE has taken the first steps in building software for case administration and management, especially for access in the CBK's Unique Account Holder Registry, has designed the Chamber's website, and has created a Chamber logo and billboard, which are located on its premises. CLE provided assistance with the Enforcement Day in July for which the Chamber is very grateful, as well as a five-day training for enforcement agents, even though it was not conducted through the Chamber.

The Chamber has created several internal bodies which oversee various functions of the PEAs, including discipline of its members; however, according to Klls with the Chamber of PEAs, their competencies, responsibilities, and procedures need to be streamlined.

The team conducted a survey of all 25 members of the Chamber of PEAs and received responses from 11 of them. Their views are varied as they provided their responses to survey questions concerning the type of assistance received by the CLE; rating of assistance received by the CLE; number of trainings attended under the CLE's assistance; whether the trainings were useful; the kind of assistance needed to strengthen the Chamber of PEA; the type of trainings or other assistance needed; the challenges of the new enforcement system in Kosovo; and their recommendations for improvements. The survey results are set forth in Annex 6.

Outreach

Attempting to reach a wide audience, CLE designed the first Public Service Announcement (PSA) to be directed to the general public to describe the new private enforcement system and the work and responsibilities of the PEAs while the second PSA was/will be directed to debtors. For the past 15 years, there was little discipline in honoring one's debts, particularly since the court enforcement process was lax, which incentivized debtors to ignore their obligations. Presently, the MOJ credits CLE's PSA and other outreach efforts in enhancing the knowledge of and encouraging compliance with the private enforcement system. There has been an increase in voluntary enforcement due to the outreach of the CLE, commented a key informant. *"Debtors are more aware of the enforcement process of which they cannot escape."*

Summary of the Impact of CLE's Work with the MOJ

According to the MOJ, CLE's work with the MOJ was extraordinarily collaborative. Each played a significant role which neither one could have accomplished alone. CLE's expertise and funding were essential; however, without the MOJ's commitment to implementing the private enforcement system, it could not have been created. *"The MOJ is very proud of the private enforcement system. Its crucial partner is CLE who jointly helped the MOJ to create the profession."* A representative of the KJC stated that *"if CLE had not been here, it would have been very difficult to create the private enforcement system; in fact, we could not have done this without CLE. It is a well-founded project. If there are better methods than CLE provided, we aren't aware of them."* According to another key informant, *"when USAID works on an activity without other donors, such as CLE with the private enforcement system, it can stand out and create a comparative advantage."*

Despite its success, there are many challenges ahead for the private enforcement system, which the team learned through its KIs. These challenges are summarized in Annex 5.

CONCLUSION

In an extraordinary collaboration with the MOJ, CLE provided significant and valuable support in establishing the private enforcement system.

4.3 EQ 3: WHAT HAS BEEN THE IMPACT OF THE CONTRACTOR'S WORK WITH MEDIATION CENTERS? WHAT HAS BEEN THE IMPACT OF THIS ACTIVITY WITH THE KJC, THE COURTS AND THE MOJ?

FINDINGS

Working closely with the MOJ, the Mediation Commission, the KJC, and the courts, CLE has provided significant support to enhance mediation services in Kosovo, particularly through direct assistance to three mediation centers in Peja, Gjiilan, and Prizren.

Review of CLE documents and information obtained through KIs with CLE, UNDP, the Berlin Center for Integrative Mediation (CSSP) - an NGO registered in Germany - the MOJ, the Mediation Commission, the KJC, and judges associated with mediation services in Kosovo, as well as site visits to Gjiilan, Gjakova and Ferizaj, provided the team with a deep understanding of CLE's mediation assistance in Kosovo.

Building on the activities and progress achieved under the SEAD Program, CLE focused on ensuring the effective functioning of the nascent mediation mechanism in Kosovo as a complementary means of relieving the caseload burden on the courts.

Following the opening of the two mediation centers in Peja and Gjiilan by SEAD in July 2011, CLE continued the operation of the two centers beginning in June 2013, and opened a third mediation center in Prizren in November 2014. CLE pays office rent for both Peja and Prizren mediation centers. The Gjiilan mediation center is located in the courthouse funded by the KJC. CLE's work with mediation centers is complemented by that of two international donors (other than USAID): UNDP, which operates three mediation centers in Ferizaj, Gjakova and Prishtina; and CSSP, which operates the mediation center in Mitrovica under a grant from the Swiss, German and Norwegian embassies. Collectively, all three donors are supporting mediation centers in each of the basic courts. Additionally, CSSP has been able to offer mediation services to non-Albanian communities by extending its mediation activities in the northern Mitrovica region.

Through KIs, the team learned that while CLE and CSSP collaborated very well, there was and continues to be discord between CLE and UNDP concerning several aspects of mediation, which is elaborated upon in the following paragraphs.

Regulatory Environment

After the Law on Mediation was promulgated in 2008, the MOJ began working closely with SEAD, UNDP, CSSP, and the EU to implement it. In collaboration with the MOJ, and due to the lack of funding to fulfill EU standards regarding mediation, SEAD, UNDP, and CSSP collectively decided in which regions to open mediation centers. Since CLE's inception, it became clear to all stakeholders that several provisions of the Law

on Mediation had to be amended as they were not consistent with international best practices and, as a result, led to a dysfunctional mediation system. To this end, CLE organized a working group meeting in the Spring 2015 with prospective donors, including UNDP and CSSP, to discuss the Law on Mediation, particularly sustainability of mediation in Kosovo. However, according to UNDP, CLE failed to invite the two essential stakeholders, the MOJ and the KJC. Consequently, the results were minimal.

Thereafter, CLE, in conjunction with the MOJ, organized another working group meeting that was attended by both UNDP and CSSP to discuss the Concept Document on Amendments of the Law on Mediation (“Concept Document”). In November 2015, the MOJ and CLE organized a third working group meeting to draft the Concept Document but UNDP failed to attend the meeting, citing a scheduling conflict due to the receipt of the invitation the previous afternoon. These scheduling details may appear inconsequential but they reflect one of several areas where there is a lack of close cooperation and/or misunderstanding between CLE and UNDP. At the November working group meeting, the Concept Document was discussed in great detail with significant advice provided by CLE. As a result, the document is in its last stages of being finalized.

As part of its support to the MOJ, CLE provided assistance to MOJ’s DFP and to the Mediation Commission, a regulatory agency under the auspices of the MOJ that was created in 2008 after the promulgation of the Law on Mediation. The Mediation Commission, consisting of five members representing the MOJ, KJC, Kosovo Prosecutorial Council (KPC), KBA, and the Minister of Labor and Social Welfare, is responsible for developing mediation regulations and certifying mediators. While UNDP has worked closely with the Mediation Commission since its creation, most members of the Mediation Commission were disinterested in their responsibilities during CLE’s first year, according to CLE’s documents, which made it difficult for CLE to achieve much progress; however, the project was able to assist the Mediation Commission in the development of its annual work plan.

CLE was also able to provide assistance to the Mediation Commission in its second year with regard to amending certain regulations concerning the training, discipline, and ethics of mediators. While the draft regulations were finalized in November 2014, they have yet to be promulgated as the MOJ and the Mediation Commission are waiting until the new Law on Mediation is passed so that the regulations could be harmonized with the new Law.

The major schism between CLE and UNDP relates to the regulatory environment and the role the MOJ and the Mediation Commission have over mediation services. UNDP asserts that the Law on Mediation gives exclusive control over mediation to the MOJ and the Mediation Commission and that the mediation centers should be outside the courthouse and its staff should be under the authority of the MOJ. UNDP’s three mediation center administrators are contracted by the MOJ and receive salaries consistent with other MOJ employees, which UNDP funds. Since 2009, UNDP has funded the Secretariat of the Mediation Commission, including staff salaries and supplies.

CLE, on the other hand, asserts that the mediation center administrators should be under the control of the KJC as the staff of such mediation centers engage in court-related services. CLE believes the proper employer for court-based mediation administrators, excluding mediators themselves, is the KJC, rather than the MOJ, for legal, institutional and constitutional separation of powers issues. One of CLE’s three mediation centers, Gjilan, is located in the courthouse, while the other two are outside the courthouse; yet all three mediation center administrators are contracted by CLE, which pays their salaries.

This schism has recently widened in that CLE, with support of USAID, has influenced the GOK to include in the KJC budget for 2016 funding for the seven mediation centers, including the salaries of the administrators. UNDP is concerned that not only does such funding violate the Law on Mediation, but also that USAID and CLE did not confer with the MOJ and the Mediation Commission about its intent. Indeed, according to UNDP, the KJC did not inform the MOJ and the Mediation Commission about the 2016 line item budget regarding mediation centers. UNDP is also concerned that KJC’s need to downsize may result in KJC replacing existing mediation center administrators with its own staff, which would have a deleterious impact on the progress of mediation, given the experience of current mediation center administrators.

CLE Mediation Centers

In evaluating CLE's mediation centers, the team conducted site visits of CLE's mediation center in Gjiilan, and UNDP's mediation centers in Ferizaj and Gjakova. The team also had an opportunity to meet with CSSP regarding its mediation center in Mitrovica.

CLE has employed at each of its three mediation centers in Peja, Gjiilan and Prizren a full-time administrator whose role is multi-faceted. CLE administrators work closely with the presidents of the relevant basic courts to review court cases for potential referral to the mediation center. All three mediation centers accept cases that are referred by the courts in accordance with the Protocol for Referral of Cases to Mediation (Protocol), as well as by the basic prosecution's office, in accordance with the Criminal Procedure Code, which requires mediation between the injured party and defendant for offenses with sentences up to three years of imprisonment or a fine. To a lesser degree, the mediation centers receive cases that are voluntarily submitted by the parties themselves.

During its site visit to the mediation center in Gjiilan, the team confirmed CLE's statistics that this center has the highest number of cases referred to mediation. According to the KII, this result is due not only to the location of the mediation center in the courthouse, but also to the cooperation between the basic court judges and the mediation center administrator, as well as the proactive approach taken by the mediation center administrator in identifying potential cases for mediation. The Court President in Gjiilan stated *"the good results of the mediation in Gjiilan have been possible due to the support of CLE's staff and its determination to increase the use of mediation in disputes."*

While the team did not have an opportunity to visit the Prizren Basic Court to meet the administrator of the Prizren mediation center, it did have the opportunity to interview extensively the President of the Prizren Basic Court. Unlike the judges associated with the Gjiilan mediation center, the President of the Prizren Basic Court was not complimentary about the CLE mediation center in Prizren. Interestingly, he suggested that some parties prefer to have their cases resolved by the court as its processes are faster than those of the mediators. He cited the low success rate of the mediators associated with the Prizren mediation center and also complained of CLE's inappropriate involvement in the mediation process.

In order to understand the Prizren Court President's concerns, the team was given a detailed description of the process by which the CLE mediation centers work with the courts and prosecution offices to support court-referred and prosecution-referred cases to the CLE mediation centers.

Upon receipt of a case referred for mediation, the CLE mediation center administrator reviews the case to ensure its compliance with the Protocol. The review often involves an additional review by CLE staff in Prishtina when there are questions regarding Protocol compliance. Once CLE staff in Prishtina has given its approval that the Protocol is being implemented properly, the two parties to the case are invited by the mediation center manager to engage in mediation.

According to CLE documents, from the inception of CLE on May 7, 2013 to December 31, 2015, 3,907 cases have been referred by the relevant court to CLE's three mediation centers. Each case referral was the result of a signed agreement to mediate and select a mediator. 1,625 cases were referred to the Peja mediation center; 1,855 cases were referred to the Gjiilan mediation center; and 427 cases were referred to the Prizren mediation center, which is decidedly lower.

