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

**STATEMENT OF DIFFERENCES TO MID-TERM
EVALUATION REPORT**

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**Systems for Enforcing Agreements and Decision (SEAD) Program in Kosovo:
Statement Of Differences to Mid-Term Evaluation Report**

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PROJECT OVERVIEW

The USAID/Kosovo Systems for Enforcing Agreements and Decisions (SEAD) Task Order was executed by USAID and Checchi and Company Consulting, Inc. on September 30, 2009. The overarching goal of the SEAD Project is to improve the rule of law foundational structures that provide the basis for increased foreign and domestic economic investment and generally lead to an improved business-friendly environment.

This program is to strengthen the legal systems in Kosovo available to citizens and businesses for 1) the enforcement of contracts and obligations; 2) the enforcement of judgments; and 3) the use of alternative dispute resolution mechanisms.

The SEAD program will focus on improving the ability of citizens, businesses and the judicial system to enforce contracts and obligations and court judgments so as to benefit citizens and businesses in a timely and just manner. Recognizing that the timely resolution of disputes is essential to the facilitation of commerce and economic growth, the program will also support the establishment of an accessible and effective alternative dispute resolution system able to provide efficient, reliable and respected mediation and arbitration services.

INTRODUCTION

The Mid-Term Evaluation Report on the USAID Systems for Enforcing Agreements and Decisions (SEAD) Program in Kosovo, which was prepared by and submitted to USAID by Democracy International, Inc., “hits the mark” in several respects, but misses widely in several others. The Report is, notwithstanding several attempts to provide accurate information to the evaluation team, generally replete with factual inaccuracies. In addition, the Report contains misstatements concerning both the legal framework that dictates how implementation can proceed, and the practical context that informs Project activities.

This Statement of Differences will therefore focus on correcting the factual inaccuracies upon which the evaluation team based its conclusions, and will avoid, with few exceptions, addressing those conclusions. Notwithstanding that the Report occasionally inaccurately conflates the Task Order organization of the Project components, structurally this Statement will track the Report’s organization, including where component distinctions are conflated by the evaluation team, so that the response applicable to a particular section can be easily identified and located. In this vein, this Statement will seek to limit discussion, where possible, only to that which is discussed in the Report, and will seek to avoid the introduction of extraneous or additional information.

Additionally, it bears noting that if this Report had used the language in the TO as both a framework for evaluation, and as a basis for discussion, it would minimize problems with definition and characterization such as those identified throughout this Statement. For example, the Contract Law and ADR components are frequently conflated, and lumped together. The Enforcement of Judgments Component should be identified as such. The Backlog Reduction Initiative should be accurately understood as a part of the Enforcement of Judgments Component. Although the BRI activities receive more attention in this evaluation, they are neither the primary focus of the Enforcement of Judgments Component, nor does this accurately convey how USAID and SEAD understand the Program design and the manner of implementation. (In some, but not all, sections of this document, BRI is in fact properly identified as “an element of” the Enforcement of Judgments Component).

The reason this definitional paradigm matters is that it undermines the utility of the evaluation to inform improvements in implementation, and renders many of the conclusions, indeed the discussion, inapplicable to the actual Project.

Misidentification of components – particularly the Enforcement of Judgments component – illustrates what seems to be an apparent general misunderstanding by the evaluation team that prospective institutional reforms and retrospective backlog reduction efforts are the same activity. This view, however, is not accurate. Although in some places the distinction is properly stated, in general the two distinct efforts are conflated, leading inevitably to conclusions that are not relevant to the objectives of the Program. The report would communicate Project activities better if the structure of the report, and the substance, were written to clearly capture the description of the objectives in the USAID Task Order.

EXECUTIVE SUMMARY – KEY FINDINGS

Overview

The Report contains numerous factual inaccuracies and misstatements that are wide of the mark, particularly with regard to the Enforcement of Judgments component, but also with regard to the other Project Components.

Component 1 – Support Local Institutions to Improve the Means and Mechanisms for the Enforcement of Obligations and Contracts (Contract Law), and Component 3 - Alternative Dispute Resolution (ADR) are addressed generally accurately, and contain only a few errors. For example, SEAD has established with partner Chambers of Commerce *two* “private sector oriented arbitration tribunal(s)” – not one, as stated in the Report – but the inaccuracies attendant to these components are not as overwhelmingly and substantively meaningful as they are for the Enforcement of Judgments Component. The Report is less accurate with regard to Outreach and Public Education (where errors similarly do not necessarily taint conclusions or recommendations). The only key point regarding outreach is that the evaluation team characterizes a major, (and admittedly important), television media campaign as the “main elements” of SEAD outreach and public education. Notwithstanding attribution to SEAD for this statement, the statement is inaccurate (as is the attribution to SEAD) – it is an important part, but does not rise to the level of “the main element.” It will be, however, the only “new” feature of SEAD outreach activities, which will still include a variety of other ongoing events, including round tables, media events, etc.

Several such errors or misstatements/mischaracterizations are present in the Report, and that there are many such examples bears noting, but only once. As such, this Statement of Differences will not further correct such instances if they are not substantively meaningful, but will focus on serious and substantive factual errors or misstatements underlying conclusions and recommendations.

Backlog Reduction Initiative

Before addressing the specific factual errors related to the Report’s discussion of Backlog Reduction Initiative (BRI) activities, clarification of the Reports’ misstatement and misunderstanding of the purposes and design informing BRI is likely to add some value to this Statement of Differences. Expanded discussion of BRI and where it fits within the scheme of the Project is contained in Section 2 – Enforcement of Judgments.

There is only one goal in the SEAD Task Order (TO): “to improve the rule of law foundational structures that provide the basis for increased foreign and domestic economic investment and generally lead to an improved business-friendly environment”. The Task Order suggests that a result that would contribute to achieving this goal would be: “Court backlogs *reduced by means developed to avoid actions* burdening the court system.” (Emphasis added).

SEAD’s primary focus is not to *eliminate* backlogs, but rather is tasked with devising means to avoid actions burdening the court and leading to backlog. The BRI is an additional task that SEAD took on,

with USAID approval, because the KJC and the Courts had no plan for doing so beyond stating a goal to accomplish it, and because it is ultimately necessary.

BRI is not intended “to develop systems to reduce the backlog and to make the enforcement process more efficient.” This is the role of activities related to institutional reform as part of the broader component. Further, SEAD has since the original inception of the BRI been clear that the backlog will not be eliminated or significantly reduced within the duration of the Project. Several major initiatives, many of them beyond the scope of the Project, are required for this to occur, and more time and resources than are available to the Project would be required. Both the SEAD Assessment, and the evaluation team’s own report acknowledge this.

Cognizant of these limiting factors, SEAD proposed a structural design that arms the KJC with a methodology for reducing the backlog. The Project obtained clear resource commitments from the KJC to ensure that backlog reduction efforts using this methodology will continue after the end of the SEAD Project.”Structurally, the design of BRI reflects current law and practice realities. It focuses resources on the largest subset of backlogged judgments (those that are clogging the system, and which, if addressed by the courts according to the law, absent Special Circumstances¹, constitute a significant impediment to existing court execution personnel in executing “regular” civil judgments). This conclusion and assessment reflects the insufficient resources available to the KJC and the Courts (and the Project) to eliminate backlog entirely by Project end.

That the BRI will not eliminate backlog is undeniable. But that was not the Program goal, nor was it ever a goal given the resources and duration of the Project. The principle question here is ignored: *is the approach sufficient, given the manner of resolving cases which the current legal regime dictates, to enable the KJC itself to clear the backlog itself in a reasonable period of time?* In other words, does it establish, and embed, sustainable capacity in the responsible institutions?

The structural design of the intervention is appropriate given levels of KJC (and Project) resources, current law, and the nature of the backlog. By having partnered with KJC on developing the approach, by securing the KJC’s commitment for a longer time frame than even the Project was given, and by relying almost entirely on resources that are internal to the KJC, the backlog reduction effort is clearly sustainable. Indeed, sustainability was not only built into the intervention from inception, it was a primary condition for launching the initiative, being dependent, prior to undertaking any activities, on a three year minimum commitment from KJC to employ the SEU’s, and on promulgation of the KJC Decision declaring “Special Circumstances².”

The assertions and conclusions of the Report here ignore the focus of the project as expressly stated in the Task Order, which is not to clear backlog in isolation, but to develop measures and mechanisms for doing so. Although the Project consistently maintains that it is desirable to reduce, and ultimately eliminate backlog, it also consistently and clearly represents the BRI as a means to establishing, and embedding in the KJC an approach that will reach that goal. Since the outset of BRI, the Project has maintained that an *optimistic* forecast for reduction is 5 years; a period of time clearly beyond the 33 months allotted to the Project.

¹ “Special Circumstances” is a legal term of art. The Law on Execution Procedures requires that cases be addressed in the order in which they were filed - i.e., temporal filing order – “except under special circumstances.” At SEAD’s urging, and based on legal analysis conducted by SEAD and presented to the Board of the KJC, the Board of the KJC announced in a Decision (drafted by SEAD) that the backlog constitutes special circumstances and allows cases to be addressed in other ways than in temporal filing order. This Decision was necessary to provide a legal basis to organize backlogged judgments into batches of actionable and geographically proximate cases to allow for greater efficiency.

Additionally, although judges do have some authority to dismiss cases under the Law on Contested Procedures and the Law on Execution Procedures, SEAD has observed that judges are often unwilling to dismiss these cases due to the ambiguity of judicial discretion on this issue under current law. Similarly, neither the KJC nor Supreme Court has promulgated any guidance. SEAD is addressing this issue through amended legislation making the rules governing suspension, withdrawal, and dismissal clearer. In addition to other procedural reforms, these procedural “pillars” constitute the mechanisms upon which SEAD’s systemic reform activities to establish conditions where the courts can ultimately eliminate the backlog, and as or more importantly, ensure it does not recur.

² The Law on Execution Procedures categorically prohibits enforcement in a manner other than the order in which judgments are filed except under Special Circumstances – this is a key legal norm contributing to the growth of the backlog, as it introduces a mandatory inefficiency (e.g., 10 claims against one debtor could not legally be enforced simultaneously barring Special Circumstances).

The Report's conclusion that the BRI will not, in itself, result in making the enforcement process "more efficient" is, strictly speaking, true, but misses the point of what the BRI is intended to accomplish. BRI was always intended to begin a process of removing tens of thousands of old cases from dockets to enable a new, more efficient, enforcement process to begin its work unburdened by this legacy. SEAD has been working closely with the Kosovo Government to create exactly that new and more efficient enforcement process. A new law implementing many of those reforms is essentially completed and ready for submission to the government and Assembly. SEAD has also worked with the Kosovo Government to facilitate enforcement against bank accounts and garnishment of wages, critical elements of making the enforcement process more efficient and effective. However, SEAD has consistently made clear that the BRI itself is not geared towards creating that new system; rather, BRI is part of the larger effort that includes the enactment of such reforms.

SEAD is quite cognizant of the error of a similar program in Macedonia that reformed the system of enforcement but made no effort to reduce backlog, leaving over 600,000 cases in a legal limbo. This backlog now threatens to undermine the Macedonian reforms. In short, SEAD is actively involved in institutional reform and working hard to bring it about. The "BRI" label simply refers to a separate part of Project activities. To observe that BRI itself will not lead directly to institutional reform, as the Evaluation Report does, thus seems simply to reflect a misunderstanding of the names attached to the various parts of the SEAD Project, and does not accurately reflect overall SEAD activities.

CONCERNING THE KEY FINDINGS

Starting with "Key Findings" in the Executive Summary, the Report introduces four "main problems:"

(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.³

CONCERNING THE "LACK OF GOOD FAITH" ON THE PART OF COUNTERPART UTILITY COMPANIES

Item (i) and subsequent discussion accuses counterpart utility creditors of a lack of good faith. This is factually wrong, and also ignores the context within which the counterparts operate. SEAD certainly does not argue that these counterparts were shining stars of implementation; yet accusations of bad faith go much too far, and are inappropriate (and additionally, contradicted by later statements in this Report!). Early participation by the counterpart utilities was indeed fraught with problems, large and small. But if performance is viewed (properly) in the context of large State Owned Enterprises (SOE) struggling to transform their calcified socialist legacy bureaucracy, and change their internal culture in anticipation of impending privatization, the conclusion of bad faith is unsupported by the facts. Performance has been, to the contrary, relatively positive.⁴ SEAD maintains that the circumstances

³Page 3 – Executive Summary – Key Findings

⁴The political context of privatization also informs questions surrounding dismissal of claims, as well, as will be discussed later in this Response.

and context of the partners must be acknowledged and included in any analysis in order to form realistic expectations, and reach an appropriate assessment of their performance.

Notwithstanding that there were – not unexpected - problems (particularly logistical and staffing problems), that impeded nimble and rapid implementation and a “fast start”, without exception when SEAD sought resolution of the problems encountered with the SOEs’ management, leadership responded by implementing Project recommendations relatively quickly (particularly for an SOE).

