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SYSTEMS FOR ENFORCING AGREEMENTS AND DECISIONS IN KOSOVO MID-TERM EVALUATION

FINAL REPORT

SEPTEMBER 2011

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ACRONYMS

ADR: Alternative Dispute Resolution

BERP: Balkans Enforcement Reform Project

BRI: the Backlog Reduction Initiative

CEPEJ: European Commission for the Efficiency of Justice

COE: Council of Europe

EU: European Union

EROL: Effective Rule of Law Program

GoK: Government of Kosovo

JSP: Judicial Support Program

KCC: Kosovo Chamber of Commerce

KEK: Kosovo Energy Corporation

KJC: Kosovo Judicial Council

MOU: Memorandum of Understanding

NCSC: National Center for State Courts

PTK: Post and Telecom of Kosovo

SEAD: Systems for Enforcing Agreements and Decisions

SEU: Special Enforcement Units

EXECUTIVE SUMMARY

EVALUATION OF PROGRAM GOALS, OBJECTIVES AND ACTIVITIES

The main objective of this mid-term evaluation, as stated in Section III of the Statement of work, is to provide USAID/Kosovo with an objective, external assessment of the effectiveness and strengths and weaknesses of the SEAD program. This includes a review of the current and planned activities of USAID's Systems for Enforcing Agreements and Decisions (SEAD) program that is being implemented by Checchi and Company Consulting in order to determine what impact the program has had to date and to offer USAID suggestions on how the program may benefit from possible adjustments.

SEAD's overarching objective is to improve the rule of law foundational structures that provide a basis for increased foreign and domestic investment and those that generally lead to an improved business-friendly environment. SEAD's three (3) core programming components are: (i) to provide support for institutions that use and enforce contracts with the goal of promoting a culture of contracts in Kosovo (the contracts component) and support systematic reform; (ii) to improve processes to enforce court judgments and reduce the backlog of unenforced judgments, including case management, legal, regulatory and policy reforms (the Backlog Reduction Initiative (BRI) or the enforcement component); and (iii) to provide support to institutions capable of resolving contract disputes through alternative dispute resolution mechanisms (the ADR component), including through the establishment of Arbitration Centers and Court-Referred Mediation Centers. The evaluation team (the team) assessed all major components of the SEAD program, including looking at the impact, relevance, efficiency, and sustainability of the program activities. At USAID's suggestion, the team placed primary focus on issues and activities related to the enforcement component of the SEAD program.

PROGRAM CONTEXT

From a historical and developmental perspective, it might be said that Kosovo's judiciary is now in a real state of transition distinct from the political and institutional turmoil of the last two years. Over the years USAID and multiple donors have promoted a myriad of activities to modernize and strengthen the independence of the judiciary. The SEAD program is now geared towards promoting both judicial independence and judicial accountability, in that it is primarily focused on the efficient, fair and effective enforcement of court judgments. This would seem to be a natural follow-on activity to previous reform programs.

In the last two to three years Kosovo's parliament passed important and fundamental court reform legislation. At the same time, judges have finally received raises and undergone an unprecedented reappointment vetting process that has resulted in many new faces on the judicial bench. There is also a new and engaged Judicial Council and a functioning, well-run institute to train both judges and court personnel. All of these institutional, structural and legal reforms present both implementation challenges and new opportunities to promote justice in Kosovo.

EVALUATION METHODOLOGY

The methodology for this mid-term evaluation included: (i) independent research/ and anonymous interviews; (ii) a full review of documents provided by USAID; (iii) key stakeholder semi-structured interviews; (iv) structured anonymous stakeholder surveys; and (v) informal open-ended group discussions with key stakeholders in four regional pilot courts in Pristina, Gjakova, Gjilan and Lipjan.

With the goal of measuring performance, the team aimed to gauge impact through the prism of five interrelated evaluation principles: (i) results-based performance; (ii) reform relevance; (iii) program efficiency; (iv) program sustainability/demand driven and (v) consensus/country stakeholder buy-in.

KEY FINDINGS

The SEAD program has fully achieved or exceeded its targeted outputs in two out of four core project components (technically the program has three main components but it was generally described to the Evaluation Team by both SEAD and USAID as having four main focal points, including public education and outreach). The first was support for local institutions to improve the means and mechanisms for the enforcement of obligations and contracts. The second was to develop and implement an appropriate and effective alternative dispute resolution system (ADR). As will be discussed below, it is too early to evaluate the impact of SEAD's public education, outreach and media relations component, or what we are calling the fourth focal point, as it was not formally scheduled to begin until after the Evaluators' field visit and the submission of this report. Nevertheless, SEAD's outreach and media efforts related to its on-going work on a number of specific reform-oriented activities, such as workshops and conferences, have been significant as described in more detail later in this report. And finally, with respect to the other component, support to local institutions to improve the means and mechanisms for the enforcement of judgments, SEAD has achieved some but not all of its targeted outputs. These four components will all be discussed in more detail below.

Through the first component, the contracts component, it has successfully supported the analysis and drafting of significant amendments to Kosovo's core law on contracts and obligations, through a well-executed consensus-building process. If this law passes this fall, as expected, it will bring Kosovo's contract laws and procedures into harmony with streamlined regional and international best practices and the European Union (EU) Acquis, which should promote economic growth over the long-term.

Through the second component, developing and promoting ADR, SEAD has successfully supported the legal and institutional development of two ADR mechanisms, one through the American Chamber of Commerce, one through the Kosovo Chamber of Commerce (KCC), one through the Mediation Commission, and one pilot program in Gjilan and Peja. New secondary laws, regulations and policies have been developed and scores of lawyers, judges and court personnel have been trained. Kosovo now has a private sector oriented arbitration tribunal and two pilot mediation centers that will also accept court referrals. Stakeholders also have how-to guidebooks, fee schedules and oversight mechanisms that were developed in a timely, efficient, home-grown user-friendly way.

These are important alternative dispute resolution developments, and if utilized in practice by businesses, should collectively help set the foundational stage and legal climate for increased use of and respect for contracts. From everything the Evaluators heard, SEAD's successful efforts to help establish a new Masters in Contract Law at the University of Pristina School of Law Work also has the potential to make a substantial contribution towards this project goal.

Success on SEAD's Enforcement of Judgments component is more mixed, although everyone we interviewed believes the full results on this component can only be achieved over the long term. This component has two main focal points or elements, the Backlog Reduction Initiative and institutional and legal reform. The first element, which SEAD calls the Backlog Reduction Initiative (BRI), is focused on developing systems, mechanisms and processes to reduce the backlog of outstanding court judgments related to the non-payment of utility bills by individuals and businesses. This group of judgments, which have been accumulating since the year 2000, accounts for more than half of the total number of unenforced court judgments. The team concluded that the BRI, as conceived and as being implemented in practice by SEAD, as well as by both the courts and the program's two utility company partners, Post and Telecom of Kosovo (PTK) and Kosovo Energy Corporation (KEK), has several serious monitoring and reporting problems that need attention. The Evaluators also believe the second element of this component, which is focused on legal, regulatory, policy and institutional reforms, particularly the legislative reform designed to create a private bailiff service, which would require a number of other legal and regulatory reforms over a number of years, has sustainability issues that need to be addressed. These two sets of issues are discussed in more detail below.

As for the public education, outreach and media component, it is premature to attempt to measure progress for purposes of this evaluation because SEAD told us in several meetings that the main elements of SEAD's work plan related to this activity were not planned until October 2011 (after the Evaluator's field trip). That said, the Team fully acknowledges that a healthy mix of media and stakeholder oriented education activities related to specific SEAD events have been undertaken throughout the life of the program. However, SEAD noted during the very first meeting that the formal public outreach and media program and strategy was only finalized during our visit. The Team also acknowledges that the media and stakeholder activities already undertaken have helped set the stage for SEAD's soon-to-be-launched formal media campaign. They may have also helped promote a number of proposed legal reforms, new regulations and the MOU's, but the quarterly reports do not have enough evidence to fully substantiate that claim. Hopefully, the new formal media campaign will serve to promote further consensus and the actual implementation of many of the activities and reforms outlined in SEAD's work plan, but the Team has no way to judge that element of SEAD's future efforts in that area at the time of this evaluation, especially since we were not given a copy of SEAD's last and final Workplan.

With respect to the BRI, the main problems appear to be four-fold: (i) the lack of good faith efforts on the part of SEAD's partners, PTK and KEK, to implement the partnership agreement with SEAD and the Kosovo Judicial Council (KJC) -- particularly with respect to the dismissal of as many small, very old or uncollectable judgments as possible; (ii) the KJC's, the Supreme Court's and the Municipal Court's failure to be proactive and use its court management legal powers to reduce the backlog by purging uncollectable judgments -- including those that the utilities have told the courts they can dismiss; (iii) SEAD's failure to systematically monitor and report on PTK's and KEK's compliance with their partnership agreement and its lack of follow-up with the KJC, the Supreme Court and the pilot Municipal Courts and (iv) SEAD's use of a reporting indicator that does not measure impact and does not comply with USAID's Performance Management Plan. Even though the MOU states that there must be three attempts to collect or execute before a case can be dismissed, the Team was told by KEK that they were ready to dismiss a number of older, uncollectable cases against individuals without going through the MOU process. While some may disagree on the impact of dismissing old, small or uncollectable judgments, few we interviewed disputed the fact that dismissing a large number of older uncollectable cases would help reduce the backlog. They believed this would no doubt positively impact the court's overall ability to enforce priority cases and collectable judgments.

Although SEAD is to be commended for securing an additional manpower commitment from the KJC to work on the enforcement of court judgments, and public/private partnership agreement, the Memorandum of Understanding (MOU) between the KJC, the PTK and KEK, it does not appear to the Evaluators that without on-going SEAD follow-up and close oversight, including systematic monitoring and reporting to USAID, that the agreements and commitments in the MOU are going to be implemented as planned or in practice. In the Evaluation Team's view, this is not just a manpower, capacity or resource issue, although those issues loom large. Another and perhaps larger problem relates to the unwillingness of any of the PTK and KEK to follow-through on their respective commitments, and the courts' enforcement practices, policies and lack of initiative and action. Indeed, from everything we heard and saw, PTK, KEK, the courts and SEAD do not appear to be seriously focused on actually reducing the backlog in a timely or efficient manner.

The Evaluators are of the opinion that as long as SEAD's main focus is just on the courts' performance in attempting field executions, as opposed to the courts' performance in obtaining tangible monetary enforcements that eventually reduce the backlog and promote trust in the courts, it is difficult for the Evaluators to see significant sustainable progress or impact on this program element. The Evaluators also believe that as long as the PTK and KEK are unwilling to proactively dismiss uncollectable cases, as well as those it has deemed not to be worth the cost of trying to collect, including judgments over 5 years old and those for relatively small amounts of money, that their good faith intention to help reduce the court

backlog is in serious doubt. The Evaluators would note that it appears as the SEAD program was beginning to have some success with KEK judgments, at least with regard to the amount of money being collected during the last quarter.

Though it was difficult for the Evaluators to obtain exact amounts that had been collected, or to match the amount collected to the age of the judgments, KEK provided us documentation that evidenced over 500,000 Euros had been collected in about 100 cases over the last few months. KEK noted they were quite happy with this result and that they were ready to provide the courts more assistance if asked. We did not receive this kind of information or a suggestion of more support from PTK, but we believe it would be worth approaching both to see what more is possible. KEK's new policy and focus on larger, more recent judgments against businesses and not individuals appears to be one of the main reasons why it and the SEAD program are now having some success. The Evaluators were only able to see some recent progress being made on the BRI initiative during our visit. While the BRI had been underway for eight (8) months, SEAD's reporting and our interviews confirmed that a relatively small number of judgments had actually been enforced as opposed to executed (attempts to enforce). While it appears the SEAD BRI component may be able to make more progress on enforcing judgments during the next quarter and year 3 of the work plan, particularly with enhanced assistance and cooperation from PTK and KEK, at the time of this evaluation we cannot say that SEAD has met its enforcement target of 5,000 during year two (2).

Indeed, based on the limited amount of information we were given by SEAD, as well as that provided in its quarterly reports, it appears SEAD has actually only enforced a few hundred judgments, although we were informed after our August visit that data through September 30 showed that over 2800 judgments had been enforced. While the Evaluators have not had the opportunity to fully analyze the most recent data, the best data and information we have is that the 2800 number also includes "other kinds of civil judgments" (as noted by USAID). In any case, as noted earlier, the Evaluators were frustrated during the entire trip because we received conflicting data in various forms from various stakeholders, including SEAD. Thus, it is almost impossible for us to confirm any firm number or to analyze the exact nature of the reported judgments. What we do know is that the 2800 number does not match any of the numbers given us by KEK and PTK and we can not find that number in any of the quarterly reports or documents we have been given or been able to access on our own. Our best guess is that that number includes cases that have also been executed (attempted enforcement) as opposed to enforced. In any case, even if the number is 2800 or so the Team is unable to conclude that that number has had impact or met SEAD's target reporting goals. Moreover, the Evaluators continue to believe that enhanced monitoring and reporting of the MOU will help ensure that at least some of SEAD's work plan activities and objectives are achieved in this and other areas outlined in the work plan and MOU.

At the same time, the Evaluators are also of the opinion that until the courts have the capacity and the willingness to assume more responsibility for enforcing judgments on behalf of PTK and KEK, in lieu of other judgments it has always deemed to be of higher priority, that court enforcement policy, practice and mindset is unlikely to change very much. The courts' and the enforcement agents made it very clear that enforcing judgments against KEK and PTK has never been and still does not appear to be an enforcement priority.

