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# Contract Law Enforcement (CLE) Program

QUARTERLY REPORT

(NOVEMBER 1, 2017 – JANUARY 31, 2018)

March 2, 2018

This publication was produced for review by the United States Agency for International Development. It was prepared by Checchi and Company Consulting, Inc.

# CONTRACT LAW ENFORCEMENT (CLE) PROGRAM

**Contract No.: AID-167-C-13-00001**

## **QUARTERLY REPORT**

(November 1, 2017 – January 31, 2018)

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## **DISCLAIMER**

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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## LIST OF ABBREVIATIONS AND ACRONYMS

AmCham	American Chamber of Commerce in Kosovo
BRO	Backlog Reduction Officer
CBK	Central Bank of Kosovo
CEPEJ	The European Commission for the Efficiency of Justice
CMIS	Case Management Information System
CPEA or Chamber	Chamber of Private Enforcement Agents
CSSP	CSSP – Berlin Center for Integrative Mediation
ESRA	Enforcement Statistical Reporting Application
EU FLP Project	European Union Free Legal Professions and Bar Exam Project
FAQ	Frequently Asked Questions
ICC	International Chamber of Commerce
IMF	International Monetary Fund
JSSP	Justice System Strengthening Initiative
KCC	Kosovo Chamber of Commerce
KJA	Kosovo Judicial Academy (formerly, Kosovo Judicial Institute)
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
KT	Kosovo Telecom (formerly PTK)
LEP	Law on Enforcement Procedure
MEI	Ministry of European Integration
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
MTI	Ministry of Trade and Industry
NCQK	National Council for Qualifications of Kosovo
PBC-CD	Pristina Basic Court-Commercial Department

PEA	Private Enforcement Agent
PfD	USAID Partnerships for Development Program
PIN	Personal Identification Number
PRP	USAID Property Rights Program
PSA	Public Service Announcement
SAA	Stabilization and Association Agreement
SCAAK	Society of Certified Accountants and Auditors of Kosovo
ToR	Terms of Reference
UNDP	United Nations Development Programme
UP	University of Pristina-Faculty of Law

## PROJECT OVERVIEW

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The USAID/Kosovo Contract Law Enforcement (CLE) Program, implemented by Checchi and Company Consulting, Inc., commenced on May 7, 2013 as a 36-month project. A 22-month extension period commenced on May 7, 2016 and will conclude on March 6, 2018.<sup>1</sup> The CLE Program builds on the progress achieved by USAID's Systems for Enforcing Agreements and Decisions (SEAD) Program and other USAID and donor programs. It works to address a range of challenges, including: 1) Reduction of the judgment caseload in Kosovo's court system; 2) Support to the Ministry of Justice (MOJ) to implement the new Private Enforcement Agent (PEA) system; 3) Training of judges, lawyers and enforcement agents on commercial law topics; 4) Expansion of mediation; 5) Improvement to commercial legislation; and 6) Work with the business community to foster increased utilization of well-drafted written contracts.

The CLE Program has also been responsive to requests for assistance from both counterparts and USAID partners, as well as having identified and pursued a variety of additional opportunities not expressly within its scope of work, but in furtherance of its overall development objectives. These activities include providing support, at USAID's direction, to the University of Pristina, the Commercial Department at the Pristina Basic Court, and the Central Bank of Kosovo (CBK). CLE has also responded to numerous *ad hoc* requests on legal policy and approach from the MOJ, the Ministry of Trade and Industry (MTI), the Ministry of European Integration (MEI), the Ministry of Finance (MOF), the Office of the Prime Minister, and several Assembly Committees.

## EXECUTIVE SUMMARY

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During the nineteenth quarter, CLE continued to support reduction of the tremendous backlog of enforcement cases remaining in the courts. CLE, together with USAID's Justice System Strengthening Program (JSSP), completed work with the courts in implementing the Kosovo Judicial Council (KJC) Decision directing them to withdraw approximately 26,000 small value enforcement cases of €50 or less where the court is the creditor. CLE continued providing embedded support through its Backlog Reduction Initiative (BRI) team in all seven Basic Courts and their branches in Kosovo, including Mitrovica, supporting court personnel and the courts to resolve the backlog of execution cases. From CLE initiation through the end of the reporting period, 168,105 court enforcement cases have been cleared from the execution caseloads in the seven Basic Courts, and over €17,410,394 of previously unrecovered judgment debt have been collected in court enforcement procedures. During the quarter, CLE planned demobilization of the BRI team embedded in the courts, scheduled to take place in February, 2018.

Support for development of the private enforcement agent (PEA) profession continued. CLE assisted MOJ to establish processes for handling complaints against PEAS. CLE continued to support capacity building with the Chamber of Private Enforcement Agents (CPEA or Chamber) by assisting with strategic planning, communications, and outreach following an exercise with the CPEA Board members, conducted during the previous quarter, and delivering organizational processes and templates to carry out core functions of the CPEA.

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<sup>1</sup> Following completion of the nineteenth quarter, by Modification issued on February 13, 2018, CLE's Contract was extended for an additional two-month period to conclude on May 6, 2018.

In the commercial law area, CLE continued support for implementation of the new Bankruptcy Law by working with MOJ to organize a new round of licensing of new Bankruptcy Administrators. A CLE supported Concept Document on the draft Law on Bills of Exchange was entered by the MOJ into its annual legislative program. Upon approval the Concept Document by the Government, the underlying draft Law will be entered into the Government's 2018 Legislative Program.

In mediation, CLE continued to support the Basic Courts by providing one-on-one practical training of clerks in each court who were appointed in June 2017 to handle case referrals to mediation. Following a decision from the Kosovo Prosecutorial Council (KPC) directing each Chief Prosecutor to designate a clerk who would be responsible for referring cases to mediation, CLE started training these clerks in January 2018 using the same training module as for the court mediation clerks. CLE also supported the 2018 KJC Budget Request process as it concerns funding for the Mediation Clerk positions in each of the seven Basic Courts. A CLE-supported draft Law on Mediation that had been returned to the Government when the Assembly was dissolved during the seventeenth quarter was resubmitted to the Assembly after the formation of a new Government and passed the first reading.

Finally, CLE continued assisting the Pristina Basic Court-Commercial Department, resulting in drafting of 326 notices/decisions and 55 judgments. In the Appeals Court-Commercial Department, CLE Legal Officers drafted 47 decisions during the reporting period.

## **SUMMARY OF PROGRESS**

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### **A. Component 1: Improved Systems for Enforcement of Judgments and Reduction of Backlog in Enforcement Cases**

CLE's Component I Enforcement of Judgments activities encompass two key areas: 1) Enforcement Backlog Reduction – Functional elimination of the courts' execution case backlog; and 2) Private Enforcement Capacity Building – Assistance to the Ministry of Justice (MOJ) to establish the Private Enforcement Agent System.

#### **A.I.1.1: Support KJC to improve systems for Statistics on execution caseload and assist developing sustainable mechanisms for reporting and maintaining accurate statistical data**

A key pillar of CLE's enforcement backlog reduction support to the courts has been establishing a system that maintains an accurate count of cases and tracks them effectively. CLE undertook this in previous years by developing the Enforcement Statistical Reporting Application (ESRA), a comprehensive statistical reporting application. Embedded Backlog Reduction Officers (BROs) who are working in all seven Basic Courts and their branches, including the Mitrovica Basic Court, continued to enter case resolution data into the reporting application. The ESRA database now contains detailed information on more than 230,000 enforcement cases (both open and closed) in Kosovo's Basic Courts. The ESRA was intended to serve as a temporary case automation system pending development of a Norwegian Embassy-funded Case Management Information System (CMIS). However, there continues to be significant delay in the development and roll out of the CMIS system, which will result in a gap between completion of CLE's enforcement backlog reduction support and full implementation of CMIS. Consequently, in Year Five, CLE has been carrying out activities in preparation for transfer of the ESRA to the KJC and providing training to enforcement clerks so they can use ESRA directly. As part of this process, during previous quarters, CLE carried out and completed training of court enforcement personnel on use of the ESRA system.