For example, a lack of (particularly KEK) personnel was a serious impediment to a fast start. This is one example of close monitoring and follow-through by SEAD, and the appropriate response by counterpart KEK. There was a clear deficiency in personnel assigned to support the teams (undoubtedly underlying the frustration on the part of KJC Special Enforcement Unit enforcement clerks with KEK’s support at the time of the evaluation team’s interviews). SEAD addressed this issue within days of the inception of activities in April of 2011. Underscoring the difficult context within which work with the SOE’s by necessity unfolds, recruitment of additional personnel required a Board of Directors decision, which adopted on the 8th of April – only one week after the issue was raised! Notwithstanding, due to the legal requirements – as a SOE – that the utilities are bound to observe in their hiring processes, and internal bureaucracy, public announcement of the positions was not announced until the 27th of May. The legally mandated hiring process followed, and final hiring and deployment of 6 additional legal officers to exclusively support the activity was completed only at the end of August. By the middle of the second quarter of field execution work, therefore, KEK was finally able to deploy, based on Project developed qualification criteria, an additional 6 legal officers to support the program. Interviews with line enforcement clerks and interns would of course reveal the problems; not however, necessarily the implementation of solutions at management level. Such questions were never raised with SEAD management.

At a quick glance, it indeed might appear that these SOE counterparts lacked genuine commitment, particularly if judged by the inapposite criteria applicable to a Western company, or even a transition country private enterprise. Given the nature of these partners, and sharp media and political attention to both utilities’ impending privatization, however, to accuse them of a lack of good faith goes well beyond reasonable criticism, even under the evaluation team’s implied test of “proactive dismissal” of old or low value cases. An important clarification of the definition used here is that these cases will be withdrawn, not dismissed (only the court can dismiss these cases). This distinction is not necessarily relevant to the instant substantive discussion, but it nevertheless an important distinction and use of proper terminology is generally important to proper understanding of the discussion. A more important point to note is that, as clearly articulated in the Memorandum of Understanding (see Appendix A), “proactive” withdrawal is not something agreed to by the utility company parties to the MOU. Rather, withdrawal after two unsuccessful attempts to collect, (which is in effect three attempts, as notice/service of process is required before the further two attempts can be made).

Further, legal processes require significant time before two attempts are completed. At the time of the evaluation team’s visit, backlog reduction activity was only at the start of its 5th month, with no cases yet ripe for withdrawal under the terms negotiated and agreed in the MOU. (This Report repeatedly states that backlog reduction efforts had been underway for 8 months, which is factually wrong – field execution activities commenced only in April of 2011, or just over 4 months at the time of the visit). Notwithstanding the evaluation team’s reporting that KEK communicated to them a willingness to withdraw claims (and contradicting the Report’s accusation of a lack of good faith), the MOU, which required a difficult negotiation to get to *any* dismissals, does not permit this. Additionally, the KEK CEO and Head of Legal deny making any such statement to the evaluation team, and remain unwilling to modify this provision, at least in the near term (although they have indicated that they may be willing to revisit the question next year).

An additional and perhaps the most important factor that must be considered here, and is what, in fact, the KEK and PTK cases are. It must be acknowledged that these judgments are legally supported property rights and interests in debts owed for services actually provided. It is unreasonable to ask the utilities, themselves struggling with bloated payrolls, poor infrastructure, and significant theft and conversion of services leading to severe limits on their resources, to forego these rights lightly.

Allegations of bad faith in this overall context, therefore, are unfounded. It is also a peculiar statement in that the Report contradicts this finding with subsequent glowingly positive statements regarding KEK's potential as a partner (see discussion pp-24-26 of Report).

CONCERNING PROBLEMS WITH THE JUDICIARY

Item (ii) and subsequent discussion accurately identifies a lingering problem with the judiciary, but fails to acknowledge important and informative context important to understanding causes of the problem. While both the Law on Execution Procedures, and the Law on Contested Procedures (the Civil Procedure law), provide, (in some cases wide) discretion and authority to manage case loads by suspending or dismissing cases for a number of reasons, this power is virtually never used. There are a number of reasons, all fairly typical for a post-socialist transition country judiciary, but mostly simply rooted in old practices and habits formed during the period when judges were "merely" civil servants and not empowered to use such discretionary power. This weakness is exacerbated by a current political focus on the judiciary.

Indeed, SEAD's own direct experience confirms the evaluation team's point – for example, for one case in Ferizaj, for a relatively meager amount owed KEK by a large family headed by a handicapped and unemployed man, the process failed. After the Municipal Court declined to dismiss the case, which clearly satisfied the criteria in the Law on Contested Procedures for dismissal, was sent to the District Court for dismissal. Still, the District Court returned the case, refusing to dismiss. Added to the general mentality and judicial culture are myriad other influences, political and practical, that make a traditionally conservative public institution even more rigidly cautious. Indeed, this may be one of the biggest problems facing efforts to reduce backlog. Change in this area, of course, is progressing at a snail's pace, given that USAID and other donors have been seeking to do so for over a decade.

CONCERNING SEAD MONITORING OF MOU WITH UTILITIES AND FOLLOW UP WITH COURTS AND KJC

Item (iii) and subsequent discussion is a broad and sweeping statement of deficiency on the part of the SEAD Program. It remains unclear to SEAD, however, what more could be done to "to systematically monitor and report on PTK's and KEK's compliance with their partnership agreement and . . . lack of follow-up with the KJC, the Supreme Court and the pilot Municipal Courts." This conclusion would perhaps be appropriate if it were based on facts, and if the intervention and activities were well developed and in their second year, or even at the end of their first year. In fact, however, the evaluation team's field visit occurred not even half way through the second quarter of an entirely, for Kosovo, novel approach. The factual basis for this conclusion does not exist, and is refuted by numerous examples (provided below in subsequent discussion, where applicable).

The Report cites: "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." In the first instance, SEAD's ability to motivate, let alone control, any of these counterparts is limited. Counterpart institutions are all governmental institutions or state-owned enterprises. Each, therefore, individually has its own impediments to flexibility and efficiency in the best of circumstances, even in areas of their respective primary functions. To combine efforts and resources in a joint endeavor is further complicated by these challenges. Nevertheless, when problems did arise, they were raised by SEAD, and the counterparts have, at least at the level of logistical and procedural issues, addressed (albeit not always promptly). Larger issues, of course, such as the general culture cited under item (ii) above, however, are not amenable to this type of intervention. All the same, however, the working relationships have been positive, if slow, particularly within the overall context of the institutions involved.

For example, while the backlog is indeed a problem for the courts, and one which is acknowledged and addressed, it is nevertheless one item in a long menu of similar and politically more important issues. These include (but are far from limited to) the transition to the Law on Courts and efforts

towards restructuring the entire judiciary by the end of 2012, ongoing re-appointment processes, an even larger (and more important to virtually all) backlog of pending cases, as well as poor resources, etc. For the SOE utility partners, with a poorly motivated workforce, they struggle to perform even their primary functions, and operate within the strictures of the laws and regulations that govern their hiring and firing, among other things. These institutions have no history of working together but instead were (and in some ways continue to be) sometimes antagonistic (utility complaints about poor court performance, and court complaints about utilities “flooding” the court with their claims, etc.).

In this context, SEAD by necessity allowed for a reasonable period of time (depending on the issue, ranging from a couple of weeks to a full quarter) to let the “newness” of the Backlog Reduction Initiative wear off, to allow the varying counterparts to adapt and learn to a wholly new set of activities, and to first see if problems would resolve themselves with some practical experience before intervention became appropriate. Each problem that arose, both anticipated and unanticipated, was raised and addressed with the relevant counterpart at a time that was considered appropriate to the Project and USAID (as consultation and coordination with USAID was continuous, often even daily). Ultimately, each counterpart reacted positively, albeit in a manner dictated by each respective institution’s intrinsic limitations.

The Key Findings section further addresses other issues, including difficulties in obtaining information and accurate data from the various sources (including SEAD: “based on the limited information we were given by SEAD” – see page 4). SEAD, of course, provided a great deal of information (see list of materials provided to the evaluation team as Appendix C to this Statement); indeed, SEAD provided virtually all Project work-product to the team in both paper and electronic form (on CD’s), as well as rearranging Project schedules to accommodate the evaluation team’s numerous requests for frequent discussions and meetings with Project management and component teams. In addition, extensive factual corrections were made, twice, to earlier drafts of the Report.

Corrections to earlier drafts also contained, in response to the evaluation team’s observations, complete and up to date information regarding the number of judgments finally enforced, in addition to data on field executions (the September 30 report provided the team, and which is also updated and provided weekly to USAID, is attached to this Statement as Appendix D – the November 30 Report is also included). The data provided was collected jointly by SEAD staff and KJC Special Enforcement Unit clerks in cooperation with the Court Presidents. It is verified, and reliable, and does not conflate executions with final enforcement, as stated in the Report (unless one reads only the first of two columns on the one-page spreadsheet). The evaluation team acknowledges receiving supplemental information, but for some reasons continues to doubt the veracity of this information. As such, the evaluation team’s “best guess . . . that that number includes cases that have also been executed (attempted enforcement) as opposed to enforced” is incorrect. As of September 30, 7,772 field executions had been performed, with 2,882 cases finally enforced, and with 2,162,731 Euro *actually* collected. This number consists of 2,293 authentic document cases, and 589 “other civil” cases (notwithstanding this Report’s misstatement that SEAD focuses “only” on authentic document cases, in fact SEAD supports the courts to enforce *all* civil judgments, with a primary focus on the authentic documents).

The Report correctly points out, too, that this number does come in below the first year target of 5000 cases. This is because three months were lost in hiring and training the 30 new KJC enforcement clerks due to a variety of factors, including early elections that impacted the State budget, KJC’s civil service hiring procedures, and an enormous number of applications for the positions. Additionally, the averages also did not meet target expectations (SEAD had targeted – essentially guessing, as there is scant performance data on existing enforcement actions to base the forecast on, 5,000 cases assuming 9 full months of execution. This is approximately 550 cases per month reaching final disposition through the end of the Project’s fiscal year. Actual performance revealed approximately 480 cases per month. Although not necessarily relevant to this Statement, later performance reflects an overall improvement to monthly averages approaching the target. As of November 30th, 4,056 cases had reached final disposition. It was always expected that early performance would lag, as systems were tested and improved, information flow was expedited, etc. In retrospect, and in light of current

performance, although ambitious given the overall context of backlog (processes, limited information on debtors, etc.), this target was fairly accurate.

The evaluation team additionally observes that this data was not contained in the quarterly reports provided them. This is a true. However, given that the team was present well before the close of what was only the second quarter of BRI field activity, the inference that SEAD was not collecting information, or was concealing it, is misplaced. There simply was no data of reportable significance in the previous quarterly report (at most a couple of hundred of the over 100,000 judgments in the courts' dockets). As noted above, field execution is a threshold matter, without which cases cannot reach final disposition. Therefore the Project focused on this court activity. This is of course logically even more important at inception.

With regard to general availability of information from courts and counterparts, SEAD completely agrees: it is difficult and frustrating to receive information from the various counterparts, who frequently change the information reported, fail to accurately collate various data sources, and collect and report differently on the same questions. SEAD's experience mirrors that of the evaluation team. As a result, SEAD only utilizes data it is able to either itself collect, or verify if collected from another source. In fact, this point underscores one of the more disruptive challenges to the enforcement system as a whole as there is virtually no reliable information available even on the court files, let alone on debtors and their assets.

It must be noted that expectations have never been exceedingly high for this activity: at no time has SEAD maintained, nor stated an expectation to eliminate the backlog during the life of the 33-month Project. On the contrary, SEAD activities seek to develop means and mechanisms for the counterparts to do so after developing their own capacity and employing the SEAD developed approach, and to provide as much assistance as possible with the time and resources at hand during the life of the Project. Indeed, SEAD has been consistent in forecasting *optimistically* that within the existing processes and with current resources, it will take 5 years to achieve virtually complete reduction, including dismissals, withdrawals, etc.

Finally, it bears mention that SEAD's approach was designed to circumnavigate the causes of complete and abject failure to achieve *any* results for several years, by several donors, and to take lessons learned from the several efforts, all of which failed to generate any discernible activity by the courts. Indeed, given the history of repeated similar efforts to address the identical problem (acknowledged in this Report), the Project was actually surprised when pilot efforts to test the approach in Pristina Municipal Court resulted even in tens of cases receiving attention. In sharp contrast with these earlier efforts, however, for which there is no evidence that even *one* case was resolved, the current approach does, in fact, yield results, albeit to date rather limited.

CONCERNING REPORTING

Item (iv) and subsequent discussion notes that the Project "use[s] . . . a reporting indicator that does *not measure impact* and does not comply with USAID's Performance Management Plan" (emphasis added). This is accurate with regard to USAID's PMP, in isolation from the duration of the activity, and the context of the *legally required* enforcement process, which requires several attempts toward recovery (and allows even for litigating or re-litigating a judgment) before a case can be disposed of. As such, the Project measured field executions, because this is a sound measure of court activity. The Project agrees and acknowledges that capturing final disposition is an important measure, and began reporting this information in response to the evaluation team's recommendation (although the Report's failure to acknowledge this adjustment is curious, that point is irrelevant to this discussion). Indeed, the Project agreed that the only true measure of success is final disposition, but that this measure, standing alone, fails to capture what is actually happening (for example, each case typically requires several attempts at field execution before final disposition can be achieved).