The Evaluators would note that USAID actually asked the National Center for State Courts (NCSC) in 1996 to work with the municipal courts on reducing the enforcement backlog, but that effort, which mainly involved PTK, was largely unsuccessful. In that multi-year project NCSC was also tasked with working on court-annexed mediation, but had little success on that front either. NCSC noted then that before further work was done on mediation that the KJC should develop a strategic analysis and long-term plan (see Evaluation of the Justice Reform Activity, p.35, July 19, 2006).

From the Evaluators' perspective, reporting on enforcement action rather than executions is far more than just an administrative or housekeeping detail. Indeed, actually developing and implementing a plan to actually reduce the backlog through real action would give the whole project and the courts more credibility, particularly to PTK, KEK and the business community. Perhaps more systematic monitoring and reporting and information sharing meetings among all concerned would help remedy this implementation problem. At a minimum it might reveal whether there is genuine interest in making the partnership work and in reducing the backlog as much and as quickly as possible.

The fourth problem referenced concerns the indicators that SEAD wants to use for purposes of reporting to USAID on BRI progress and success. After many discussions with SEAD and USAID, the Evaluators believe that SEAD either came to the conclusion over time that reporting on the number of judgments actually enforced, dismissed or collected was not the best measure of progress, or that it misinterpreted the reporting requirements in the PMP from the beginning (although 2.2.2. defines enforcement -- not execution -- as ~~the~~ the point when a final decision is actually executed (money paid, property seized, etc.). SEAD takes the position that the indicator agreed upon was one that tracked and reported on the number of times a court ATTEMPTS to enforce or EXECUTE on a PTK or KEK judgment. However, the Evaluators cannot find any evidence that USAID intended to use an execution indicator versus an enforcement indicator (as defined in the PMP itself). Indeed, a review of the terms of the MOU and SEAD's Draft Program Proposal of September 29, 2010, clearly reveals an agreement and work plan that contemplates enforcement action. The Draft Proposal lists 5 key elements of the BRI. The fifth is: —Encourage dismissals or suspensions (p.4).” It also clearly contemplates a categorization process that leads to, among other things, the enforcement of —collectable” cases and —dismissals (p.6).” The Evaluators must therefore conclude that SEAD has and is using an improper reporting indicator. (It should also be noted that the data needed to regularly report on —enforcement” and —execution” is readily available from both PTK and KEK) and the number of cases actually dismissed from the backlog by the courts should be available from the courts and/or the KJC when dismissals actually occur.)

Although the Evaluators believe that attempts to enforce a judgment may well be a sub-indicator worth adding to the PMP, it is clear from a thorough review of all of the documents and from virtually all of the interviews, that measuring the impact of the BRI was originally contemplated and can be best done by measuring the degree to which systems and mechanisms have been institutionalized that will actually reduce the backlog by significant amounts over a reasonable length of time. Measuring the number of times a court clerk or enforcement agent attempts to interact with a debtor is but the first step in actually developing a sustainable backlog reduction system that is realistically measureable and has impact over time. This important reporting issue was brought to both SEAD's and USAID's attention at least twice during the Evaluator's field trip,

In short, merely reporting and focusing on the number of executions does not appear to be the best way or the agreed upon manner in which to achieve, one of the main goals of the enforcement component -- to develop systems to reduce the backlog and to make the enforcement process more efficient, although we would defer to USAID's final judgment on that question, since it knows Kosovo better than the Evaluators, USAID may also decide to amend the reporting requirements to only require reports on executions and not enforcements. However, USAID has not taken such action to-date.

The Evaluators would also like to point out, for future programming design purposes, that however we calculate the numbers, it appears that the current backlog will not be significantly reduced, even after several years, because of insufficient capacity, the influx of new judgments entering the system every year and because of the inefficient manner in which the MOU with the utility companies is being implemented and monitored by key stakeholders.

These problems are also compounded by the fact that the capacity of the newly expanded BRI team (including 30 new KJC funded enforcement agents) is still not sufficient to significantly reduce the backlogged numbers over time, although SEAD should be given due credit for having obtained even this

commitment. It is at least a start and it represents at least an effort by the KJC to address a serious problem. However, it is clear that there is more the KJC and the court presidents could do much more on their own to reduce the backlog without a huge amount of additional resources. In addition, the 30 additional enforcement agents the KJC has brought on board could also be much more effective and efficient if they were given the tools and assistance promised in the MOU, including prioritized collectable judgments. The Evaluators have no doubt that the BRI has clear potential to have impact, but that it needs more strategic direction and oversight in order to make it work in practice.

In the final analysis, the Evaluators believe that the courts need to demonstrate to the public and the business community that it is serious about reducing the backlog as quickly as possible and, at the same time, that it is an independent institution committed to and capable of enforcing contracts and protecting the legal rights of everyone. One of the ways it could do this would be for the courts to at least have a plan to dismiss uncollectable cases from its docket, starting with those that PTK and KEK have given it either express or implicit permission to do. The court's seeming unwillingness to dismiss judgments that the debtors have told them they do not intend to try and collect calls into question their interest in getting its own house in order and in presenting themselves in the best possible light. In any event, the Evaluators believe the whole process will be more efficient and that it will have more impact once it is clear what judgments are collectable, which should be summarily dismissed which should receive priority action and what court policy is with regard to dismissing uncollectable cases. Another sign that the stakeholders are serious about real action would be for the KJC and SEAD to develop a clear strategy that outlines, step-by-step or year-by-year, how the backlog numbers will actually be significantly reduced over time both during and after the SEAD program ends. To our knowledge, no such clear operational strategy exists.

It is worth noting that everyone we interviewed believes the courts in Kosovo can only become a strong independent institution over time due to many factors, including their limited court resources, the number of new judges, the lack of enforcement judges and the court's low reputation. These real-world facts make success on the enforcement front in Kosovo all the more difficult.

In sum, after many probing interviews and a close review of all available documents, as well as consideration of the action actually taken or not taken by PTK, KEK and the courts, the Evaluators can only conclude that broad consensus, clear stakeholder buy-in and demonstrated political will and judicial support for a number of the BRI activities is lacking or that more incentives need to be built into the process in order to make everyone more accountable. We also conclude that more careful planning, strategic development and coordination are needed by the KJC and SEAD in order for the BRI to have measureable impact in either the short or long-term. Systematic monitoring and reporting that closely tracks both the USAID indicators and the commitments in the MOU would greatly help get this component in order.

The second important element of the enforcement component relates to SEAD's focus on at least three important legal reforms that directly relate to or would fundamentally alter the enforcement process for court judgments in Kosovo. These reforms are: (i) legal, regulatory and policy reforms related to the garnishment of employee's wages to pay a court judgment; (ii) legal, regulatory and policy reforms related to the attachment of personal or business bank accounts to pay court judgments; and (iii) a new law that would privatize the judicial enforcement process and give a newly created private bailiff service the task of enforcing court judgments.

While the legal reforms and SEAD activities related to the garnishment of wages and the attachment of bank accounts was not specifically foreseen in the contract or work plan, SEAD has successfully supported legal reforms for the Central Bank, including the development of a Registry of Account Holders. This registry or database, once implemented, will help facilitate payment of court judgments against well-identified bank accounts. Similarly, SEAD was also successful in helping broker an agreement between the KJC and the Tax Administration that is designed to share employer information

with the courts for purposes of facilitating wage garnishment. Experience from other countries tell us that both of these reforms, once fully implemented should serve to make the enforcement process more effective and efficient, including reducing the time it takes to enforce court judgments. However, it is also clear from the experience of other countries that these reforms will need strong and on-going support long after the SEAD program is over. SEAD's initial efforts in these two important areas are an important step in the right direction.

Finally, with regard to the new draft law geared towards privatizing the enforcement system, the team came to the conclusion that political and business community support and buy-in for such a fundamental reform is weak or mixed at best, although the draft law itself contains a number of reforms that would make the enforcement process more efficient if implemented properly. Unfortunately the Evaluators did not have sufficient time to discuss or fully analyze the very lengthy, complex draft laws being debated (we were given two very lengthy versions toward the end of our trip), although this was not in our mandate anyway. Thus, it is difficult to comment too much on the substance of the drafts except in general terms.

However, it is clear from all of the documents reviewed that SEAD was quite successful in promoting a new draft law that included many useful reforms that would make the enforcement process more efficient. It was also successful in promoting reform of the bailiff system, which as we understand it, would turn the current public bailiff service into a private one. This would mean several things, including the creation of a whole new profession (private bailiffs), garnering business, judicial and public trust and creating new well-funded and well-monitored oversight mechanisms needed to make it work properly and ethically. While the Evaluators do not know enough about Kosovo to make any kind of judgment as to whether a public, private or mixed enforcement system would work best in Kosovo, it would note that moving to a private system is more risky, complex and costly than moving to a mixed system. It also may not result in more competition within the enforcement sphere, as some might hope, if demand or trust is low, which would mean creditors would have no enforcement options.

Since our field visit SEAD has provided additional information that tells us the draft law includes reforms that geared towards streamlining procedures, limiting the opportunity for debtors to object to enforcement actions and empowering judges to dismiss unenforceable cases. All of these are reforms being undertaken in many countries in Europe and around the world. However, the Evaluators still do not have the information necessary to be able to analyze how many steps, how much time or how much it would cost to enforce a court judgment under the draft law, which does not break-out this information in comprehensible format for a layperson (or for that matter the Evaluation Team). To our knowledge this kind of analysis does not yet exist, although it would seem to be important information for all stakeholders to consider. There also does not appear to be a big picture strategy or work plan, including some kind of notional budget, as to how much time and money it will take to create the new private bailiff enforcement system under the draft law. Further, it does not appear to the Evaluators that a consensus on how to make a privatized bailiff system actually work in practice, particularly with regard to utility judgments or smaller sized judgments, has either not been fully considered or at a minimum it has not finally jelled.

All of that said, the Evaluators would note that many European countries are in the process of reforming their enforcement systems and that different models have emerged in different countries. Many of these countries have found these reforms to be very complex and difficult to implement in practice. Some have opted for mixed systems (public and private bailiffs) and others for pure public or private bailiff systems. As noted by the Council of Europe (COE), one model does not fit all within European context. Indeed, the COE emphasizes that each country should create a system that meets its needs and fits its culture but with an eye towards European harmonization.

We would also note that while virtually everyone we interviewed believed the current enforcement system was broken, most we interviewed did not have an opinion as to whether the current system was

worth reforming, whether an entirely new system should be created or whether a mixed system made more sense within current Kosovo context. Some of the municipal court judges we interviewed said they believed that Kosovars had a historical disposition to rely more on the government officials to protect and enforce their rights and that they were skeptical that a private institution could gain the trust of the average citizen. Other judges we interviewed endorsed the privatization idea in theory but then noted that they did not know how the idea would play-out in practice or what their oversight role would be – if any. Other stakeholders we interviewed said they thought a pure private enforcement system could possibly work, but many were skeptical as to whether there was sufficient demand or trust in a private-sector oriented enforcement model to work in Kosovo. Unfortunately we did not have the opportunity to interview the President of the Supreme Court or the Minister of Justice so we do not know their full opinion or whether they have any concrete plans on how to address these important questions and implementation issues.

In any case, there are clearly additional important unresolved inextricably linked issues, such as those related to information privacy, financial and employer information sharing and corruption and oversight (whether within either a public, mixed or private enforcement process) that are still on the table for further stakeholder and public discussion. The experience from other countries in the regional and globally tells us that fundamental reforms to the enforcement systems in many countries needs to be undertaken but that has proven to be a complicated, long-term, resource driven process that requires considerable support from all key stakeholders, including the public and the business community. Having a long-term work plan in place that promotes synergistic complementary reforms and the confidence of the public and business community, as well as a budget and a strategy are all very important to success.

Finally, it is also worth noting that at the time of our field trip there was still no consensus as to whether the Ministry of Justice or the courts, or both, should have monitoring and oversight powers over any newly created private bailiff service. This is another very important issue that needs to be fully discussed and resolved within Kosovo context before moving any enforcement reform package moves forward.

KEY RECOMMENDATIONS

- **ADR/Contracts Components.** The team recommends that activities related to Contracts, mediation and arbitration be kept to a bare-minimum in year three. The main SEAD outputs and successes have already been achieved in these areas. It will now be important to place more emphasis on testing the will of the relevant institutions to promote demand and to sustain these programs on their own. It will also be important to invest any remaining resources in targeted elements of these programs or on activities related to the implementation of the BRI or to resolving important issues related to the draft law on enforcement.
- **Enforcement/BRI Component.** The team recommends that USAID review the BRI strategy and the MOU and the way in which it is being implemented and monitored by key stakeholders. Prioritizing and actually enforcing judgments that may be the most collectable or dismissed, regardless of age or size, should be the focus during year three of SEAD's work plan. Consideration should be given to renegotiation of the MOU to fully explore and to make it clear that uncollectable judgments should be dismissed or closed by both the utility companies and the courts (through clear, fully explained court guidance/policy/action). This action would help demonstrate the good faith efforts of both the utility companies (PTK and KEK) and the courts to reduce the enforcement backlog. In addition, USAID should request more utility company support for the enforcement process (KEK told us they are more than ready to step-up to the plate and do more). While the Evaluators did not have the mandate or time to explore this issue in detail, KEK said they would be very receptive to discussing the provision of more assistance in a number of areas, including: (i) more transportation assistance; (ii) more regular and timely

assistance with regard to execution team planning and field visits; (iii) more comprehensive data bases so that neither SEAD nor the courts would have to internally record executions or enforcement or duplicate enforcement information KEK already has, including batching judgments against the same debtor; (iv) more and (v) more guidance to the courts and enforcement agents with regard to which cases should receive highest priority and which should be dismissed or deemed to be uncollectable. The Evaluators believe it would be worth exploring these and other issues with both KEK and PTK.