**Sub-activity I.1.1.1 – Develop capacity and transfer function and use of ESRA data entry to Basic Courts.** During the nineteenth quarter, CLE carried out activities to set up the transfer of the ESRA system. CLE conducted discussions with KJC leadership and with KJC’s IT office to plan in detail the transfer of the ESRA server and system. In December 2017, with CLE assistance, the KJC unanimously adopted a decision approving transfer of the ESRA server to KJC and mandating court personnel to enter data into the ESRA pending eventual full roll out of the CMIS. Pursuant to the decision, courts will submit for review automatically generated statistical reports on a monthly basis to the Head of the KJC Statistics Department. This decision will help bridge the gap between completion of CLE’s enforcement backlog reduction efforts and eventual implementation of the CMIS. The ESRA server is planned for relocation to KJC early in Quarter 20.

During the nineteenth quarter, CLE received a request by the Mitrovica Court to provide the training to court personnel from branches in the north of the Mitrovica Basic Court region, which are being integrated into Kosovo’s judicial system in accordance with the Brussels Agreement on Integration of the Justice Sector. In January 2018, CLE trained court personnel from the Leposavic and Zubin Potok branches on enforcement procedures under the Law on Enforcement Procedure and on use of the ESRA. CLE delivered four training sessions to nine enforcement clerks, of whom six were male and three were female. All of the trainees were Kosovo-Serbian.

**Sub-activity I.1.1.2 – Support migration of ESRA database into CMIS.** Cognizant of KJC’s eventual deployment and use of the CMIS, the ESRA and its database were developed in programming languages that will make integration into CMIS possible. During the nineteenth quarter CLE continued its regular meetings with the KJC IT Department Manager to discuss the progress of the CMIS rollout, who reiterated that the enforcement module of CMIS will not start in development until later in 2018.

#### **A.I.2.1: Establish with KJC clear goals and targets for the reduction of backlogged enforcement cases in the Kosovo court system**

CLE continued to work with KJC leadership to stress the importance of eliminating the backlog of unenforced judgments. During Year Four, KJC agreed to the goal of removing 155,000 cases from the execution caseload by the end of the Program.

**Sub-activity I.2.1.1 – Work with the KJC Leadership and Basic Court Presidents to set case removal targets and periodically track performance of case removal.** CLE coordinated with KJC, Court Presidents, and court enforcement personnel to prepare for upcoming demobilization of BROs from the courts early next quarter. As described in Sub-activity 1.2.3.2, CLE also shared weekly progress data with the KJC and Court Presidents regarding removal of cases pursuant to a September 2017 KJC Decision to remove small court-as-creditor cases.

#### **A.I.2.2: Assist the KJC and other relevant actors to develop and implement mechanisms for and to complete the reduction of the backlog in enforcement cases in the Kosovo court system, effectively resolving the backlog by program end date**

CLE works to identify and implement innovative strategies and approaches to maximize removal of enforcement cases from the courts. One of CLE’s most powerful activities to reduce Kosovo’s tremendous backlog of court enforcement cases has been its continuous deployment of its Backlog Reduction Initiative—consisting of up to 44 law-trained Backlog Reduction Officers (BROs)—in all of Kosovo’s Basic Courts and branches. BROs assist court personnel in categorizing civil enforcement cases in all Basic Courts and most of the branches. CLE has embedded teams in every court, with the exception of the Gracanica branch and the northern branches of the Mitrovica Basic Court in Zubin Potok, and Leposavic.

**Sub-activity I.2.2.1 – Continue deployment of BROs in Kosovo Basic Courts to prepare cases for enforcement and enter data into ESRA.** During the nineteenth quarter, the CLE BROs continued to support enforcement clerks in the Basic Courts and branches to remove cases from the execution caseload. CLE's embedded Backlog Reduction Officers will be demobilized early in Quarter 20.

**Summary of court-based enforcement case removal efforts to date**

- Through the end of January 31, 2018, the courts receiving CLE support and assistance have cleared 168,105 cases from the execution caseload. The total claimed value of the cases removed from the execution caseload through the reporting period was €466,314,345. In 43,941 of those cases, 100% of the amount claimed was recovered, amounting to a total of €17,410,394.
- In the nineteenth quarter alone, 11,967 cases were removed from the execution caseload. The claimed value of the cases removed during nineteenth quarter was €3,716,481. In 1,361 of those cases, 100% of the amount claimed was recovered, amounting to a total of €445,141.
- To date, 6,601 Enforcement Decisions have been prepared for enforcement against wages by all courts, reflecting an amount of €18,454,809 Euro to be recovered. Forty-eight Enforcement Decisions have been enforced, amounting to full recovery of €16,592.

The following table sets out a detailed breakdown of results for case categorization and case removal by Basic Courts and branches over the life of the CLE Program through January 31, 2018:

CASES REMOVED AND VALUE CLAIMED BY BASIC COURTS AND BRANCHES THROUGH 2018-01-31		
Basic Court	Total Claimed Value	Total Number of Cases Removed
Basic Court Pristina	(€) 200,070,597	30,931
Branch Podujeve	(€) 13,261,178	7,838
Branch Lipjan	(€) 9,688,156	4,852
Branch Glogovc	(€) 8,577,717	2,077
Commercial Department	(€) 35,646,076	4,282
<b>Pristina Basic Court and Branches</b>	<b>(€) 267,243,723</b>	<b>49,980</b>
Basic Court Prizren	(€) 40,176,132	19,161
Branch Suhareke	(€) 8,326,043	5,412
Branch Dragash	(€) 347,334	752
<b>Prizren Basic Court and Branches</b>	<b>(€) 48,849,509</b>	<b>25,325</b>
Basic Court Gjakove	(€) 24,061,065	11,078
Branch Malisheve	(€) 6,756,014	4,374
Branch Rahovec	(€) 4,847,692	4,241
<b>Gjakova Basic Court and Branches</b>	<b>(€) 35,664,772</b>	<b>19,693</b>
Basic Court Peje	(€) 18,024,359	13,685
Branch Decan	(€) 1,731,529	3,433

Branch Istog	(€) 4,712,113	2,831
Branch Kline	(€) 4,072,403	3,380
<b>Peja Basic Court and Branches</b>	<b>(€) 28,540,404</b>	<b>23,329</b>
Basic Court Ferizaj	(€) 19,979,416	14,494
Branch Kacanik	(€) 15,860,170	4,114
Branch Shterpce	(€) 90,357	120
<b>Ferizaj Basic Court and Branches</b>	<b>(€) 35,929,943</b>	<b>18,728</b>
Basic Court Gjilan	(€) 14,655,231	15,226
Branch Viti	(€) 6,722,670	5,353
Branch Kamenice	(€) 3,344,678	1,502
Branch Novoberde	(€) 20,333	351
<b>Gjilan Basic Court and Branches</b>	<b>(€) 24,742,911</b>	<b>22,432</b>
Basic Court Mitrovice	(€) 12,388,011	4,192
Branch Skenderaj	(€) 2,105,417	911
Branch Vushtrri	(€) 10,849,655	3,515
<b>Mitrovica Basic Court and Branches</b>	<b>(€) 25,343,083</b>	<b>8,618</b>
<b>Total for all Basic Courts and Branches</b>	<b>(€) 466,314,345</b>	<b>168,105</b>