Ultimately, however, the Report's analysis suffers from a misunderstanding of the law, and a misstatement of SEAD's focus. The evaluation team states:

“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 Report does not acknowledge that these are not two separate issues. They are integral parts of the same thing. However, while execution can certainly exist without final resolution, the reverse is not true. And while it is true that the Project had focused on executions in its reporting, as execution attempts constitute evidence of court action, the rationale for this was based in efforts toward monitoring whether enforcement clerks were performing any of the precursor, or threshold actions, necessary to achieve final resolution. (These actions, too, in contrast with dismissals, which do nothing for creditors, nor demonstrate improved court performance, although they would certainly “reduce backlog”, are the only measures of whether there are court efforts to perform their functions). And because at the time of the evaluation team’s field visit, the activity was only starting its fifth month, there was rather marginal data to report regularly on cases that were finally resolved. Notwithstanding, when raised by the evaluation team, SEAD began regular reporting regularly on both field executions and final dispositions. Although the Report devotes considerable space to this issue, as the matter was resolved prior even to the first draft of the Report (and about which the evaluation team was twice informed, in written corrections to drafts), no more attention will be given this issue in this Statement.

Additionally, this early reporting focus was agreed upon between SEAD and USAID for the same reasons. i.e., to monitor genuine actions geared to reducing backlog as opposed to merely reportable reductions (from withdrawals, dismissals, etc.). The general consensus from KJC leadership and business leaders, as well as in the opinion of the Project, is that aggressively pursuing administrative dismissal and statistical housekeeping at the expense of seeking to pursue viable cases would be seen by Kosovars for what it is – an effort to “look better” without actually having an impact. This approach would be contrary to the Project’s overall objective, which is to “improve the rule of law foundational structures that provide the basis for increased foreign and domestic economic investment and generally lead to an improved business-friendly environment.”

CONCERNING THE TIME NECESSARY TO FULLY ELIMINATE BACKLOG

With regard to whether the backlog can be reduced during the life of the Project, SEAD absolutely agrees. This was never contemplated. Indeed, given the short 33-month life of the Project, such an expectation would presume a great deal of preparatory work, which had not already taken place, and significantly greater resources than are available to the Project.

CONCERNING SUPPORT TO THE KJC

The Report further concludes that “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.” This conclusion is utterly devoid of any factual basis. First, as was explained and demonstrated to the evaluation team on several occasions, prioritized geographically organized “batches” of actionable judgments are generated weekly for the SEU’s by SEAD personnel (in fact, three SEAD staff are permanently assigned to perform this function, to liaise with Court Presidents, Enforcement Judges, and creditor partners, and to manage the SEAD interns who enter information from the paper files into the Project developed database that enables geographical batching. (Examples of the April batches, or plans, which are generated weekly, and dating from the first weeks of the activity, are included as Appendix E). More discussion of “batching” is below, in this Statement’s discussion applicable to Report Section 2.1.

Additionally, the evaluation team misreads the MOU, and even misidentifies the parties to it. It is an MOU between SEAD, and two judgment creditor SOE's⁵ – the electric company KEK and post/telecom PTK. It was witnessed by the KJC, but KJC is not a party to the agreement. As such, it does not promise anything to the KJC.

Notwithstanding the MOU question, however, SEAD has provided a great deal of assistance and resources to KJC. This assistance has been technical, legal, and material - to equip the SEU's so that they have, in fact, the tools they need. In order to launch the initiative, SEAD developed for the KJC a wide range of legal analyses, budget analyses, reports, and initial drafts of regulatory instruments necessary to establish SEU's. These were presented to the KJC Board to secure its decision to support BRI. SEAD has purchased and equipped each SEU enforcement clerk with a laptop, and each SEU office has been provided with printers (including mobile printers to avoid having to fill out paper in the field, necessitating a return to the office and a repeat of a field visit to finalize an action), and other related peripheral equipment. In Pristina, SEAD rents office space for the SEU, and equipped it with the necessary furniture, etc., as there is insufficient office space to house the SEU in the Pristina Municipal Court. (Copies of all of the relevant documents were provided to the evaluation team, in addition even to the SEAD Program budget, containing detailed information on how much had spent on this support, and for what). Additionally, three SEAD Program personnel are assigned full-time responsibility for all the coordination and liaison support between the various parties, which is necessary to facilitate ongoing operations. This includes weekly batching of prioritized cases by geographical region, verification that the batches do not contain cases that have already been paid (a common flaw in the KEK and PTK databases is that debts have been paid, but not reported to the courts), assisting transfer of files to SEU's, and a wide range of other tasks.

CONCERNING THE STATUS OF KJC SEU'S AND SEAD BRI TEAMS, AND THEIR INTERACTION

It is important to clarify that the KJC SEU's and the SEAD BRI Categorization Teams are separate entities. The SEU teams are KJC employees, not SEAD's, and SEAD therefore, does not have (nor can it have) managerial control over their work. Instead, SEAD must work with, and through, Court Presidents and the KJC. The Report notes these teams and interns will do “nothing but focus on reducing the number of backlogged utility cases in Kosovo's five courts.” This is inaccurate, and contrary to written and verbal communications provided the evaluation team (and also contradicted by the Report in other areas).

First, SEAD Teams have worked, to date, in 9 courts, and the SEU's are assigned to 5 of Kosovo's courts – those with the largest proportion of Authentic Document cases in the backlog. Although the main focus of the KJC SEU's is authentic document cases, in at least two courts the KJC SEU also assists the court in the enforcement of general civil judgments as well (Peja and Prizren). In at least four courts (Lipjan, Malisheve, Suharekë, and Gjilan) SEAD BRI teams also work on supporting those courts to enforce other civil judgments. SEAD BRI Categorization Teams are categorizing *all* civil judgments in the courts they work in (focusing first, however, on authentic documents where SEU's are operating and/or it is practicable). The evaluation team was repeatedly informed, both verbally and in writing, that the BRI Categorization effort will seek to cover as many courts as possible during the duration of the project and, although focused on supporting the SEU's, the initiative is intended to generally support the KJC with building the backlog database as completely as possible given Project resources and duration, and is not restricted to “only” supporting the SEU activities.

As was explained in the SEAD briefing to the evaluation team, SEAD *Staff* (not interns) engage in batching categorized cases on a weekly basis, and generate batches based on geographical proximity. Indeed, the batching is not focused on singular debtors, which is too narrow a focus, but rather on covering neighborhoods for speed and efficiency. Geographical proximity batching, (which was always planned as the approach SEAD would take), however, does capture individual debtors, so long

⁵ Technically, these are Publicly Owned Enterprises – purportedly “private” but the State is the sole shareholder.

as they live at only one address. Additionally, SEAD supports the SEU's by first taking each weekly case plan to verify the validity of these claims with KEK and PTK to ensure that enforcement actions are NOT taken on cases that have already been paid, but which have not been withdrawn by the creditor. The number of these cases is not high, but nevertheless, it is important that SEU's not attempt further field execution on them.

CONCERNING A KJC BACKLOG REDUCTION STRATEGY

The Report also proclaims: "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." Such a Strategy does exist, however.

The KJC and the USAID Kosovo Justice Support Program (JSP) (with SEAD Program input on judgment backlog, and Mediation questions) together developed a comprehensive backlog reduction strategy in 2010, which was adopted and promulgated by KJC as an official strategy document. Implementation of this strategy, which also addresses enforcement (and includes extensive SEAD cooperation and liaison), is continuous and ongoing. It is true that SEAD did not provide a copy of this document to the evaluation team (documents provided to the evaluation team were limited to SEAD work product and draft laws), although reference to participation in developing and the promulgating the Strategy can be found in SEAD Reporting.

CONCERNING LEGAL REFORMS AND OTHER ENFORCEMENT OF JUDGMENTS ACTIVITIES

Although under the SEAD Task Order, in Project documents, and in several communications, verbal and written, to the evaluation team the activities related to reform of the system for enforcing judgments are primary and priority over efforts to reduce backlog, the Report recognizes these activities as "an important second element" to SEAD enforcement of judgments activities.

This is much more than another element of the Enforcement of Judgments Component – these activities are the primary focus of the Project, and relate to the following results: "Procedural shortcomings in the Law on Execution Procedure identified and amendments introduced." Additionally, the law does vastly more than "privatize" enforcement; *inter alia* the draft also streamlines existing court processes, removes opportunities for endless appeal, provides greater power to courts to administratively and ex officio deal with cases proven to be unenforceable, re-establishes underlying claim statutes of limitations (see discussion under Section 2.1) in order to properly dispose of criminal and administrative fines that have been reclassified as civil judgments and constitute a large percentage of the 100,000 case backlog, in addition to establishing the legal framework for a highly regulated, non-court based bailiff system (called generally "private" enforcement).

This law will achieve two goals – first, and foremost, it will replace the two laws currently in force, streamlining a number of procedures, eliminating a number of steps in the enforcement process, limit the opportunity for debtors to "object" to enforcement actions, provide greater power to judges to dismiss unenforceable cases, etc.

The draft will also remove from the courts enforcement. This is commonly styled a "privatization." This term, as it stands alone here, accurately reflects the "shorthand" usage for removing enforcement responsibilities from the courts and transferring them to a bailiff institution, but does not fully capture how such a system works in practice. As written in the draft, (provided to the evaluation team), the institution proposed is not a "pure private system" at all, but rather, on the model of more than 20 of the 27 EU Member States, a non-court based but otherwise heavily State regulated and controlled model.

Key Recommendations

ADR/CONTRACT COMPONENTS

This is an inaccurate identification of Project components – the ADR and Contract Law Components are two separate components, not one joint component.

With regard to the recommendation, SEAD maintains that both ADR centers still require a considerable amount of effort before they will be fully functional, efficient providers of ADR Services. Although they are well-established, they lack sufficient capacity to be “cut loose” prematurely. With planned support the centers should be sustainable by Project end, but if support were withheld, SEAD maintains this would be a guarantee for these efforts to fail as a result of insufficient follow through. Additionally, Standard Form Contracts, to be developed following passage by the Assembly of the new Law on Obligations, so as not to be instantly obsolete, still remain to be finalized and promulgated. Mediation is also a nascent institution, and notwithstanding SEAD successes in establishing the secondary legislation necessary for mediation to be viable, much more work remains before this task can be considered completed.

ENFORCEMENT/BRI COMPONENT

As previously mentioned, BRI is but a subset of the Enforcement Component. Similarly, the specific recommendations have already been addressed above (or below), and will not be restated here.

STRATEGIC BRI FOCUS

As with the enforcement component, this is addressed – considerably – elsewhere, both above, and below.

DRAFT LAW ON ENFORCEMENT PROCEDURES

SEAD concurs virtually entirely with the Report recommendations; obviously, as the working group developing the law has yet to agree on which of two alternative approaches to overseeing the new institution of bailiffs will be contained in the final version, coordination and considerable discussion still remain.

1. CONTEXTUAL OVERVIEW OF THE SEAD PROGRAM

1.1 Background

This section of the Report also contains a meaningful factual error, and concomitant flaws in legal analysis.

First, the Report asserts:

“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.”

These numbers are not a topic of debate. While it is true that the precise number of these cases can only be estimated because SEAD has not yet categorized all of the judgments, and KJC data does not capture them as a discreet category, their legal validity is indisputable. SEAD is a Rule of Law Project, charged with legal reform. That the law “technically” recognizes these judgments as enforceable is not an insignificant issue, and the legal status of these claims must not be disregarded in a cavalier manner, if the law is to be respected and observed; this is unavoidable no matter what consensus there may be regarding the policy question of whether or not they *should* be legally valid.

SEAD agrees that as a matter of policy that enforcement law should not depart from limitations found in the law underlying the claims. Legally, these are mostly criminal claim execution proposals (although there are a good many court fees claims in this number as well). These claims, with State as creditor, are typically administrative or criminal fines (or, as noted, court fees). In the underlying legislation, there is a two year limitation period for fines, during which the creditor (the State) must take action in furtherance of enforcing its claim. The filing of an execution proposal, under the Law on Execution Procedures, constitutes an action in furtherance of enforcing its claim, thereby tolling the claim. As such, their legal status is more than a technicality. As a matter of law, these claims are valid, notwithstanding that they have not actually been collected during the two year period.

SEAD has been a vocal advocate for amendments to the Law on Execution Procedures to limit the term for collection for both practical and policy reasons. SEAD has ensured that both variants of the draft Law on Execution Procedures presently under development by the Ministry of Justice incorporate, by reference, statutes of limitations from underlying laws, and apply them to actual *collection* during the period. This analysis is not applicable, however, to the court fees claims.

With regard to the court fees cases, SEAD similarly advocates that these cases be *ex officio* dismissed, as carrying them and actually enforcing them likely carries greater cost to the courts than the amount to be collected. The bottom line regarding both, however, is that they are under current law completely valid claims, and until such time as law and policy positions change (and there is no guarantee that the government will adopt SEAD’s positions with regard to either), they must be counted as valid claims, and treated with as much respect as any other.