To break down the statistics of court-referred cases even further, Table 6 below provides more detailed information regarding referral of cases from May 7, 2013 to December 31, 2015:

Table 6: Referral Cases (May 2013 – December 2015)

Category	Gjiilan	Peja	Prizren
Cases reviewed by CLE for potential referral	1956	1795	485
Cases selected by CLE and court for potential referral	1855	1625	427
Cases referred to mediation, based on agreement of the parties	425	281	52

Category	Gjilan	Peja	Prizren
Cases settled through mediation and approved by court	373	192	24
Cases still in the mediation process	4	23	10
Cases not settled through mediation and transferred by to court	48	100	25
Self-referred mediation cases	26	9	6

According to CLE, the amount in dispute that has been successfully mediated at its three centers from May 7, 2013 to December 31, 2015 is 1,169,598 Euros.

UNDP Mediation Centers

While the team was not tasked with evaluating the other mediation centers, it took the opportunity to conduct KIs with representatives of UNDP and CSSP mediation centers as a means of comparing the operations and outputs of these centers with the CLE's mediation centers.

In its site visit to the UNDP mediation center in Gjakova, which is located outside of the courthouse, the team learned that it was initially founded by Partners Kosovo and is currently supported by UNDP. Like the other two UNDP mediation centers, it is under the control of the MOJ.

KIs revealed that the mediation center administrator works with the court President and judges to identify cases, which are appropriate for mediation according to the Protocol; however, the administrator only provides technical advice. During 2015, using UNDP's Mediation Information System (MIS) on registering and managing its cases, the mediation center received 33 court-referred cases, of which 18 cases were resolved, 12 cases remain unresolved, and 3 cases are pending resolution. The mediation center received 130 prosecution-referred cases of which all were resolved except for 12 cases, which are pending resolution. It also received 6 self-referred cases, after a UNDP public outreach campaign, of which 3 cases were resolved, 1 case was unresolved, and 2 cases are pending resolution.

It is noteworthy to mention that the Gjakova mediation center has almost "non-existent cooperation" with the CLE mediation centers.

The UNDP mediation center in Ferizaj is also located outside the courthouse and, with 12 mediators, has received 402 court-referred cases of which 189 are prosecution-referred cases in 2015. The team learned that the mediation center administrator provides technical assistance to the courts and prosecution offices to refer cases and to present the parties with a list of mediators, but is not involved substantively in judging the appropriateness of cases for mediation. It is also noteworthy to mention that the administrator did not have information on how the CLE mediation centers operate.

According to UNDP, CLE initially refused to give the Mediation Commission information to populate the MIS with information from its three mediation centers, and has recently begun to provide limited information for the MIS. According to CLE, it uses a different definition of a "court-referred mediation case" than UNDP in that it does not count cases that the parties do not agree to mediate while UNDP mediation centers counts all cases identified as potentially mediatable.

Additionally and more important, CLE has been reluctant to share all of its mediation information as it has "concerns about the security of the system, both in terms of maintaining the integrity of reporting data, and in complying with the Law on Data Protection and the Law on Mediation's confidentiality requirements." CLE shared its concerns with the Secretariat, which currently has the ability to access and change the data reported in the MIS at an April 2015 workshop with the Mediation Commission. CLE has agreed to provide the essential information to populate the MIS as soon as its reservations, described above in quotes, are resolved.

CSSP Mediation Center

The team learned from its KI with a key representative of CSSP that CSSP's mediation center in Mitrovica is located outside the court, has been fully operational since January 2014 and, admittedly, is smaller in manpower and financial support than CLE's mediation centers. While the number of mediations is less in

Mitrovica than with most other mediation centers, CSSP is pleased not only with the 89% resolution of mediation cases, but also that their training of mediators is in multi-ethnic areas, which ensures a broader support of mediation services.

The KII revealed years of uncoordinated cooperation among the international donors involved in mediation services in Kosovo, although CLE was praised for being supportive of CSSP's interest in opening its Mitrovica mediation center.

Mediation Center Responsibilities

There is a notable difference of opinion between UNDP and CLE in the responsibilities of the mediation centers. While UNDP believes the mediation center administrators are to be strictly technical in their administrative work, CLE mediation center administrators attempt to ensure that judges are implementing the Protocol properly.

During KIIs, some suggested that while well-intentioned, CLE staff in Prishtina is overreaching, engaged in legal interpretations of the Protocol, which should be within the sole purview of the judges. Key informants also stated that the proactive and substantive involvement of the mediation center administrators who are non-court personnel, as well as of the CLE staff in Prishtina, raises concerns regarding their non-judicial role in rejecting cases referred by judges for mediation as well as privacy concerns by parties to the case whose files are being reviewed by non-court personnel.

In response to the survey of mediators, a Prizren mediator stated, *"The Mediation Center of Prizren has been damaged a lot because of the interventions of CLE Program, who, after the referrals of the Court or Prosecution have done a 'control' of the cases by pre-qualifying them for mediation. With this intervention, the Mediation Center has refused criminal cases from the Prosecution and very few cases referred from the Court were accepted by CLE responsible officers. This has had a negative impact in the will of the judges, because, despite the cooperation of the Mediation Center, the cases referred by the judges themselves were turned back to the Court with no reasoning at all. Going back to the recommendations, I am convinced that an increase of mediation services could have been reached for more than a year, if there were not interventions in the judge-mediator rapport I described above."*

CLE, on the contrary, believes that its review of cases ensures that cases are legally appropriate for mediation. CLE believes it has a role to confirm that cases are referred by the judge in good faith and as a result of both parties being genuinely interested in mediating the case. Not only do some judges want to "dump" their cases by referring them to mediation, but also some litigants will agree to mediation as a means of seeking any delay possible.

CLE does not believe it infringes at all on the confidentiality of the parties, given its role to undertake a legal review of cases as appropriate for mediation in that information relating to the case is *"non-disclosed beyond what is necessary for legal review and administrative needs."*

Training

CLE recognized that building public confidence in mediation as an alternative to court resolution was essential. Therefore, throughout the past two years, CLE provided multiple training programs to new mediators as well as refresher courses to experienced mediators who are required by law to attend a refresher training every two years. One such training is a week-long course on law, ethics, and international best practices for new mediators. According to KJI, CLE-supported trainings of judges and prosecutors were successful as they were result of *"great collaboration"* among CLE, KJI, and judges.

Recognizing that judicial and court staff skills concerning the referral of cases to mediation are critical, CLE developed a training program for judges and clerks, particularly at the Prizren court, to provide an overview of the law and regulations affecting mediation and to explain the court referral process. As of December 31, 2015, CLE has conducted 18 trainings on mediation and has trained 119 of approximately 170 licensed mediators. While not directly attributable to the trainings, CLE has witnessed an increase in the number of cases undertaken by mediators in each of its three mediation centers.

The collaboration in providing training with other donors, however, did not extend to UNDP (according to

UNDP) and is a contentious issue. UNDP contends that it provided training of the administrative staff of all mediation centers in 2013, but the staff associated with CLE's mediation centers in Gjilan and Peja were not allowed to attend, while CLE believes it never received the invitation either at the office in Prishtina or at the mediation centers.

UNDP contends CLE did not include mediators associated with UNDP's mediation centers in its own training of mediators, while CLE states just the opposite. CLE's training programs are coordinated with the Mediation Commission and are targeted to include those licensed mediators in need of meeting the required minimum of biannual training hours. The geographic location of a mediator does not factor into CLE's decision-making process in inviting mediators. It is likely that there is a greater number of CLE mediator participants in that CLE's training programs are located in the same municipalities where its mediation centers are located. Yet, according to CLE, that does not explain why all mediator participants at CLE's September 2013 training included mediators either from Prishtina where UNDP's center is located or Mitrovica, where CSSP's center is located.

According to KIs with MOJ staff, "CLE did everything to enhance the quality of mediators by organizing and funding the trainings and bringing international experts to Kosovo." The MOJ does not have the capacity or sufficient funding to continue the work of CLE, nor knowledge of or access to international experts on advanced mediation training, which MOJ believes is essential to continue enhancing the quality of mediation services in Kosovo.

Mediation Association

CLE has supported the Mediation Association, a private and voluntary association of mediators formed to advance the interests of mediation and mediators, and to be a voice for the profession with the Mediation Commission by providing advice and guidance in its organizational development. Specifically, CLE has helped to draft essential documents, such as the bylaws, disciplinary rules and a code of ethics, and to develop the capacity of the staff. According to KIs, there remains a serious organizational issue particularly concerning the development of a unified organization that includes all 170 licensed mediators in Kosovo.

According to KIs, the Mediation Association is viewed as a CLE-created association with the majority of its members associated with CLE's mediation centers. KIs with mediators from non-CLE mediation centers challenge the representation of the Mediation Association as currently constituted, have no interest in joining, and have sought to create another Mediation Association that will represent their interests.

According to a survey of CLE's 74 mediators, to which only 15 mediators responded, the Mediation Association should have more activities for its members, build their capacity by organizing trainings, assist them in obtaining more mediation cases, and engage in exchange visits with mediators from other countries. The entire survey results are presented in Annex 7.

The lack of collaboration between CLE and UNDP has led to this result which, in a country with 170 mediators, is disappointing and clearly does not portend well for a cohesive association that will represent the interests of all mediators.

Public Outreach

Recognizing the cultural barrier to resolving disputes by mediation, CLE engaged in public outreach to inform the public of the benefits and availability of mediation. CLE's first outreach program on mediation was launched in February 2014 with a PSA as part of an advertising campaign that was played on Radio Dukagjini and focused on explaining the nature of mediation and introducing CLE's mediation centers. While it cannot be directly attributed to the PSA, there is a causal link. Since the PSA has been broadcasted approximately 5,000 times, over 550 individuals have contacted the three mediation centers requesting mediation services. CLE also launched a second PSA in July 2014, which focused on the benefits of using mediation services.

In addition to the PSAs, CLE has also promoted mediation in the local media, distributed Know Your Rights Brochures to raise awareness on the availability of mediation services, and has met with individual businesses - primarily in Peja, Gjilan and Prizren - to promote mediation services and their benefits.

During a KII with a representative of the MOJ, the team heard praise for the public awareness campaigns that CLE conducted around their three mediation centers, while KIIs with judges revealed a serious need for greater public outreach as there is an “insufficient awareness of mediation services by citizens, especially in the rural areas.”

While there are issues regarding the development of mediation services in Kosovo, USAID was highly praised for its support of mediation from the outset, without which mediation “could have died” since there was no tradition of mediation in Kosovo, and, in fact, faced significant cultural opposition.

CONCLUSIONS

1. CLE has: 1) provided valuable legislative assistance to enhance mediation services in Kosovo by working closely with the MOJ and the Mediation Commission, the KJC and the Courts; 2) provided organizational support to CLE's three mediation centers in Peja, Gjilan and Prizren; 3) supported the mediation center administrators in working closely with the basic court presidents on proper application of the Protocol, although there is concern over the role CLE played in this work; 4) provided significant training of mediators; and 5) engaged in outreach regarding the benefit and availability of mediation services to overcome the cultural barrier to resolving disputes by mediation.
2. The current configuration of mediation centers being funded and operated by three different donors with their overlapping programmatic jurisdictions and the disparate interpretations of the Law on Mediation by CLE and UNDP has led to slower progress in enhancing mediation services in Kosovo than could have been achieved. The landscape for dispute among the donors, as has been shown in the discussion above, is fertile, and could continue to have a deleterious impact on strengthening mediation services in Kosovo.
3. The shortfall by MOJ, the Mediation Commission and the KJC to take a leadership role in determining which institution has authority over mediation services combined with donors' lack of unified concept and practices of mediation centers has resulted in the underutilization of mediation as an ADR mechanism throughout Kosovo.
4. USAID's support for the development of mediation services is highly recognized and appreciated. However, public awareness about these services, especially in rural areas, is still low.