- **Strategic BRI Focus.** The team recommends that consideration should also be given to focusing future BRI activities on enforcing prioritized potentially collectable judgments and not on attempts to execute any kind of judgment, and on the dismissal of judgments that are unlikely to be collectable. SEAD's biggest success to-date seems to relate to the enforcement of KEK's judgments, as this appears to be where the biggest pay-off and enhanced cooperation is most likely. Another focus should be on support for the development and institutionalization of a sound, long-term backlog reduction strategy and work plan, including a systematic monitoring and reporting process to ensure that the MOU and policy is implemented in practice. Any enhanced BRI initiative should be consistent with KEK's new policy, which is to only enforce judgments against businesses that are over 1,000E and then only those that were filed from 2005 through 2009. PTK's current internal policies are inconsistent with the intent of the MOU and make its implementation too costly, too complex and too time consuming to be worth further USAID investment without changes. If PTK adopts an enforcement policy and a practice consistent with the intent of the MOU and one that will actually help the courts and SEAD with the BRI initiative a partnership with it would then also make sense.
- **Draft Law on Streamlining Enforcement Procedures and Privatization of the Enforcement Process.** The team recommends that more discussion occur with all key stakeholders in order to ensure there is broad consensus on what public and/or private enforcement reforms are most likely to succeed within Kosovo context. At present, none of those interviewed seemed to fully grasp the pros and cons of the myriad reforms required under different models being implemented throughout the region, including their costs, challenges, complexities, complementarity and risks. Other legal reforms that SEAD has successfully helped launch, such as those related to streamlining enforcement procedures, wage garnishment and inter-agency/court information sharing are all positive developments that have the potential to make the enforcement process more efficient and reduce the enforcement backlog over time. The long-term challenge is to provide support to develop long-term strategies and work plans to implement these important reforms. The short-term challenge would appear to be to provide a clear side-by-side analysis of the current and proposed enforcement process so that all stakeholders can see how the proposed and new reforms are going to benefit them, from a time, cost, effectiveness and sustainability perspective. This kind of analysis might replicate or be complementary to the process and information in the annual Doing Business report by the World Bank, which many people and businesses look to for purposes of determining the effectiveness, efficiency and predictability of the legal enforcement and regulatory systems.

1. BACKGROUND

1.1 CONTEXTUAL OVERVIEW OF THE SEAD PROGRAM

The team was asked to evaluate a rule of law program in one of the newest democracies in the world, Kosovo, which is also one of the poorest countries in Europe. Many democratic institutions in Kosovo are still in a nascent, fragile state and capacity and resources to implement programs is limited.

The legal system, including the judiciary, is one of the weakest institutions in Kosovo. Many perceive it to be among the most corrupt or least trusted. However, with recent passage of enabling and reorganizational legislation, and after weathering an unprecedented vetting and purging process, the institution of the judiciary is finally moving from a tumultuous to a transitional state, although global experience tells us that the implementation of the myriad reforms underway will take many years.

For the first time in over a decade Kosovo will have most of the essential legal infrastructure and institutions in place needed to promote and sustain a wide range of democratic, economic and political reforms. To strengthen the rule of law, Kosovo has introduced a new Judicial Council and a Judicial Institute. There also appear to be new and emerging opportunities to promote an independent, effective and efficient judiciary capable of resolving and enforcing disputes and protecting human rights, as well as a more efficient judicial enforcement system.

However, the institutional reality today and the likely reality tomorrow is that the judiciary remains under-resourced and under-staffed and it is still perceived as one of the most corrupt institutions in Kosovo. In addition, most courts still do not have experienced enforcement judges or enforcement clerks. The result is an increasing backlog of cases in both the to-be-decided (approximately 200,000 pending cases) and to-be-enforced (approximately 100,000 civil judgments) categories. The numbers, however, are a topic of debate. When stakeholders were queried about the 100,000 pending to-be-enforced cases, all but SEAD agreed that the 100,000 number should really be reduced to 70,000 to 80,000, since 20,000 to 30,000 judgments of that number related to criminal fines levied by the courts that are now unenforceable because of a two year statute of limitations law (the team was unable to obtain an exact number of criminal fine judgments but it appears to be in the range of 20,000 to 30,000). While the Team acknowledges that technically the law recognizes these judgments as being enforceable, everyone we interviewed, including SEAD, noted that in practice they were not going to be enforced and that they would eventually be dismissed.

Another institutional reality with regard to the enforcement of court judgments is taken from SEAD's own analysis and research, namely that the Judicial Council has chosen to invest minimally in the collections process, including having provided an inadequate number of enforcement agents and judges, often requiring the presidents of various courts to perform those tasks in addition to his or her numerous other responsibilities, providing little training for judges or court staff beyond that supported by donors, and drastically inadequate levels of capital expenditures. However, this is not to discount the Council's recent budgetary allocation of support to provide the courts with more enforcement personnel and training, which we were told was done at the urging of SEAD staff. This is a step in the right direction that deserves further support and encouragement from the government and the parliament as well as the broader donor community. Indeed, the courts clearly need more resources for a range of important judicial reforms before they can develop their institutional capacity and independence on virtually any front, including enforcement. SEAD also makes the observation that the Government of Kosovo (GoK) seems to treat the fee system within the courts and enforcement system as just another source of revenue, with little concern for how well the system actually works.

After many interviews and considerable research into past and present reform programs and issues, including a review of the meager budget for the justice system, the team reluctantly has to concur with SEAD's overall assessment. It is clear, for whatever reason(s), that the courts are not seizing opportunities

to reduce the case backlog in a timely manner and that the GoK has yet to make a serious budgetary or strategic commitment to adequately fund reforms or to even provide the basic resources to make the wheels of justice work or run on time. It is also clear that enforcing utility judgments has never been a priority activity for the courts and that these cases still receive little attention, mainly because they are not seen as being as important as other kinds of cases and judgments on the Kosovo docket.

It is within this historical, socio-economic and institutional context that we have tried to present our analysis, findings and recommendations. The team would note that our time in country and the time to write this report were necessarily short, given upcoming USAID programming priorities. That said, the team managed to meet with over fifty-five stakeholders, including visits to three of the largest courts in Kosovo where the bulk of backlogged judgments reside and where reform initiatives were underway (Pristina, Gjilan and Gjakove), as well as a smaller court in Lipjan.

1.2 KEY GOALS, OBJECTIVES, AND COMPONENTS OF SEAD

A review of the relevant documents provided by USAID and SEAD reveal the stated overarching goal of SEAD is to improve the rule of law foundational structures that provide a basis for increased foreign and domestic investment and those that generally lead to an improved business-friendly environment.

SEAD documents specifically state that the program has three somewhat related objectives and components: (i) to provide support for institutions that use and enforce contracts and obligations; (ii) to improve processes to enforce court judgments and reduce the backlog of resolved cases; and (iii) to develop institutions capable of resolving contract disputes through alternative dispute resolution mechanisms, such as arbitration or mediation. SEAD states that activities in these areas will help promote a “culture of contracts” in Kosovo.

At the direction of USAID, which is preparing for a program design exercise, and in light of the fact that the team has determined that SEAD has either met or exceeded its main objectives and targets related to two of three program components, namely, the contracts and ADR components, the primary focus of this report will be on the enforcement component, including the Backlog Reduction Initiative (BRI). The team believes this approach is appropriate given that the contracts and ADR components are mainly recently achieved outputs. Moreover, during our de-brief meetings with both SEAD and USAID, there was general agreement on the progress made and future direction of SEAD programming in these areas. The latter section of this report will examine the activities and outputs in these two components in summary form, after a more in-depth discussion of the enforcement component.

Indeed, the enforcement component is the most complex and problematic component of SEAD’s program and the one that needs attention. As the Council of Europe notes in various reports on this regional and global topic, the appropriate system for enforcing court judgments, at least within debtor/creditor context, is a complex concept that varies from country-to-country. What kind of system might be most effective, efficient and fair will depend on an analysis of many factors, including a country’s legal history, socio-economic conditions, the state of the judiciary and law enforcement community and striking the right balance between the competing interest of the creditor and debtor.

2. PROGRAM COMPONENTS

2.1. ENFORCEMENT/BRI COMPONENT

A key element of SEAD's enforcement component relates to reducing the number of utility judgments in backlog. A second relates to the streamlining of enforcement procedures and to promoting legal reforms—including "privatizing" much of the current judicial enforcement process. A more detailed discussion on other elements of the enforcement component, including issues related to the possible privatization of the enforcement process, will follow our discussion of the BRI initiative.

SEAD states that during years two and three of its program it is primarily supporting a mid-term strategy, called the Backlog Reduction Initiative (BRI). It notes this huge backlog, which has been accumulating for over 10 years, continues to clog the courts and that the courts' inattentiveness to this serious problem continues to raise questions related to the courts' genuine interest to devote some of its limited time and resources necessary to enforcing PTK and KEK judgments. However, SEAD also notes that KJC's three year commitment to provide the municipal courts 30 additional enforcement agents for three years at demonstrates, at a minimum, that the KJC is more interested in reducing the backlog than ever before. The Evaluators agree with SEAD's overall analysis on these important court buy-in points.

In an effort to reduce the backlog SEAD states that it will also support Special Enforcement Units (SEU)-30 enforcement clerks employed by the KJC or enforcement-oriented teams, including 30 "cataloguing" interns (for at least six months) in some of the largest courts in Kosovo. It notes these teams and interns will do nothing but focus on reducing the number of backlogged utility cases in Kosovo's five courts. The Evaluators learned during field visits that the interns did not seem to even be batching cases against the same debtor in any kind of systematic manner, as SEAD had planned, and that there was no follow-on judicial effort to keep the catalogued files up-to-date after the interns had completed their initial work. If SEAD staff batch on their own the Evaluation Team was not told this by either SEAD or the enforcement clerks and judges that we interviewed.

SEAD's efforts are centered on the reduction of about 45,000 of the 65,000 backlogged judgments pending in the courts (45,000 is the total number of PTK and KEK judgments in backlog, otherwise known as authentic document cases. Approximately 20,000 of the 65,000 authentic document or utility judgments relate to other utility companies, such as water and heating. While SEAD refers to 100,000 backlogged judgments in its quarterly reports and its work plan, SEAD acknowledges that the number they are focused on in the BRI is actually only 45,000 (PTK and KEK judgments only). It should be noted that the 100,000 backlogged judgments often mentioned in SEAD materials and by others generally includes about 20,000 to 25,000 criminal fine cases and about 10,000 to 15,000 civil judgment cases of a commercial nature. When these kinds of non-SEAD cases and numbers are subtracted from the total backlog number being used, 100,000, the number of backlogged judgments is about 65,000. And when the 20,000 or so other kinds of utility judgments are subtracted from this number, one is left with a total of about 45,000 PTK and KEK backlogged judgments.

In its Year Two Work Plan from October 2010 to September 30, 2011, SEAD targets reducing the enforcement backlog by 5,000 cases. Based on the limited and conflicting amount of information available to the Evaluators, it does not appear from SEAD reporting that it has met that goal, although it is noted that most of the reporting has focused on the number of attempted executions made and not the actual enforcement of judgments. Perhaps when SEAD actually provides USAID with the number of cases enforced rather than just those executed, full or partial compliance with the Work Plan can be determined. (SEAD notes the 2882 number we only learned about long after our field visit also includes "other civil judgments. Thus, even post September 30th the Team still does not think it has an accurate number that can be properly analyzed for impact or compliance reporting purposes).

The team could not find consistent reliable data from various stakeholders and finally had to conclude that the accessible court data available should not be deemed to be entirely accurate. We also concluded that various stakeholders had different information systems and different information gathering objectives that made any kind of thoughtful analysis or planning very difficult. That being acknowledged, we believe the data and information we are using for purposes of this report to be reliable enough to come to certain findings and recommendations.

In any case, whether the 45,000, 65,000 or 100,000 number is used, the team notes that even though it is theoretically possible to enforce as many as 5,000 to 10,000 judgments over the next year, that such a number, even if it is somehow doubled, would still likely leave a significant number of backlogged judgments when this program ends in June 2012. The 5,000 to 10,000 number is based on current reduction rates with 30 recently hired clerks enforcing an average of two (2) judgments per day in Kosovo's five largest courts (which have the lion's share of backlogged utility judgments). In Pristina, the average per day in March 2011 was 1.4 per SPU clerk. While the Team can not state for sure that these numbers are entirely accurate, given the poor quality of data available from any source in Kosovo, these numbers appear to be in the ballpark and in any case help illustrate the defects in SEAD's strategic approach to the BRI. The Team's assessment of SEAD's performance is based mainly on impact during the life of the SEAD program and the program's overall objectives. We merely try to extend the logical and practical conclusions of the BRI strategy to mainly illustrate its inherent weaknesses and its overall inability to have significant short or long-term impact.