#### **Sub-activity I.2.2.2 – Support transfer of court enforcement cases to private enforcement**

**agents.** Another backlog reduction strategy has been to encourage creditors to transfer court enforcement cases to private enforcement agents. During previous reporting periods, CLE met with major creditors to discuss the possibility of transferring cases from the courts to PEAs. One of those creditors, Kosovo Telecom (KT, formerly PTK), had expressed tentative support for transferring claims so long as they would not have to pay the initial administrative fee (payment of which was mandated under the Tariff set out in an MOJ Administrative Instruction). CLE supported amendment of the Tariff to accomplish the transfer of cases, however KT later claimed that the absence of a Government over the summer prevented movement forward. Even though a new Government was formed last quarter, KT continues to fail to take decisive action to solicit PEAs. CLE will approach KT again in February 2018 to evaluate whether they can move forward on selecting PEAs to collect KT's current court-based enforcement cases.

#### **A.I.2.3: Reduce number of cases where the court is the creditor in court enforcement by supporting better management of these cases and dismissal of smaller cases**

Although the LEP required all new enforcement cases after July 1, 2014, with some minor exceptions,<sup>2</sup> to be handled by private enforcement agents, a significant number of new cases continue to enter the court's enforcement caseload. The vast majority of these cases are small

<sup>2</sup> Under the LEP, the only enforcement cases to be handled by the courts are family law cases and return to employment cases.

claims where the court is the creditor for unpaid court expenses and fees in criminal cases. Hundreds of these new claims are pouring into the court enforcement system each month, unnecessarily diluting the benefits of CLE's backlog reduction efforts.

**Sub-activity I.2.3.1 – Support development and implementation of policies in the courts to increase collection of the expenses and fees together with fines in underlying criminal cases.**

Better court management and efficient procedures in handling collection of court fees and expenses can help avoid and significantly reduce the enforcement burden posed by these small claims. During the nineteenth quarter, CLE continued to meet and coordinate with judges and court administration to encourage better processes for collecting court expenses, particularly for criminal cases, by requiring satisfaction of outstanding court expenses before court fines are paid. Data from the ESRA system indicate an apparent decrease in the number of new court-as-creditor cases in recent months, however it is not yet clear whether this reduction is likely to be sustained or is a periodic fluctuation.

**Sub-activity I.2.3.2 – Support development of policies to better manage small, old court-as-creditor claims.** Courts continued to implement the September 8, 2017, KJC Decision requiring withdrawal of all cases of €50 or less where the court was the creditor and which had been initiated on or before December 31, 2016. The Decision set a deadline of December 31, 2017 to close out the approximately 26,000 cases that were covered by the Decision. CLE continued to use its tracker tool to measure progress in implementing the Decision and worked with each Basic Court and branch to remove these cases from the backlog within the deadline. CLE also shared with each Court President weekly progress reports generated by the tracker tool. By the December 31, 2017, deadline, 25,319 of the covered cases were withdrawn and removed from the backlog. Only 63 cases (around two tenths of one percent) remained, due to inability to locate case files. 58 of those cases were in Pristina Basic Court and branches. Detailed data for the case removal, by court/branch, appear in Annex II.

**A.1.3.1: Support the professional and effective functioning of the Private Enforcement System and CPEA**

The Chamber of Private Enforcement Agents (CPEA) was established in January 2015 pursuant to the LEP to serve as a self-regulating body for the profession, engaging in the development of law and policy with government partners, fostering the professionalism of private enforcement agents, and promoting the work of the profession to the public. CLE continues to support development of its institutional capacity. In the nineteenth quarter, the Assembly of the CPEA held its annual meeting during which it elected a new President, members of the Executive Board, and members of the Control Council. During the reporting period, the CPEA and the Ministry of Justice (MOJ), with support from CLE, worked together to develop an Administrative Instruction on procedures to de-register a Private Enforcement Agent.

**Sub-activity I.3.1.1 – Assist CPEA initiation of strategic planning.** During the previous quarter CLE, jointly with the EU Project – Support to Free Legal Profession and the Bar Association (FLP Project), organized a full day workshop with the members of the Executive Board and the Director/Head of Professional Services of the CPEA to conduct a SWOT Analysis to support development of strategic objectives for the CPEA. Following the workshop, CLE and the EU Project jointly prepared a draft set of strategic objectives, mission statement, vision and values of the CPEA to be considered by the CPEA Board. On December 23, 2017, the CPEA Assembly approved the strategic objectives, mission statement, vision and values of the CPEA. In the same meeting, the Assembly set the 2018 PEA

membership fees at 0.8% of gross annual income (deducting 18% of the VAT and 10% in income tax) and set the 2018 CPEA budget at €48,050.

**Sub-activity I.3.1.2 – Assist CPEA develop organizational processes and templates.** CLE continues to assist the CPEA in developing key templates and processes. During the nineteenth quarter, the Assembly of the CPEA approved the Guideline on employment and HR policies of the CPEA that was developed in early Year Five. CLE also prepared and sent to the CPEA the following documents that were derived from the Guideline on employment and HR policies of the CPEA: 1) a draft request for proposal recruitment; 2) a draft job description; 3) a performance evaluation form during probationary period; 4) a draft form for employee performance evaluations; 5) the Executive Board's decision on appointment of the Committee members; 6) a final report regarding the Committee for the recruitment process; 7) a draft certification of outside employment status; 8) a draft declaration confirming the absence of any conflict of interest; 9) a draft timesheet template; and 10) a draft leave request.

During the previous quarter, CLE drafted a Guideline for the CPEA on use of the Bank Account Registry (BAR) by PEAs. This Guideline contains the conditions, requirements, security procedures, data management and liabilities of PEAs on use of the BAR. CLE also prepared a draft template Registry for the CPEA to maintain data on PEA subscriptions to use the BAR, and a template Registry that each PEA should maintain, showing the agent's day to day use of the BAR. The Guideline includes draft templates for decisions on freezing debtor accounts, transferring the monetary funds to the creditor and for notification of commercial banks to unfreeze bank accounts of debtors. The draft templates will facilitate the work of PEAs and contribute to greater efficiency in enforcement through the BAR. During the reporting period, CLE updated this Guideline based on the discussions with the Central Bank and the Kosovo Association of Bankers and shared it with the CPEA for further discussion and eventual adoption by the CPEA's Executive Board.

In the nineteenth quarter, CLE prepared and shared with the CPEA a draft Policy on Duty Travel on CPEA Business. This draft Policy establishes administrative requirements and operational procedures for processing duty travel for representatives of the CPEA, private enforcement agents and CPEA's staff. It also includes the following template annexes to this Policy: 1) a draft scheme on duty travel rates; 2) a draft request for duty travel; 3) a draft decision on duty travel approved/rejected by the Executive Board; 4) a draft report on duty travel expenses while abroad; and 5) a draft report on expenses for duty travel that is completed in under 24 hours. Once finalized, the Policy will be presented to the CPEA Executive Board for Adoption.