4.4 EQ 4: HOW HAS THE SUPPORT PROVIDED TO THE GOK LEGISLATIVE DRAFTING EFFORTS BEEN PERCEIVED BY COUNTERPARTS AND HOW HAS IT MADE A DIFFERENCE? WHAT HAS BEEN THE IMPACT OF THIS ACTIVITY WITH THE MOJ?

FINDINGS

CLE supported the GOK's legislative efforts focusing on providing assistance to the MOJ and MTI on developing and/or improving the commercial law framework, including drafting of: new legislation, amendments to existing laws, and secondary legislation required to implement the existing laws.

According to its contract, CLE's expected level of effort in the area of legislative drafting was rather limited. However, the team found that the project staff has engaged proactively offering legal drafting assistance to GOK's legislative agenda through both international and local experts. Desk review of materials, KIIs with GOK's representatives, and discussions with the CLE staff, showed that CLE's assistance in this area included support to drafting of primary law, and support to the policy development process for preparing revisions and amendments to the existing laws, and drafting of secondary legislation for implementing existing laws. The main beneficiary of the CLE's legislative drafting assistance has been the MOJ; however, CLE has also engaged proactively with the Ministry of Trade and Industry (MTI), CBK, and more recently with the Office of the Speaker of Assembly. The team is cognizant that CLE may have been involved, at varying degrees, in providing comments and advice to other pieces of legislation but we are confident that the following represents the bulk of CLE's legislative drafting efforts.

Primary Legislation

As part of its commercial law activities, CLE offered technical assistance to the MTI in drafting a new Law on Bankruptcy by engaging an international legal expert on bankruptcy matters. Kosovo had a bankruptcy law since 2003 but due to the failure of the GOK to adopt a series of implementing regulations on bankruptcy

procedures it gradually became un-implementable in Kosovo courts.²⁷ The team learned that during 2014 and 2015, CLE participated in various MTI/GOK working groups to develop the new law. Given the lack of homegrown expertise on bankruptcy matters, MTI requested international expertise and CLE responded positively by engaging local staff and a short-term international expert to support the drafting process. The MTI also received advice from the European Commission and the World Bank and considers new draft law to be based on international best practices and compliant with EU directives on cross-border regulation of bankruptcy issues. The draft has been endorsed by the GOK and both the CLE and MTI, which claimed that the law should have been adopted by the Kosovo Assembly within 2015. However, at the time of the evaluation, the adoption was delayed due to the recent political turmoil, which paralyzed the work of the Assembly for several months starting late August 2015.

The existing Law on Mediation has been effective since 2008.²⁸ In 2015, the MOJ requested the assistance of international donors in developing a concept paper as a blueprint to drafting a new Law on Mediation. In collaboration with other donors, CLE participated in a working group, bringing together the MOJ, Office of the Prime Minister, Mediation Commission, USAID Property Rights Project, and the CSSP representatives. Through KIs with MOJ and Mediation Commission representatives, the team found that the drafting of the Law on Mediation is in its early stages and it is not expected to be adopted by the Kosovo Assembly during the life of the CLE Program.

In early 2015, CLE responded to an initiative of the Speaker of the Assembly for drafting several laws related to economic growth and rule of law. Together with the USAID-funded Empower Credit Support project, CLE assisted the drafting of several laws, which had been proposed by the business community (in particular, the KBA and AmCham) such as the Law on Credit Guarantee Fund²⁹, the Law on Late Payments, the Law on Bills of Exchange, and amendments to the Law on Enforcement Procedure. The team learned through KIs with GOK representatives and discussions with the project staff that upon the initiative of the Speaker of the Assembly, these laws were expected to be adopted through expedited procedure foreseen by 53 to 59 of the Rules of Procedure of Kosovo Assembly requiring an Assembly Committee or a group of members of assembly group to take the initiative for drafting a new law.

While CLE appears to have taken all steps required by the Assembly Regulation for adopting drafts through extraordinary procedures in the Assembly, the MOJ felt strongly that CLE should not have bypassed the MOJ as the line ministry supporting the revisions of the Law on Enforcement Procedure. According to CLE documents, USAID supported the MOJ's position regarding the legislative approach to follow the regular legislative drafting procedures for amending the Law on Enforcement Procedure, including the development of a Concept Document. The team also learned that CLE and the MOJ have agreed to work together on the revisions of the Law on Enforcement Procedure prior to its presentation to the GOK and the final adoption by the Assembly through regular legislative procedures. The Law on Late Payments and the Law on Bills of Exchange are still pending approval in the Assembly due to the political crisis and the disruption of several plenary sessions of the Kosovo Assembly.

Through KIs with GOK representatives, the team found that in line ministries that are CLE's counterparts considered the CLE's role in proposing draft laws through fast track procedures both unnecessary and fruitless. Due to the lack of any urgency, various stakeholders perceived this as an undue interference with the regular legislative procedures outlined in the Government Regulation No.09/2011 requiring a line ministry's sponsorship and GOK's endorsement on a draft law prior to the consideration by the Assembly committees and plenary session. The team is unable to conclusively confirm the necessity of bypassing the regular legislative drafting rules and was not informed of any immediate urgency for adopting the economic growth legislation. The lack of urgency was also supported by KIs with GOK's lawyers, one of which noted that *"Even the package of 24 laws emanating from Ahtisaari Proposal which served as the basis for Kosovo's declaration of*

²⁷ See the OSCE Kosovo "Report on the Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government Review Period: Laws Promulgated in 2002-2003" January 2005, page 13-14 on the Law No. 2003/4 "On Liquidation and Reorganization of Legal Persons in Bankruptcy" promulgated by UNMIK Regulation 2003/07.

²⁸ Law No. 03/L-057 on Mediation promulgated by the Kosovo Assembly on 18 September 2008.

²⁹ The Law on the Establishment of the Kosovo Credit Guarantee Fund was approved by the Kosovo Assembly on 14 December 2015.

independence, followed the normal legislative procedures in the GOK and Assembly. It is common knowledge that economic growth laws are no more important than Ahtisaari related laws”.

However, the team also observed that CLE’s efforts to support the GOK’s legislative agenda have often not produced the indented result due to elections cycles or political turmoil, which are beyond the control of the project.

Amendments and revisions of the existing laws

The team also found that CLE has provided technical assistance to MTI in drafting the amendments to the Law on Business Organizations. Although, MTI initially received UNDP’s assistance in 2013 in drafting amendments, the amendments did not pass in the Assembly and CLE offered its assistance during 2015. The procedure for adopting the amendments is expected to last beyond the life of the CLE Program.

One of the pillars of CLE’s activity with the MOJ has been the establishment of the new private enforcement system based on the new Law on Enforcement Procedure, which partially entered into force in early 2013 and partially in January 2014. The law was drafted with important support from the SEAD project whereas CLE’s work has been instrumental in completing the sub-legal framework for the implementation of the law. While the new private enforcement system is generally considered a success story by judicial sector stakeholders, through the KIs with judges, bankers, PEAs and MOJ officials, the team learned that during the implementation of the law several provisions have been found to be vague, confusing and inconsistent.

MOJ has already solicited the contribution of various stakeholders and due to its continued work in the backlog reduction initiative and PEA the CLE is well positioned to provide feedback on the post-facto implementation process of the recently adopted law. The MOJ has gathered recommendations for revisions/amendments into a Concept Document, which will drive the stakeholder discussions and the work needed to reach a consensus on amendments. CLE has collected feedback of basic and appellate level judges, and is proposing amendments on streamlining the enforcement procedures through bank accounts and shortening of procedures for the sale of immovable property.

Amendments to the Law on Enforcement Procedure were initially intended to be initiated through an accelerated procedure by the Assembly, along with a package of laws related to the rule of law and economic growth in Kosovo. However, USAID supported the position of the MOJ that the amendments to the Law on Enforcement Procedure would go through the regular procedure for amending laws and CLE is now participating in the MOJ-led working group to finalize the Concept Document on the amendments to the Law on Enforcement Procedure. The working group is composed of MOJ officials from the Legal and Free Professions Departments, the Prime Minister’s Office, an Appeals Court Judge, the Chamber of PEAs, and CLE. At the question of the team, the MOJ explained that the process of adopting amendments may take another year going beyond the expected life of the CLE project.

Secondary legislation

Through KIs with GOK representatives, MOJ, DPF, and CLE staff, the team found that CLE has provided considerable assistance to MOJ to create the implementing regulations and administrative instructions on various aspects of the newly established private enforcement system, including but not limited to the control and inspection methods of the PEAs, the management of monetary means by the PEAs, the conditions and procedures of the business and personal data of the PEA, and the creation of the professional commission and disciplinary commission of private enforcement. As of December 31, 2015, 17 sub-legal acts have been adopted by the MOJ with CLE’s assistance, and four are expected to be adopted soon. Work on drafting the remaining four administrative instructions is ongoing and their adoption will complete the regulatory framework on the functioning of the new enforcement system. (See Annex 8 for a list of the sub-legal acts drafted with CLE’s assistance).

The work of CLE on establishing the institutional structures and procedures for new system has already produced very positive results. The Disciplinary Committee of Private Enforcement has received over 20 complaints against the activity of the PEAs and has already concluded three cases with fines and public

reprimand to the PEA.³⁰ Another area that CLE has supported the implementation of the new PEA system is its contribution to institutional building to the Chamber of PEAs. CLE is currently working with the PEA Chamber to review and draft its provisional Statutes and Code of Ethics, which were initially adopted by the MOJ pending the establishment of the PEAs.

USAID's SOW expected CLE to help draft the secondary legislation related to the new Law on Obligation Relationships, particularly those associated with financial services. According to the PMP and CLE documents, regulations had to be adopted during Year 3 in order to replace the applicable provisions of the old Yugoslav Law on Obligations. CLE worked with Legal Department of the CBK to help drafting several of regulations on Contracts for Loans; Regulation on Letters of Credit and Bank Guarantees; Regulation on Deposit of Securities and Regulation on Current Bank Accounts and Bank Deposit, all of which are pending deliberation and adoption by the Board of the CBK.

CONCLUSIONS

1. CLE's legislative assistance efforts, particularly its contribution in creating the sub-legal acts for the successful establishment of the private enforcement system is considered by the beneficiary institutions as significant and delivered in a professional manner
2. Due to delays in the adoption of several laws caused by the six month delay in forming a government and the recent political deadlock leading to the disruption of the work in the Kosovo Assembly (August - December 2015), CLE's work in drafting primary laws has not made a significant difference in improving the commercial law legal frameworks.
3. While CLE's support to drafting the Bankruptcy Law, a new Law on Mediation and amending the Law on Enforcement Procedure and sublegal acts implementing the Law on Obligation Relationships are still ongoing,

4.5 EQ 5: HOW HAS CHECCHI AND COMPANY CONSULTING, INC. MADE A DIFFERENCE IN THE DEVELOPMENT OF A CULTURE FOR USE AND RESPECT FOR CONTRACTS?

FINDINGS

CLE promoted a "Culture of Contract" in Kosovo, through its "Put it on Paper" activities supporting the use of contracts in the agricultural sector and with multiple campaigns targeting Kosovo businesses in majority and non-majority communities aimed at raising awareness on the importance of written contracts and its benefits.

According to USAID's assessment, at the time of CLE's design, the overall awareness of legal rules and procedures governing contracts and dispute resolution options was quite low among the business community, resulting in low use of a well negotiated, written contract by Kosovar businesses. CLE developed legal information materials, including "Know Your Rights" brochures, to combat misperception, misunderstanding, and a low level of general awareness of legal rules among businesses. In addition, CLE distributed the standard form contracts with accompanying legal commentary and layperson user's notes. In cooperation with the USAID New Opportunities for Agriculture (NOA) project, CLE liaised with farmers and processor buyers to use written contracts (650 contracts implemented). In addition, CLE utilized targeted promotions to inform businesses of the availability of the CLE developed standard form contracts. Using the Short Message Service (SMS, or "text" messaging), CLE distributed to more than 800 businesses information on where to find and download the standard form contracts.