This reduction rate is based on personal interviews with enforcement clerks who gave the team data and estimates based on their actual enforcement experience. If this calculation is anywhere near approximate, it means that a total of about 60 judgments would be enforced per day in these five courts, about 300 judgments per week, 1200 judgments per month or somewhere between 5,000 to 10,000 judgments maximum per year. Indeed, even if the current BRI is extended by two additional years beyond 2012, it still would probably only reduce the current PTK/KEK backlog of 45,000 by only one-half to two-thirds. While the Evaluators recognize that there are many barriers to overcoming the huge backlog enforcement problem in Kosovo, including the capacity and resources of the court, we are mainly trying to point-out that if USAID's and the KJC's long-term goal is to substantially reduce the size of the enforcement backlog that the current strategy and methodology will not likely accomplish this objective. As noted earlier in this report, the Evaluators believe the KJC needs to develop a long-term strategic plan that clearly outlines year-by-year the number of judgments that will be enforced or dismissed so that the backlog is significantly reduced over time.

Assuming this enforcement rate holds true and the courts' capacity to enforce cases remains about the same, simple arithmetic tells us that the backlog in Kosovo's courts will continue to be a serious problem, given the total number of new enforcement judgments typically filed and enforced each year. The Kosovo Judicial Council's official case management reports indicate that the courts, on average, add about 15,000 judgments per year to its enforcement files. At the same time, these reports also indicate that the courts are only able to enforce approximately half of them each year (about 7500). They are not usually utility cases that have accumulated over many years.

This means that if any of the 7500 cases added in any year do not get concluded in a two year period, they will be added to the backlogged list (and these are all kinds of judgments not just utility judgments). At the same time, about the same number of judgments (somewhere between 5,000 and 10,000) might be enforced each year at the current BRI rate.

Thus, it does not appear the SEAD strategy or current level of work will be sufficient to significantly reduce the total number of all backlogged judgments to any significant degree, either by the end of the program or over three years, although it appears it would be theoretically possible to reduce the current backlog of 45,000 cases over a four year period. One unknown factor that could have some impact on these calculations might be the passage of a new law privatizing the enforcement system. However, at

present, no one knows whether such a law will actually pass and no one knows what provisions it might have related to the filing or disposition of new utility judgments or reducing the current backlog of judgments.

In summary, the current SEAD strategy to reduce the number of backlogged utility judgments, even over a three-year period (which would be two years beyond the life of the current SEAD program), does not seem to meet the overall backlog reduction objectives of the program (the current SEAD program funding ends in June 2012). At the current reduction rate, between now and the end of its program in June 2012, it would appear that SEAD may only be able to reduce the current 45,000 backlogged judgments by 5,000 to 10,000 at best. Even if the BRI program or some version of it continues at the current pace for two years beyond the life of the SEAD program, or through 2014, the current backlog would probably only be reduced by 15,000 to 30,000 at best (see the formula for making the current reduction rate in P16-19 above). While the Evaluators acknowledge that the SEAD program was not intended to and cannot itself significantly reduce the enforcement backlog given that it comes to an end in June 2012, we believe that one of the main goals of the overall program -- developing systems, mechanisms and strategies to reduce the court enforcement backlog -- has not and is not going to be achieved. As will be further discussed, it is hard to see under SEAD's methodology or the proposed legislative or institutional reforms, in either theory or practice, how the backlog will be significantly reduced or impacted during the life of the SEAD program or even after the SEAD program ends. In short, there is no action or monitoring plan or strategy in place that would enable any stakeholder to quantify success or failure on an on-going basis.

Other issues that appear to need attention relate to the statutory time in which judgments must be filed and enforced under Kosovo law. The first legal or statute of limitation issue relates to the time in which any debt must be collected in Kosovo, including judgments. The other statute of limitations issue relates to the time in which a utility case must be filed with the court after the debt is actually incurred.

KEK Internal Enforcement Policy

More recently, KEK has established a new internal enforcement policy that effectively dismisses all court judgments filed before 2005 and all past judgments for less than 1,000E's. It has also decided not to file any future cases for less than 1,000E's. This new KEK enforcement policy and strategy means many KEK judgments now in backlog have been effectively closed or dismissed and therefore could effectively be dismissed by the courts for practical backlog planning and priority enforcement purposes.

KEK told the team that sometime after the 2007 letter to the courts was written that it expanded its internal enforcement policy with regard to all court cases pending before January 1, 2010. We were told this policy was entirely focused on enforcing judgments against businesses only, not individuals, that the judgment had to be more than 1000E and that they were only going to try to enforce judgments filed from the beginning of 2005 to the end of 2009. KEK told us this policy decision was made for several financial, practical and socio-economic reasons, including: (i) the cost of collecting a judgment worth less than E1000 would not be cost-justified; (ii) most judgments against individuals would be too difficult if not impossible to collect because of unknown addresses and a lack of assets to attach; and (iii) most individuals in Kosovo were still living in poverty.

PTK Internal Enforcement Policy

On the PTK side of the enforcement aisle, similar policies do not appear to be in place. In fact, one might say the PTK policy is quite the opposite. Basically, PTK told us their policy is not to dismiss any case on their own initiative, no matter how old or how small the judgment. Even under the terms of the MOU (attached), PTK said that the burden was on the debtor or the court clerk to make a request to PTK to have a case dismissed for any reason. This even includes judgments for less than 50E, cases where the address of the debtor is unknown or cases where the debtor does not have any assets or is living in poverty. They appeared to say this even includes judgments where a statute of limitations might apply.

The team tried to determine the total paper value of current PTK/KEK judgments in backlog against the total paper value of all backlogged judgments in order to assess and compare the costs and benefits of the

SEAD program against other possible reforms or targeted initiatives (such as an initiative focused on enforcing other kinds of commercial or civil judgments). This kind of analysis seemed all the more important since SEAD acknowledged that it chose to focus on utility judgments because they represented about two-thirds (or about 45,000 judgments) of the total number of all backlogged civil judgments (about 65,000), even though these judgments represented a relatively small percentage of the total paper value of all backlogged judgments.

Indeed, the JSP program, as cited by SEAD itself, estimated that the total figure that could theoretically be collected from utility judgments was perhaps as low as 6 to 10 percent of the total amount that could theoretically be collected from all pending civil judgments in Kosovo. However, recently obtained data from KEK shows that at least in one month (March 2011) it was able to collect approximately 25% of the money owed in judgments dated from 2007 to 2010. If this amount is anywhere near representative of what is actually collectable by KEK, then it may mean that some elements of the BRI are worth retaining or focusing on. PTK and KEK told us that the total paper value of their backlogged judgments was 12,000,000E and 50,000,000E, respectively, although it is still not clear to the team exactly what timeframe this covers and whether the KEK figure only includes the kind of cases KEK is pursuing in its new internal enforcement policy.

For future programming purposes, it also raises the question as to whether the focus should be more on the KEK judgments, which are directed at judgments over 1,000E involving only commercial enterprises and not individuals. Indeed, KEK told us that they were not attempting to enforce judgments against individuals for several reasons, including: (i) many individuals could no longer be found because of unreliable addresses; (ii) most judgments were too small to make them worth the cost of collection; and (iii) it realized many individuals who owed money (60% of the population) lived in poverty and had no assets. They also said they were no longer filing judgments for less than 1,000E and that they were not trying to enforce judgments at all before 2005.

At the team's request, KEK provided us a breakdown of the judgments it had been able to collect after attempting collection in 138 cases (the 149,744E as reported by SEAD in year one), although SEAD disputes this is an accurate number. While this breakdown cannot be considered representative of all of the judgments in backlog it does help illustrate, at least according to KEK, that when an attempted collection was made, the courts were able to recover either full or partial payment in a significant number of cases (about 100). The grand total collected, 149,744E, means that about 25E was collected on every 100E owed in about two thirds of the cases where enforcement or collection was attempted. The average amount collected was about 1500E per case (149,000E divided by 100 cases). Of that number the full amount of the judgment was actually recovered in about 20 cases.

The breakdown also reveals that in about one third of the cases no money at all was collected. If one were to use that 25% collectable recovery rate as typical for all KEK judgments now in backlog, the total collectable amount would be around 12,000,000E. If one were to assume that no money was likely to be collected in about one third of the cases, then about 30 to 40 judgments could potentially be dismissed or closed for every 100 now in backlog. And if one adds to this number (one third) the judgments where only a nominal amount of money was collected, the number that could be dismissed or closed would be closer to one half of the total number in backlog.

In short, KEK believes its new enforcement policy is now more strategic, logical, and pragmatic and politically more attune to Kosovo's socio-economic and judicial context. They also believe it is more cost-effective and oriented towards developing a rule of law culture within the business community, which it believes has more of an ability to both pay its legal debts and enforce its legal judgments than most individuals in Kosovo.

It is also worth noting that virtually everyone acknowledges that many KEK and PTK older judgments are uncollectable for various reasons (such as unknown addresses, dead or newly located debtors, debtor bankruptcy or debtors living in or below the poverty level with no financial resources to pay). Moreover, no stakeholder we interviewed expects many of the judgments to be paid in whole or part. While neither

KEK nor PTK has had an independent auditor place a real world value on the amount they are likely to collect from all pending judgments for financial reporting purposes, even though SEAD made this recommendation to them over a year ago, a review of the research and experience from other countries related to debtor collection issues indicates that the total amount likely to be collected on debts of this nature and age would be significantly less than the amount owed.

Even if one assumes the KEK data is not a representative sample, if regional and global experience is any guidepost, research from other countries reveals that the collectable amount would probably be in the 10% to 30% range (EBRD and World Bank reports). If these estimates are anywhere close to being accurate, this would mean that potentially somewhere between 6,200,000E and 18,600,000E would actually be collected or collectable. Thus, this amount, and not the 62,000,000E (the total amount of the paper judgments), would be closer to representing the real-world value of PTK's and KEK's judgments. This latter figure becomes relevant for USAID and other stakeholders in any kind of cost-benefit analysis. It would also be relevant to the overall public worth of the utilities as they move farther down the path to privatization.

SEAD points to the initial “highly successful results” of the BRI in the PMC as justification for expanding and proceeding with the BRI initiative. However, so far most of the reporting appears to be sporadic and of a varying nature, and there is clear confusion in the reporting terminology being used. As will be discussed, some of the reporting appears to be on the number of times the court attempts to collect from the debtor and the total book value of each of those judgments (see SEAD's April-June 2011 quarterly report). In other cases, SEAD quoted data related to the total number of cases executed and the total dollar amount collected. Indeed, the Team was never given any SEAD data in a comprehensible, consistent side-by-side format.

After a thorough review of the objectives and reporting indicators agreed upon and SEAD's Performance Management Plan, as well as a round of intensive interviews with USAID and SEAD, it is clear that SEAD should be reporting on the number of cases actually “enforced”, not the number “executed” or attempted (as it defines that term). Tracking the number actually enforced would track the number of judgments actually being closed or dismissed from the backlog (including the amount collected). Tracking the number executed or attempted, along with the total paper value of the judgment, does not.

However, it should be noted that in some reports SEAD reported on the actual amount collected against the number of the court's collection attempts, but the team could only find one report of this nature. In this one instance, SEAD noted that during year one (spring and summer of 2010) the BRI strategy led to the “execution” (not necessarily closing or dismissal) of 652 judgments and actually collected E149,744 in the Pristina Municipal Court. However, in other quarterly reports SEAD seemed to be reporting on the number of executed cases and the total amount of the paper judgment or Euro value (see QR April-June 2011).

As will be discussed, even this level of reporting, which comes closer to the data needed to measure backlog reduction progress and impact (the number of dismissals or closed cases and the amount actually collected), does not allow the team to track the cost or time to reduce the backlog or the number of judgments actually enforced.

During our debrief with USAID and in a subsequent meeting with KEK the same day, we learned, for the first time, that KEK does track the amount of money actually collected and not just the total value of the amount of the official judgment on paper. However, like PTK and SEAD, KEK is only reporting on the number of attempts to collect a judgment and not the number of judgments actually enforced (or dismissed and the actual number of judgments where an actual collection occurred).

At the same time, SEAD notes that it's longer-term backlog reduction and case management strategy is both forward-looking and centered around promoting alternative dispute resolution mechanisms, such as arbitration and mediation, as well as key reforms and information systems that enable creditors to more efficiently collect debts through expedited legal procedures, such as bank account seizure and garnishment of wages.

2.2 ARBITRATION, MEDIATION AND CONTRACT LAW/LLM COMPONENTS

In Kosovo the institution of formal arbitration and mediation has long been a goal of multiple donors working in the Judicial Sector. Promoting the use of contract rights and the rule of law has been another closely related goal in various donor programs. Indeed, USAID has programmed in these spheres for many years during both past tumultuous and current transitional times.

On the mediation front, this project alone has worked with three Ministers of Justice. While Kosovo has a long tradition of informal mediation to resolve disputes before they rise to the level when formal court proceedings are necessary, there has been no formal arbitration system to resolve disputes and avoid lengthy and expensive court litigation. Although for some years there has been a Mediation Commission working under the aegis of the Ministry of Justice, there has been no court sponsored mediation which would help clear court dockets of cases and have the effect of reducing court delay. Nevertheless, there have been other efforts by NGOs sponsored by donors to train professional mediators for work outside the purview of the courts.