#### **A.I.3.2: Support the MOJ to develop and implement all the necessary mechanisms to implement the new law on enforcement procedure**

Although the CPEA serves as a self-governance body for the PEA profession, the MOJ plays the lead governance role over the profession, promulgating regulations, setting tariffs, and carrying out inspections for legality of action. In previous reporting periods, CLE has supported the development of regulations to implement the Law on Enforcement Procedures (LEP) and the development and passage of legislation to amend and improve the Law on Enforcement Procedures. In the nineteenth quarter, the Minister of Justice signed an Administrative Instruction on the Business and Personal Data of the Private Enforcement Agents that was drafted in 2015 with CLE assistance.

During the reporting period, the MOJ published a Call for Applications for the appointment of PEAs for a total of 33 vacancies. The candidates for the vacancies are those who have passed the PEA exam and meet other criteria required by the LEP. The Call for Applications was open from December 11, 2017 until January 10, 2018. The vacancies were allocated accordingly: 2 PEAs for the territory of

the Basic Court of Pristina; 5 PEAs for the territory of the Basic Court of Mitrovica; 4 PEAs for the territory of the Basic Court of Peja; 7 PEAs for the territory of the Basic Court of Prizren; 4 PEAs for the territory of the Basic Court of Gjiilan; 6 PEAs for the territory of the Basic Court of Ferizaj; and 5 PEAs for the territory of the Basic Court of Gjakova. A total of only nine applications were received. The Minister of Justice will decide on appointments following review of the applications by a ministerial committee charged with evaluating the candidates.

**Sub-activity I.3.2.1- Support for amending the PEA tariff.** The new LEP amendments require amendment of the Administrative Instruction on PEA Tariffs to set up a new tariff system. CLE is supporting MOJ's development of this tariff through designing a Cost Study that would provide data on actual costs to run PEA offices. Earlier in Year Five, CLE developed a draft Terms of Reference (ToR) for this Cost Study and initiated a search for a potential funder of the study (CLE does not have funds or a contract mechanism to conduct such a study).

Finding a funding institution depends upon active engagement by the Ministry of Justice. CLE continued to meet with the Minister and his Chief of Cabinet about progress on reaching out to potential donors, particularly the Norwegian Embassy. Progress regarding the Cost Study Model remained slow. CLE emphasized both to the Minister, as well as to the MOJ Legal Department that the Cost Study Model is becoming increasingly pressing, as it will serve as the basis for amendments to the Administrative Instruction on Tariffs, which must be amended by November 2018, according to the 2017 amendments to the LEP. CLE will continue to urge the Ministry to seek funding and commence with the study.

**Sub-activity I.3.2.2 – Support developing initial agenda for Professional Commission.** The LEP also provides for establishment of an independent Professional Commission on Evaluation of Enforcement to serve as an observer of the PEA profession and to make recommendations on improving the system. The Commission was formally constituted for two years, but was not operational and did not exercise any of its enumerated duties. In Year Four, the Commission finally adopted a procedural regulation drafted with CLE assistance to guide its operation and decision making. CLE also discussed with the MOJ the importance of a functional Professional Commission and why funding from the MOJ is warranted and necessary. CLE will continue its discussions with the MOJ regarding the Commission.

#### **A.I.4.1: Support the MOJ to ensure the efficient functioning of the new enforcement system disciplinary system**

**Sub-activity I.4.1.1 – Continue support of PEA inspection process.** The new LEP amendments provide for creation of an Inspection Unit at the MOJ. Currently, inspections are carried out by an *ad hoc* Inspection Committee, set up as an interim body during Year Four. CLE has been supporting this Committee by training members on inspection processes set out in the PEA Supervision Guidelines developed by CLE and adopted during Year Four. From the time of its formation during Year Four through the end of the reporting period, the Inspection Committee has inspected 29 PEAs. During the reporting period, the Inspection Committee conducted one inspection. CLE again raised with the MOJ the need to strengthen and ensure the independence of the Inspection Unit. The MOJ indicated to CLE that it is developing a proposal to create an Inspection Unit for all of the Free Legal Professions that would be independent from the Department of Free Professions.

**Sub-activity I.4.1.2 – Support development of complaint screening procedures.** In addition to the complaint mechanisms being developed for the CPEA, CLE also supported the MOJ in developing a complaint screening procedure for complaints against PEAs. During the nineteenth quarter, CLE

worked with the MOJ's Department of Free Professions to consult on and revise a draft guide for the Screening of Complaints.

#### **A.I.5.1: Support the establishment of an efficient and sustainable cooperation among all the necessary stakeholders to improve the systems for enforcement of judgments in Kosovo**

One key pillar of an effective enforcement regime is access to information to locate debtors and their assets. Most of the information necessary is held by other public institutions and banks. As such, cooperation and information-sharing between public and private sector actors is necessary. Previous CLE activity has supported coordination among government and private bodies for gathering information to facilitate the location of debtors and assets. CLE continued this activity during the reporting period.

**Sub-activity I.5.1.1 – Support CPEA to establish information exchange protocols with Civil Registry and Cadastral Agency.** CLE has previously supported the Chamber in preparing written requests to the General Director of the Cadastral Agency and Civil Registry Agency to enable private enforcement agents to access their public registries for enforcement purposes. In a previous reporting period, the CPEA advised CLE that the Civil Registry Agency agreed to share their databases with PEAs for vehicles and personal data for enforcement purposes if the CPEA purchased its own server. The agreement was set to come into effect on January 1, 2018, but due to budget constraints, the CPEA has been unable to purchase a server. As a result, the CPEA continues to lack access to the necessary information from the Civil Registration Agency to carry out enforcement responsibilities.

During the reporting period, CLE prepared and shared with the CPEA a draft MOU establishing an information exchange protocol between the CPEA and the Civil Registration Agency, to obtain access to information without having to purchase a server. The draft MOU is intended to facilitate and maximize the communication between the Civil Registration Agency and the PEAs.

Also, in the previous quarter, CLE had supported CPEA in meeting with the Head of the Legal Department of the Ministry of Finance (MOF) regarding a request by the CPEA to the Kosovo Cadastral Agency to provide PEAs with requested data from the Cadastral Registries free of charge and to provide access to Cadastral information on the same terms as are provided to court enforcement personnel. As a result of that meeting, the MOF had requested a legal opinion from the Prime Minister's Office for guidance. No opinion has yet been issued, and it is unclear when one will be issued.

#### **A.I.6.1: Utilizing improved methods and information resources to improve enforcement against bank accounts and earnings**

One of the most effective tools of collection is seizure of debtor bank accounts. In Year Two, CLE developed a system upgrade to the Bank Account Holder Registry (BAR), which fully automated enforcement of judgments against bank accounts, eliminating the need for face to face meetings with banks and allowing for greater and more efficient enforcement and collection of debt.

The Amendments to the LEP that came into effect during the previous quarter incorporate mandatory use of the BAR for bank account garnishments. CLE continues to provide technical support to the Central Bank to debug issues identified in the system as they arise. CLE is also working with the Chamber to provide guidance to PEAs on their new responsibilities under the amendments for using the BAR.



Through the end of January 31, 2018, courts have prepared and presented a total of 37,691 bank account garnishment requests with CLE assistance, resulting in the closure and full recovery in 10,431 cases (€2,728,755). During the nineteenth quarter, 700 bank account garnishment requests were prepared and presented, resulting in the closure and full recovery in 225 cases (€65,740).

**Sub-activity I.6.1.1 – Training on use of BAR to users and banks.** From the fourteenth quarter to the eighteenth quarter, CLE carried out a program of training for PEAs, court enforcement personnel, and bank officials on use of the upgraded, fully automated, CBK Registry. Training was completed in the previous quarter. CLE continues to monitor and supervise the work of bank officials, court enforcement personnel, and Private Enforcement Agents.