Furthermore, CLE organized one "Put it on Paper" roundtable per month with businesses from various sectors, including agriculture, information technology (IT), real estate, construction, retail/wholesale distribution, and producers. The roundtables were organized to encourage use of written contracts in business

³⁰ See Decision No. 3 of the Disciplinary Committee of PEAs dated 10 November 2015 stipulating a fine of 3000 Euros and a public reprimand for multiple legal violations by a private enforcement officer. Decision was published on 24 November 2015 and is available in Albanian at http://www.md-ks.net/repository/docs/Vendimi_Nr.03-2014.pdf

transactions; increase public confidence in judicial institution; and increase public awareness of, and benefits from, improved ADR processes. To ensure the contract suited the industry's needs, CLE organized a working group on March 6, 2014, with the construction business members of the AmCham of Kosovo.

Based on the feedback received from participants in the roundtables, a majority of businesses now realize the importance of using written contracts in business transactions but do not understand how to properly read or interpret a contract, or know the basic types of provisions that belong in a contract to memorialize the parties' rights and obligations.

CLE ensured the participation of women-owned businesses in cooperation with other USAID programs, and national NGOs including Women for Women International. CLE also organized three roundtables with non-majority businesses, two in North Mitrovica, and one in Gracanica Municipality. In an effort to promote the "Culture of Contract" in the non-majority communities, CLE conducted three focus groups with Kosovar-Serbian businesses from South and North Kosovo during 2013 -2014. While USAID's assessment was that the use of contracts and ADR was quite low, the focus groups showed that businesses are generally very much aware of the benefits of written contracts and, in general, are already using them. Out of 29 participants, only three businesses stated that they never use written contracts; three businesses declared that they use written contracts in specific cases; 15 use them sometimes; one uses them frequently; and seven participants declared that they always use written contracts.

Based on the programmatic reports, KIs with KCC and AmCham, and discussions with CLE and other USAID projects, the team observed that CLE has successfully designed and organized multiple activities to promote the usage of contracts amongst businesses. CLE's work with small and medium enterprises (SMEs) among Kosovo's Albanian and Serbian communities to foster improved contracting practices has incorporated both gender and minority elements, which are important programmatic cross-cutting themes of USAID/Kosovo. Proactive engagement with agricultural sector in promoting the use of contracts has resulted in greater use of written contracts amongst farmers and better contracting practices in the sector.

In 2014, CLE surveyed 900 businesses throughout Kosovo. The same survey was conducted in 2011. Results show that compared to 2011, the frequency of contract usage by the business community in Kosovo and its knowledge of the importance and benefits of entering into written contracts has substantially increased. Of businesses that reported using contracts, 40% of them indicated they "always" use contracts, a 16% change compared to the 2011 survey; 92.9% of them believe more in written than oral agreements, (10% change); and 70% use written contracts (3.5 % change).

CONCLUSION

1. CLE has been very active in designing and executing many campaigns on fostering awareness on the rule of law and promoting a "Culture of Contract" and proactively engaging with agriculture businesses to promote usage of the written contracts. However, it is difficult to attribute all the reported higher percentage in the use of written contracts in the 2015 survey to the impact of the CLE's activities.

4.6 EQ 6: IS THERE A POTENTIAL FOR GREATER CHECCHI AND COMPANY CONSULTING, INC. COLLABORATION WITH OTHER USAID AND OTHER DONOR PROJECTS?

FINDINGS

According to KIs with three other USAID projects - Agricultural Growth and Rural Opportunities (AGRO), Property Rights Program (PRP), and Partnership for Development-Kosovo (PFD) - and with CSSP, CLE has been an extraordinarily collaborative donor project. Both AGRO and CSSP credit CLE and its leadership with supporting their efforts to pursue their respective projects' activities and to provide advice and guidance, when requested, to ensure their activities were successful.

A constant refrain during KIs with other donors was that CLE has been "very cooperative and very responsive" and did not hesitate to provide assistance even when the specific activity was not set forth in their SOW but was within the spirit of enhancing commercial law in Kosovo.

According to the staff of the AGRO project, CLE's collaboration with AGRO was strategic. They joined efforts in conducting an outreach program to farmers, encouraging them to engage in written contracts. CLE assisted in refining 3-4 page sample contracts for small farmers who were unaccustomed to using written agreements preferring, instead, the time-honored handshake. AGRO was particularly grateful to CLE for providing two interns to AGRO to work directly with farmers in the field, which was not specifically listed in CLE's workplan but was within the broad scope of encouraging the culture of contracts.

Beginning with SEAD and followed by CLE, CSSP continues to acknowledge CLE's openness in supporting its quest to create a mediation center in Mitrovica and in collaborating closely on issues concerning the regulatory environment of mediation, training of mediators, and the Mediation Association.

According to PFD, CLE cooperated well with PFD in various areas, such as assisting in developing and publicizing construction contract examples, providing information on activities connected with Doing Business Indicators that supported PFD's efforts with the GOK and the World Bank, and proffering advice regarding the Law on Business Organizations and bankruptcy reforms.

Interviews with PRP staff indicated that CLE has been a "*very capable and collaborative*" assistance provider and has coordinated well with regards to their joint efforts in encouraging improved court procedures to more efficiently resolve court cases through mediation, particularly those cases pertaining to property rights.

As for other donors, the team was unable to meet with the EU Rule of Law Cooperation Section representative, given the holidays. CLE's relationship with UNDP is already addressed in detail in the response to EQ 3.

CONCLUSION

1. CLE's willingness to collaborate with other USAID projects has already resulted in an increased impact on enhancing Kosovo's commercial law environment, and with greater collaboration with other donor projects, would have an even broader impact.

4.7 EQ 7: WHAT HAS CHECCHI AND COMPANY CONSULTING, INC., DONE TO PROMOTE SUSTAINABILITY OF REFORMS?

FINDINGS

CLE has engaged in numerous activities with the MOJ, the KJC and courts to transfer skills to key personnel and develop the capacity of each institution that demonstrate best practices in enhancing the commercial law environment in Kosovo with the intention that these activities will be sustained after the termination of CLE; however, with the best of intention, CLE staff has provided significant hands-on assistance rather than required stakeholders' staff to perform the tasks themselves.

Sustainability of the Activities with the KJC and Courts

At the outset of the program, CLE and KJC worked together to establish the baseline that would guide the goals and targets of the execution backlog reduction strategy. CLE's pilot process of case categorization identified around 10,000 previously unreported backlogged cases in the Gjilan Basic Court alone, and the KJC and CLE have continued to use various information gathering and reporting on the backlog reduction initiative. While CLE took important steps to improve the system of collecting and reporting statistical data through the creation of the web-based case tracking mechanism, provision of tablets to court presidents, and enforcement clerks to KJC, at the time of the evaluation, KJC continued to collect the information through its statistical officers based on the manually held case registers, which KJC itself admits are inaccurate. The team found that enforcement clerks and CLE backlog reduction teams work very well together on a daily basis but the case tracking mechanism is mainly used by the CLE teams. At present, the case-tracking execution database is used to a varying degree in Kosovo courts also due to the very strong presence of CLE backlog reduction teams. Unfortunately, the team found that 32 months into the CLE project, at the KJC and at court level, the case tracking mechanism is referred to as the "USAID system" and "CLE's database" and has yet to be formally adopted by the Committee on Court Administration. Therefore, its future usefulness and sustainability are in

question due to KJC's lack of full buy-in and ownership of the reforms undertaken in close collaboration with CLE.

CLE holds that the results of CLE's activities with KJC will materialize after the case categorization process and the population of the database with the entire amount of the backlogged execution cases is completed, upon which the KJC will take over and maintain the system. While CLE acknowledges that there are delays in improving the statistical reporting capacity of the KJC, interviewed staff maintained that most of them are of a temporary nature and are caused by the vacancy in the KCJ committee on statistics (see EQ I for more details).

The team also investigated the efforts made by the KJC in maintaining and enhancing the database developed by the Effective Rule of Law Program (EROL) and found that since the hand-over ceremony of the EROL project in the middle of 2015, the database is not widely used in Kosovo courts, and most court registrars have gone back to entering the data for case and controversy caseload manually, as it was before EROL developed the database. Through KIs with the relevant stakeholders, the team found that despite the fact that CLE has been asked by USAID to ensure the maintenance and sustainability of the EROL developed database and has tasked the CLE team to act temporarily as Regional Court Liaisons to the courts, the future use of the EROL database beyond the life of the CLE is seriously questioned.

The uncertainty over the EROL database and failure of the KJC to adopt the statistical reporting systems proposed by CLE show that despite the good faith efforts undertaken by CLE to assist the KJC and courts in dealing with the execution backlog reduction, the KJC continues to operate in a reactive manner, often relying on technical assistance providers to guide its work.

Sustainability of mediation centers

It is noteworthy that the GOK is committed to the sustainability of the seven mediation centers. The final 2016 GOK budget, with the encouragement of USAID and CLE, incorporates the salaries for seven mediation center managers as a line item in the KJC budget.

If timing allows, CLE, in accordance with its MoU with the KJC, will work with the KJC to transfer the location and operation of its mediation centers in Peja and Prizren to the respective basic courts. This move should facilitate a growth in the number of mediation cases either transferred by the court or voluntarily submitted, given the location of the centers, which will be more convenient to parties in dispute.

Additionally, there is a likelihood that given their experience, the three current CLE mediation center administrators may continue to work under the auspices of the KJC as mediation center administrators, although UNDP, as previously mentioned, has a different perspective on this.

The increasing number of cases undergoing mediation suggests that court-referred mediation has the potential of becoming an important ADR mechanism, thereby relieving the courts from their overburdened caseload. However, the team found that while mediation is not an entirely new concept to Kosovars, the infrastructure surrounding it, particularly the Mediation Commission and the seven mediation centers, are still in a developmental stage. Further, mediation services remain relatively unknown to the general public.

While not part of CLE's past activities, CLE intends in the future to advance court annexation for certain types of cases by seeking an amendment to the Law on Mediation, which will help to institutionalize mediation services, thereby ensuring its sustainability. Mediation services are donor-driven, which leads to the question whether mediation can be sustained without donors. According to several KIs, even with the GOK's assumption of the salaries of all mediation center managers, sustainability of the mediation centers is questionable unless donors continue to provide funding and some technical assistance.

Sustainability of the Private Enforcement System

Given CLE's extraordinarily collaborative work between the MOJ and CLE to create the private enforcement system, and the commitment that MOJ has demonstrated to develop a regulatory framework, including 15 regulations and administrative instructions to implement the Law on Enforcement Procedure, create the Disciplinary Committee of the PEAs to oversee and monitor the private enforcement system, and qualify,

license and commission PEAs, the sustainability of the private enforcement system seems assured. However, the nascent nature of the private enforcement system makes it fragile.

After just two years, and with candid observation, the MOJ has already undertaken a series of steps to amend the Law on Enforcement Procedure in order to address the Law's weakness and to include best international practices, including those dealing with debtor's objections to writs of enforcement and the court processes that follow, as well as with the complaint procedures before the Disciplinary Committee. With the recent creation of the Disciplinary Committee, the need to strengthen its organizational capacity continues. There is also a significant need to expand the outreach of the private enforcement system to educate all citizens throughout Kosovo about the role and authority of PEAs so that compliance rather than complaints result from the work of PEAs.

The MOJ, after a multi-month delay in conducting examinations for prospective PEAs, has resumed conducting periodic examinations. While the MOJ recognizes the importance of training new PEAs, it admits that sufficient resources do not exist to provide the quality and duration of training that CLE has provided.

The newly-created independent Chamber of PEAs plays an important function in collectively representing its members and also monitoring the performance and practice of PEAs. While CLE has provided significant assistance, the Chamber will continue to need external financial support before it can rely solely on its members and its financial self-sustainability will be difficult to achieve until the required complement of PEAs, estimated to be over 100, are commissioned and, as members of the Chamber, pay the Chamber's dues.