The broader goal of the ADR component was to establish formal arbitration and court-referred mediation centers that would give businesses dispute resolution options to the current court system, which is still emerging and remains very weak and backlogged with cases. Fulfillment of this goal would theoretically reduce the number of cases that clog court dockets, allowing the courts to focus on other issues, assuming there is sufficient demand to displace filing cases in favor of using either court-referred mediation, or chamber of commerce led mediation or arbitration centers as an alternative to going to court. Achieving these goals would necessarily require determining the qualifications, training, certification, and other regulations, including ethical codes and fee schedules for arbitration and mediation personnel. The project was also to foresee sustainability issues for the ADR Centers. For judges to refer cases for arbitration (which we were told is legally allowable and sometimes done by some judges) or mediation, they needed to be trained in how best to use these tools to help move their cases off their dockets.

Additionally, an arbitration and mediation “climate” was to be developed. To this end, lawyers and others would need to add arbitration clauses to contracts they developed, and a large scale public awareness program would be required to let the citizens know that there were less expensive, quicker ways to resolve their disputes other than taking their adversaries to court.

Overall, SEAD appears to have achieved virtually all key outputs in these components, including new outputs added to its work plan and budget. Likewise, it received high marks from virtually all stakeholders for its training programs in all of these areas.

Some of the key outputs in these components include the development of notable amendments to the existing law on Contracts and Obligations, that are designed to further harmonize and streamline Kosovo’s laws, as well as the development of new regulations, policies and guidebooks in this area. Other key outputs concern the establishment of and support for new pilot arbitration and mediation centers.

Almost everyone interviewed and surveyed believed that there was a growing demand to use more contracts in business transactions and that it was time or possible to promote a wider use and “culture of contracts” within Kosovo socio-economic context, as well as alternative dispute resolution (ADR). Likewise, virtually all interviewed and surveyed believed there was a demand for an advanced legal degree in Contracts, that an LLM degree program was sustainable and that it would help promote a culture of contracts. SEAD was successful in helping the Pristina Law School obtain accreditation for this new course.

Since virtually all of these components are pure outputs and because some of the key draft laws have not passed (although virtually everyone believed they would pass this fall), it would be premature for the team to try to measure impact at this time.

2.3 OUTREACH AND MEDIA COMPONENT

SEAD was to use an outreach program as a means of understanding policy issues in the Kosovo context and formulating policy proposals for referral to appropriate Kosovo institutions for adoption. For example, in pursuing a “culture of contracts” in Kosovo, SEAD was to use focus groups to enunciate the problems confronting economic and business development because appropriate contracts are not used, but also to promote critical thinking about the value of contracts generally. Media coverage of the issues was desired to buttress calls for change that emanated from the policy discussions. This was true for other components of the project, including the use of arbitration and mediation, the establishment of a Master’s program at the University of Pristine and the Enforcement of Judgments activities.

As noted earlier, this Evaluation does not cover an examination of most of the major elements of SEAD’s outreach and media component, given that it was not going to be officially launched until our field visit (the campaign was to begin in October 2011). However, prior to the official campaign, SEAD engaged the media, focus groups, government officials, donors, experts and the public in a number of events that highlighted the enforcement problem in Kosovo and SEAD’s reform efforts. These events are worth noting and are summarized below.

- In all of SEAD’s program components, there were outreach activities to try to obtain consensus about the problems to be solved, their causes, and solutions.
- To that end, SEAD worked with five focus groups in years one and two to analyze why formal contracts are not more widely used in Kosovo.
- Through the Kosovo Chamber of Advocates, SEAD held courses for practicing attorneys in the use and development of contracts, and the need to insert arbitration clauses into contracts, as well as the international standards for enforcement of judgments and Execution procedures.
- SEAD held a conference on Enforcement of Judgments, at which the U.S. Ambassador, and prominent Kosovo judicial figures gave speeches. This and similar activities received much press coverage and TV spots. There were six television spots, two radio spots, and eight articles in newspapers about this event.
- When promoting Arbitration, a key SEAD staffer wrote an article published in a major Kosovo newspaper about the need to use formal arbitration.
- SEAD held a major press conference on BRI that received significant publicity that highlighted the importance of the enforcement problem and the BRI. It was attended by the Deputy Prime Minister, the Minister of Justice, the President of the Supreme Court, the Chairman of the KJC, the Deputy Chief of Mission to the US Embassy, as well as many members of the press.
- When SEAD signed a Memorandum of Understanding with the Kosovo Chamber of Commerce and the American Chamber of Commerce about establishing an Arbitration Center, there were seven television spots, five newspaper articles and three web sites that mentioned it.
- When the Masters in Commercial Law program was accredited, there was an article in the newspaper, information posted on the SEAD web site, short spots on TV, and much word of mouth promotion by professors.
- Although the Mediation Centers were established, the public awareness campaign had not been initiated by the time the evaluation took place, although in an apparent showing of strong support, high ranking government officials attended SEAD supported ribbon-cutting ceremonies.
- The challenge to building a critical mass of opinion to support substantive changes in laws and procedures is great because in a society like that of Kosovo, teaching and tradition have formed —popular conflict resolution cultures” somewhat different from those espoused by SEAD.

Only time will tell if these efforts will have “sold” the changes to not only the legal profession, courts and businesspersons, but to the public in general.

3. KEY FINDINGS AND CONCLUSIONS

3.1 ENFORCEMENT FINDINGS

As noted earlier and will be discussed further, the strategy to develop systems, mechanisms and policies to significantly reduce the backlog of enforcement cases, assuming it continues on its current course and rate, would seem to have little chance of meeting SEAD's backlog reduction targets of 5,000 cases by the end of year two (2010-2011 Work Plan), since it has mainly been reporting on the number of attempted executions and not the number of judgments actually enforced (as that term is defined in the PMP). In addition, the policies, systems and mechanisms being put into place by SEAD do not appear to have the potential to significantly reduce the enforcement backlog even for several years after SEAD program ends. It is worth noting that the only clerks focused on the BRI or PTK/KEK judgments, are those recently hired by the KJC for a limited three (3) year timeframe. At present, we were told there is no clear, comprehensive operational KJC or SEAD plan or strategy that clearly sets out how much of the enforcement backlog will be significantly reduced either during this three year period or beyond, even though SEAD notes it will likely take longer than three years to achieve this goal.

There seems to be a consensus that the current enforcement system is broken and that reforms are needed. However, it is not clear that a broad consensus has been reached as to exactly what kind of private or public sector oriented reforms are most likely to work in Kosovo. While considerable debate has occurred, a number of important issues remain for public debate and many stakeholders we interviewed, particularly those outside of Pristina, had little knowledge or no opinion as to what kinds of reforms were most needed. There are also some at USAID who have serious questions as to whether a purely private enforcement system could work in Kosovo, or whether a mixed system that includes legal reforms to the public system might work better. The team is not in a position to make meaningful comments on the likelihood of success of such a new and radical change in the way in which judgments are enforced in Kosovo or on all of the changes to the system that would be required to make such a system work. However, at the request of USAID we are attaching an appendix to this report that details key global and regional enforcement issues which we hope can help inform USAID's future programming in this regard.

What we do know is that if certain international best practices are adhered to in either a public or private enforcement system that either system or a mix of systems could work relatively well over time. Different European countries have different legal histories and enforcement traditions and Kosovars themselves will have to decide what system will work best in their country. Most countries that have recently moved toward private enforcement in the region are still experimenting with this change so there is an opportunity to learn from the experience of others. In general, there is no right or wrong approach although adopting a mixed enforcement system that gives debtors both public and private options seems to be a less risky path and the one many countries are choosing.

In terms of its quarterly reports, SEAD seems to be reporting on program progress based on different objectives and indicators than those in USAID's scope. With regard to progress on the enforcement front, it is reporting on the number of times a PTK or KEK debtor is requested to pay a debt instead of the number of judgments enforced (collected or dismissed) or the percentage of the backlog reduced. At the time of the evaluation, there also appears to be virtually no reporting on the amount of money actually collected, which was one of the indicators originally contemplated and discussed in various documents. Reporting on various fronts, including the amount of money collected, would also logically be one factor among many to measure overall court performance. SEAD's method of reporting seems to be contrary to the earlier stated overarching goals and programmatic objectives of the program, as well as the self-descriptive title of the program itself (Systems for Enforcing Agreements and Decisions).

In essence, SEAD appears to be reporting on the value of the utility judgments being executed by enforcement clerks or enforcement judges (attempts to enforce) not the number or dollar amount of actual judgments enforced (collected or dismissed). SEAD argues that this should be the performance indicator since their overall program is focused on the objective of promoting court performance and not a “culture of contracts,” although SEAD refers to both objectives in various documents.

The Kosovo enforcement process is complicated, lengthy and costly, from procedural, time and total cost perspectives. Doing Business ranks Kosovo’s contract enforcement process as the worst in the region and one of the worst in the world. The team’s interviews with key stakeholders, including with enforcement clerks and enforcement judges, also supports the notion that the enforcement process related to utility cases and compliance with the KEK and PTK MOU is also very complex, time consuming and overall costly.

Indeed, one enforcement clerk outlined the process he typically utilizes to enforce a utility case either through normal procedures or those outlined in the MOU. Under either system or whether the claim involved 50E or 500E, one of the clerks outlined a remarkable number of different steps involving multiple actors and institutions and a timeframe that more often than not required six months or more to complete. This clerk also noted the complexity and multiple steps required in the MOU and stated that neither PTK nor KEK were fulfilling their agreed upon responsibilities. Indeed, one clerk walked us through at least 20 steps that had to be undertaken before a case could be dismissed or closed (enforced) and noted that this process usually required many months. It is noted that many of these steps, but not all, are seen by many as necessary legal steps that must be taken as required by law. Hopefully many of these steps will be eliminated in the new legislation being proposed. However, it is also noted that some of these steps, such as the need to pursue uncollectable judgments, including those with incorrect addresses, can already be effectively eliminated by the courts under current law.

A summary of what one enforcement clerk outlined as the steps usually involved, no matter what the size of the debt, tells the story best The creditor prepares and files a case against the debtor;

- The case is received by the court;
- The case and documents are reviewed by court staff and assigned to a judge;
- The judge conducts a proceeding to determine if it is a legal debt;
- If so the judge so finds and sends the case to the court’s Enforcement Clerk;
- Court staff then categorize the debt in the Enforcement Office;
- If the debtor objects, the debtor may file an appeal;
- The above process is repeated at the Appellate level;
- If the creditor does not provide an accurate address for the case file, the Enforcement Clerks try to locate an address by searching through the Tax Administration information;
- The clerks also try to find an accurate address through the Civil Registry;
- The clerks may also ask the Police for help;
- The clerks may also ask the utility company itself which might have developed a correct address after it filed the case for collection;
- Enforcement Clerks try to visit the debtor at his residence when he might be home, with an employee of the telephone company if possible, or a policeman if necessary. The debtor and the Clerk might have the same work hours and thus not make face to face contact;

- If the Enforcement Clerk actually makes face to face contact with the debtor, he tries to persuade the debtor to pay the bill;
- If the debtor does not pay as agreed, the Enforcement Clerk must make another personal visit to the debtor;
- If the debtor pays the telephone company directly, and does not pay the court fee, which can be 10 or 15 Euros, the Enforcement Clerk must return to collect the court fee before the case can be considered Enforced;
- If the debtor, after the second face to face meeting, still does not pay the telephone company as agreed, the Enforcement Clerk must make a third personal face to face visit to assess the value of the debtor's assets for possible seizure;
- If it is determined by the Enforcement Clerk that there are no seizable assets, the clerk must wait three months and then must make yet another, fourth, visit to see if the debtor has acquired enough assets to seize;
- If there are still no assets to seize, the Enforcement Clerk can recommend to the judge that the case be closed;
- The creditor can appeal that decision, however. An appeal keeps the case in the backlog category; and
- If the debtor alleges that he has indeed paid the telephone company, or made an agreement to pay the debt by installment payments, but the telephone company has not informed the court of this, the Enforcement Clerk must inquire of the company if the debt has been paid so that the case can be marked Enforced. (Often the telephone company does not bother to tell the court that payment has been made, or an agreement for installments has been reached.)

Other judges and clerks we interviewed further noted that the reality in practice, no matter what reforms might be passed or what MOU's with the utilities might exist, is that the judges and enforcement clerks have and will likely continue to make other kinds of enforcement cases, such as those related to the collection criminal fines, child support and criminal cases, a higher enforcement priority. They stated there were many reasons for this but they all pointed out that the virtual impossibility of actually collecting these kinds of debts in the majority of cases (wrong addresses, can't find the debtor, no money/assets, no place to store assets, no place to auction assets, no transportation, etc.) made many of their enforcement efforts pointless and overly time-consuming.

At the same time, it is clear from experience in both the SEAD program and earlier USAID funded programs focused on backlog reduction issues that the judges and enforcement clerks themselves are not exercising their full authority to dismiss cases and manage and systematize the enforcement process (SEAD Assessment). Part of the reason seems to be that neither the judges nor clerks seem to fully understand how the enforcement process should work, under the terms of the BRI or MOU, or they do not appear to have clear internal guidance on how to implement it in practice, including what the priorities should be.