#### **A.1.7.1: Enable the business community to receive information, provide feedback and use these reforms in their daily operations**

**Sub-activity I.7.1.1 – Assist CPEA development of strategic communication and outreach plan.** During the nineteenth quarter, CLE continued to engage in public outreach on the enforcement system through business associations and its own webpage. Outreach efforts on enforcement issues will be ultimately transitioned to the CPEA. Early in Year Five, CLE assisted the CPEA in developing a draft communications strategy and outreach plan. CLE expects that the draft will be finalized now that the CPEA Assembly has approved the strategic objectives discussed under Sub-activity I.3.1.1, which include approval and implementation of a communications plan.

**Sub-activity I.7.1.2 – CPEA Outreach Materials.** During this quarter, CLE continued to work with the CPEA to distribute and make available the consolidated version of the LEP incorporating the amendments passed in May 2017, in order to make the amended LEP more user-friendly for PEAs and the business and legal communities. A consolidated version also helps to minimize risks of misapplication or misunderstanding of the Law and the amendments. In the previous quarter, CLE had developed the following outreach materials for the CPEA: 1) Template of the CPEA Banners; 2) Template of the CPEA Notebook; 3) Template of the CPEA Certificate; 4) Template of the CPEA Folders; 5) Template of the CPEA Cover Page of documents; and 6) Template of the CPEA Brochures. These templates will be shared with the CPEA as part of the draft strategic communication and outreach plan development process, discussed under Sub-activity I.7.1.1.

**Sub-activity I.7.1.3 – Support joint creditor perception survey.** In Year Four, CLE conducted an informal opinion survey with creditors about the private enforcement system. In Year Five, CLE has been supporting the CPEA to develop an expanded follow up creditor survey to better understand their perceptions of the CPEA and PEAs. This quarter, CLE together with the CPEA developed an initial draft Survey and expects the CPEA will conduct the survey in early 2018.

**Sub-activity I.7.1.4 – Outreach and awareness event on passage of the amendment to the LEP.** This activity remains indefinitely suspended.

#### **Activities under A.I. relate to the following AMEP indicators:**

##### **IR1.1(1): Number of civil enforcement cases enforced as a result of USG assistance**

CLE will track the number of all civil enforcement cases enforced in courts receiving CLE assistance.

Target Year 5: 155,000	Actual Year 5: 168,105	Q19: 11,967
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##### **IR 1.1(4): WB Doing Business indicator on contract enforcement (ranking)**

Target Year 5: 46	Actual Year 5: 49	Q19: N/A
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##### **IR 1.1.1(1): Number of USG-assisted courts with improved judgment/enforcement case management**

CLE assists 24 Courts: 7 Basic Courts (Pristina, Prizren, Gjakova, Peja, Ferizaj, Gjilan, and Mitrovica) and 17 branches (Podujeva, Lipjan, Gillogovc, Suhareka, Dragash, Malisheva, Rahovec, Decan, Istog, Klina, Kacanik,



Strpce, Viti, Kamenica, Novoberdo, Vushtrri, and Skenderaj).

Target Year 5: 24(27)<sup>3</sup>

Actual Year 5: 24

Q19: 24

**IR 1.1.1(2): Number of legal institutions and associations supported by USG assistance**

Twelve legal institutions are supported by CLE: 1) Ministry of Justice (MOJ); 2) Kosovo Judicial Council (KJC); 3) Central Bank Kosovo (CBK); 4) Ministry of Trade and Industry (MTI); 5) Kosovo Bar Association (KBA); 6) Basic Courts and Branches - and the Commercial Department at Pristina Basic Court; 7) Kosovo Judicial Academy (KJA); 8) Kosovo Banking Association (KBA); 9) American Chamber of Commerce (AmCham); and 10) the Chamber of Private Enforcement Agents; 11) Kosovo Prosecutorial Council (KPC); and 12) Chamber of Bankruptcy Administrators.

During the 19<sup>th</sup> Quarter, CLE support of certain institutions concluded as the planned activities were completed.

Target Year 5: 15

Actual Year 5: 12

Q19: 12

**IR 1.1.1(3): Percent change of court enforcement actions against bank accounts**

Pursuant to the amended AMEP approved in January 2018, this indicator was closed out in the 18<sup>th</sup> quarter and will not appear in future reporting.

Target Year 5: N/A

Actual Year 5: N/A

Q19: N/A

**IR 1.1.1(4): KJC reporting on execution caseload improved**

The KJC continued transitioning from paper-based to the CLE designed electronic system which is more accurate and allows monitoring of individual enforcement personnel performance. This activity will be measured by two milestones: 1) Adoption of electronic system by KJC order; 2) full utilization of the electronic system.

During the 19<sup>th</sup> quarter achieved both milestones. The KJC issued a decision mandating that all Court personnel use the CLE designed Enforcement Statistical Reporting Application (until the full rollout of the CMIS is complete) and CLE trained court enforcement personnel on usage of the system and these individuals demonstrated full ability to enter case data into the database.

Target Year 5: Yes (1)/ Yes (2)

Actual Year 5: Yes (1)/ Yes (2)

Q19: Yes (1)/ Yes (2)

**IR 1.1.3(3): Number of enforcement cases resolved through new procedures (e.g. bailiff) with USG assistance**

The Private Enforcement Agents report to the MOJ on an annual basis (January 1-December 31); PEAs are not obligated to report to CLE. The below data are taken from the 2016 annual PEA report to the MOJ.

Target Year 5: 10,000

Actual Year 5: 11,376<sup>4</sup>

Q19: N/A

**IR 1.1.3(4): Amount recovered through new procedures (e.g. bailiff)**

The Private Enforcement Agents report to the MOJ on an annual basis (January 1-December 31); PEAs are not obligated to report to CLE. The below data are taken from the 2016 annual PEA report to the MOJ.

Target Year 5: €100,000,000

Actual Year 5: €109,564,883<sup>5</sup>

Q19: N/A

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<sup>3</sup>CLE is not working in Zubin Potok, Leposavic, and Gracanica court branches.

<sup>4</sup> Number corrected from previous reports based on CLE review of source data from the CPEA conducted in January 2018. Includes only number of cases through Dec. 31, 2016, and will be updated with 2017 data once that data becomes available after March 31, 2018.

<sup>5</sup> Amount corrected from previous reports based on CLE review of source data from the CPEA conducted in January 2018. Includes only amounts collected through Dec. 31, 2016, and will be updated with 2017 data once that data becomes available after March 31, 2018.

## **B. Component II: Development of the Contract and Commercial Law Framework and Systems, Improvement of Contract Enforcement Systems and Functioning of the ADR Mechanisms**

CLE's main legislative activities under Component II involve: 1) supporting implementation of the new Bankruptcy Law that passed in July 2016; 2) advocating for the passage of the draft new Law on Mediation; 3) monitoring passage of the amendments to the Law on Business Organizations; and 4) developing a Law on Bills of Exchange. The pending legislation was re-submitted to the Assembly after a new Government was formed in September 2017. It is possible that CLE will already have concluded before the above legislation reaches the Assembly for passage after the second reading.