CONCLUSIONS

1. There has been sufficient progress with many of CLE's activities, which have been geared toward promoting sustainability of reforms in Kosovo. However, the usefulness and sustainability of the case tracking mechanism are in question due to KJC's lack of full buy-in and ownership of the reforms undertaken in close collaboration with CLE. In addition, given CLE's hands-on assistance, it is questionable whether the stakeholders will continue to pursue the same activities with the same level of skills and commitment that CLE has demonstrated.
2. Even with the GOK's assumption of the salaries of all mediation center managers, sustainability of the mediation centers is questionable unless donors continue to provide funding and some technical assistance.
3. Although fragile, the private enforcement system seems to be sustainable.
4. There is a need to increase awareness about the role and authority of PEAs so that compliance rather than complaints result from the work of PEAs.
5. Chamber of PEAs is in need of continued financial support from donors until it becomes self-sustainable. The MOJ also needs resources to provide training to new PEAs.

5.0 CLE RECOMMENDATIONS

1. Any future execution backlog reduction activity should move beyond the "utility bills" priority and focus on the enforcement of all types of cases with a view at eliminating the backlog as soon as possible. Once the pressure from the large amount of backlogged utility bills dissipates, USAID should instruct CLE to work with KJC and develop an agreed plan with clear targets and goals for the functional elimination of the execution backlog devoting more attention and resources to enforcing final civil judgments of commercial nature as well as those involving court expenses or criminal penalties where the state is the creditor.
2. CLE should work with the KCJ leadership to develop guidelines that can allow for closure of cases by judges when all enforcement actions have been taken in accordance with the law. Furthermore, CLE should continue to raise this issue with court leaders since their court management responsibilities will be significantly strengthened following the decentralization of authority from the KJC Secretariat to the court leadership.
3. In an ideal situation, the KJC and courts should lead the backlog reduction activity, monitor the results of CLE's assistance, and have a clear picture of what has been achieved and what remains to be done. Ownership of the process will increase the sustainability of CLE's interventions.

4. As the case categorization is over, CLE should reinvigorate its engagement with the KJC in order to improve the statistical reporting system before the end of the project's life. This should involve close collaboration with the Committee of Court Administration to adopt new rules for unifying the procedures for capturing processing and reporting statistical data on the execution cases. In addition, the CLE and KJC should agree on a transitional plan for moving from the paper based system of the KJC into a more sophisticated web-based tool that would enable KJC and courts to track the status of the backlogged cases into the court system, and inform the performance management process in the future.
5. USAID should continue providing support to the MOJ to further the sustainable development of the private enforcement system along with support to the PEA Chamber in order for it to become self-sustaining.
6. Donor expertise is necessary to support the regulatory environment of mediation, particularly with regard to amending the Law on Mediation following the finalization of the Concept Paper on the Law on Mediation and refining the Protocol for Referral of Cases to Mediation. It is debatable, however, given the current interplay of the three donors, whether it is in the best interests of USAID, depending upon its expectation of the return on its investment, to continue supporting mediation, unless there is a resolution by the GOK regarding the roles of the MOJ and the KJC over mediation, and of the outstanding conflicts between CLE and UNDP over the provision of mediation services.
7. With KJC controlling the work of the mediation center administrators, the functioning of the mediation centers will need to be coordinated; systematized training of judges and clerks in all basic courts will be required to ensure a higher capability of referring court cases to the mediation centers; training programs for new and experienced mediators will continue to be a necessity; an expansion of public outreach on the benefits and availability of mediation services in Kosovo is essential for the growth of mediation; and the development of a nation-wide Mediation Association.
8. CLE's support should continue to improve the commercial law framework but the drafting efforts should focus on the MOJ and PEA Chamber in order to strengthen the procedures for monitoring, inspecting and disciplining the enforcement system.
9. CLE should continue its effective collaboration with other USAID and other donor projects.
10. USAID's assistance to KJC and courts should focus on improving the tracking and statistical reporting of execution backlog and ensuring KJC's buy-in and full use of the CLE enforcement case tracking mechanism. Future activities in this area should include *inter alia*, the adoption of sub-legal acts by the Committee on Court Administration, development of a clear plan for transitioning from the manually held statistical reporting into more sophisticated web-based tool that would enable KJC and courts to track the status of the backlogged cases into the court system, and inform the performance management process in the future. The transitional plan should include the location of resources that KJC need to fully utilize and maintain the new system as well as milestone to testing and fully adopting it.
11. USAID should continue providing support to the MOJ to further the sustainable development of the private enforcement system along with support to the Chamber of PEAs in order for it to become self-sustaining.

6.0 AMCHAM FINDINGS AND CONCLUSIONS

6.1 EQ 1: WHAT HAS BEEN THE IMPACT OF USAID-FUNDED ACTIVITIES THROUGH AMCHAM ADR CENTER ON THE RULE OF LAW SYSTEM IN KOSOVO?

FINDINGS

The activities of the AMCHAM/ADRC have been focused on internal institutional strengthening and increasing awareness amongst business organizations and public institutions on the use of arbitration as an important ADR mechanism in resolving disputes.

According to the documents provided by CLE, AmCham was established in 2004 and became fully operational in 2006. Currently, it has around 200 members from major business organizations in Kosovo. In its process of strengthening the business climate and economic growth in Kosovo, amongst other activities, AmCham established its own ADRC in 2011, which aimed to provide alternative resolution services on disputes through arbitration and mediation. The USAID project required AmCham ADRC to work on training, outreach, and developing and using a case management system for arbitration proceedings.

In the implementation phase, one of ADRC's first activities was to conduct a Training Need Assessment and, based on its result, compile a training curriculum for arbitrators. The Training Needs Assessment involved arbitrators from ADR roster, judges of the commercial department, attorneys, law students and representatives of business organizations. As part of the training, AmCham did the following:

1. Organized round tables for 20 to 30 business and smaller groups in order to increase their awareness on arbitration
2. Provided training-education for students on arbitration in order to prepare them to participate in international arbitration competitions, by signing MoU with three local universities
3. Prepared and delivered a Manual on Arbitration
4. Prepared and delivered a template of Arbitration Clause
5. Prepared and delivered a model of Arbitration Agreement
6. Prepared a model of application of initiation of arbitration

The training curriculum targeted arbitrators who were in the roster of AmCham since 2011 and new arbitrators interested to join the roster. The training curriculum focused on the two main topics identified during the needs assessment exercise, namely: 1) how to take evidence in cases involving international arbitration; and 2) how to write an arbitration award/decision.

During the fieldwork, the team found that despite the positive impact of the ADRC's training programs, many arbitrators felt that they still lacked sufficient knowledge on several aspects of arbitration proceedings, particularly those involving cases/disputes between local and foreign companies. Through KIs with arbitrators, the team gathered information that training sessions were predominantly theoretical discussions and did not incorporate practical approaches or illustration of arbitration proceedings in an interactive manner. In interviews with the team, respondents expressed interest to attend training in the following areas:

1. Practical aspects of an arbitration procedure
2. Taking evidences in the proceedings
3. Training on UNICITRAL rules
4. Bankruptcy Law & Procedures
5. Insurance Law
6. International Financial Transactions

In order to increase the awareness of business organizations on arbitration, ADRC developed and designed a detailed outreach strategy and organized round roundtables targeting 20 to 30 business and smaller groups. Through a "University Cooperation Program," ADRC concluded three MoUs with private universities aiming at exposing their students to arbitration and preparing them to compete in the international arbitration (moot court) competitions. The MoUs required local universities to include arbitration in their course offerings. Towards the end of the project, ADRC published the first journal of dispute resolution and distributed it to its membership and other business organizations.

One of the milestones of the project - case management system - was completed by AmCham ADRC in cooperation with the KCC PTA. The software was installed and began being utilized in September 2015. The software is an online, web-based application that allows participants in arbitration proceedings to check the stage of the process and any forthcoming deadlines. The application is designed in compliance with the principle of confidentiality of arbitration proceedings; all information stored in it is encrypted and protected by

firewalls. This tool is accessible by all parties, their representatives, the arbitrators, and the Secretariat through an user ID.

Since the establishment of the ADRC in 2011, there have been only two cases referred to arbitration. Meanwhile, the Court Commercial Department receives around 500 cases, annually. When asked about this situation, the AmCham representatives argued that the ADRC's objective is to educate and discipline the business community in the country while at the same time offering services in case of disputes, through arbitration and mediation. The team was informed by AmCham representatives that fees of arbitration proceedings in the ADRC are approximately 30 % of the value of dispute, which has proven to be a deterrent to the use of arbitration as court tariffs can be considerably lower resulting in a lower financial risk for those who may lose the case.

The AmCham and ADRC representatives considered the small number of cases as irrelevant and measured their success with the indirect positive impact that ADRC has had in introducing the arbitration as a new avenue for quick and efficient resolution of commercial disputes and the increased use of arbitration in business contracts. According to AmCham, around 90 % of its members use written contracts to conduct business and many of them include the Arbitration Clause as part of these contracts. The team also understood from the AmCham representatives that ADRC worked closely with the MOJ and MTI; as a result, an amendment has been drafted to include the Arbitration Clause as mandatory ADR for all public procurement contracts where the GoK or its agencies are procuring services from businesses.

While the team shared the view that the insertion of the arbitration clause in government contracts may increase the number of cases resolved through the arbitration proceedings in the future, it also learned that a large number of businesses are not familiar with the arbitration proceedings and more aggressive outreach is needed to promote ADRC and its activities. Additionally, the team found that many businesses deem the arbitration fees to be very high and particularly small businesses find them prohibitively high compared to cheap court proceedings.

CONCLUSIONS

5. The AmCham has made substantial efforts to strengthen the internal capacities of ADRC to offer arbitration services and to increase the awareness amongst business organizations on the importance of arbitration.
6. Participants appreciate the training programs provided by AMCham ADRC but would like to see more topics offered, especially regarding arbitration proceedings. In addition, participants would like to attend trainings that incorporate practical approaches or illustration of arbitration proceedings in an interactive manner.
7. High arbitration fees are impeding many businesses to use arbitration services.
8. Lack of awareness is another factor why arbitration services are not used widely.

6.2 EQ 2: WHAT HAS BEEN THE IMPACT OF AMCHAM ADR CENTER TRAINING AND OUTREACH ACTIVITIES?

FINDINGS

AmCham ADRC training is perceived by new and current arbitrators as valuable. 87.5% of surveyed arbitrators considered the quality of training as "very good." However, when asked about the impact that AmCham ADRC training has had on arbitration, in general, responses varied from satisfactory to very good. Responses on the impact of AmCham ADRC outreach activities also varied with some calling it "poor" and others "significant."

AmCham ADRC provided training to new and current arbitrators; conducted outreach activities on raising awareness among the business community on ADR services; provided arbitration services in two cases; initiated cooperation with educational institutions on ADR; published one issue of a journal on ADR issues; held face-to-face workshops and other outreach activities with targeted businesses; conducted a study tour for arbitrators; and developed a case management software.

Based on several sources of information (i.e. the Annual Report as presented by AmCham; the information obtained through KIs; the survey conducted with AmCham's members and arbitrators), the team developed a grounded understanding of AmCham's activities regarding its arbitration services. In accordance with the goals, the main outputs of the project were the following:

1. Professionally trained arbitrators
2. Prompt responses to the needs of the business community
3. Understanding of and the use of arbitration by the business community in Kosovo
4. Promotion of arbitration and ADR to young professionals; and
5. The efficient and professional conduct of ADR proceedings by AmCham

First Output: Professionally Trained Arbitrators

Training for new arbitrators - In February 2015, a single three-day training event was provided to the new arbitrators. The training topics focused on the AmCham ADRC Arbitration Rules; Kosovo Arbitration Law; and the UNCITRAL Notes on Arbitration Proceedings. The training was attended by 21 national and international arbitrators.