Similarly, the Evaluators were told by several interviewed that judges have the legal or inherent authority to dismiss, enforcement cases, particularly those involving the utilities ("special circumstances"), that do not have correct debtor addresses or those that are clearly not collectable. While we are not prepared to argue exactly what the law allows or disallows, our follow-on points are based on what the judges told us they could do if they wanted to under the law. To the best of our knowledge neither the Supreme Court, the KJC, nor the president of any municipal court have developed such a policy or taken any action. One municipal court president even told us that while this issue has been discussed at the highest levels of the judiciary and even though an unofficial decision to do this has been made to proceed along these lines that the courts are not really moving in this direction on their own initiative. However, even if judges and the KJC do not have the legal authority to take such legal action formally we were told they can still do

considerably more to manage their caseload and establish priorities through internal policy and enforcement guidelines and objectives than is currently being done. At the same time, the enforcement clerks and judges we interviewed almost still believed they had to enforce the oldest judgments first, irrespective of their size or likely collectability, even though the KJC had rendered a decision (allowed under the special exceptions clause in the Law on Execution Procedures) that allows the courts to address judgments in other ways beyond temporal filing order. Clearly the courts have some authority to enforce some cases before others, regardless of the date in which it was originally filed, yet the courts and court personnel do not appear to even be moving in this direction. As previously mentioned, at a minimum, more court guidance, training and oversight appears to be needed.

In sum, there appears to be no written policy or clear court guidance on this all-important issue and there appears to be no on-going programmatic effort underway to develop or promote it. Virtually all stakeholders also complained that the neither PTK nor KEK were living-up to the full terms of their MOU and that they were not providing the services to which they had both committed. Some interviewed also said that the process outlined in the MOU was so complex and time consuming in terms of the way in which PTK and KEK were implementing it that it made the dismissal or closing of a case extremely difficult and time-consuming at best. This included providing transportation, updated address information, employment or bank account information. Several court officials also said they were uncomfortable traveling to debtor's homes in the cars of the utility companies, as they thought it sent a public signal that the court was not acting as a neutral arbiter of disputes. On the other hand, other court officials said they were comfortable with the cooperation, even though it was only slowly emerging.

Streamlining Legal Reforms and Privatization of the Enforcement Process

This section focuses on the new draft law to privatize the enforcement process, since this seems to be the main thrust of SEAD's overall enforcement efforts and given the fact that the wage garnishment and bank account attachment reforms are not as advanced or as broad in scope. Indeed, the latter two reforms are still in the beginning stages of implementation and appear more tenuous and dependent on other legal reforms that would need to be made beyond the scope of the SEAD program. Thus, it would not seem timely or relevant to this mid-term evaluation to comment very much on either their potential enforcement impact or even the value of the planned outputs in these two areas.

Also, while these two reforms are important enforcement tools in every country, if global experience is any guide, they are not as likely to have significant impact on Kosovo's enforcement system in the short-term, given current socio-economic, cultural, institutional, and rule of law context.

Suffice it to say that SEAD's technical and analytical work in these two areas, in terms of some of the outputs achieved to date, is satisfactory and could potentially have positive impact on the enforcement process if other needed legal, policy and technology-oriented reforms and information sharing systems (IT) are passed and implemented by institutions that are not part of SEAD's work plan or budget. However, this additional work would require significant resources and time, and it would include significant policy and regulatory programming and IT procurement, on-going training related to the Central Bank, the KJC, the Tax Administration, the Pension Fund and the courts, as well as interagency information systems that are currently either non-existent or ineffective. Support for the development of a long-term strategic strategy and work plan on how to move forward and link-up these reforms with broader enforcement reforms would help ensure these recent reforms have impact in the future on the broader enforcement reform front. It would also help ensure that these reforms are implemented within an anti-corruption, financial privacy legal context.

While the same short-term impact forecast could arguably be made with regard to the possible passage of a draft new law, which would dramatically change the enforcement process from public to private, this kind of legal reform has more far-reaching consequences for promoting the rule of law in Kosovo and an efficient effective enforcement system over the long-term.

However, not unlike some of the other legal reforms being contemplated, this institutional reform raises serious privacy issues that also need to be duly considered in any serious debate or comprehensive reform program. How and whether to share private financial and employment information among state or non-state institutions is a very important emerging issue in every country, but a more important issue in transition and developing countries, where the risk of human rights abuses and abuses of the legal system still loom large.

Privatization of the Enforcement Process

It is clear from a review of SEAD's documents and from interviews with various stakeholders that the program has invested considerable resources and time in promoting a draft law to privatize all or part of the judicial enforcement process. They have also established a good record of having worked to develop a consensus among some of the key stakeholders as to how and when to make this fundamental legal reform, although that discussion seems to have mainly focused on some of the key stakeholders in Pristina and not so much with many stakeholders outside the capital or the general public. While there have been a number of media stories that highlight this general issue and topic, as well as other legal reforms being promoted in the SEAD program, SEAD notes that its larger public outreach/public education campaign will only really be launched in October of this year.

While the team has not been asked to give an expert's opinion on whether the enforcement process should be privatized, since that is a decision that should only be made by Kosovars, we have been asked to help identify and briefly comment on some of the key issues that need to be addressed before any final reform decision might be made along these lines. This approach to commenting on the key issues instead of the draft law itself is timely, given the fact that the draft law is purportedly close to being finalized, although there is no guarantee that any new law will pass the parliament this year. It is also more appropriate since the language in the draft law is still changing in the midst of an on-going discussion with stakeholders on several key issues.

3.2 ARBITRATION AND MEDIATION FINDINGS

Two formal Arbitration Centers were instituted: one in the Kosovo Chamber of Commerce (KCC) and one in the American Chamber of Commerce in Kosovo. Each Arbitration Center has a Secretary General to be paid with USAID funds for one year, at which time the Centers are to be self-sustaining. Each Arbitration Center was equipped with the necessary office equipment to function adequately.

Each Chamber maintains a separate roster of arbitrators. The number of arbitrators on the American Chamber of Commerce roster is significantly smaller than that of the KCC because it both presented fewer candidates for training and because the KCC recruited distinguished certified arbitrators internationally. In order to bolster the roster of the American Chamber of Commerce, two key SEAD staff have been placed on the roster, although it is not anticipated that they will actually perform as arbitrators.

Arbitration Rules were established in conjunction with the two Chamber organizations. Appropriate arbitration training materials were developed and training was conducted for 40 arbitrators, in two training sessions. Although training to meet certification requirements was adequate, follow-up continuing training will be necessary to keep skills sharp. No cases had been arbitrated in either Center at the time of this evaluation, although the KCC seemed to be "marketing" its Center to attract clients.

The SEAD project plans to incorporate Arbitration and mediation clauses into formal model contracts for various economic activities, given that in Kosovo, this is a very rare practice. Nine model contracts are being developed.

With SEAD support, Court Mediation Centers and new mediation regulations were successfully established in two courts, Peja and Gjilan, through work with the Kosovo Mediation Commission and the Court Presidents. This was accomplished even though at first the Commission's members were obliged to serve without compensation, without dispensation from their normal duties, and put little or no effort into

drafting regulations or attending meetings. According to the team's discussion with the SEAD program, with patience, SEAD and other international donors working together to achieve the goal, brought the commission members along to the point to where they actually wrote the regulations (. Licensing and fee issues have been resolved and adopted. Although the Centers have been opened, judges have not been trained on mediation issues and protocol for referral has not been finalized. Therefore they cannot refer cases for mediation yet. Publicity was directed at the opening of the Centers, but we were told that there has not been a formal public awareness campaign or long-term strategy to bring private clients to the Centers to help them attain sustainability. There is also little information in the quarterly reports or other SEAD documents that shows significant activities in this area.

Two Centers have Directors, space and equipment paid with USAID funds for a period of one year. At the end of that period, they are to be self- sustaining from the fees collected from the courts and private persons. The third project involved establishing mediation centers in the two chambers of commerce in Pristina..

SEAD in cooperation with European Union (EU) Twinning and Partners Kosovo and short-term technical assistance trained 45 mediators for four mediation centers. SEAD has agreed to pay the mediators' fees for non-court referred sessions. The Courts are to pay the fees for court referred mediation. The minimum fee has been established at 25 euros per session.

Whether Kosovars are willing to use these new tools to settle disputes, which is a major change in the culture, remains to be seen. Although the framework for arbitration and mediation has been established, only time will tell if it will become part of Kosovo's commercial culture. Embedding such innovations into a culture can be a long-term process, and then only if Kosovars see the advantage and are willing to try to resolve disputes outside the formal court structure.

A year would seem to be a reasonable time for USAID to fund the salaries and costs of the Arbitration and Mediation Centers, but anything beyond that would imply that USAID found a solution to a problem unrecognized in Kosovo. If the Arbitrators and Mediators certified through the program do not get to practice their newly acquired skills within a reasonable time after training, they will both lose their skills and their interest. In order for the Mediation Centers to be financially viable the courts must begin directing cases to them. They cannot do that until the judges are trained.

Only time will tell if Arbitration and Mediation will decrease the number of cases files in Kosovo courts. Although court action will be necessary to validate the decision taken during the ARD processes, if the process occurs as envisioned, the validation should proceed expeditiously and not clog significantly the dockets.

3.4 CONTRACT LAW/LLM DEGREE FINDINGS

SEAD was seen by key stakeholders as very successful in its consensus building efforts to update, harmonize and draft notable amendments to Kosovo's existing Law on Contracts and Obligations, and the development of guides, training materials and tools (such as a form construction contract) to implement the law as amended. Next steps will be for the parliament to pass the amendments, to institutionalize training programs, for relevant ministries to then implement the law and then for the courts to enforce the law effectively, efficiently and fairly. In short, implementation of the law will be no small task. However, as planned, SEAD is now poised to move on these fronts, including the continued development of form contracts that can be used by businesses in various areas, such as leasing, employment and sales.

SEAD's efforts to establish an LL.M. degree at the University of Pristina were also seen as highly successful by all key stakeholders. Most also told the team that they thought there was a growing demand for this kind of degree and specialization, that such a program should be self-sustaining in short order and that they thought this development would help promote a culture of contracts and the rule of law. The answers to the stakeholder surveys fully supported these views.

SEAD's efforts included the development of a curriculum based on international best practices, on-going support to have the new degree fully accredited and the successful recruitment of international and national law professors. SEAD's ability to proceed with the development of a series of user-friendly contract forms as planned will depend on the passage of the draft amendments to the Law on Contracts and Obligations.

SEAD's ability to make the new LL.M. program sustainable before the end of its program will depend on whether the demand for the course is as high as is expected and planned and the law school's capacity to employ professors from Kosovo who can teach the course in future years in both Albanian and ideally English.

3.5 KEY FINDINGS

- In all of the components, there were outreach activities to try to obtain consensus about the problems to be solved, their causes, and solutions.
- To that end, SEAD worked with five focus groups in years one and two to analyze why formal contracts are not more widely used in Kosovo.
- Through the Kosovo Chamber of Advocates, SEAD held courses for practicing attorneys in the use and development of contracts, and the need to insert arbitration clauses into contracts, as well as the international standards for enforcement of judgments and Execution procedures.
- SEAD held a conference on Enforcement of Judgments, at which the U.S. Ambassador, and prominent Kosovo judicial figures gave speeches. This and similar activities received much press coverage and TV spots. There were six television spots, two radio spots, and eight articles in newspapers about this event.
- When promoting Arbitration, a key SEAD staffer wrote an article published in a major Kosovo newspaper about the need to use formal arbitration.
- SEAD held a major press conference on ADR that received significant publicity that highlighted the importance of the enforcement problem and the BRI. It was attended by the Deputy Prime Minister, the Minister of Justice, the President of the Supreme Court, the Chairman of the KJC, the Deputy Chief of Mission to the US Embassy, as well as many members of the press.
- When SEAD signed a Memorandum of Understanding with the Kosovo Chamber of Commerce and the American Chamber of Commerce about establishing an Arbitration Center, there were seven television spots, five newspaper articles and three web sites that mentioned it.
- When the Masters in Commercial Law program was accredited, there was an article in the newspaper, information posted on the SEAD web site, short spots on TV, and much word of mouth promotion by professors.
- Although the Mediation Centers were established, the public awareness campaign had not been initiated by the time the evaluation took place, although in an apparent showing of strong support, high ranking government officials attended SEAD supported ribbon-cutting ceremonies.
- The challenge to building a critical mass of opinion to support substantive changes in laws and procedures is great because in a society like that of Kosovo, teaching and tradition have formed —popular conflict resolution cultures” somewhat different from those espoused by SEAD.
- Only time will tell if these efforts will have —sold” the changes to not only the legal profession, courts and businesspersons, but to the public in general.