### **B.II.1.1: Support Implementation of the new Bankruptcy Law**

The new Law on Bankruptcy, developed and enacted with CLE assistance, entered into effect in Year Four. During the nineteenth quarter, CLE continued support for implementation of the new Law. As part of its support, CLE has undertaken monitoring of the performance of the PBC-CD (the Department in which bankruptcy cases are filed) in handling bankruptcy cases. During the reporting period, CLE Legal Officers continued to support judges with administering the ongoing bankruptcy cases. No significant implementation issues were observed. CLE will monitor progress of open bankruptcy cases to identify and advise on resolving implementation issues. As part of its coordination activities with other donors, CLE is also facilitating the efforts of the EU FLP Project to establish an association of Bankruptcy Administrators, either as part of the Society for Certified Accountants and Auditors (SCAAK) or as an independent legal entity.

**Sub-activity II.1.1.1 – Support MOJ to Promulgate and Implement Regulation on Certification of Bankruptcy Administrators.** This activity was completed when the Bankruptcy Regulation drafted in previous reporting periods with CLE assistance was promulgated by the Ministry of Justice during the seventeenth quarter.

**Sub-activity II.1.1.2 – Finalize Training and Certification Process for Bankruptcy Administrators.** CLE is now working with the MOJ to organize a new round of examinations for licensing new Bankruptcy Administrators.

**Sub-activity II.1.1.3 – Finalize and distribute Bankruptcy Manual and use to train relevant stakeholders.** The Bankruptcy Manual was finalized in prior reporting periods. CLE expects it to be published on the MOJ website pending approval by the Head of the MOJ's Department of Free Professions.

### **B.II.1.2: Law on Mediation**

**Sub-activity II.1.2.1 – Advocate for passage of Law on Mediation.** The draft Law on Mediation, developed over the course of two years in close cooperation with the MOJ, was approved by the Government and had proceeded to the Assembly. Its passage was imminent when the Assembly was dissolved and new elections announced. Following formation of a new Government midway through the eighteenth quarter, the draft law was again approved by the Government, passed at first reading in the Assembly in the nineteenth quarter, and referred to committees for review. The Assembly's Committee on Legislation established a working group to review and finalize the draft Law before sending it back for a second reading and approval, but this working group has not, as yet, held any sessions. CLE expects the working group to convene early in the next quarter. CLE will attend working group sessions to support the MOJ in advocating for the draft Law, particularly for the following key provisions: 1) exclusion of domestic violence cases from the mediation process; 2)

mandatory mediation for certain family law and property cases; and 3) placing mediation clerks within each of the seven Basic Courts who would be responsible for referring cases to mediation.

**Sub-activity II.1.2.2 – Assist the KJC and Courts with implementation of the new Law on Mediation.**

As noted above, the draft Law on Mediation is currently under consideration in the Assembly and, as such, no actions could be undertaken for this activity in the nineteenth quarter.

**Sub-activity II.1.2.3 – Support MOJ in amending the relevant Administrative Instructions.** As the draft Law on Mediation remains pending in the Assembly, no actions could be undertaken for this activity in the nineteenth quarter.

**B.II.1.3: Amendments to the Law on Business Organizations**

The Law on Business Organizations governs the forms a business may take and the rights and responsibilities of companies, officers, boards of directors, and shareholders or other investors or partners. In previous reporting periods, CLE worked with MTI and the USAID Partnerships for Development Program (PfD), to develop a draft Law on Business Organizations.

**Sub-activity II.1.3.1 – Monitor and support passage of the Law.** The PfD Program has been leading this initiative and monitoring the draft Law's movement through the Assembly. The draft law had passed the first reading in the Assembly and was scheduled for approval in the second reading during quarter seventeen. However, the dissolution of the Assembly on May 10, 2017 resulted in a return of the draft law to the Government. The draft law was re-submitted to the Assembly last quarter. CLE will continue supporting the Assembly Committee on Trade and Industry in reviewing the comments received during the public consultation phase and preparing the law for submission to the Assembly for second reading.

**B.II.1.4: Support implementation of the Law on Late Payments and drafting of the new Law on Bills of Exchange**

**Sub-activity II.1.4.1 – Assist CBK with promulgating regulations to implement Law on Late Payments.** The Law on Late Payments passed in late Year Four. In Year Five, CLE supported the CBK in developing and finalizing the regulation on Late Payments for Financial Institutions, which shall be promulgated by the Board of Directors of the CBK. In previous reporting periods, the regulation was finalized and submitted to the Board for approval. Due to an unexpected resignation of the Governor of CBK during the eighteenth quarter, approval of the Regulation has been postponed for consideration by the CBK Board of Directors after appointment of a new Governor.

**Sub-activity II.1.4.2- Monitor and support passage of the Law on Bills of Exchange.** In prior periods, CLE had completed an initial draft of the Law on Bills of Exchange and reached an understanding with the MOJ to present the draft Law to the Government for submission to the Assembly. Although a CLE-supported Concept Document in support of the draft Law had been approved by the previous Government, due to intervening elections and formation of a new Government in 2017, the Concept Document supporting this draft law will again need to be approved, this time by the new Government. During the nineteenth quarter, the MOJ included the Concept Note on the draft Law on Bills of Exchange in its legislative agenda. After approval of the Concept Note by the Government, the draft Law on Bills of Exchange will be entered into the Government's 2018 Legislative Program.

**B.II.2.1: Improve the systems of judges assigned to the Economic Departments of the Pristina Basic Courts and the Court of Appeals**

The purposes of CLE's Commercial Department assistance are to: 1) assist the Commercial Department to identify the volume of investment disputes that are before it; and 2) support the

Commercial Department to improve its efficiency and eliminate its backlog of unresolved commercial disputes.

**Sub-activity II.2.1.1 – Provide embedded legal support to the Pristina Basic Court-Commercial Department.** In Year Three, CLE embedded five Legal Officers in the PBC-CD, four of whom are assigned individually to judges and one who supports the Registry in the Department. The five Legal Officers provide daily and ongoing support to the judges with: 1) legal research and preparation of preliminary drafts of decisions; 2) support for the Court Registry's intake of new cases filed with the CD; 3) ensuring that all case information is being entered into the KJC electronic database, moving away from a manual case management system; and 4) maintaining individual spreadsheets and templates for each judge to help keep track of progress and facilitate drafting. The legal officers have also prioritized backlog cases, assisted in identifying "foreign investor disputes," and helped with archiving. In October 2017, one of the four embedded legal officers was hired by the Basic Court as a professional associate. Although a court employee, he will temporarily carry on the same duties in the CD. CLE's Legal Officers worked closely with court staff during the transition to the new CMIS system, implemented as of October 2017. The team also supervised interns in updating and verifying registers and archive records.

During the reporting period, CLE took initial or follow-up actions on pending cases, drafting 326 decisions or notices and 55 judgments. There are 937 active cases on the docket, of which 242 are active backlog cases.

Through the end of the reporting period, only 17 cases (12 active, two resolved, two closed, and the procedure is terminated in one case) have been deemed to meet the criteria for designation as a foreign investment case (as defined under the Law on Foreign Investment). These cases represent less than one percent of the overall caseload of the PBC-CD.

**Sub-activity II.2.1.2 – Provide embedded legal support to CoA-CD.** In Year Four, CLE also commenced support for the Court of Appeals-Commercial Department (CoA-CD) and embedded three Legal Officers. The Legal Officers focused on taking inventory of all the cases in the CoA-CD, and one Legal Officer started to provide legal support to one of the judges. As of the end of the reporting period, there is only one judge in the CoA-CD, as the other two vacancies remain unfilled.

Through the end of the reporting period, the embedded legal officers in the CoA-CD drafted 184 decisions, of which 47 were drafted during the nineteenth quarter. The Court has resolved 316 commercial cases since CLE support began, and 71 disputes were resolved during the nineteenth quarter. The docket currently has 352 active cases and no active backlog cases.