Advanced training program – Advanced training for current arbitrators focused on four main topics, namely award writing; taking of evidence and expert witness in arbitration; arbitration of trade disputes; and arbitration of construction disputes. One of the trainings was jointly organized with the KCC PTA and focused on the *International Commercial Arbitration* guide. It was attended by 15 AmCham arbitrators.

Based on the result of the surveys conducted with arbitrators, the majority of them attended at least three training programs. With regards to the quality of training sessions, their evaluation varies from satisfactory to very good. According to the majority of individuals who responded to the survey (see Table 7), the quality of the trainings provided was very good (87.5%). However, the arbitrators think they need further or more advanced training on topics such as taking of evidence, award writing, special arbitration, more practical issues, etc. A majority of the KIs surveyed stated that they agree with the trainings in general, but some of them recommended that content of presentations as well as the methods used could be improved. When asked about the impact AmCham had on arbitration in general, the responses varied from satisfactory to very good.

Table 7: Survey Results

Quality of Training	Percentage
Very good	87.5%
Good	N/A
Satisfactory	12.5%
Poor	N/A

During the AmCham KIs, respondents were also asked about the impact that AmCham outreach activities had on arbitration as a new service. It is interesting to note that responses to this question varied significantly, with some responding “poor” and others saying “significant.” In contradiction to some of these responses, with regards to the obstacles businesses face when using arbitration, the majority of respondents mentioned the lack of businesses’ awareness of arbitration. However, there were others that listed the ability of some businesses to influence court decisions and the general culture of not having written contracts. A few respondents believed that high fees of the arbitration are a real obstacle for the businesses to seek arbitration services.

Second Output: Prompt Responding to the Needs of Business Community

In order to achieve this output, AmCham ADRC worked with a group of businesses. The specific actions it undertook for this are described below:

Face to face promotional campaign – AmCham ADRC conducted meetings with businesses that represent the different industries that might benefit from arbitration. Businesses involved represented the construction

industry, trade, the financial sector, consultancies and services, and manufacturing. However, the majority of meetings were held with businesses representing the service sector (both national and international), banking and financial institutions, production and distribution, and the legal community. Aside from information on arbitration, the attending businesses were provided with packages containing promotional materials, including the arbitration rules, FAQs on arbitration, etc.

Workshops and roundtables with businesses – In total nine such events have been held, two in Peja and Ferizaj, and the others in Pristina. Businesses from the consulting sector, service industry, construction industry, trade, the financial sector, and the manufacturing sector were all in attendance. The topics of such workshops covered different areas and in general had a satisfactory participation (see Table 8).

Table 8: Training Topics

Workshop	Participants
Selecting Dispute Resolution Strategy for Your Company	27
Arbitration and Mediation for Young Professionals	40
Enforcement of Arbitration and Mediation Awards in Kosovo	18
Arbitration and Mediation: Strategic considerations and experiences from	N/A
Judicial System in Kosovo: Relations and support for arbitration and doing	31
Preparing the case for arbitration	30
Tools for Alternative Dispute Resolution for Entrepreneurs	40
Advantages of arbitration	N/A
The Use of Arbitration for Resolving Business Disputes	15

Third Output: Understanding and the Use of Arbitration by Business Community in Kosovo

During its workshops and other activities, the AmCham ADRC informed businesses about its ADR services, specifically arbitration. It also informed them of the benefits of incorporating the arbitration clause in their prospective business contracts. AmCham's low number of members (estimated to be about 200) should not have made a significant impact on their ability to arbitrate a greater number of cases. So far, AmCham has arbitrated only two cases, representing only 1% of its members using arbitration services. However, it is highly unlikely that only 1% of AmCham's members required arbitration services. This is further reinforced by KII's during which over 20 businesses reported having disputes. When asked why they do not use arbitration, the majority of KII's responded that there has been insufficient outreach on arbitration, and that arbitration clauses were nonexistent in their previous contracts. When it comes to incorporating the arbitration clause, a majority of businesses responded that they have started to include it or they will start to use it. Businesses surveyed had attended AmCham's activities and rated the outreach campaign as good, but stated that more outreach is necessary. Businesses cited a lack of awareness, high arbitration tariffs, and that "many businesses are too small to settle disputes through arbitration due to cost" as key obstacles to wider use of arbitration.

The AmCham in Kosovo is the only AmCham among 43 AmChams all over Europe to provide arbitration services. The internationally accepted best practice is that arbitration is a free profession, therefore, in principle, it can be provided by any competent body (usually chambers of commerce). However, neighboring countries in the Western Balkans (i.e. Croatia, Albania, and Macedonia) have a single body to provide arbitration services. In Kosovo there are currently two such bodies providing arbitration services (AmCham ADRC and the KCC PTA).

Fourth Output: Promotion of Arbitration and ADR to Young Professionals

In order to promote arbitration, especially to young professionals, AmCham ADRC conducted the following outreach activities:

Lawyers and professional associations – Many legal professionals, including the arbitrators, legal practitioners, notaries, judges, PEAs, KJC representatives, and other legal professionals attended AmCham's workshops and roundtables, either as official representatives or as a private professional. However, no specific outreach activity was conducted by AmCham ADRC with any professional association of different legal professionals.

Journal of Alternative Dispute Resolution in Kosovo – So far, AmCham ADRC has published the first issue, which was released in August 2015. The Journal was disseminated mainly among AmCham members, either electronically or in print, but also to other stakeholders (including law practitioners, law teachers, students, etc.). The topics of this issue covered areas such as comparisons between the UNCITRAL Model Law and the Kosovo Law on Arbitration, the relationships between the regular courts and arbitration, and the importance of ADR through arbitration in Kosovo.

Networking – AmCham ADRC has signed a Cooperation Agreement with the American Arbitration Association. The objectives of such an agreement include: cooperation on advancing arbitration, mediation, and other forms of alternative dispute resolution; exchanging information and publications on commercial arbitration, mediation and other forms of ADR; facilitating lectures of mutual interest; and providing technical assistance. AmCham ADRC managed to establish some initial cooperation with the International Chamber of Commerce in Paris, The Young Arbitrators Forums, and other arbitration providers. It also attended arbitration events at the international level aiming to further establish its network.

Six days media campaign (newspaper advertisement) – AmCham ADRC conducted a six-day media campaign in six daily newspapers in Kosovo promoting arbitration services. In addition, there were articles placed in electronic media in Kosovo containing information about the arbitration activities conducted by the AmCham ADRC.

University Cooperation Program – The program signed three MoUs with the following educational institutions: ILIRIA University; European School of Law and Governance; and the Universum College. The MoUs had the following objectives: promoting arbitration and mediation among the respective students; incorporating ADR, especially arbitration, in the universities' curricula; promoting the AmCham ADRC capacities; and involving interested students of the respective universities in the roster of arbitrators. The cooperation between AmCham ADRC and Iliria University was excellent. The KIs confirm this cooperation and respondents were very happy with the achievements. With regards to the two other universities, however, the respective MoUs were not implemented at all. These two universities made their initial efforts to start implementing the MoUs but following changes in management, specifically after the former Secretary General of the AmCham left, failed to continue to implement them. No specific steps were taken by AmCham to follow up on the implementation of the MoUs. During KIs, respondents stated that they had expected more from AmCham but were willing to cooperate closer with it.

Fifth Output: The Efficient and Professional Conduct of ADR Proceedings by AmCham

Case Management Software – AmCham ADRC together with KCC PTA have agreed to develop the case management database and software. The software is a web-based application for participants in the arbitration proceedings aimed at facilitating communication between the parties and organizations involved in the case proceedings on the side of AmCham ADRC. It contains the data of the case including data about the arbitrators. Parties may access it through the usernames provided to them.

Aside from the information mentioned above, the software tool also provides an online calculator. This calculator provides a simple calculation of the expenses the parties may face in an arbitration case. It aims to help the parties better predict their costs during a case and decide whether to initiate a case. The team accessed this calculator and reviewed it. According to the data provided, there are three types of expenses a party may face during arbitration proceedings: the Registration Fee, the Arbitrator's Fees, and the Administrative Costs. The registration fee is a non-refundable amount for arbitration proceedings. The fee is 250€ if the amount at dispute is less than 100,000€, and 500€ if the amount at dispute is equal or over 100,000€. The arbitrators' fees and the administrative costs vary depending on the amount being disputed as well as the number of arbitrators involved in the case. The team used the calculator to calculate the costs of an arbitration involving three arbitrators for an amount of 100,000€ resulting in total fees of 12,787.50€ or

over 12% of the disputed amount. This reinforces those responses made during KIs that stated that high tariffs are a reason why parties are reluctant to use arbitration services.

CONCLUSIONS

1. While AmCham ADRC and KCC PTA have had a positive impact on the training of arbitrators, their outreach activities, particularly those of AmCham ADRC, have had limited impact on compliance and the use of arbitration.
2. Although the training was considered of good quality, additional topics need to be offered to respond to arbitrators' needs.

6.3 EQ 3: AS CURRENTLY IMPLEMENTED, ARE AMCHAM ADR CENTER ACTIVITIES LIKELY TO HAVE A SUSTAINABLE DEVELOPMENT IMPACT AFTER USAID FUNDING HAS STOPPED?

FINDINGS

While AmCham intends to continue supporting the operations of the ADRC, there is uncertainty regarding the sustainability of the activities beyond USAID funding due to the lack of awareness of arbitration services and high arbitration fees.

The AmCham ADRC was established under the former SEAD Program in 2011. Currently, the technical expenses related to the ADRC administration are covered by the AmCham. The Board of Directors of the AmCham is responsible for monitoring and evaluating the work of the ADRC and receives monthly reports from the ADRC. Based on KIs, project documents and on-site visits, the team found that despite the termination of USAID's financial support, the operations of the ADRC, while currently supported by AmCham funds, may become self-financed from arbitration fees after 1-2 years.

With regard to the sustainability of the arbitration case management, the team learned that the AmCham ADRC is utilizing the case management system jointly developed with the KCC PTA and there is dedicated funding for maintaining the software during the year 2016. The AmCham ADRC is convinced that there is a need to approve a Code of Ethics defining the conflict of interest and the grounds upon which parties can challenge arbitrators.

The AmCham ADRC published the first issue of the Journal of Dispute Settlement as a collection of academic, legal, and business perspectives on arbitration, and intends to continue publishing two issues each year in May and December, respectively. It will continue outreach activities specifically on raising awareness about using the arbitration as the alternative form of resolving commercial disputes. The AmCham ADRC officials regularly visited businesses in order to closely inform them about the arbitration and the use of arbitration clause on their contracts. The activities organized by AmCham and attended by businesses include: 1) workshop on "Arbitration and mediation in business world"; 2) strategic considerations and experience from US; 3) round table for judicial system and arbitration decisions; and 4) enforcement of arbitration decisions and mediation agreements in Kosovo.

The survey sent to the AmCham ADRC arbitrators and businesses showed that the main obstacle for the wider use of the arbitration services by businesses in Kosovo is lack of business awareness, high fees, and general culture of not having written contracts.

Table 9: ADR Arbitrator's Surveys

Obstacles to Wider Use of Arbitration	Percentage
Lack of Business Awareness	40
High Fees	20
No written contracts	20
Preferring Courts to Prolong the cases	20

With regard to future activities, the team learned that AmCham ADRC is planning to organize more training for arbitrators and continue its promotions targeting legal professionals, business representatives, and public institutions.