SEAD provided data on judgments categorized to date, from which approximately 30% of the backlog of unenforced judgments consists of cases that are criminal fines, court fees, or a combination of both. Even though only approximately two thirds of the 100,000 cases have been categorized by SEAD (at the time of this writing), it is possible to extrapolate from these efforts that 30% is a more or less accurate estimate as to the number of claims based on criminal or administrative fines, court fees, or both. This categorization does not capture what is to be done with court fees. Even if the statute of limitations applies, in a large number of these claims, court fees are sought as well. Recent (September 26, 2011) figures: Total civil judgment claims deriving from criminal fine cases are combined court fees and criminal fines, as all criminal fine cases also seek court fees; the total number includes these two categories as well as cases that are not past the Criminal Code Statute of Limitations, i.e., cases not amenable to dismissal.

MALISHEVE		
1704 cases	no of cases	Euro value
Court fees	410	26,556.78
2 years old (end of 2008)	395	92,744.43
Total criminal Cases	931	176,687.89

GJILAN 6019 cases	no of cases	Euro value
Court fees	655	27,355.36
2 years old (end of 2008)	221	138,380.05
Total criminal Cases	1158	990,627.88

GJAKOVE 7349 cases	no of cases	Euro value
Court fees	1031	51,220.79
2 years old (end of 2008)	504	48,827.58
Total criminal Cases	1205	88,898.95

PRIZREN 7098 cases	no of cases	Euro value
Court fees	917	73,366.95
2 years old (end of 2008)	567	86,775.74
Total criminal Cases	1292	214,674.11

SUHAREKE 2582 cases	no of cases	Euro value
Court fees	429	32,082.18
2 years old (end of 2008)	770	199,902.14
Total criminal Cases	1053	255,797.77

LIPJAN 2706	no of cases	Euro value
Court fees	1040	63,146.43
2 years old (end of 2008)	672	122,194.07

Total criminal Cases	1275	178,423.09
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TOTAL	CASES	EUROS
27458 cases	6914	1,905,109.69

2. PROGRAM COMPONENTS

2.1. Enforcement/bri Component

CONCERNING TASK ORDER COMPONENT DEFINITION AND DESIGN:

The Report conflates Project organization in this section heading and departs from the Task Order organization. SEAD maintains that adhering to the Task Order is important to understanding the Project, and to properly framing discussion of its activities and results, and forming conclusions about it. Further, SEAD suggests that this understanding must be placed in the context of lessons learned, and the context within which the activities take place to fully appreciate activities and results (on this latter note, the Report does a good job recognizing key problems and current context, but does not connect them closely with Project activities).

This present discussion is therefore necessary for clarifying discussion in the Report.

The Task Order Expected Results for this Component are:

- Procedural shortcomings in the Law on Execution Procedure identified and amendments introduced;
- Court case filing process is streamlined and tightened as court clerks are trained on the filing requirements and procedures including fee collection;
- The role of the judges in the enforcement process is re-evaluated and the administration of non-judicial responsibilities is transferred to the court clerks or a private collection system;
- Overall enforcement efforts are improved as training programs for judges regarding their enforcement duties are developed and delivered;
- Courses on execution of judgments developed and delivered through KJI; and
- Court backlogs reduced by means developed to avoid actions burdening the court system. (Emphasis added).

The Task Order illustrative activities are:

- Identify the procedural shortcomings in the Law on Execution Procedure and propose appropriate amendments;
- Identify overly-burdensome actions and processes clogging the courts (e.g. utility bills) and propose means to resolve the problems;
- Train court clerks on case filing and processing requirements and procedures;
- Re-evaluate the roles of judges in the enforcement process and assess the possibility of transferring the administrative or non-judicial responsibilities to court clerks or a private collection system (e.g. private bailiffs);
- Develop better training programs for judges regarding their enforcement duties; and

- Develop courses on execution of judgments for the KJC that could be added to the curriculum of the KJI.⁶

Under these defined activities, and as previously noted in this Statement, backlog reduction activities – BRI – are corollary, and constitute a subset of the Enforcement of Judgments component. More importantly, they do not constitute the Project’s main focus, nor are they the most important component activities.

In contrast with the Task Order, however, the Report states:

“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.”

SEAD, and USAID Kosovo, however, understand the primary focus of the Project is to improve processes regarding enforcement. The improved processes are required to also facilitate reducing the current backlog, and ensure that a backlog does not again arise. As such, SEAD’s efforts to improve processes are primary – indeed, really the sole goals of the Project. These activities receive minimal coverage in the Report, primarily include developing new legislation streamlining procedures, and by establishing the institution of bailiffs to prospectively reform enforcement in order to overcome the court systems current, and forecast, chronic resource and capacity limitations.

SEAD activities also involve building avenues for information exchange between courts and other government institutions to allow for more efficient location of judgment debtors and identification of their assets. The Project’s primary effort is on new legislation. SEAD is officially a member of the Ministry of Justice’s legislative drafting working group developing a new draft Law on Execution Procedures. This law, in addition to streamlining court processes, etc., also creates the institution of bailiffs (in “shorthand” characterized, somewhat inaccurately given the rather extensive involvement of government in regulating the institution, as “Private”).⁷

This working group has actually been working on two varied approaches. One version vests nearly all responsibility for licensing, regulating, monitoring, and control of the profession of bailiffs in the Ministry of Justice. The alternative, advocated by SEAD and incorporating lessons learned in Kosovo and in the region, where the executive branch often does not respond nimbly to judiciary concerns, incorporates extensive KJC involvement in key decisions.⁸ This is an additional mechanism to ensure backlog does not arise again (as KJC would be in a position to ensure the number of enforcement agents was quickly expanded, in the event that there is an insufficient number of bailiffs to keep up with demand).

Additional SEAD interventions to improve processes, already well-advanced, include those that allow for exchange of employer data by tax authorities so wages can be garnished; by regulations that create increased Central Bank oversight of commercial banks to ensure greater compliance with enforcement actions; and by establishing mechanisms for information exchange between courts and the Central Bank on bank accounts facilitating greater efficiency in attaching bank accounts to satisfy judgment debts.

⁶For purposes of this Statement of Differences, it bears mentioning (but not belaboring) that SEAD of course is actively implementing all of these activities. The one exception is with regard to working with court clerks (not to be confused with enforcement clerks) on training and on filing procedures, as at this point in the enforcement process administrative functions are legally limited, and activities here would not lead resolution of the problems (the relevant authority and jurisdiction rests with the execution judge(s)).

⁷ It is “Private” in that the function is removed from the court system, and bailiffs are non-governmental and non-civil service. An important caveat to this, however, is the extensive amount of regulatory oversight that a government institution maintains.

⁸ Particularly those involving the number of bailiffs (a minimum threshold and non-discretionary increase should a backlog begin to accumulate), and revocation of a license (as a mechanism to minimize the influence of “telephone justice” or other influence on a bailiff), among others.

CONCERNING BRI DESIGN

A conservative, risk-averse approach to seeking the Task Order results in implementation, one that focused *narrowly* on the implementation of the Task Order's mandate, would have the result of limit activities accordingly, in seeking little actual backlog reduction, but being satisfied with prospective reforms that are achieved through capacity building and procedural reform. In truth, the task order contemplated a limited approach, with activities piloted in only one court (albeit Kosovo's busiest, Pristina Municipal Court). This is also the approach taken by past donor projects in Kosovo, and in the region.

It is not a stretch to infer from the fact that SEAD exists that previous efforts did not lead to resolution of the problem. Regionally, similar efforts have also failed – in some instances spectacularly: Macedonia's reform, which largely mirrored the SEAD design, ultimately succeeded in reforming the system *prospectively*. Simultaneously, however, this intervention erred catastrophically as the reform left orphaned a backlog of over 600,000 cases that could not be transferred to the newly established bailiff system, while also eliminating the means by which the courts could enforce these cases (their jurisdiction and resources were limited under new law).

SEAD BRI activities, developed closely together with USAID Kosovo, sought to incorporate the lessons learned from these previous experiences, both in Kosovo and in the broader region, as well as to capitalize on new opportunities with an innovative, and previously untried, approach.

Briefly, three core issues informed SEAD's and USAID's strategic planning for enforcement reform:

1) Capacity building alone has failed in Kosovo, and doing more of the same would also result in further failure. Even assuming "perfect world" skill-sets and efficiency, the judiciary will for the foreseeable future lack sufficient resources to fully perform all of its current adjudicatory *and* enforcement functions. The judiciary is woefully under-resourced and it will not see improvements to resource levels any time soon given overall limitations on State resources. There will simply not be available to the courts in the foreseeable future sufficient tools for both. Without addressing the courts' severe resource limitations, both increased capacity *and* streamlined procedures⁹ will be insufficient to resolve problems.

This background informs why, by at least January 2010, the Government of Kosovo policy decision was taken to adopt the bailiff system, as was already done by more than 20 of the 27 European Union members, and others in the Western Balkans, including Albania and Macedonia. (That the Government of Kosovo had *already* taken this political and policy decision by the time SEAD began operations is not acknowledged by the report. The evaluation team is nevertheless accurate in recognizing that SEAD does support the introduction of bailiffs, with simultaneous procedural reform, as the best approach for reforming Kosovo's enforcement system).

2) Compounding resource and capacity issues is the turmoil the judiciary is presently experiencing due to the complex task of transitioning to a comprehensively reorganized justice system. The transformation flows from the adoption of a four new "justice sector" laws (laws on Courts, KJC, Prosecutors, and KPC). These laws mandate transformation be completed by January 2012. These challenges, of course, are on top of existing challenges the courts face from a lack of resources allocated for the adjudication of cases, the dismissal and re-appointment of many judges, and the lack of a modern case management system, among other intrinsic problems.

This transition, even solely with regard to adjudicating cases, constitutes both the political, and the institutional priority for an already nearly overwhelmed system. Enforcement, while incredibly important, still takes a backseat to these issues. This reality further supports the policy choice to transition to a bailiff system, acknowledging limitations on the ability of the courts to accomplish sweeping reorganization of organizational, administrative, and adjudicatory functions, *and* enforcement.

⁹Those limiting the ability of judgment debtors to use legal processes to delay judgment, granting and mandating the use of greater judicial power to manage caseloads, and making greater information on debtors available, and other procedural changes.

From SEAD's perspective, this also mandates that *some* mechanisms, methods, and capacity be built within the KJC to deal with its existing docket of judgments (at the time of this writing, now over 117,000 cases). As in Macedonia, these cases will remain the responsibility and jurisdiction of the courts until they are finally enforced, or judgment creditors *willingly* pay a *second* time, a fee to a bailiff to enforce (they will have already in most cases already paid a fee to the courts).

This transitional filing fee challenge creates a problem. While it is certainly likely with regard to perhaps even many cases, but by no means all, judgment creditors will choose to do so as and when bailiffs demonstrate performance. But no "refund" of filing fees is practicable, and legally requiring a second payment, now to a bailiff, is constitutionally and legally problematic (as well as bad policy). Therefore, it is logical to anticipate that a large number of these cases will remain the responsibility of the courts, and a means must somehow be found, and the courts equipped with, a means to do so.

For these reasons, the legislation being developed by SEAD has always contemplated that even after the introduction of the Bailiff system a "dual" system will be required for some years, until backlog is eliminated. (Additionally, the courts will retain jurisdiction for labor, family, and child related enforcement).

3) Several circumstances presented an opportunity to coincide with the foregoing. In the context of a changing institutional landscape, the new leadership and commitment to reform at the Kosovo Judicial Council, created vastly greater openness and accountability than existed even in the first months of the Project. New KJC leadership and the replacement of an "old-guard" at the KJC Secretariat, for the first time created conditions where the problem was acknowledged as serious. Thus, for the first time, KJC created with USAID support a comprehensive backlog reduction strategy, addressing problems with both open cases and enforcement of judgments virtually simultaneously with the KJC Board's ratification and adoption of the SEAD BRI approach, and the allocation of budgetary resources to the hiring of an additional 30 enforcement clerks (incidentally, these clerks, based on SEAD recommendations, are actually trained and educated as lawyers, unlike the existing 76 enforcement clerks assigned to the courts).

CONCERNING BRI IMPLEMENTATION

SEAD was able, supported by USAID, to take advantage of these new opportunities. One of which was a willingness to identify the problems, and support innovations to address them. Most importantly, the KJC demonstrated its commitment to itself taking care of the problems of enforcement by adopting the SEAD judgment backlog reduction strategy, and committing what scant available additional resources it could. USAID directed SEAD to provide what support it could, and to integrate the methodology and approach into the KJC. The foregoing is the context and background illuminating how, and why, USAID Kosovo and SEAD came to introduce the SEAD BRI activities within the general framework of the Enforcement of Judgments component.

As described in SEAD Memo to USAID to Initiate the BRI (dated September 29, 2010):

The operation of the Special Enforcement Office will have two direct impacts on existing court enforcement operations. First, because authentic document cases will be worked on intensively by the Special Enforcement Office, the total backlog of cases in local courts should be significantly reduced. Second, because the pressure from the large number of authentic documents cases will be removed, the existing offices will be able to devote more attention to other civil execution cases. This will have direct impact on the reduction of the backlog of both authentic document cases and other civil cases.

SEAD hired 15 interns (subsequently doubling his number to 30) to electronically categorize case files – i.e., entering data from each of the now more than (at the time of this writing) 117,000 paper files into a SEAD developed database. Starting in December of 2010, the interns began operations in Lipjan Municipal Court (a relatively small court close to Pristina) with a view to testing the database and developing operating procedures. This is the first step in the BRI activity – putting the

information on judgment cases in an electronic database so that the cases can be more efficiently and effectively managed.