## **B.II.2.2: Improve the skills and knowledge of judges assigned to the Economic Departments of the Pristina Basic Court and the Court of Appeals**

**Sub-activity II.2.2.1 – Commercial Law Training for Judges.** During the first three years of the Program, CLE developed a curriculum of specialized courses to provide commercial judges with substantive knowledge on various commercial law topics. Such topics included Intellectual Property, how to assess notional value, appreciate the time value of money in calculating damages, basic accounting to understand balance sheets, and shareholder rights. A total of 24 courses have been delivered by CLE. In Year Four, CLE handed over the curriculum to the Kosovo Judicial Institute, now the Justice Academy, and the Institute delivered these trainings itself. If new judges are appointed to the Commercial Departments of the Pristina Basic Court and/or the Court of Appeals while CLE is operating, CLE will coordinate delivery of an initial training curriculum to the new judges.

### **B.II.3.1: Assist in the development of necessary mechanisms and procedures to ensure the proper and efficient enforcement of arbitral awards**

Notwithstanding that the legal framework for arbitration and enforcement is in place and does not require amendment to meet best international practices, CLE monitors the performance of the PBC-CD, which has jurisdiction to recognize arbitral awards. Throughout the CLE Program, CLE has held discussions on a monthly basis with the PBC-CD's Presiding Judge to monitor performance of the Court, which has jurisdiction to recognize arbitral awards (enforcement is under the jurisdiction of PEAs).

**Sub-activity II.3.1.1 – Monitor recognition and enforcement of arbitral awards.** During Year Four, two foreign arbitral awards were submitted to PBC-CD, one for recognition and another for set-off. A decision rendered by the trial court on its lack of jurisdiction to decide the request for set-off was overruled by the appellate court two times. The trial court has not been able to decide on the request for recognition of a foreign arbitral award for several months. In the set-off case, during the reporting period, a hearing on the request was scheduled by the Court to take place in September 2017. However, the hearing was then postponed to February 2018, because of delays in serving invitation on a foreign party. In the case requesting recognition of foreign arbitral award, the case was withdrawn by the Claimant as the parties reached an out-of-court settlement. In addition to these foreign cases, a request for recognition of a domestic arbitral award has been recognized by the Court and confirmed at the appellate level. CLE will continue monitoring the situation with PBC-CD and the Court of Appeals.

### **B.II.3.2: Assist in the development of necessary mechanisms and procedures to ensure the proper and efficient enforcement of mediation agreements**

The Laws on Mediation, on Contested Procedures, and on Enforcement Procedure already contain provisions on the recognition and enforcement of mediation agreements that reflect best international practices and largely reflect UNCITRAL standards. A provision in the draft Law on Mediation provides that an agreement reached by the parties and signed by a licensed mediator will have the same enforceability as a notarized contract. CLE will seek to ensure that this provision remains in the draft Law as it moves through the approval process.

### **B.II.4.1: Support Basic Courts in establishing mediation clerk positions to assist with referral of cases to mediation**

#### **Sub-activity II.4.1.1 – Coordinate with the KJC to create and allocate mediation clerk position.**

During the nineteenth quarter, CLE continued its dialogue with the KJC, JSSP, Basic Court Presidents, and donors about allocating a specialized administrative position—the Mediation Clerk—in each of the seven Basic Courts. The Mediation Clerk position will manage the mediation referral process, including serving as a liaison between the judge assigned to the case, the parties and their counsel, the Mediator, and the Court Registry (to ensure that the status and outcome of the case are accurately captured in statistical reporting).

CLE also discussed the 2018 KJC Budget Request as it concerns funding for the Mediation Clerk positions. JSSP indicated an expectation that the KJC would fund these positions, however CLE learned this quarter that the Ministry of Finance allocated funds to the KJC only to hire judges, Professional Associates, and IT specialists. JSSP and KJC are coordinating with CLE to strategize on how to make these positions permanent. Until this issue is resolved, each Basic Court will continue to designate one existing court clerk to be responsible for referring cases to mediation.

Based on several meetings with the KJC Director of the Secretariat, CLE expects that the KJC will refer the CLE-developed Practice Guide: Step by Step Manual on Referral of Cases to Mediation

(Practice Guide) to the Court Administration Committee for review and comment, after which the Committee will make a recommendation regarding adoption of the Practice Guide as an official KJC document.

During the nineteenth quarter, with approval from USAID and the U.S. Embassy, CLE started training mediation clerks designated by Chief Prosecutors in each Basic Prosecution Office in accordance with a Decision from the Kosovo Prosecutorial Council (KPC) issued in December 2017. The prosecution mediation clerks are being trained based on the same Practice Guide being used to train the court mediation clerks.

**Sub-activity II.4.1.2 – Continue to support Basic Courts in Peja, Gjilan, and Prizren.** As of April 2016, In the previous quarter, each of the Basic Court Presidents had designated existing court clerks to be responsible for referring cases to mediation, pursuant to a decision from the KJC Chairman. During the reporting period, CLE continued to support the Basic Courts in Peja, Gjilan, and Prizren, as well as the Basic Courts in Ferizaj, Gjakova, and Pristina by providing one-on-one practical training to these clerks. This interim measure is a step forward in reducing donor dependency for mediation referral and lays the foundation for self-sustainable mediation through the Kosovo courts.

In the nineteenth quarter, CLE held a one-day workshop with all the court clerks designated by Basic Court Presidents to handle case referral to mediation. During the workshop, the participants provided comments and feedback on the CLE-developed Practice Guide. Based on the comments and feedback received, CLE incorporated responsive changes into the Practice Guide. The final Practice Guide has been distributed to the KJC, KPC, and other donors.

#### **B.II.4.2: Provide support to mediators and on mediation-related activities**

**Sub-activity II.4.2.1 – Support unification of organization inclusive of all mediators in cooperation with other donors.**

At the end of Year Four, mediators requested that the new draft Law on Mediation provide for a Chamber of Mediators. At that time, the MOJ objected to establishing a Chamber for a variety of reasons, namely that mediators lack the financial resources to establish and operate a Chamber. Instead, the MOJ and CLE support either breathing life back into the current Association or registering a new NGO that would be inclusive of all mediators in Kosovo. As discussed above in Sub-activity II.1.2.1, the draft Law narrowly missed adoption by the Assembly in 2017 before dissolution of the Assembly and new elections. The draft Law is again in the Assembly, and it is likely that the mediators will again request that the draft Law provide for the establishment of a Chamber. CLE expects that the MOJ will maintain its position on the matter, although it is also possible MOJ may allow for a Chamber to be established so as long there are no financial implications for the MOJ.

#### **B.II.4.3: Increase referral of commercial mediation cases to AmCham Arbitration Center**

Mediation has been contemplated as an additional service of the AmCham Arbitration Center since its inception; however, commercial mediation is still nascent. The AmCham itself and the Arbitration Center Steering Council endorse the further development of mediation services through the Arbitration Center. ADR services, arbitration and mediation, are also available to parties who are not members of the AmCham.

**Sub-activity II.4.3.1 – Facilitate cooperation between AmCham Arbitration Center and Commercial Department for referral of cases to mediation.** Both AmCham and the PBC-CD remain reluctant to enter into a formal or informal arrangement for the referral of cases to the Arbitration Center. CLE made numerous attempts in Year Five to facilitate such cooperation, but is unlikely that any such agreement will be reached prior to closeout of CLE's mediation support activity in March 2018.