According to the team's survey with arbitrators, the arbitration training was rated very good by 95% of the participants. 30 % of the arbitrators participated in one training, 40 % in three trainings, while 30 % in more than three trainings. The survey shows that the trainings that could improve the work of arbitrators in the future include:

1. Review rules of procedure
2. Practice decision-writing
3. Training on rules of evidence
4. Role playing decision writing

Furthermore, the AmCham ADRC will continue the cooperation with other arbitration tribunals in the region. The AmCham ADRC officials stated that ADRC will focus more in raising awareness to wider use of arbitration service and the use of arbitration clause in the contracts concluded between businesses, and between public institutions and businesses. Therefore, the advocacy is ongoing within the business community and, as a result, an increased number of companies is expected to include arbitration and mediation clauses in their contracts.

CONCLUSION

Although the AmCham intends to support ADRC in the near future, it is unlikely that ADRC will be sustainable after a few years if there is not continued donor support, significantly broader outreach activities to overcome the wide-spread lack of awareness of arbitration and a reduction of the arbitration fees.

7.0 AMCHAM ADRC RECOMMENDATIONS

1. Building upon the limited but promising experience of ADRC, USAID could help strengthen ADRC's sustainability in the longer term by continuing to provide support for the wider use of commercial arbitration, specifically by addressing the benefits of arbitration and the role of arbitrators.
2. In supporting a broader use of arbitration, USAID should focus on a serious limitation in the use of arbitration which is the high arbitration fees that deter many businesses from seeking arbitration services.
3. Future training programs should work more closely with arbitrators to ensure that their needs are covered. Training should focus less on theoretical discussions and more on practical use of concepts and methods.
4. Future foreign assistance should focus on institutional building and more aggressive outreach activities towards businesses. AmCham ADRC's outreach efforts should include joint activities with the KBA, the Chamber of Notaries and the Chamber of PEAs, which would have a value added in promoting arbitration.

8.0 KCC PTA FINDINGS AND CONCLUSIONS

8.1 EQ 1: WHAT HAS BEEN THE IMPACT OF USAID-FUNDED ACTIVITIES THROUGH KCC-PTA ON THE RULE OF LAW SYSTEM IN KOSOVO?

FINDINGS

KCC PTA'S activities have focused on institutional strengthening of the Permanent Tribunal of Arbitration (PTA) and increasing awareness amongst business organizations and other stakeholders on the use of arbitration as an important ADR mechanism in resolving disputes.

The Impact of KCC-PTA on the Rule of Law

Since 1999, the rule of law in Kosovo has gone through extensive reforms. In the last decade, attempts have been made to improve the court system and introduce alternative disputes mechanisms to relieve the courts from the execution backlog. In 2007, the Assembly of Kosovo adopted the Law on Arbitration, which provided a comprehensive framework for an efficient and effective arbitration system in Kosovo. The law contained provisions on arbitration agreements, the composition and jurisdiction of the Arbitral Tribunal, arbitral awards, and judicial procedures for recognition of arbitral awards.

The objective of the PTA was to offer fast, independent, and efficient dispute resolution services as an alternative to court proceedings. It has been assessed that to solve a dispute in the court system in Kosovo can take at least 2-3 years, while at the PTA the same dispute can be solved within six months. The SEAD Program offered some initial technical assistance to the PTA until 2012. To enhance the awareness and use of arbitration in commercial disputes, USAID designed this project to support the KCC PTA through three (3) components, namely: 1) training programs for arbitrators; 2) implementation of an outreach strategy on arbitration; and 3) case management and development of a system for case management.

Education Pillar/Training Programs

PTA designed and delivered trainings for a roster of arbitrators in the form of continued legal education. In addition, it provided training for new arbitrators. On 19 June 2014, PTA completed the report on training needs of the arbitrators in the roster of the PTA. The report identified two need categories: 1) general training for new arbitrators; and 2) advance/specific training for the arbitrators in the roster. Both aimed to increase the knowledge of the arbitrators on several aspects of the arbitration procedures, such as: validity of the arbitration agreement, substantive and formal jurisdiction of the arbitral tribunal, court involvement conducting arbitral proceedings, conflict of interest, conducting arbitral proceedings, drafting arbitral awards/full reasoning/ other related issues.

Nevertheless, based on KILs with PTA arbitrators, the team found that most arbitrators require more training on advanced topics of arbitration, such as international arbitration procedures; arbitration of complex cases involving local and international companies and topics related to the International Chamber of Commerce and UNCITRAL Arbitration Rules.

Outreach for Increasing Awareness on Arbitration

One of the most important components of the project was the outreach strategy and campaign to increase awareness of business organizations on the important role of arbitration as an ADR mechanism. Therefore, on August 2014, the PTA finalized the Outreach Strategy, which included the following strategic goals:

1. *Awareness* - aiming to improve awareness and accurate understanding of businesses and legal community on the existence of commercial arbitration and the services of the PTA
2. *Enhancement of recognition* - aiming to establish a common system that enhances national and gains regional recognition of the services of the PTA
3. *Provision of information* - aiming to establish a common system that gives access to businesses and legal community on resources and serves through an information database

According to PTA's documents and KIL interviews, PTA has conducted certain activities to achieve the abovementioned goals, including: publishing a first edition of the arbitration journal; presenting PTA arbitration services to specific sectors (e.g. fuel and construction associations); providing legal assistance for interested companies regarding drafting arbitration clauses; conducting a public awareness campaign about PTA services on radio and television; publishing certain articles and publications in local and international media; expanding collaboration of PTA with other arbitration institution in the Balkans; launching a cost-calculator in the PTA's official website, and others. The team learned that PTA's activities were also focused on increasing the awareness of public institutions to incorporate the arbitration provision when concluding contracts with

private businesses and coordinating with the CBK, as a supervising body of insurance companies, in order for the latter to include an arbitration provision before they enter into contract with their clients.

Bylaws and Case Management System

From KIs with PTA representatives and other stakeholders, the team found that one of the main obstacles for including arbitration as part of a contract is the tariff of arbitration procedures. Several interviewees mentioned that tariffs are very high and this was considered as a disincentive for businesses to choose arbitration over very inexpensive court proceedings. As an example, for a case which was dealt first by PTA but later was sent to the Commercial Department of the Prishtina Basic Court, the total amount of the dispute was around 60,000 Euros while the arbitration tariffs alone were around 25,000 Euros. Since most of commercial disputes relate to non-payment of contractual obligations, the parties have more incentives to opt for very lengthy court proceedings in hope of postponing contract compliance over an expensive and speedy resolution through arbitration. Hence, in order to address this concern, the PTA representatives informed the team that the PTA's Decision on Tariffs has been revised and the draft revision is in the process to be adopted by the competent authority.

Documents provided by PTA and interviews with KIs indicated that the Case Management Software was a very important tool on strengthening the institutional operability of PTA. The Case Management Software is a web-based application, which is intended to serve parties, the Secretariat and arbitrator(s) manage arbitral proceedings. This software facilitates communication between parties, arbitrators and the Secretariat by offering quick and real-time information. The software is accessible by all parties, arbitrators and the Secretariat through special usernames provided by the Secretariat. Moreover, the software offers a cost-calculator, which can be accessed by interested parties to calculate potential cost of the arbitral proceedings. This activity has been jointly implemented with the AmCham ADRC.

Statistical Overview

Despite the overall small number of arbitrated cases, statistical data shows that the use of arbitration as a mechanism for resolving disputes has been increased in recent years. The PTA's statistics shows that from 2011 until 2014 there were five cases dealt by PTA, while during 2015 there were only two registered cases out of which one case was received after the completion of the project. In addition, the number of commercial disputes dealt by PTA was very low compared with the number of commercial disputes dealt by the Commercial Department of the Basic Court in Prishtina. While PTA had only two cases during 2015, the status of cases within the Commercial Department during the same year is presented in the table below:

Table 10

Year: 2015	Uncompleted cases at the beginning of 2015	New cases	Total number of cases	Completed cases	Uncompleted cases
Court Commercial disputes	885	441	1,326	191	1,135

The increasing but yet very small number of arbitrated cases indicates that even businesses which do end up in commercial disputes do not resort to arbitration but prefer the court system. According to PTA there are several factors which seem to have affected this situation. The main ones include:

1. Lack of trust in extra-judicial proceedings
2. Lack of awareness and information
3. Some businesses prefer to go to courts just to prolong the case and avoid paying for any service
4. Arbitration fees are too high

Project documents of the KCC PTA and many KIs with stakeholders, revealed that the current status of relations between the business community and the PTA is considered as relatively good. However, PTA activities on arbitration have not managed to attract sufficient interest from business organizations and this is

evident from the very small number of KCC members using arbitration for resolving commercial disputes.³¹ On the other hand, the arbitration system is incomprehensible for many businesses, given the prevailing culture of selecting court proceedings over ADR. In addition, most companies which use written contracts for conducting their activities still do not include arbitration clauses in their contracts and rely on personal relations or end up in lengthy court proceedings to resolve disputes.

CONCLUSION

- I. The business community is reluctant to use arbitration as a means of resolving their commercial disputes due to lack of awareness, lack of trust, and high tariffs. Furthermore, some businesses prefer court proceedings in order to prolong resolution of their disputes. As a result, PTA's impact on relieving courts of the commercial disputes caseload has been very limited, but positive.

8.2 EQ 2: WHAT HAS BEEN THE IMPACT OF PTA'S TRAINING AND OUTREACH ACTIVITIES?

FINDINGS

KCC PTA provided training to the current arbitrators, conducted outreach activities on raising awareness among the business community on its services, provided arbitration services in nine cases, published one issue of a journal on arbitration issues, held workshops, meetings, and other outreach activities with targeted businesses (local and international), and developed a case management software.

Arbitration Training

Needs Assessment Report – In June 2014, KCC PTA finalized a Needs Report Assessment. The outcomes of this assessment, among others, included the needs expressed by the arbitrators themselves. Based on the results of this assessment, the PTA started to direct its capacity building activities to fulfilling the needs arising from the report. Consequently, in February 2015, KCC PTA developed the curricula for the Training Program for current and new arbitrators.

Specialized Training Program Curricula and Delivery of Training – In January 2015, the PTA drafted a Manual for Specialized Training composed of five main topics: 1) validity of the arbitration agreement; 2) jurisdiction of the arbitral tribunal/court involved; 3) conducting arbitral proceedings/conflict of interest 1; 4) conducting arbitral proceedings/conflict of interest 2; and 5) drafting arbitral awards/full reasoning/other related issues. In June 2015, KCC PTA, together with AmCham ADRC, co-organized Specialized Training on Commercial Arbitration focusing mainly on the issues of taking evidence in arbitral proceedings and writing the arbitral award. Twelve KCC PTA arbitrators attended this training.

Delivery of Training for Trainers – In October 2015, KCC PTA organized a Training of Trainers (TOT) program, which was attended by eight participants, including arbitrators, law professors, and other professionals with the aim to further build its internal capacities. The main topics of this TOT were arbitration in general, arbitrable disputes, arbitration in practice, and case work.

Table 11: PTA Training Activities

Training activity title	No. of participants
Delivery of Specialized Training on Commercial Arbitration	12
Training for Trainers	8

In order to cross-check the results reported by the PTA and in addition to the interviews, the team drafted a Questionnaire and distributed it, with the assistance of KCC PTA, to 28 arbitrators as well as business members of the KCC, asking them information on a wide range of issues related to arbitration. The team, however, only received results from two arbitrators. According to those results, the PTA arbitrators have attended at least three trainings and the trainings are rated as good and very good. When asked whether they

³¹ In meetings with the Evaluation Team, the KCC leadership reported to have over 2000 members and has resolved only 7 cases through arbitration since 2011. This represents 0.35% of the membership pool.

agree that skills gained at those trainings will help them on their work as arbitrators, they stated “agree” and “strongly agree.” When asked about what kind of further training they would need, they asked for more practice and award writing, as well as issues of contract law. They were also asked about the impact of PTA activities as well as the possible obstacles to the wider use of arbitration. With regards to the first question, according to them, PTA had “poor” and “good” impact, while with regards to the second question, they mentioned “the lack of business awareness on arbitration” and “high fees & lack of business arbitration.”