An important note on categorization is that the categorization activities are not restricted to supporting only the five courts with SEU's, nor to only capturing authentic document cases, but rather, to completely categorizing all civil cases in as many courts as possible before Project end. The exception to this approach is in Pristina Municipal Court, where to date, only Authentic Document utility cases (AD) - more than 23,000 – are the first priority (although once those are completed, the team will also begin categorization of other civil cases). Categorization in courts where SEU's are operating focuses first on AD cases, but ultimately categorizes all cases. SEAD hopes to achieve categorization in all courts before Project end, but frequently cautions that it may not be possible to do so. To date, SEAD categorization is concluded or underway in 10 courts.

Notwithstanding this limitation, SEAD maintains that even an incomplete database has demonstrable utility to the courts, and it is expected that a follow-on Project will complete the task if SEAD does not. Additionally, notwithstanding that these databases, once finalized, are not being maintained by the courts¹⁰ (for a variety of reasons, mostly related to the personnel and IT infrastructure considerations), they are designed to integrate into anticipated improvements to court electronic case management, and will contain the overwhelming majority of backlogged judgments in those courts.

Concurrently, SEAD increased the size of its Project staff by adding a BRI Coordinator, and a database manager. Later, as operations were expanded at the direction of USAID, SEAD hired another staff member to be an assistant coordinator, and added management responsibilities for the database administrator to also assist with management and coordination. These three manage the interns; and liaise with both the MOU creditors (as well as the other utility creditors), Court Presidents, enforcement judges, court based enforcement clerks, the KJC Secretariat, and the Special Enforcement Units.

In addition to the wide range of coordination and logistical activities required, one of their primary tasks is to weekly provide a "Plan" for the SEU's. This involves batching cases from the database based on whether they are actionable (i.e., notice has been provided to the debtor, and verifying that the judgment has not already been paid but not reflected in the case files as a result of poor administration on the part of a creditor, court, or both). Actionable cases are then further compiled in geographical batches (see Appendix E - examples of the April, 2010 batches dating from the first month of SEU operations). The vast majority of cases included in these plans are AD utility cases, but not exclusively. These weekly plans are then provided to the SEU's, who implement them, and report results. SEAD BRI staff compiles the reports for USAID, and the courts.

Additionally, it is worth noting that the evaluation team recommends that batches ought to be based on common judgment debtor. SEAD maintains that this is entirely too narrow a batching protocol. Geographical batching captures cases against a common debtor based on address, ensuring that multiple judgments, where they exist (not such a common circumstance), are captured in the batch, in addition to building in significantly greater efficiency to SEU work. With these batches SEU's then focus on a neighborhood, essentially going "door to door" and minimizing the time and effort that travel from debtor to debtor requires.

CONCERNING DISCUSSION OF BRI IN THE REPORT

Much of the discussion in the Report is addressed above. There remain a few incorrect statements and factual errors, however, which are not addressed in this Statement's general discussion above.

¹⁰It is true that, due to a number of circumstances SEAD does not imbed personnel (interns) permanently in the courts, and therefore once categorization of the backlog is complete, categorization teams move on to other courts. SEAD leaves in place the database, and the means to continue maintenance of it, but lacks the resources to permanently replace court personnel. Additionally, SEAD has advocated to the KJC Secretariat that the database be maintained on an ongoing basis, and used as an electronic registry of judgment cases until such time as an effective Case Management Information System is implemented. Nevertheless, IT infrastructure and personnel limitations generally result in the database not being maintained regularly after SEAD teams complete their work.

First, the Report states:

[The Report] 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.

Efforts to correct this factual error were attempted in written responses to initial drafts of the Report. It is important to clarify that these teams and interns are not intended to "do nothing but focus" on backlogged utility cases. While a priority where SEAD supports the SEU's, the activity is not confined to these types of cases, either in categorization, or in execution and enforcement. Judicial maintenance of the databases is also addressed above. Finally, the last sentence of this paragraph contains an additional error. The evaluation team was informed verbally, and in writing of this fact on several occasions.

Subsequent discussion in the Report relies on inaccurate data on performance, in addition to attributing the data used to base the analysis on to a month when, in fact, there *were* no actual activities (the Report cites March data, when operations began only in April). Issues of data quality are addressed more completely above in this report. Suffice it to say that SEAD data, comprehensively supplied to the evaluation team both during their visit and subsequently is based on court records and close monitoring of the SEU's, and activities in courts where SEAD is working.

Examples of the weekly data, from September 30, 2011 (data reported weekly to USAID, and also was supplied to the evaluation team in corrections to earlier drafts), and the most recent as of this writing, are appended to this Statement (Appendix D).

The calculations on the average rate of case closure per day used in the Report – 1.4 cases per day on average as opposed to the *actual* (September) average of over 7 cases per day – is quite flawed. This Statement sets for the correction that was written by SEAD for USAID, and communicated to the evaluation team to correct the errors its first draft Report:

The number of cases in the backlog, as reported by KJC is over 100,000. This is the backlog. Until categorization is completed, the precise number of backlogged Authentic Documents cases within the backlog will not be known (due to shoddy record-keeping, lack of an electronic database, etc.), but the generally accepted estimate range is between 45,000 and 60,000, or roughly half.

The average per day that should be reflected, as of September 21¹¹ is:

Pristina;

221 cases executed (10 SEU officers) divided by 5 days (week) = 4.42 cases a day per SEU clerk.

Ferizaj:

75 cases (5 SEU clerks) = 3 cases a day per SEU clerk,

Gjakova;

222 cases (5 SEU clerks) = 8.88 cases a day per SEU per clerk.

Peja:

133 cases (5 SEU's) = 5.32 cases a day per SEU clerk;

Prizren;

¹¹These figures were generated approximately one month following the evaluation team's field visit during the middle of August, after they had prepared their first draft. Performance has since improved further.

403 cases (5 SEU's) = 16.12 cases a day per SEU clerk.

TOTAL: average for all courts (SEU operational) is =7.02 cases a day per SEU clerk.

Note: There are 2741 closed cases; or 91.36 cases (69,425.69 euros) per SEU clerk to date (starting from April, 2011).

The foregoing calculation is at the low-end of performance, in the worst case. However, the analysis explicitly ignores the stated strategy of the BRI, which is to develop with and assist in the implementation of a means by which the KJC will be equipped to dispose of backlog after Project end. Although indeed it would be desirable for the Project to eliminate an overwhelming majority of the backlog, this is simply not feasible given the resources available to the Project within the 33 month Project duration. The Project has consistently maintained that the initiative will not completely eliminate backlog, and has predicted that a minimum of three, and likely five years would be necessary to do so.

This context, indeed, is a key rationale for having designed the intervention to work from within the KJC; to provide a methodology and to support the KJC SEU's with case categorization so that the caseload can be more efficiently managed by KJC when the Project ends; and to ensure that there is sustainability. It will also become easier to dispose of cases through batch processing when planned procedural reforms are fully operational, such as bank levy with the cooperation of the Central Bank, and wage garnishment with the assistance of pension information. So we should expect the rate of BRI case resolution to speed up significantly as the institutional reform portion of SEAD sees its programs come to fruition. Finally, this Strategy, with disclosure of its limitations, was developed with, and approved by, USAID.

The structural design of the intervention is appropriate given levels of KJC (and Project) resources, current law, and the nature of the backlog. By having partnered with KJC on developing the approach, by securing the KJC's commitment for a longer time frame than even the Project was given, the intervention is clearly sustainable. Indeed, sustainability was not only built into the intervention from inception, it was a primary condition for launching the initiative. SEAD had imposed this condition before committing resources itself. The initiative therefore was dependent, prior to undertaking any activities, on a three year minimum commitment from KJC to employ the SEU's, and on promulgation of the KJC Decision declaring "Special Circumstances."

The Report's discussion of these activities departs from the organization and purposes of the Project as expressly stated in the Task Order. This is not to clear backlog in isolation, but to develop measures and mechanisms for doing so. Although the Project is vocal that it is desirable to reduce, and ultimately eliminate backlog, it also consistently and clearly represents the BRI as a means to establishing, and embedding in the KJC an approach that will reach that goal. Since the outset of BRI, the Project has maintained that an *optimistic* forecast for reduction is 5 years; a period of time clearly beyond the 33 months allotted to the Project.

The conclusion that the BRI will not result in making the enforcement process more efficient is, strictly speaking, true. However, SEAD has consistently made clear that BRI is not geared towards doing so. Rather, institutional reforms – new legislation and interventions to facilitate enforcement against bank accounts and garnishment of wages – are designed to make the enforcement process more efficient. BRI is designed to leave in place a methodology with which the KJC can itself, given the short duration of the Project, continue efforts with until such time as backlog is ultimately cleared. As the Report fails to note, SEAD is quite cognizant of, and frequently cites as an example for why a backlog reduction initiative is necessary, the error of a similar USAID program in Macedonia that reformed the system of enforcement but made no effort to reduce backlog, leaving over 600,000 cases in a legal limbo. As such, because BRI is expressly NOT directed toward prospective reform, the conclusion stated that it will not lead to procedural reforms here mischaracterizes the project's intentions.

Finally, with regard to discussion of newly filed cases, these cases by definition are not "backlogged" cases – they are inventory. Definitions and correct characterization matter generally, but particularly with regard to law and legal systems. And while it is true that some percentage of inventory (i.e.,

newly filed cases) may eventually become backlogged, due to deficiencies and inadequacies in the system, precise use of language here is necessary to avoid an incorrect statement of the issue.

REGARDING PARTNER UTILITY ENFORCEMENT POLICIES

The Report extensively discusses the KEK and PTK internal enforcement policies. The Report does not acknowledge, however, that these policies are applicable to their filing of new claims, and not retrospectively to claims already filed. SEAD experience differs considerably, as achieving even the value threshold and number of attempts to secure withdrawal of cases was carefully negotiated, and both partners were unwilling to go farther in waiving their property interests. Although these current policies are welcome in that they will minimize the number of claims that will be filed now and in the future, they are largely irrelevant to the issue of backlogged cases.

2.2 Arbitration, Mediation, and Contract Law/LLM Components

This section contains only one substantively factual error, regarding characterization of the SEAD Mediation Centers. While these Mediation Centers will also “take” court referrals, and SEAD is working closely with both the KJC and the Court Presidents in Peja and Gjilan, where the centers are located, to energize and systematize court referrals, they are not limited to court referrals. This distinction is important, as the purpose-driven motivation to conduct mediation is to try to resolve disputes before they rise to the level of litigation. That said, SEAD recognition that court-referrals also serve a dual role – both to expand the use, and thereby the acceptance of Mediation, as well as to relieve, where possible, pressure on the courts.

It should be noted, as well, that the Mediation Commission at the Ministry of Justice also has considerable responsibility for “Marketing” mediation. The Report accurately acknowledges this counterpart’s limitations.

2.3 Outreach and Media Component

As addressed above, the television media campaign planned for Project Year 3 is important, it is neither the main nor “most of” the elements of SEAD’s outreach and media activities. The Report does, however, provide a partial summary of what, in fact, are the main, and most of, SEAD’s outreach activities.

It is worth mentioning, as well that, in Report Appendix 2, only partial (apparently only one quarter’s) information is captured. This Statement, in Appendix F, corrects this information.

3. KEY FINDINGS AND CONCLUSIONS

3.1 Enforcement Findings

As most of the numerous issues with the Report’s discussion of enforcement are already covered above, only a couple of items bear noting.

First, the Report continues to discuss at length reporting on field executions versus final enforcement. As noted previously in this Statement, the Project concurs that this number is important, but that field

execution performance must also be collected to accurately measure not only ultimate success, but also court performance within the process..

Second, the Report attributes to SEAD the statement that court performance is the “overall programming objective.” This is an incomplete statement. BRI activities (alone of Project programming objectives) are related to court performance, and the use of this (now these) measures, is a mechanism to monitor that.

Generally, the Report more or less accurately restates the myriad gaps in standard operating procedure, the low institutional capacity, and the cumbersome process that constitute the enforcement environment. On the other hand the Report misuses the term “Special Circumstances” – which is a legal term of art (it means merely an authorization to courts, enabled by a KJC Board Decision having the status of a regulation, allowing for cases to be addressed in other than temporal filing order).

CONCERNING THE DRAFT LAW ON EXECUTION PROCEDURES

The Report very briefly summarizes the status of activities with the Tax Administration (an agreement already concluded between the tax authorities and KJC to share employer data) and Central Bank (regulation already promulgated that ensures greater commercial bank compliance with enforcement actions and the as-yet-to-be completed registry of account holders). This section, however, is factually incorrect with regard to completion of reforms. First, the legal reforms (a regulation drafted by SEAD for the Central Bank and promulgated in February of 2011) for enforcement against bank accounts is complete). The evaluation team was provided with a copy of this instruction (regulation).

Further to this intervention, the development of the Registry of Account Holders at the Central Bank of Kosovo, a database containing account holder names, Personal Identification Numbers (PIN), and account numbers held at commercial banks will be completed and operational this year. This Registry will remove several steps in the process, by facilitating enforcement against identified accounts – essentially removing at least two steps in the process. Finally, a concept for a clearing mechanism for judgments similar to check clearing mechanisms will be developed for the Central Bank, but neither implementation nor necessary legislation for this is within the scope of SEAD. It is hoped that any follow-on Project will be able to build upon the foundation of this concept and fully implement it.