4. RECOMMENDATIONS

4.1 ENFORCEMENT RECOMMENDATIONS

1. USAID should review the likely impact of the BRI strategy, as it is being implemented and interpreted by all key stakeholders, including SEAD. This includes its goals, program activities and SEAD's reporting indicators. Some thought should be given to placing more focus on the enforcement of KEK judgments, since their efforts are very focused on potentially collectable larger judgments from the business community and not individuals living in poverty with no assets or unknown addresses. The potential pay-off with respect to KEK judgments, in terms of dollars and the number of KEK cases enforced, as evidenced by recent court enforcement actions and collections in Pristina, seems much higher than any pay-off from the PTK judgments under their current internal enforcement policies. However, the team believes any on-going backlog reduction effort will need to be more closely monitored and supported by both SEAD and USAID, not to mention KEK and PTK, in order to achieve any measureable impact or success.
2. USAID should consider shifting some remaining resources in the mediation component to the BRI effort. The risk of that initiative being seen as a failure by stakeholders is high. Emphasis should be placed on monitoring PTK and KEK compliance with the existing MOU and to promoting clear dismissal policies and procedures that can be undertaken on the court's own initiatives or motions. Ideally this should include categories of prioritized cases, not just utility cases.
3. At the end of SEAD Year 3, USAID should consider rolling over any on-going activities to the Effective Rule of Law (EROL) program, but only if key laws, regulations and policies currently being promoted under the SEAD program are passed. This includes key legal reforms related to the attachment of bank accounts and garnishment, mediation, arbitration and private or public enforcement, although it would appear that follow-on activities related to the seizure of bank accounts holds the most promise of improving enforcement procedures.
4. In addition, there should be clear evidence that enforcement policies and strategies with clear, practical reduction goals and self-initiated reforms have been developed, prioritized and in implementation by both the courts and the utilities, before making a further investment in a backlog reduction program. Clear commitment and consensus on the part of the courts, the banks and the utilities needs to be solidified. Support for these reforms also appears to be deepened within all of the courts among various stakeholders, and they need to be linked more closely to broader rule of law and democracy and governance related reforms in order to obtain full-buy-in, achieve success and be sustainable.
5. Another approach that should be given consideration relates to the need to expand the scope of the MOU with the utility companies to include their verbal agreement (according to some judges) not to file any new enforcement cases that are less than certain amounts and to automatically dismiss cases before a certain date (apparently they had already agreed to reduce all cases before 2003 under the Judicial Support Program (JSP) program but this agreement was never fully implemented in practice and somehow conveniently forgotten). Cases with incorrect or incomplete addresses and those that are impossible to collect (defined criteria) should also be part of a broader MOU. Judicial policy and guidance should be developed alongside both the existing MOU and any broader MOU.
6. Review the statute of limitations issues in Kosovo. Another issue that needs some attention relates to the fact that current Kosovo law provides that if an authentic documents case is not brought against a debtor within one (1) year then the case should be automatically dismissed. It does not appear as though SEAD, the courts, or the utilities are cataloguing or reviewing cases to determine whether and how many cases fall into this category and that no dismissals are being contemplated. We were told that the SEU clerk was not to advise the debtor that the statute of limitations has run, but rather to try and collect the debt. It also appears that no notice is being given to debtors that they have a right to have their case dismissed if the case was not brought within one year after the debt was incurred.

7. Consideration should be given to the development of a new MOU that promotes more cooperation and a higher degree of support from KEK and PTK. Alternatively, the existing MOU should be clarified and made more efficient and self-executing. There is also a need to make sure that the courts fully understand the content and opportunity presented in the MOU, and to support the development of an internal court guide on how to implement it and establish clear priorities. At present it is clear there is considerable confusion within the courts as to what the MOU requires and how and who to complain to if one or more parties are not complying with the agreement.
8. Review the draft law privatizing the enforcement process to make sure it includes incentives to promote enforcement of all existing enforcement cases. To do otherwise would be to invite the bad experience of Macedonia, where virtually all of the old judgments pending before the new law was passed three years ago are still languishing. SEAD told the Team that the draft law, if passed, preserves a parallel system until court filed cases are completed in order to ensure that the Macedonia experience does not occur. However, there is also still reluctance on the part of the utilities to make a serious effort to actually implement the MOU and dismiss cases. Even their process for assistance and approving the dismissal of cases is confusing, complex and technical. It appears to be designed not to work in practice or to be so costly that their assistance is ineffective.

4.2 ARBITRATION, MEDIATION AND CONTRACTS/LL.M. RECOMMENDATIONS

9. After a suitable period, the Mediation Centers established by SEAD and those established by UNDP, when they are up and running, should be studied and compared for success to determine lessons learned from each., by a USAID project such as EROL. The IMF/World Bank has extensive experience and some success in this area throughout the region and has developed good lessons learned reports and case studies that would appear to have relevance to Kosovo. It may be worth approaching the World Bank to see what regional training activities they may have planned or what kind of technical assistance or training could be provided in Kosovo.
10. USAID projects should not finance the ARD centers after the initial one-year commitment. Many we interviewed believed that if there was demand that they should be self-sustaining within a short period of time and that in any case the business community should bear any on-going expenses if the demand for this service were there.
11. During the remaining period of this program, some continuing training for arbitrators and perhaps mediators should be undertaken, unless there is evidence that the Centers are not going to be used in the near future. However, since other donors such as UNDP are working in the area of mediation, the team recommends that most resources be oriented towards making the arbitration and LL.M. programs sustainable and to the follow-on training and form development work related to the Contract's component.
12. Given that judges have not been trained in the courts where the Mediation Centers are located, they should be trained as quickly as possible.

4.3 KEY RECOMMENDATIONS

ADR/Contracts Components. The team recommends that activities related to Contracts, mediation and arbitration be kept to a bare-minimum in year three. The main SEAD outputs and successes have already been achieved in these areas. It will now be important to place more emphasis on testing the will of the relevant institutions to promote demand and to sustain these programs on their own. It will also be important to invest any remaining resources in targeted elements of these programs or on

activities related to the implementation of the BRI or to resolving important issues related to the draft law on execution procedures.

Enforcement/BRI Component. USAID support the development and institutionalization of a sound, long-term backlog reduction strategy, including actionable impact-oriented indicators and timelines that all stakeholders understand and buy into. USAID should also review the likely impact of the BRI strategy, as it is being implemented and interpreted by all key stakeholders, including SEAD. This includes its goals, program activities and SEAD's reporting indicators. Some thought should be given to placing more focus on the enforcement of KEK judgments, since their internal enforcement policies are more consistent with the letter and the intent of the MOU and SEAD's goals to establish mechanisms and systems to reduce the enforcement backlog. Their policy, which is focused on potentially collectable judgments from the business community, and not individuals living in poverty, who have no significant assets or identifiable address, is likely to produce more concrete pay-offs, have more impact and resonate more with the Kosovar people. The potential pay-off with respect to KEK judgments, in terms of dollars and the number of KEK cases enforced and the number of cases actually dismissed, seems much higher than any pay-off from the PTK judgments under PTK's current internal enforcement policies. However, the team believes any on-going backlog reduction effort will need to be more closely monitored and supported by both SEAD and USAID, not to mention KEK and PTK, in order to achieve any measureable impact or success.

Draft Law on Privatization of the Enforcement Process. The Evaluators recommends that more discussion occur with all key stakeholders in order to ensure there is broad consensus on what public and/or private enforcement reforms are most likely to succeed within Kosovo context. At present, few stakeholders seem to fully understand the pros and cons of different models in the region, including their costs, challenges, complexities and risks. We also recommend that SEAD support the development of a long-term draft strategy, work plan and global budget that clearly outlines and link-up the multiple reforms that will need to be undertaken whichever enforcement reform road Kosovars decide to proceed. This kind of analysis will no doubt help Kosovars decide which road is the best one for them.

APPENDIX 1: KEY GLOBAL AND REGIONAL ENFORCEMENT ISSUES

KEY PRIVATIZATION ISSUES

Some of the key issues most relevant to answer the question include: (i) whether a genuine consensus has been reached among all key stakeholders on the nature and full scope of the new draft law to move enforcement out of the judicial process and into the private sector; (ii) whether important related laws, such as the right to privacy, have been passed or will or can be implemented alongside such a new law to protect everyone's human rights and property rights, including the right to due process; (iii) whether any new law will include sufficient and appropriate oversight, including enforcement agent accountability and transparent/affordable fees and expenses; (iv) whether there is sufficient demand for and to what degree there is public trust for a private enforcement system; (v) whether any decision has been made regarding how to handle cases now pending, judgments currently in backlog or which enforcement cases should receive highest priority.

The team's overall finding or answer to most of these important inter-related questions is that most of them have either not been thoroughly analyzed, discussed or debated by all key stakeholders at the national and sub-national level or that most have not been fully resolved in the draft law – at least not yet. A short discussion of each of these issues follows.

A cursory review of the global and regional research and lessons learned reports on the enforcement of court judgments reveals that all of the above issues mentioned in the preceding paragraph are very important in every country, but they are particularly important and harder to address in transition and developing countries — where many institutions are still weak or corrupt and where a rule of law culture is still emerging. Indeed, these issues and more are all discussed and in a comprehensive regional comparative survey report of over 47 European and Asian countries initiated by the Council of Europe and undertaken by the Swiss Institute of Comparative Law and the University of Nancy (France) in 2007, entitled: European Commission for the Efficiency of Justice (CEPEJ): Enforcement of Court Decisions in Europe.

That report notes that while the majority of countries at that time had a public or court based enforcement system (26) that there was an emerging trend to reform these systems and a move to create new —“mixed” public and private enforcement systems. It also noted that mixed systems would provide stakeholders more enforcement options related to civil cases and judgments and alternatives to judicial dispute resolution (such as mediation and arbitration). The report further noted that 11 countries said they worked under a “purely private” bailiff system and that some of those reserved criminal enforcement and judgments against the state to the courts or public enforcement agents. Since this report was written the trend to privatize elements of the judicial enforcement system in many countries continues to play-out. While some countries, such as Macedonia, have adopted pure private enforcement systems (Macedonia), it appears most countries in the region have adopted various forms of mixed public and private enforcement systems for civil judgments. Research reveals that the enforcement reform agenda was being driven, at least in part, by efforts of the CoE and the EU to harmonize enforcement laws and procedures across the region and by business community demand to make many inefficient enforcement systems more efficient.

CONSENSUS

Stakeholder interviews and structured survey questions led us to the conclusion that most believed that a full or partially privatized enforcement could potentially work in Kosovo, although some noted there were a number of legal and cultural hurdles to overcome. However, it was also fairly clear that many expressed this opinion largely on their belief that a new system could not be any worse than the current system. We would also note there was some disagreement within the donor community as to whether Kosovo cultural

preferences for public institutional powers over emerging private sector institutional powers would inhibit the practical implementation of such a fundamental change in the legal system.

Indeed, one judge interviewed also told us that one of the biggest hurdles to overcome was of a cultural and social nature, since most Kosovars continued to rely upon the authority of the state, and not the private sector, to protect their rights and resolve disputes. This judge also noted that this society-wide cultural hurdle also helped explain why mediation was a mechanism in small demand in Kosovo. The Evaluators also found that most key stakeholders did not have a good grasp of what the regional experience had really been, and they did not fully understand that there were no easy public or private solutions as to how to make the enforcement process more fair, efficient and effective.

The team was also unable to access a relatively recent lessons learned report that had been written by the Balkans Enforcement Reform Project (BERP), which is also working in Kosovo. We believe the country specific and comparative information in that report could be very useful to Kosovo's stakeholders as they continue work on the draft law and related reforms. However, the team would note that BERP's 2009 Transition Roadmap for Improving the Enforcement Process in the Western Balkans is an excellent resource for anyone interested in exploring enforcement issues more fully.

BACKLOGS/PRIORITIES

We have learned from the experience of other countries, such as Macedonia, that it is critical to address issues related to pending cases and case and judgment backlog issues in any new laws, regulations and policies. In the case of Macedonia, which privatized enforcement, the backlog issue remains a serious problem because the legislation did not make it clear how those judgments and cases should be handled or prioritized. Likewise, it is important for the courts and the institutions involved with the enforcement process to prioritize what kind of cases should be decided and enforced first.

In the case of Kosovo it became clear to the team that the enforcement agents and enforcement judges often made their own priorities because it was either not clear what the enforcement policy was or because they did not agree with it. In Kosovo this meant that judges and enforcement clerks prioritized cases that they thought were most important and in the best interest of the family/debtor or commercial enterprise. They placed enforcement of utility company judgments at or near the bottom of the enforcement pile. This real world enforcement reality at the local level points to the need to make sure the law and policy is clear, well grounded, and well understood and to have monitoring mechanisms in place to ensure that it is followed and implemented.

PRIVACY

There are few issues more important or contentious than the privacy issue in any country. New laws and regulations are just emerging and it is difficult for the law to keep up with ever-changing technology. The issues are even more difficult to manage in transition and developing countries, where legal and enforcement institutions are still weak and corruption and the selling of information is still both a serious issue and a serious illegal business. While the team did not have the opportunity to explore this issue to any significant degree, it appears from the SEAD documents reviewed that this important issue has not been given very much attention and that Kosovo's relatively recent privacy law has not been fully implemented in practice. In any case, the EU and COE have established clear privacy rules and guidelines that merit close and timely review.

OVERSIGHT/ACCOUNTABILITY

The oversight and accountability issues are important and contentious in every country. Indeed, it is hard for experts to identify a replicable effective model for another country, since country context should dictate what oversight and accountability system might work. That said, the CoE believes it is clear that whether enforcement agents are public or private, that they are performing a public interest duty. Thus, most countries with mixed systems, such as France, have highly regulated government and private oversight mechanisms to ensure the system is transparent, effective, efficient, fair and affordable, and that enforcement agents are accountable.

In a number of countries either the Supreme Court, the Judicial Council and/or the Ministry of Justice have important oversight responsibilities, including the transparency and regulation of fees and expenses. It is interesting to note that the COE/CEPAJ report mentioned above found that the fees and expenses in countries with public or mixed enforcement systems had far greater transparency than those with private enforcement agents. In Kosovo, the debate as to which public institution (s) should provide oversight is still under serious institutional debate. The experience of other countries tells us that this is an important question that should be fully resolved through consensus if at all possible. Other key questions that do not appear to have been fully resolved relate to the ultimate responsibility of the deciding judge or the courts to oversee the enforcement process and the disciplinary and ethical mechanisms and professional incentives needed to make either public or private enforcement agents fully accountable.

DEMAND

Court data and stakeholder interviews and structured survey answers revealed that there is growing demand for more efficient case management and enforcement systems. We were told more cases are being filed in the courts than in previous years and that both the number of pending cases and enforcement decisions is growing. This reality, coupled with pressure from investors, a fast growing domestic economy, the need to resolve property disputes, and increased political pressure from the COE, EU and the donor community at large, are collectively creating the need to create a rule of law society where the law is enforced efficiently, effectively and fairly.