Awareness Raising & Implementation of the Outreach Strategy

The KCC PTA Outreach Strategy is based on the following three issues, which will be elaborated specifically: a) awareness raising; b) enhancement of recognition; and c) provision of information.

A. Awareness Raising

Arbitration Journal – KCC PTA published one issue of this journal, covering important arbitration topics. This journal has been printed, published electronically, and promoted at the National Library of Kosovo. Most of the articles in this journal are authored by the arbitrators themselves.

Newsletter – PTA published one electronic issue of a newsletter informing the public of the latest developments with regards to PTA’s activities. In addition, PTA has also published leaflets informing businesses on how to initiate proceedings and the tariffs and costs of proceedings.

Digests of Arbitration Case Law – KCC PTA published electronic digests of the cases it has arbitrated. The digests are mainly intended to be addressed to the legal community for legal reviews and commentaries as well as to the business community as a promotion tool of arbitration.

Meetings with the KCC Regional Units Leadership – PTA conducted meetings with the leadership of the KCC Regional Units Leadership in the regions of Kosovo. Business representatives also attended such meetings.

Meetings with the Kosovo Insurance Association (KIA) and the CBK Governor – KCC PTA conducted meetings with representatives of the KIA and the CBK Governor with the aim of introducing the arbitration services that KCC PTA provides. In addition, the idea of convincing both the KIA and CBK to introduce an arbitration clause in their contracts between insurance companies and the policy holders was introduced. If realized, this proposal would reduce the number of people contesting procedures in court.

Meetings with the Construction Producers and Traders Association – Several meetings with representatives and members of this association were held. During the meetings, KCC PTA informed members of the benefits of arbitration services. In addition, the KCC PTA had introduced to them the idea of allowing their representatives to be trained as arbitrators and then incorporate those trainees into the KCC PTA arbitrator’s roster.

Meeting with the Public Procurement Regulatory Commission (PPRC) – KCC PTA conducted a meeting with the Head of the PPRC aimed at discussing the possibility of incorporating the arbitration clause in contracts concluded between the public contracting authorities and economic operators. It appears as though changes expected to take place in the Kosovo’s public procurement legal framework, especially the expected introduction of electronic procurement in 2016, will have some impact on delaying the possible inclusion of such a clause in those contracts. If such a proposal is accepted and such a provision is included in those contracts, it would decrease cases going to court.

Cooperation with the German-Kosovo Chamber of Commerce (GKCC) – KCC PTA signed a cooperation agreement with the GKCC. According to this agreement, the GKCC commits to seek for and the KCC PTA commits to provide arbitration services for the disputes arising among GKCC members. This agreement, undoubtedly, recognizes and strengthens the role of KCC PTA on providing arbitration services.

Presentation to the Kosovo Investment and Enterprise Support Agency (KIESA) – KCC PTA gave a presentation to the leadership of KIESA regarding its arbitration services. By promoting KCC PTA arbitration services to foreign investors, KIESA is representing KCC PTA as a reliable arbitration body at an international level.

Promoting KCC PTA at Global Arbitration Review – KCC PTA published an article online in the Global Arbitration Review informing the public about the services it provides. By publishing in this review, the KCC PTA continued to promote its arbitration services to the international arena.

KCC PTA's work on daily media – The work of the KCC PTA was also mentioned in several articles in Kosovo's daily newspapers as well as Radio Free Europe – Albanian Edition. By writing articles about the KCC PTA, media organizations recognize and contribute to increasing the awareness of KCC PTA's arbitration role.

KCC PTA TV Advertising and Brochures – PTA placed an advertisement on Kosovo public television regarding the services it provides. In addition, it designed, produced and distributed over 1000 brochures on arbitration services. Such brochures contain the "10 reasons to choose PTA".

International General Fair Prishtina 2015 Promotion – During April and May 2015, KCC organized this fair with national and international businesses. The PTA used the occasion to distribute promotional materials to the participating businesses and discuss with them how can they initiate and conduct arbitration cases with the PTA.

Kosovo-Croatia Arbitration Agreement – In September 2015, the PTA and the Permanent Court of Arbitration of the Croatian Chamber of Commerce signed an arbitration agreement. According to this agreement, both parties commit to exchange information, experience, and expertise on arbitration issues.

Prizren Business Forum 2015 – The PTA used the Prizren Business Forum held in September-October 2015 to distribute its promotional materials to the participating businesses and inform them of the possibility of using the PTA's services.

Kosovo-Austria Business Forum – In October 2015, the Kosovo-Austria Business Forum took place which gathered businesses from both Austria and Kosovo. PTA used the event to distribute informational materials to the participants and inform many of them directly of its arbitration services.

B. Enhancement of Recognition

International Enhancement of PTA – The PTA leadership (including a woman arbitrator) attended regional conferences on arbitration organized in Montenegro and Macedonia. By attending such conferences, PTA representatives contributed to enhancing the PTA's international image. In addition, PTA representatives attended the Warsaw Commercial Arbitration Moot Court.

C. Provision of Information

Updating the PTA webpage and Social Media activity – PTA continuously updated its webpage and provided continuous information on the developments of arbitration. It also continued to publish digests of the cases it was arbitrating in order to inform the wider public of the latest developments. PTA was also active on the social media (Twitter, LinkedIn, Facebook, etc.) with continuous updates. It is, however, difficult to measure how much impact PTA's activity on social media had on outreach efforts in general.

Newsletter publication – in October 2015, PTA published its first electronic newsletter. The newsletter aims at informing the legal and business communities of the latest events and developments concerning the PTA's arbitration issues.

Case Management and Regulatory Framework

Revising PTA Regulatory Framework – Conference on Assessment of Arbitration Rules – In November 2015, PTA organized a conference on assessing the Arbitration Rules. The conference gathered arbitration professionals, business association representatives and members, and lawyers and other professionals. The main topics reviewed at this conference were: assessment of the rules and the decision on costs, Kosovo arbitration legislation and supporting legislation, and the possibility of introducing mediation within PTA. PTA also published electronically a model Arbitration Clause in order to guide the business community on how to draft such a clause in their own prospective contracts.

Code of Ethics – it was planned for PTA to draft a Code of Ethics. This issue had been discussed for a long time within the PTA management and arbitrators. Issues arose while drafting it, with some supporting the idea

arguing that it was a good, American practice with others arguing that as it is not traditionally European to include a code of ethics, it ought to be left out. It was eventually decided to wait until more cases had been arbitrated to decide whether the code was necessary or not.

Case Software Development and the Cost Calculator – AmCham ADRC and PTA together developed the case management database and software. This software, as explained on the AmCham ADRC's section, contains case data including data about the arbitrators. Parties involved may access it through the usernames provided to them. The software also has an integrated online calculator. The fees and costs of PTA are identical to those of the AmCham ADRC. PTA, however, drafted some proposals for amending the Decision on Costs of Proceedings. The proposal has yet to be reviewed.

CONCLUSIONS

1. KCC PTA had a positive impact on training the arbitrators and a satisfactory impact on outreach activities resulting in a growing number of cases arbitrated.
2. Practice and award writing, issues with contract law, taking of evidence, and special arbitration were mentioned by arbitrators as topics that should be covered and elaborated in future trainings.

8.3 EQ 3: AS CURRENTLY IMPLEMENTED, ARE KCC-PTA'S ACTIVITIES LIKELY TO HAVE A SUSTAINABLE DEVELOPMENT IMPACT AFTER USAID FUNDING HAS STOPPED?

FINDINGS

While KCC intends to continue supporting the operations of the PTA, there is uncertainty regarding the sustainability of the activities beyond USAID funding unless KCC receives financial support from donors as there continues to be a lack of awareness of arbitration services for which the fees are high.

While USAID funding was beneficial in many respects, KCC PTA continues to offer arbitration services using its own resources and revenues. According to KIs with KCC officials, the lack of financial support represents a handicap for PTA so they will need further financial support from donors until they become a self-funded institution. Based on KIs with a KCC representative and PTA staff, this may happen in 2-3 years because businesses have started realizing the importance of choosing arbitration over court litigation.

Arbitration in Kosovo is governed by the Law on Arbitration, which was adopted on 26 January 2007.³² The Law sets forth the rules for arbitration agreements, arbitration proceedings, and the recognition of arbitral awards made inside and outside Kosovo. During the field work, the team found that PTA intends to propose amendments to the existing legislation on arbitration. Furthermore, PTA claims that some provisions on the Arbitration Regulations need to be revised by the MOJ, which is the competent institution to amend the rules. KCC's authority is limited to the promulgation of the internal rules of PTA as enshrined in the Kosovo Arbitration Rules effective as of 27 June 2011. The Decision on Costs has also entered into force on June 27, 2011. The KCC General Assembly approves the rules of Arbitration drafted by PTA. With regard to internal Rules of Arbitration, those are adopted by the Tribunal's Presidency where the KCC has only one representative. This shows that PTA enjoys a high degree of autonomy in pursuing its activities.

Regarding the establishment of a tracking system for case management, currently the KCC PTA is using two databases. One is an internal database which is online, and the other is a software which currently is shared with AmCham.

Regarding the Code of Ethics for Arbitrators, KIs interviewed by the team can be divided in two groups: those that believe that a Code of Ethics that defines matters of conflict of interest is needed and those that think there is no need for such a code. The PTA is still assessing this matter by taking into consideration the experience of developed countries. However, the view of having a Code of Ethics for Arbitrators is expected to prevail.

³² Law N. 02/I-75 Law on Arbitration

PTA established the Kosovo Journal on Arbitration to function as a biannual platform, which covers mainly national developments but also international trends in commercial arbitration. The main reason for the establishment of this journal was to enhance understanding of topics pertaining to commercial arbitration, as a private dispute resolution mechanism. Therefore, the KCC PTA is planning to continue to publish the Journal on Arbitration with support from KCC and/or other donors.

With regard to outreach, the management of PTA confirmed for the team that the PTA activities will continue in accordance with 12 actions foreseen in the Working Plan. In early December 2015, PTA launched a promotional campaign in public TV stations to increase public awareness on the use of arbitration as an alternative mechanism for resolving disputes. Outreach activities will continue in the future based on needs.

A survey conducted with KCC PTA arbitrators, indicated that the main reason arbitration services are not used by businesses in Kosovo is lack of awareness. Kils with KCC PTA showed that future outreach efforts will focus on raising awareness on the use of arbitration service and inclusion of arbitration clauses in the contracts concluded between businesses, as well as between public institutions and businesses.

Table 12: PTA Arbitrator's Responses

Obstacles to Wider Use of Arbitration	Percentage
Lack of awareness	40
High fees	20
No written contracts	20
Business ability to influence court decisions	20

Survey responses identified the following areas on which arbitrators may need further training:

1. Practice decision-writing
2. Training on rules of evidence
3. Role playing decision writing

PTA will continue the cooperation with other arbitration tribunals such as Croatian Arbitration Tribunal in the areas of technical assistance, exchange of experiences between their arbitrators, and organization of joint conferences and other events.

CONCLUSION

1. Although KCC intends to support PTA in the near future, it is unlikely that the PTA will be sustainable after a few years if there is not continued donor support, significantly broader outreach activities to overcome the wide-spread lack of awareness of arbitraton and a reduction of the arbitration fees.

9.0 KCC RECOMMENDATIONS

1. Building upon the limited but promising experience of PTA, USAID should continue providing support for wider use of commercial arbitration.
2. In supporting a broader use of arbitration, USAID should focus on a serious limitation in the use of arbitration which is the high arbration fees that deter many businesses from seeking arbitration services.
3. Future foreign assistance should focus on institutional building and more aggressive outreach activities towards businesses.
4. Building upon the promising experience of the KCC PTA, USAID should continue providing support for wider use of commercial arbitration.
5. Future training programs should work more closely with arbitrators to ensure that their needs are covered.