Similarly, SEAD brokered an Agreement between the KJC and the Tax Administration of Kosovo (TAK) on the sharing of limited employer information to facilitate wage garnishment. These reforms are substantially completed, and now require only monitoring and follow-through to ensure they are institutionalized and regularly maintained. Implementation is underway, and TAK has already cleared delivery of its employer information to the KJC. Mechanisms for the regular exchange of this information are in place at the time of this writing.

SEAD maintains that these reforms are the most significant interventions of the many SEAD activities, other than revised and streamlined processes in the draft law.

Concerning the draft law itself, it will achieve two goals – first, and foremost, it will replace the two laws currently in force, streamlining a number of procedures, eliminating a number of steps in the enforcement process, limit the opportunity for debtors to “object” to enforcement actions (and re-litigating them), provide greater power to judges to dismiss unenforceable cases, place greater information on judgment creditors to provide complete execution proposals, etc.

The draft will also remove from the courts enforcement. This is commonly styled a “privatization.” This term, as it stands alone here, while accurately reflecting the “shorthand” usage for removing enforcement and transferring it to a bailiff institution, fails to completely communicate what is contemplated. As written in the drafts (and which were provided to the evaluation team) the institution proposed is not a “pure private system” at all, but rather, on the model of more than 20 of the 27 EU Member States, a non-court based but otherwise heavily State regulated and controlled model.

CONCERNING PRIVATIZATION OF THE ENFORCEMENT PROCESS

This is addressed in greater detail above. Suffice it to say that credit for “advocating” this policy position is not due SEAD (nor has SEAD needed to exert any resources to achieve this position). Rather, this was the existing government policy decision made by the Minister of Justice. SEAD agrees with this policy decision, as noted, and has provided considerable technical and logistical support to the Ministry of Justice Legislative Drafting Working Group to finalize the draft.

3.2 Arbitration and Mediation Findings

The Report also errs in characterizing the *SEAD* Mediations Centers as “Court Mediation Centers,” and stating that they “are within the courts.” They are *SEAD* Centers and are not located in the courts. Additional factual errors include that judges have not been trained on Mediation (*SEAD* has conducted several judicial trainings on Mediation at the KJI, and works on an ongoing basis with the Court Presidents and Civil judges in Peja and Gjilan on a direct basis).

Additionally, the Report observes that there is little information in the Quarterly Reports on activities toward sustainability, etc. While true that *SEAD* quarterly reports available to the evaluation team did not have this information, this is because, when the evaluation team was present in Kosovo, the Centers had only been opened in the weeks prior to their visit, in other words, during the quarter in which the team conducted its field visit. By definition, therefore, this information would not be contained in reports for previous quarters.

Finally, the Report notes that, “we were told 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.” This is true with regard to an awareness campaign—there had not been, for the same reason that there was no information in the quarterly reports. The Centers had been open only a few weeks. The Opening Ceremonies noted in the Report were the start of formal campaigns, which were planned strategically to follow the openings (and the conclusion of the Balkan Holiday month of August) with daily face-to-face visits with businesses by *SEAD* and Mediation Center Staff, holding weekly open houses at the Centers, and continuing to liaise with Court Presidents and judges regarding referral.

3.3 Contract Law/LLM Degree Findings

Only one significant error is contained in this section. The Report questions the sustainability of the LLM Program, but does not acknowledge the commitment by the University of Pristina in its MOU with *SEAD* to fund this LLM for three years. *SEAD* maintains, and the Report seemingly would acknowledge, that this is ample time for the program to take root.


3.4 Key Findings


There are no significant factual errors in this section. It should be noted, however, that this summary of *SEAD* activities is quite summary, and selective. Nevertheless, it is a fair representative sample.


4. RECOMMENDATIONS

SEAD makes no comment on the recommendations, save that they should be considered in light of accurate factual bases and other relevant contextual considerations.

APPENDIX A - MOU BETWEEN KEK, PTK, AND USAID SEAD


NGA POPULLI AMERIKAN
OD AMERICKOG NARODA


KORPORATA ENERGETIKE E KOSOVËS sh.a.
KOSOVO ENERGY CORPORATION J.S.C.
ENERGETIKA KORPORACIONE KOSOVA d.d.


PTK, SH.A.
Poste dhe Telekomunikacioni i Kosovës Sh. A
Post and Telecommunications of Kosovo, J.S.C
Pošta i Telekomunikacione Kosovës, D.D.
Nr./No./Br. 01-160/11
Data/Date/Datum 12-01-11
PRISHTINË, PRISTINA, PRISTINA

Nr. 564 Dt. 02/12/2010 December 2, 2010
PRISHTINË A

MEMORANDUM OF UNDERSTANDING
Between

KEK, represented by ARBEN GJUKAJ

PTK, represented by DR. SHYQIRI HAXHA

USAID SEAD Program Kosovo, represented by DAVID GREER

I. PURPOSE & SCOPE

The purpose of this Memorandum of Understanding (the agreement between the signatory parties regarding their agreement to perform certain actions in furtherance of common and shared objectives and hereinafter "The Agreement") is to identify the roles and responsibilities of each party as they relate to the implementation of the USAID Systems for Enforcing Agreements and Decisions (SEAD) Program (hereinafter "SEAD" or "The Program") for solving backlogged Authentic Document Cases in the Municipal Courts of Kosovo.

To support this goal, the Kosovo Energy Corporation (hereinafter KEK), The Post Telecom Kosovo (hereinafter PTK) (KEK and PTK together, hereinafter, "the Creditors), and SEAD will conduct certain activities described in this Agreement below.

SEAD, KEK, & PTK shall ensure that program activities are conducted in compliance with all applicable Kosovo laws, rules, and regulations, including regulations governing enforcement issues.

David Greer

II. BACKGROUND

It is widely acknowledged in Kosovo that systems for enforcing civil judgments face many problems. Significant among those problems is a large and growing backlog of unresolved cases; a backlog that places overwhelming burdens on the courts' enforcement officials and that virtually guarantees that new cases will face a long and frustrating delay before their judgments can be collected or otherwise enforced.

There currently exists wide agreement that the very large case backlogs in many of Kosovo's municipal courts' enforcement dockets are a significant obstacle to handling enforcement cases in an efficient and speedy manner. A large proportion of these existing cases are collections cases filed by the major utility companies, including KEK and PTK.

Major judgment creditors, including KEK and PTK, have filed these enforcement cases in an effort to recover funds that are owed to them. Because of the very large number of cases, these cases collectively are of very significant monetary value to the creditors, and recovery would greatly enhance their company value. KEK and PTK are anxious to resolve the execution cases they now have pending in the Kosovo courts, and for that reason are entering into this agreement to cooperate with the USAID SEAD Program to resolve these cases. SEAD and the Creditors therefore have a common interest in resolving the authentic documents enforcement cases now pending in Kosovo courts, and enter into this agreement in order to combine their efforts to seek resolution of this backlog.

III. CREDITOR RESPONSIBILITIES UNDER THIS AGREEMENT

1. Kosovo Energy Corporation (KEK) and Post and Telecom of Kosovo (PTK), as creditors in authentic document enforcement cases now pending in the Kosovo courts, agree to provide to SEAD a list, in electronic form, of all cases for collection of utility bills that they have filed with Kosovo courts between the years 2000 and 2010.

The list will, if possible, show the following for each case:

- (a) Court case E-number;
- (b) Debtor name;
- (c) Current procedural status of the case – filed, decided, pending, or dismissed;
- (d) Listed debtor address and any other known addresses;
- (e) Claimed debt in Euros;
- (f) Requested means and object of enforcement;
- (g) Dates of the current procedural status of the cases;
- (h) Reason for dismissal of cases (if applicable);
- (i) Personal identification numbers or business registration numbers (if available).

Additionally, KEK and PTK understand that the list will be made available to the Central Bank of the Republic of Kosovo for the purpose of improving the data available in the Credit Registry, and to which access by financial institutions is authorized so that they may make better informed decisions with respect to lending activities or insurance underwriting. The Creditors agree that they will exert best efforts to work and cooperate with the Central Bank of the Republic of Kosovo and


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the USAID Business Enabling Environment (BEEP) Program to ensure that the list is updated and sent regularly to the Central Bank of Kosovo as to be agreed upon with the Central Bank of the Republic of Kosovo.

Copies of the above lists will be provided to SEAD as soon as possible, and no later than January 10, 2011.

2. (a) Creditors agree to provide representatives to accompany court execution clerks on their field visits, according to a schedule to be developed by SEAD in consultation with the creditors and in cooperation with each of the municipal courts. Understanding that the backlog reduction initiative may be implemented in several courts simultaneously, which may require more resources than are available to the Creditors, SEAD and the Creditors agree to exercise best efforts to develop reasonable alternative plans. Representatives of KEK and PTK on these field visits will include employees in the following categories:
 - I. A legal officer of the creditor company; and
 - II. A staff member of the creditor company knowledgeable about addresses and locations in the specific neighborhood to be visited on each visit
 - (b) With respect to category (1) above, the creditor's legal officer shall, based on findings during the field visit, submit a list, to the creditor's Head of Legal, of those cases that should be withdrawn because the named debtor cannot be located, is dead or the case cannot be enforced for any other similar reason (e.g. the debtor is imprisoned, has immigrated, or is otherwise not locatable after multiple attempts to locate him or her). The creditor's Head of Legal may thereafter determine whether there is adequate legal basis for withdrawing these cases, and reserve the right to seek approval of KEK's Managing Director for the withdrawal of cases;
 - (c) With respect to category (2) above, that may include any company representative highly familiar with company customers and addresses in the specific areas to be visited on each visit. In the case of KEK, for example, that may include a feeder specialist who routinely works in that neighborhood; in the case of PTK, that may include a postal delivery agent who normally works in that neighborhood.
 - (d) A team consisting of the above creditor representatives and court enforcement officials will visit the listed addresses of debtors on enforcement cases to deliver notifications of enforcement decisions, to undertake seizure of movables, or to undertake seizure of immovables, as appropriate to the specific case. SEAD will from time to time accompany the team on these visits.
 - (e) Creditors recognize that cases will be organized by neighborhood and procedural action to be taken. It will not be possible for the team to deal exclusively with cases involving a single creditor, and thus the team will take enforcement actions dealing with cases involving this creditor and other creditors. SEAD and the court system will make a good faith effort to categorize cases for delivery so that the creditor's representatives will be on teams that emphasize the creditor's cases, but no actual percentage can be assured.
3. In addition, the creditors will make best efforts to provide the following resources, at creditor's expense, to facilitate the work of the field visits:
 - (a) Transportation as needed to implement the field visits;

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- (b) Secure warehousing and transportation for any items seized during the field visits or seized subsequently as a result of the field visit, with appropriate receipts or other documentation provided to the court;
 - (c) A list of all backlogged cases that have debtor addresses in the neighborhood to be visited by enforcement clerks on that day.
 - (d) A list of cases provided to the court that should be withdrawn; these will include old cases (cases filed with the court between years 2000 and 2005), for which unsuccessful collection attempts have been made at least twice; and which are also of small value (under 100 Euros). Creditor agrees to the withdrawal or dismissal of such cases, provided that, in KEK's case, prior approval of KEK's Managing Director for the withdrawal of cases has been sought and obtained.
4. Creditor agrees to amend each execution proposal of the cases that have not been withdrawn to include the following, where available to the creditor:
- (a) for physical persons, the Personal Identification Number assigned by the Kosovo government;
 - (b) for legal persons, the Business Registration Number assigned by the Business Registry of the Ministry of Trade and Industry.
5. When and if the Court has obtained information concerning the address of a debtor, the debtor's bank name and account number, or the employer of a debtor, creditors will make best efforts to amend their execution proposals to make use of the obtained information.
- (a) When the Court has obtained information as to the debtor's current home address, creditor will amend the execution proposal to include the new address.
 - (b) When the Court has obtained and provided information as to debtor's place of employment, the creditor shall amend the execution proposal to include execution against the debtor's income, pursuant to Articles 102 to 134 of the 2008 Law on Execution Procedure, or Articles 102 to 126 of the 1978 Law on Execution Procedure, as appropriate.
 - (c) When the Court has obtained and provided information as to the debtor's bank name and accounts, the creditor shall amend the execution proposal to include execution against the debtor's bank account, pursuant to Article 144 of the 2008 Law on Execution Procedure or Article 127 of the 1978 Law on Execution Procedure, as appropriate.
 - (d) When the Court has obtained and provided information that might make possible other methods of execution, the creditor shall amend the execution proposal to take advantage of that information for that purpose.

IV. SEAD PROGRAM RESPONSIBILITIES UNDER THIS AGREEMENT

1. The SEAD Program will make its best efforts to assist the creditors in pursuing the enforcement or completion of their Authentic Documents cases currently in the Municipal Courts of Kosovo, as well as assisting in the enforcement or completion of all other enforcement cases now in the Municipal Courts.
2. The SEAD Program will undertake a case categorization program that will facilitate the identification of cases for which specific enforcement-oriented actions are appropriate. This program is intended to promote faster and more efficient processing of enforcement cases.