The main unanswered demand oriented question is whether there is sufficient demand and political will within governmental and business circles to undertake meaningful reform on the enforcement and rule of law fronts. Unfortunately the team did not have sufficient time or the mandate to fully explore this important issue with all key stakeholders. However, our initial impression is that the judges, at least at the municipal level, as well as the KJC, have not fully bought-into the need for fundamental judicial and enforcement reform, as best evidenced by their own past actions or lack of action.

While we do not have the time to go into detail for purposes of this evaluation, we would only note that the judges, courts and utility companies seemed to have passed on past and present opportunities to implement reforms or reduce enforcement backlogs and that it has taken many years to pass, much less implement, key laws to either organize the judiciary or undertake other important substantive and procedural legal reforms related to enforcement. In any case, it would appear that this is more the time to implement many of the key legal reforms recently passed before asking the system to take on more fundamental reforms of a complicated, multi-faceted nature.

APPENDIX 2: LIST OF SEAD OUTPUTS

FROM PERFORMANCE INDICATOR REFERENCE SHEETS OF THE PMP

- Outreach:
 - 2010...Project organized 25 outreach events
 - Provided copies of assessments, fact sheets, newsletters to 1110 persons
 - 2011 project website received 780 hits on daily average; 23,000 monthly
 - Organized 55 outreach events from October 2010 to July 2011
 - Developed a master list of all electronic and printed media in Kosovo
- Training:
 - Trained 47 mediators
 - Trained 25 arbitrators
 - Developed and delivered a course on Commercial Contracts Training
 - Developed full LL.M curriculum in Contract and Commercial Law (15 courses)
 - Trained 30 KJC SEU personnel
 - Trained 30 BRI interns
 - Conducted four training sessions at the KJI for judges
 - Conducted five continuing legal education sessions for the KCA
 - Organized a Mediation Study tour to Croatia
- Legislation and Regulations
 - Prepared draft Law on Obligations
 - Law on Executive Procedures amendments finished
 - Five Mediation Regulations promulgated
 - All internal Arbitration Association documents drafted, adopted and promulgated
 - Presented concept paper to MOJ on amendments to the Law on Contested Procedures
- Standard Contract Forms
 - Developed and released model construction contract
 - Eight additional standard from contracts in development
- Assessments
 - Study on Enforcement of Judgments completed
- Enforcement of Judgments
 - Hired 30 interns to catalogue utility cases in the courts
 - Held an International Conference on Enforcement of Judgments

- Entered into two MOUs with the telephone and electric utilities to help with the enforcement of judgments
 - Trained 30 KJC Special Enforcement Unit Clerks in Enforcement
- Centers Opened
 - Two mediation centers equipped, opened, and staffed with SEAD funds
 - Two arbitration centers equipped, opened, and staffed with SEAD funds

APPENDIX 3: EVALUATION QUESTIONNAIRE

MID-TERM EVALUATION --SEAD

SEAD Core Goals: Promoting a Culture of Use and Respect for Contracts and a More Efficient, Fair and Effective Legal System to Enforce Court Judgments

[Informal Anonymous Evaluation Questionnaire – Your name will not be disclosed anywhere on this form or anywhere in the Evaluation Report -- Kosovo – August 2011].

1. In your personal opinion, is a realistic within current Kosovo socio-economic and political context to promote the wider use of contracts to engage in business activities? ___1. Yes ___2. Possibly ___3. No ___4. Not sure [Comments – please elaborate]
2. In your personal opinion, would a wider use of business contracts help promote a “culture of contracts” in Kosovo at this time? ___1. Yes ___2. Possibly ___3. No ___4. Not sure. [Comments – please elaborate]
3. From what you know and in your personal opinion, is there informal general agreement or sufficient consensus within the judicial and legal communities that the training activities for judges, enforcement clerks, advocates and others, as well as the legal reforms related to commercial law, such as will help promote the wider use of business contracts? ___1. Yes ___2. Somewhat ___3. No ___4. Don’t know. [Comments – if not, what are the unresolved problems/issues?]
4. What do you see as the greatest unfulfilled need within your organization with respect to how to best participate in and institutionalize SEAD training and reform activities? ___1. Capacity building ___2. Resources ___3. Technical assistance ___4. Training ___5. Awareness ___ Other. [Comments - - prioritize them if possible]
5. From what you know and in your personal opinion, do you believe business contracts are being used more in Kosovo over the past two years? ___1. Yes ___2. Somewhat ___3. No ___4. Not sure. [Comments -- if so, how has it improved; if not is it the same or worse?]
6. How relevant in terms of substantive content has the training in SEAD programs been to your institution or own work? ___1. Very relevant ___2. Relevant ___2. Somewhat relevant ___4. Not relevant ___5. Not sure. [Comments – give an example and note what, if anything, could make it more relevant?]
7. What is the overall quality of the training materials and instructors you or your organization has received under the SEAD program? ___1. High ___2. Good ___3. Satisfactory ___4. Unsatisfactory ___5. Not relevant. [Comments – what if anything would improve the quality?]
8. From what you know and in your personal opinion, do you believe enforcing court decisions has improved over the last two years? ___1. Yes ___2. Somewhat ___3. No ___4. Not sure. (Comments -- if so, in what ways; if not, why not?)
9. From what you know and in your personal opinion, do you believe the number of unenforced court judgments (backlogged cases) in the courts has been reduced over the last two years? ___1. Yes ___ No ___3. Not sure. [Comments – if so, what made a difference; if not, why hasn’t there been a reduction or what has created a larger court backlog?]

10. Have you or your institution entered into any kind of written or formal agreement with SEAD to cooperate, participate in or institutionalize activities or reforms in their program? ____1.
Yes ____2.No ____3.Not sure. ____4. Not relevant. [Comments – if any, please elaborate on what kind of agreement/MOU; if not, why not?]
11. Do you feel that the kinds of training activities and legal reforms in the SEAD program will help reduce opportunities for corruption in the Kosovo judicial oversight or enforcement process?
____1.Yes ____2. Possibly ____3. No ____4. Not sure [Comments -- If so, how? if not, why not?]
12. Will the kinds of training activities and legal reforms in the SEAD program help promote the enforcement of court judgments and reduce case backlogs more effectively and efficiently within Kosovo socio-economic and political context?
13. ____1.Yes ____2. Possibly ____3.No ____4. Not sure. [Comments -- if so, which ones are most important; please elaborate on each?]
14. What are some of the key activities and reforms, beyond those in the current SEAD program, needed to help promote a culture of contracts in Kosovo? ____1.Yes ____2.No ____3.Not sure. [Comments -- if so, which are most important?]
15. Is there a growing demand within the business community for arbitration and mediation in Kosovo at this time? ____1. Yes ____2.Possibly ____3. No ____4. Not sure. [Comments -- if so, what key issues need to be addressed to make these systems work in practice in Kosovo?]
16. Will the possibility of obtaining a Masters or LLM Degree in Contract Law help promote a culture of contracts in Kosovo? ____1. Yes ____2. Possibly ____3. No ____4. Not sure [Comments?]

APPENDIX 4: PERSONS INTERVIEWED

USAID

1. Ardian Spahiu, Development Assistance Specialist
2. Gresa Caka, Project Management Specialist

SEAD

1. James Agee, Vice President, Checchi and Company Consulting
2. David Greer, Chief of Party
3. Marilyn Zelin, Senior Legal Advisor - ADR
4. Andrea Muto, Senior Legal Advisor – Legal Education
5. Teki Shehu, Senior Legal Advisor-Enforcement of Judgments
6. Artan Haddri, Backlog Reduction Initiative Coordinator
7. Sefadin Blakaj, Legal Advisor-Legal Education

KOSOVO JUDICIAL INSTITUTIONS

1. Enver Peci, Head, Kosovo Judicial Council
2. Albert Avdiu, Secretary, Kosovo Judicial Council
3. Hajredin Kuci, Minister of Justice
4. Lavdim Krasniqi, Director, Kosovo Judicial Institute

KOSOVO COURT PERSONNEL

Gjakova

17. Gjoke Radi, Execution Judge
18. Hektor Vula,
19. Rudin Elezi, Court Administrator
20. Sami Neziri, SEAD intern
21. Liridolia Karakushi,
22. Hilmi Hoxha, Judge
23. Liridona Ukshini, SEAD intern

Gjilan

1. Ramiz Azizi, Court President
2. Burim Emerliahu, Execution Judge

3. Berat Spalriu, Judge
4. Shemsije Kadriu, Court Administrator

Lipjan

1. Gani Zabeli, Court President
2. Jusuf Bytyqi, Judge
3. Isa Gashi, Judge
4. Avdi Gashi, Judge
5. Shashivar Hoti, Court Administrator
6. Hasim Soliliu, Enforcement Clerk
7. Luan Sopa, Enforcement Clerk

Pristina Municipal Court

1. Makifete Saliuka, President, PMC
2. Erol Gashi, KJC Enforcement Clerk
3. Labinote Ismaili, KJC Enforcement Clerk
4. Florineta Elshani, SEAD Intern
5. Vlora Sahiti, SEAD Intern
6. Mizafere Halimi, SEAD intern
7. Besa Rexhepi, SEAD Intern
8. Vatra Fernava, SEAD Intern
9. Malesore Berisha, SEAD Intern

OTHER KOSOVO INSTITUTIONS

1. Bajram Ukaj, Dean, University of Pristina Law School
2. Ahmet Kasumi, President of ARD Tribunal, Kosovo Chamber of Commerce
3. Ardi Shita, Secretary General, ARD Center, American Chamber of Commerce
4. Leke Musa, Executive Director, American Chamber of Commerce
5. Yll Zekaj, Executive Director, Kosovo Chamber of Advocates
6. Nuredin Krasniqi, Chief Financial and Treasury Officer, PTK
7. Lulzim Sokoli, Manager Legal Component, PTK
8. Rafet Halimi, Legal Manager of Telecom, PTK
9. Sani Berisha, Director of the Legal Department, KEK
10. Rexhep Podvorica, Head of Legal Affairs, KEK

OTHER INSTITUTIONS

1. Ben Reed, USAID/EROL Project
2. Terry Slywka, USAID/BEEP
3. Declan O'Mahony, EULEX
4. Llyr Rowlands, Legal Adviser to the Director General of KEK
5. Ylber Batalli, Attorney/Office of Legal Advisor, Tetra Tech Inc.

APPENDIX 5: DOCUMENTS REVIEWED

6. Performance Management Plans (PMP), October 2010 through July 15, 2011
7. National Survey on Contracts, May 2011
8. Year One Work Plan Timeline October 1, 2009 – September 30, 2010
9. Quarterly Report, October 2009-December 2009
10. Quarterly Activity Report, January-March 2010
11. Quarterly Activity Report, April-June 2010
12. Annual Activity Report, October 2009-September 2010
13. Annual Work Plan, October 1, 2010 to September 30, 2011
14. Quarterly Activity Report, Oct.-Dec. 2010
15. Quarterly Activity Report, Jan.-March 2011
16. Quarterly Activity Report, April-June 2011
17. Report, Facilitation of Focus Group Meetings related to SEAD in Kosovo, 22 April 2010
18. Report, National Survey on Contracts, May 2011
19. Report, Focus Group Report on Contracts, May 2011
20. Survey of Cases in the Commercial Court of Pristina to Guide the Creation of Standard Form Contracts, August, 2011
21. Report, Streamlining Enforcement of Contracts: Report and Recommendations Regarding Commercial Case Procedures and Enforcement of Judgments (undated)
22. Arbitration Training Manual, May 6, 2011
23. Arbitration Training Manual, June, 2011
24. 6. Alternative Dispute Resolution Materials, (undated)
25. SEAD/USAID budget revised 1/14/2011
26. Arbitration and Mediation: Kosovo and Select International and Foreign Laws and Commentary
27. Andrea Muto, May 2011
28. Lists of Participants in SEAD trainings
29. The Kosovo Municipal Competitiveness Index Report 2011, USAID/BEEP, June 30, 2011
30. Annual Working Program, Kosovo Judicial Institute (2011)
31. The Kosovo Municipality Competitiveness Index Report (2011)

32. Nations in Transit, Judicial Independence and Corruption Country Scores, Kosovo (2011)
33. USAID Kosovo Strategic Plan (2010-2014)
34. European Commission for the Efficiency of Justice (CEPEJ): Enforcement of Court Decisions in Europe (2008)
35. Regional Best Practices: Enforcement of Court Judgments, Lessons Learned from Latin America, IFES (2004)
36. Guidelines for Implementing Existing Recommendations Regarding the Execution of Court Decisions in Europe, COE (2008)
37. Doing Business, World Bank, Country Ratings: Business Reforms for Enforcing Contracts and Enforcement (2011)
38. USAID/Civil Execution Caseload Report, NCSC (2007)
39. Republic of Albania, General Enforcement Service Presentation, Ministry of Justice (2009)
40. USAID/Kosovo Justice Support Program, Annual Report (June 2008-2009)
41. Annual Work Plan, EROL/USAID (June 2011)
42. USAID/Kosovo Judicial Support Program Mid-Term Evaluation Final Report (July 2009)
43. USAID/Evaluation of the Justice System Reform Activity –Kosovo (July 2016)
44. Transition Road Map for Improving the Judgment Enforcement Process in the Western Balkans (BERP November 2009)

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