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3. The SEAD Program will use its best efforts with the courts in Kosovo to do the following:
 - To read and categorize enforcement cases now pending in all Kosovo courts;
 - To create and maintain a database facilitating the identification of cases eligible for specific actions, and use the database to facilitate efficient processing and resolution of pending enforcement cases;
 - To organize implementation teams of court enforcement agents and creditors' representatives to process and resolve cases;
 - To work with the Kosovo Municipal Courts and with creditors to organize schedules in which implementation teams can operate;
 - To monitor and regulate the activities of implementation teams to ensure that both court enforcement agents and creditors are aware of actions needed to facilitate enforcement in specific cases to encourage full participation in implementation teams.
 4. The SEAD Program will compile reports of the results of this categorization and implementation program and will make those reports available to all parties.
 5. The SEAD Program will make its best efforts to promote and encourage full court participation in this program.
 6. SEAD shall have the right to terminate this Memorandum of Understanding (MOU) at any time upon 30 days written notice; additionally, all SEAD Program activities and assistance under this MOU are expressly contingent upon ongoing availability of USAID funding for the Program and must be in accordance with the USAID-approved work plan for the Program. This MOU does not constitute an obligation of funds, and any funds associated with the activities described in the MOU will be obligated in separate agreements.
- V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**
1. Creditor's reserve the right to seek approval of their Managing Director to dismiss any cases under the terms of this MOU. Creditors also agree not to object to court decisions suspending the case when the debtor has no means to pay the claimed debt either in whole or in part, and this fact has been verified by at least two field visits of execution clerks and creditor representatives.
 2. Subject to paragraph (1) above, within 10 business days of each day participating in field visits, creditors' will provide to SEAD and the court a list of cases to be dismissed pursuant to this authority, in writing, with the exact court execution E-number and the name of the debtor.

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VI. EFFECTIVE DATE AND SIGNATURE

This MOU shall be effective upon the signature of Parties authorized officials.
It shall be in force from December XX, 2010 to June 30,2012.


Parties indicate agreement with this MOU by their signatures.

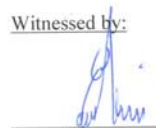
Signatures and dates


Arben Gjakaj
Managing Director
KEK Company
02/12/2010


Shyqri Haxha
Chief Executive Officer
PTK Company




David Greer
Director
USAID SEAD Program
USAID Contractor


Witnessed by:

Enver Peci
Chairman
Kosovo Judicial Council


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APPENDIX B - KEK MAY 25 2011 ANNOUNCEMENT

KORPORATA ENERGETIKE E KOSOVES sh.a.
KOSOVO ENERGY CORPORATION J.S.C.
KOSOVSKA ENERGETSKA KORPORACIJA d.d.

3398 27.05.2011

 KORPORATA ENERGETIKE E KOSOVES sh.a.
KOSOVO ENERGY CORPORATION J.S.C.
ENERGETSKA KORPORACIJA KOSOVA D.D.

Në bazë të kërkesës, nr. 2094 datës të 08.04.2011, për shpalljen publike nga Zyra Ligjore të aprovuar nga Drejtori Menaxhues të KEK sh.a, Divizioni i Burimeve Njerëzore bëjnë këtë:

Rishpallje Publike

KEK sh.a- Zyra Ligjore do të bëjë rekrutimin e 6 punëtorëve në cilësinë e praktikantit të diplomuar në Fakultetin Juridik për nevojat e Distrikteve si vijon:

1. Një(1) praktikant për Distriktin e Prishtinës
2. Një(1) praktikant për Distriktin e Pejës
3. Një(1) praktikant për Distriktin e Prizrenit
4. Një(1) praktikant për Distriktin e Ferizajt
5. Një(1) praktikant për Distriktin e Gjiçanit
6. Një(1) praktikant për Distriktin e Gjakovës
- 7.

Punëtorët do të pranohen në cilësinë praktikantit, ndërsa koha e punës së praktikantit do të zgjasë 6 muaj. Gjatë kohës së punës së praktikantit punëtorët do të monitorohen nga mentori gjegjësisht personi përgjegjës. Gjatë kohës së punës si praktikant punëtorët do të vlerësohen për punën e tyre nga mentori i tyre dhe Menaxheri i Departamentit përkatës. Praktikantët e rekrutuar do të angazhohen në implementimin e Marrëveshjes për ndihmë dhe bashkëpunim të nënshkruar nga Ndërmarrjet Publike dhe Programit SEAD të USAID-it.

Kërkesat profesionale

Aplikacionet do të pranohen vetëm nga kandidatët të cilët janë të diplomuar në Fakultetin Juridik. Kandidatët preferohet të jenë nga regionet të cilat mbulojnë nga Distrikti përkatës, shkaku njohja e terrenit dhe konsumatoreve. Vlerësimi formal dhe intervista do të bëhet pas përfundimit të afatit për aplikim. Për aplikantët është e preferueshme njohja e gjuhës angleze dhe njohja e mirë e punës me kompjuter. Pas përfundimit të intervistimit kandidatët e selektuar do të informohen për selektim dhe kohën e fillimit të punës në cilësinë e praktikantit KEK e mbanë të drejtën e formimit të listës së shkurtuar me aplikantët.

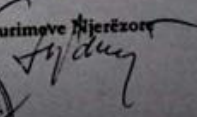

Paga

Lartësi e pagës do të përcaktohet në harmoni me rregulloret e KEK-ut.

Të interesuarit duhet të aplikojnë nëpërmjet internetit duke i plotësuar aplikacionet të cilat mund t'i marrin në Ueb Faqen e KEK-ut: www.kek-energy.com
E-mail adresa ku duhet të aplikohet është: ofertapune@kek-energy.com
Kandidatët duhet të aplikojnë vetëm përmes formës elektronike.

Aplikacionet e shpalljes paraprake do të mirren parasysh
Afati i aplikimit është deri më 03.06.2011 në ora 16:00

Prishtinë, 27.05.2011

Divizioni i Burimeve Njerëzore



Translation of KEK Advertisement above:

KOSOVO ENERGY CORPORATION

Pursuant to the request No. 2094 of 08.04.2011, on the public announcement of the Legal Office approved by the Managing Director of KEK, J.S.C, Human Resource Division issues the following

Public Re-advertisement

KEK, J.S.C – Legal Office shall recruit 6 employees in the capacity of interns graduated at the Faculty of Law for the needs of Districts, as follows:

1. One (1) intern for the District of Prishtina
2. One (1) intern for the District of Peja
3. One (1) intern for the District of Prizren
4. One (1) intern for the District of Ferizaj
5. One (1) intern for the District of Gjilan
6. One (1) intern for the District of Gjakova

Employees will be recruited in the capacity of interns, and the duration of their internship will be 6 months. During the internship, employees will be monitored by a mentor, that is, a responsible person. During the internship, employees will be evaluated for their work by their mentor and the Manager of respective Department.

Professional Requirements

Applications shall only be admitted from applicants who have a degree from a Law Faculty. Candidates are preferred to be from the region covered by the respective District, since he/she would know the area and consumers.

Formal evaluation and interviews will be conducted after the deadline for application is closed. Candidates are preferred to have knowledge of English Language and good computer skills. Following the interviews the selected candidates shall be informed about their selection and about when they should start working as interns.

KEK reserves the right to create a shortlist of applicants.

Salary

The salary level will be determined in compliance with KEK Regulations.

Interested persons should apply through the internet by filling in the applications they can download from KEK Website www.kek-energy.com

Applications should be submitted to this email address: ofertapune@kek-energy.com

Candidates may apply only electronically.

Applications in the earlier advertisement shall also be taken into consideration.

Deadline for application is 03.06.2011 at 16:00 hrs.

Prishtina, 27.05.2011

Division of Human Resources
(signature)

APPENDIX C – LIST OF MATERIALS PROVIDED TO EVALUATION TEAM

Systems for Enforcing Agreements and Decisions Program – Work Product

1. Assessment

ADR Assessment

Enforcement of Judgments Assessment

2. SEAD Program Information Materials

Scope of Work for the USAID SEAD Media Campaign

SEAD Program Brochure

2.1 Fact Sheets

2.2 Success Stories

2.3 Newsletters

2.4 Mediation PR Materials

3. SEAD Program

3.1 SEAD Reports, PMP and Year 2 Work Plan

1. Focus Group Report 2010

2. Business Survey Report

2.a Focus Group Report on Contracts

3. Commercial Court Case Analysis

4. SEAD Program After Year 2

4. Commercial Law and Legal Education

a) Legal Education

MOU University of Prishtina Law Faculty and USAID SEAD Program

SEAD LLM Progress Report

Self Assessment Report LLM

b) Commercial Law

b.1 Standard Form Contract

Standard Form Construction Contract

Draft Law on Obligations

Explanatory Notes on the Draft Law on Obligations

5. Enforcement of Judgments

5.1 Kosovo Judicial Council

SEAD Program Proposal to initiate a Judgment Backlog Reduction Initiative (BRI)

a) Memo on BRI

1. SEAD BRI and KJC Special Office Executive Summary

2. *Analysis Establishment of Temporary Office for Authentic Document Enforcement*
3. *Proposal to Establish Temporary Office for Authentic Document Enforcement*

b) *Decision and Proposed Regulations*

1. *KJC Decision to Establish Special Units of Enforcement*
2. *Proposed Regulation*

5.2. MOU Central Bank and Tax Admin

1. *TAK Agreement*
2. *MOU Between KEK, PTK and USAID SEAD*
3. *Central Bank Instruction*

6. Alternative Dispute Resolution

Concept on Amendment to Law on Contested Procedure

6.1 Arbitration

a) *Kosovo Chamber of Commerce*

MOU Between SEAD and KCC

Arbitration Rules KCC PTA

Decision on Costs

b) *American Chamber of Commerce (AmCham)*

MOU Between SEAD and AmCham

Arbitration Rules AmCham ADR

Decision on Costs

c) *Arbitrators Training Materials*

6.2. Mediation

a) *Kosovo Judicial Council (KJC)*

A proposal for referral of Court Cases to Private Mediation

b) *Mediation Commission and MoJ regulations*

7. KJI and KCA training Materials

International Standards Civil Enforcement

Training Material on Arbitration

APPENDIX D – BRI DATA AS OF SEPTEMBER 30 2011 AND NOVEMBER 30 2011

BRI Report - (23 September through 29 September 2011)

MC LIPJAN	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>	7	0		42
Total to date	2706	248	212		603
TOTAL Euro		54,043.54	886,766.83		1,742,273.46

MC MALISHEVE	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>	<i>finished</i>	<i>finished</i>		
Total to date	1704	154	73		
TOTAL Euro		42,893.95	374,367.81		

MC SUHEREKE	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>				
Total to date	2582	63	26		
TOTAL Euro		14,395.03	106,721.56		

MC FERIZAJ	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	0	56	9		
Total to date	0	360	192		
TOTAL Euro		71,972.00	356,253.62		

MC PRISHTINE	Cases categorized	Field Executed			
		PTK / VALA	KEK	Water/Heating	Other civil
This week	<i>finished*</i>	96	29	120	
Total to date	19929	2331	397	212	
TOTAL EURO		665,783.09	1,002,036.71	64,604.76	

MC GJILAN	Cases categorized	Field Executed			
		PTK / VALA	KEK	Water/Heating	Other Civil
This week	<i>finished</i>				
Total to date	6019				
TOTAL Euro					

MC GJAKOVE	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	366	19	2		
Total to date	8829	381	172	83	
TOTAL Euro		75,807.69	381,923.72	14,309.73	

MC PRIZREN	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	651	271		7	82
Total to date	8239	743	249	9	119
TOTAL Euro		304,424.72	7,061.94	2,950.87	31,018.00

MC PEJA	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	442	42	4	20	2
Total to date	4451	474	83	575	13
TOTAL Euro		96,458.92	198,565.94	87,148.74	802.93

GRAND TOTAL TO DATE	Cases categorized	Field Executed PTK/VALA, KEK, water supply, Heating			
		54459	7772		
TOTAL EURO VALUE		6,582,585.56			

MC LIPJAN	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	7	0		18	1	0
Total	50	14		287		
Euro value	8,220.13	31,311.14		1,079,198.04		

MC MALISHEVE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week					0	0
Total						
Euro value						

MC SUHEREKE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week					0	0
Total						
Euro value						

MC FERIZAJ	Closed cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
					0	5

This week	13	1				
Total	183	75				
Euro value	30,998.16	180,497.20				

MC PRISHTINE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	24		3		4	10
Total	366	20	19			
Euro value	65,351.47	70,987.68	4,492.35			

MC GJILAN	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week					0	0
Total						
Euro value						

MC GJAKOVE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	6				10	5
Total	323	150	60			
Euro value	68,725.40	319,637.22	11,520.72			

MC PRIZREN	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	11			4	9	4
Total	406	11		289		
Euro value	28,670.72	6,950.32		15,370.67		

MC PEJA	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	28	4	20	2	5	3
Total	263	32	321	13		
Euro value	46,829.47	128,421.07	64,746.81	802.93		

GRAND TOTAL TO DATE	Closed cases (since SEU operational) PTK/VALA, KEK, Water/Heating and other civil cases				SEAD/BRI Interns	KJC/SEU Clerks
	2882					
TOTAL EURO VALUE	2,162,731.50				29	30

*AD cases up to year 2010 finished. Waiting to allocate and categorize AD cases of 2011 and other civil cases.

BRI Report - (25 November through 1December 2011)

MC LIPJAN	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>	12	2		30
Total to date	2706	322	249		853
TOTAL Euro		615,355.19	931,483.96		2,193,954.69

MC MALISHEVE	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>	<i>finished</i>	<i>finished</i>		
Total to date	1704	154	73		
TOTAL Euro		42,893.95	374,367.81		

MC SUHEREKE	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>				
Total to date	2582	63	26		
TOTAL Euro		14,395.03	106,721.56		

MC FERIZAJ	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	566	27	19		
Total to date	3077	927	283		
TOTAL Euro		193,292.05	706,818.81		

MC PRISHTINE	Cases categorized	Field Executed			
		PTK / VALA	KEK	Water/Heating	Other civil
This week	336	43	9	32	
Total to date	22918	2978	614	486	
TOTAL EURO		998,371.39	1,864,200.75	192,449.36	

MC GJILAN	Cases categorized	Field Executed			
		PTK / VALA	KEK	Water/Heating	Other Civil
This week	<i>finished</i>				
Total to date	6019				
TOTAL Euro					

MC GJAKOVE	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>				

		33	5	31	
Total to date	9784	810	446	366	
TOTAL Euro		159,321.38	747,737.55	75,986.58	

MC PRIZREN	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	<i>finished</i>	35	12	58	20
Total to date	10431	2092	333	78	614
TOTAL Euro		777,014.32	608,485.32	14,733.14	242,653.88

MC PEJA	Cases categorized	Field Executed			
		PTK/Vala	KEK	Water/Heating	Other Civil
This week	133	28	11	49	0
Total to date	7767	903	137	922	19
TOTAL Euro		162,094.64	412,626.91	150,201.58	987.93

GRAND TOTAL TO DATE	Cases categorized	Field Executed			
		PTK/VALA, KEK, water supply, Heating			
	63911	13748			
TOTAL EURO VALUE		11,586,147.78			

MC LIPJAN	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	4	2		15	1	0
Total	90	42		486		
Euro value	17,968.93	118,029.04		1,525,651.86		

MC MALISHEVE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week					0	0
Total						
Euro value						

MC SUHEREKE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week					0	0
Total						
Euro value						

MC FERIZAJ	Closed cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil		
This week	5	0			8	5
Total	257	93				

Euro value	50,818.62	257,003.66				
MC PRISHTINE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil	10	9
This week	42	2	4			
Total	492	26	53			
Euro value	88,517.89	90,901.08	19,483.49			
MC GJILAN	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil	0	0
This week						
Total						
Euro value						
MC GJAKOVE	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil	0	5
This week	18	5	7			
Total	414	175	120			
Euro value	79,063.57	365,372.01	22,669.66			
MC PRIZREN	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil	0	5
This week	25	0	1	9		
Total	578	11	1	380		
Euro value	54,713.54	6,950.32	499.42	23,651.65		
MC PEJA	Closed Cases				SEAD/BRI Interns	KJC/SEU Clerks
	PTK/Vala	KEK	Water/Heat	Other civil	10	5
This week	15	11	47	0		
Total	325	47	450	16		
Euro value	56,238.63	182,816.69	87,900.19	892.93		
GRAND TOTAL TO DATE	Closed cases (since SEU operational) PTK/VALA, KEK, Water/Heating and other civil cases				SEAD/BRI Interns	KJC/SEU Clerks
	4056				29	29

APPENDIX E – REPRESENTATIVE SAMPLE OF BATCH REPORTS

Below is *one* representative “batch” or weekly plan developed by SEAD staff and provided to the Special Enforcement Units. Typically, at least four such plans, per SEU court, are prepared weekly.

Albanian Version as provided by SEAD to KJC Special Enforcement Units:

KEK														
Emri i Referencës Përgjegjës	1. Numri i rastit:	2. Emri i Kreditorit	4. Emri i debitorit	4i. Nr Konsumatit KEK	4a. Vendbanimi i Debitorit	4a1. Qyteti/ Fshati	11. Data kur propozimi për permbirim është parashtruar :	12. Përgjegjës nga gjykata lidhur me propozimin	14. Data e tentimit të dorezimit të pare të lajmerimit tek debitor i?	14a. Data e tentimit të dorezimit të dytë të lajmerimit tek debitor i?	14b. Data kur është dorezuar lajmerimi?	17. Vlera totale e kërkuar nga Kreditori	18. A janë paguar taksat gjyqësore	18a. Nese po, sa është vlera e pagesës
DARDA NIJA¹²														
Sabit Dakaj	E DA-190/09	KEK	Isak Paci	20485	Dardania Bl i Ri Hy	Prishtine	23/02/2009	Approved (E Aprovuar)				3528.95	Yes	30
Sabit Dakaj	E DA-232/09	KEK	Ismajl Gashi	20484	Dardania BL i Ri hy.1	Prishtine	27/02/2009	Approved (E Aprovuar)				4721.89	Yes	30
Sabit Dakaj	E DA-215/09	KEK	Ismer Gjurkaj	20502	Dardania te Rrethi Hy 1	Prishtine	27/02/2009	Approved (E Aprovuar)				3648.67	Yes	30
Hazbie Nura	E DA-3248/08	KEK	Avdulla Mirena	204958	Dardania BL i Ri	Prishtine	23/09/2008	Approved (E Aprovuar)				3521.85	Yes	30
Hazbie Nura	E DA-3253/08	KEK	Avdullah Metolli	205091	Dardani te Rrethi Hy 3 nr.19	Prishtine	23/09/2008	Approved (E Aprovuar)				3510.35	Yes	30
Lumnije Gashi	E DA-3795/09	KEK	Nebih Sylejmani	205051	Dardania te rrethi Hy 2 nr.9	Prishtine	28/09/2009	Approved (E Aprovuar)				3157.61	Yes	30
ULPIAN A														
Emri i Referencës Përgjegjës	1. Numri i rastit:	2. Emri i Kreditorit	4. Emri i debitorit	4i. Nr Konsumatit KEK	4a. Vendbanimi i Debitorit	4a1. Qyteti/ Fshati	11. Data kur propozimi për permbirim është parashtruar :	12. Përgjegjës nga gjykata lidhur me propozimin	14. Data e tentimit të dorezimit të pare të lajmerimit tek debitor i?	14a. Data e tentimit të dorezimit të dytë të lajmerimit tek debitor i?	14b. Data kur është dorezuar lajmerimi?	17. Vlera totale e kërkuar nga Kreditori	18. A janë paguar taksat gjyqësore	18a. Nese po, sa është vlera e pagesës
Sabit Dakaj	E DA-228/09	KEK	Ismajl Zhushi	648	Rr.Henry Dynan C-5 I-10	Prishtine	27/02/2009	Approved (E Aprovuar)				4212.83	Yes	30
Hazbie Nura	E DA-2575/08	KEK	Agron Emerlahu	656	Rr.Henry Dynan C-5 I-Podrum	Prishtine	17/09/2008	Approved (E Aprovuar)				3638.36	Yes	30
BREGU I DIELLIT														
Emri i Referencës Përgjegjës	1. Numri i rastit:	2. Emri i Kreditorit	4. Emri i debitorit	4i. Nr Konsumatit KEK	4a. Vendbanimi i Debitorit	4a1. Qyteti/ Fshati	11. Data kur propozimi për permb	12. Përgjegjës nga gjykata lidhur me propozimin	14. Data e tentimit të dorezimit të pare të	14a. Data e tentimit të dorezimit të dytë	14b. Data kur është dorezuar lajmer	17. Vlera totale e kërkuar nga	18. A janë p	18a. Nese po, sa është vlera e pagesës

¹² These are neighborhood/regional designations.

							arim eshte paras htruar :			lajmeri mit tek debitor i?	te lajmeri mit tek debitor i?	imi?	Kred itori	a g u r a t a k s a t g j y g j e s o r e	
Hazbie Nura	E DA- 2600/08	KEK	Agim Hivzi Muratoviq	11055	BD rr.Vellezerit Gervalla BLL 5 H-1 nr.3	Prishti ne	17/09/ 2008	Approved (E Aprovuar)					3709. 75	Y es	30
Hazbie Nura	E DA- 3232/08	KEK	Astrit Rifat Mustafa	20669 9	BD Rr.Vellezerit Gervalla Hyr.I/17	Prishti ne	23/02/ 2008	Approved (E Aprovuar)					3375. 1	Y es	30

English Translation of Batch Report as provided by SEAD to KJC Special Enforcement Units:

KEK														
DARDA NIJA														
Name of the responsible Clerk	1. Case Number:	2. Name of the Creditor	4. Name of the Debtor	4i. Name of the Consumer KEK	4a. Location of Debtor	4a1. City/Village	11. Date when the proposal was submitted for the execution:	12. The answer from the court regarding the proposal	14. Day of the first attempt of the notification to the debtor?	14a. Day of the second attempt of the notification to the debtor?	14b. Date when the notification was delivered?	17. The total amount required by the creditor	18. Were the court fees paid?	18a. If yes, what is the value of payment?
Sabit Dakaj	E DA-190/09	KEK	Isak Paci	204885	Dardania Bl i Ri Hy	Prishtine	23/02/2009	Approved (E Arovuar)				3528.95	Yes	30
Sabit Dakaj	E DA-232/09	KEK	Ismajl Gashi	204884	Dardania Bl i Ri hy.1	Prishtine	27/02/2009	Approved (E Arovuar)				4721.89	Yes	30
Sabit Dakaj	E DA-215/09	KEK	Ismer Gjurkaj	205052	Dardania te Rrethi Hy 1	Prishtine	27/02/2009	Approved (E Arovuar)				3648.67	Yes	30
Hazbie Nura	E DA-3248/08	KEK	Avdulla Mirena	204958	Dardania BL I Ri	Prishtine	23/09/2008	Approved (E Arovuar)				3521.85	Yes	30
Hazbie Nura	E DA-3253/08	KEK	Avdullah Metolli	205091	Dardani te Rrethi Hy 3 nr.19	Prishtine	23/09/2008	Approved (E Arovuar)				3510.35	Yes	30
Lumnije Gashi	E DA-3795/09	KEK	Nebih Sylejmani	205051	Dardania te rrethi Hy 2 nr.9	Prishtine	28/09/2009	Approved (E Arovuar)				3157.61	Yes	30
ULPIAN A														
Name of the responsible Clerk	1. Case Number:	2. Name of the Creditor	4. Name of the Debtor	4i. Name of the Consumer KEK	4a. Location of Debtor	4a1. City/Village	11. Date when the proposal was submitted for the execution:	12. The answer from the court regarding the proposal	14. Day of the first attempt of the notification to the debtor?	14a. Day of the second attempt of the notification to the debtor?	14b. Date when the notification was delivered?	17. The total amount required by the creditor	18. Were the court fees paid?	18a. If yes, what is the value of payment?
Sabit Dakaj	E DA-228/09	KEK	Ismajl Zhushi	648	Rr.Henry Dynan C-5 I-10	Prishtine	27/02/2009	Approved (E Arovuar)				4212.83	Yes	30
Hazbie Nura	E DA-2575/08	KEK	Agrom Emerllahu	656	Rr.Henry Dynan C-5 I-Podrum	Prishtine	17/09/2008	Approved (E Arovuar)				3638.36	Yes	30
BREGU I DIELLIT														
Name of the responsible Clerk	1. Case Number:	2. Name of the Creditor	4. Name of the Debtor	4i. Name of the Consumer KEK	4a. Location of Debtor	4a1. City/Village	11. Date when the proposal was submitted for the	12. The answer from the court regarding the proposal	14. Day of the first attempt of the notification to the	14a. Day of the second attempt of the notifi	14b. Date when the notification was delivered?	17. The total amount required by the	18. Were the cour	18a. If yes, what is the value of payment?

							execu tion:		debt or ?	cat ion to the debt or ?		cred itor	t fe es pa id ?	
Hazbie Nura	E DA- 2600/08	KE K	Agim Hivzi Muratoviq	11055	BD rr.Vellezerit Gervalla BLL 5 H-1 nr.3	Prishtin e	17/09/2 008	Approved (E Aprovuar)				3709. 75	Y es	30
Hazbie Nura	E DA- 3232/08	KE K	Astrit Rifat Mustafa	206699	BD Rr.Vellezerit Gervalla Hyr.I/17	Prishtin e	23/02/2 008	Approved (E Aprovuar)				3375. 1	Y es	30

APPENDIX F – CORRECTED OUTREACH REPORT

Highlighted figures and data are corrections to data in Appendix 2 of the Evaluation Report.

Outreach:

- 2010...Project organized 25 outreach events
- Number of justice sector personnel who received SEAD training in year 2010 is 332
- Provided copies of assessments, fact sheets, newsletters to 1110 persons
- 2011 project website received 780 hits on daily average; 23,000 monthly
- Organized 57 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 40 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 sixteen training sessions at the KJI for judges (312 people were trained within these trainings)
 - Conducted five continuing legal education sessions for the KCA (147 people were trained within these trainings)
 - 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 form 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