**Sub-activity II.4.3.2 – Assist AmCham Arbitration Center in marketing commercial mediation services.** Throughout Years Four and Five, CLE worked closely with AmCham and jointly organized roundtables directed towards representatives from the business and legal communities on the benefits of commercial mediation and arbitration. While some in the business community have had positive experiences with mediation, other are still reluctant to try mediation and prefer to have their cases resolved by the PBC-CD because decisions are directly enforceable and the length of proceedings is far less than for cases in the Civil Department.

**B.II.5.1: Support the KJC to request that mediation clerk positions be continuously funded and a permanent line item in the KJC budget**

**Sub-activity II.5.1.1 – Monitor status of funding Mediation Clerk positions.** CLE discussed the 2018 KJC Budget Request as it concerns funding for the Mediation Clerk positions and the request included a line for the mediation clerks. JSSP indicated an expectation that the KJC would fund these positions, however CLE learned this quarter that the Ministry of Finance allocated funds to the KJC only to hire judges, professional associates, and IT specialists. JSSP and KJC are coordinating with CLE to strategize on how to make these positions permanent. Until this issue is resolved, each Basic Court will continue to designate one existing court clerk to be responsible for referring cases to mediation.

**B.II.6.1: Support the training of judges, lawyers, and law students in the area of commercial law as deemed appropriate**

CLE's commercial training program materials, consisting of eleven general commercial law topics, have been developed for both judges and advocates. The materials were provided to both the Justice Academy and the KBA.

**Sub-activity II.6.1.1 – Support the training of judges, lawyers, and law students on the new Bankruptcy Law.** In previous quarters, CLE developed training materials on the Law on Bankruptcy. During the reporting period, CLE organized two training sessions on the Bankruptcy Law with Master students. The first training was delivered to students from ILIRIA College and of the 26 students that attended, 5 were female and 21 were male. The second training was delivered to students from the University of Business and Technology (UBT) and of the 38 students that participated, 23 were female and 15 were male.

**Sub-activity II.6.1.2 – Support the training of judges, lawyers, law students, mediators, and court personnel on the new Law on Mediation (after passage).** As a result of the dissolution of the Assembly in May 2017, the amended Law on Mediation was not passed, and it was returned to the Government. The draft Law was re-submitted last quarter to the new Government that was formed in September 2017. As such, CLE has not delivered any training on the draft Law.

**B.II.6.2: Support ILIRIA College in organizing the 4th Annual Western Balkans Vis Pre-Moot Competition**

After co-organizing three Annual Western Balkans Vis Pre-Moot Competitions, together with ILIRIA College, AmCham, the University of Pristina, and the KCC, CLE has progressively transferred responsibility to local partners for organization and funding of future competitions. The 3<sup>rd</sup> competition, held late in Year Four, was conducted entirely with locally contributed funds. ILIRIA College expressed a desire and a demonstrated capacity to take the lead in organizing the 4<sup>th</sup> Annual Pre-Moot. CLE is continuing to support final transfer of organizational knowledge to ILIRIA College for this year's competition in February 2018.

**Sub-activity II.6.2.1 – Transfer institutional knowledge to ILIRIA College faculty and law students.**

During the reporting period, CLE continued to meet regularly with ILIRIA College to provide guidance on organization of the 4<sup>th</sup> Annual Western Balkans Vis Pre-Moot.

**Sub-activity II.6.2.2 – Assist with identifying potential contributors for the Pre-Moot.** This activity was completed in the previous quarter.

**B.II.7.1: Encourage the promotion of contract use, arbitration, and mediation among business owners; improve the general public’s awareness of important commercial law topics and legislative changes, including those related to secured transactions and the new enforcement system**

CLE continued to distribute USBs at all events with six standard form contracts developed by CLE. In the nineteenth quarter, the CLE website was visited 1,951 times, while the most downloaded file was the Training Manual on Business Organizations.

**Sub-activity II.7.1.1 – Deliver roundtables on the importance of written contracts and ADR awareness.** In the nineteenth quarter CLE co-organized two “Put it on Paper” roundtables with Masters degree students. The first roundtable was held with Law and Business students from ILIRIA College. A total of 58 students and professors attended the presentation and discussion regarding the importance of contracts, mediation, and the Private Enforcement System; 33 were male and 25 were female. The second roundtable was held with Law and Business students from UBT. A total of 35 students and professors attended the presentation and discussion; 7 were male and 28 were female.

**B.II.7.2. Improve the general public’s awareness of important commercial law topics and legislative changes**

Since Year Four, CLE does not have a distinct outreach component or budget. However, CLE has continued to engage in outreach through its website and in cooperation with other USAID programs, Chambers of Commerce, universities, and professional organizations

**Sub-activity II.7.2.1- Develop CLE Newsletter.**

CLE undertook drafting of its next newsletter, planned to be completed and published in the next quarter.

**Sub-activity II.7.2.2- Engage in digital outreach.** As CLE does not have its own Facebook page, after publicly significant activities, CLE sends a description of relevant events and developments to the Mission to be published on its Facebook page to inform the public about legislative and institutional reforms.

**Activities under B.I. relate to the following AMEP indicators:**

**IR1.1(2): Percentage of pending civil cases over 24 months old (Pristina Basic Court-Commercial Department only)**

CLE will track on a dynamic basis the percentage of cases heard and resolved within 24 months in the Pristina Basic Court Commercial Department.

Target Year 5: 15%

Actual Year 5: N/A

Q19: 26.00%<sup>6</sup>

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<sup>6</sup>CLE attributes this result for Nineteenth Quarter to high number of settlements and withdrawals of non-backlog cases, resulting in a significant drop in overall active caseload. At the same time, the number of backlog cases grew as older cases reached the backlog definition of remaining pending resolution for 24



**IR 1.1(3): Average number of cases resolved above KJC-required norm (Appeals Court Commercial Department only)**

CLE will track on a dynamic basis the percentage of cases heard and resolved within 24 months in the Appeals Court Commercial Department.

Target Year 5: 5                      Actual Year 5: N/A                      Q19: 0.00%

**IR 1.1(5): WB Doing Business indicator on resolving Insolvency (ranking)**

Target Year 5: 163                      Actual Year 5: 49                      Q19: N/A

**IR.1.1.2 (1) Number of person days of training delivered to justice sector professionals**

Target Year 5: 10                      Actual Year 5: 33                      Q19: 0

**IR 1.1.3(1): Number of new laws and secondary legislation finalized and adopted to improve contract law and property rights using USG assistance**

Target Year 5: 2                      Actual Year 5: 2                      Q19: 1

**IR 1.1.3(2): New Law on Bankruptcy/Insolvency adopted and promulgated, as well as implementation of secondary legislation**

Sub-level milestones: 1) Draft Law complete; 2) Law adopted and promulgated; 3) secondary regulations implemented; 4) Bankruptcy Administrators licensed; 5) Manual on Rules and Procedures for Bankruptcy promulgated and adopted.

Target Year 5: 5                      Actual Year 5: 3                      Q19: 3

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**ACTIVITIES PLANNED FOR NEXT QUARTER (NOVEMBER 2017-JANUARY 2018)**

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**A. Component 1: Improved Systems for Enforcement of Judgments and Reduction of Backlog in Enforcement Cases**

**Court-based enforcement backlog reduction**

In the next quarter, CLE wind down its backlog reduction activities by demobilizing BROs that have been embedded in the courts. CLE will also:

- Transfer the ESRA system to the KJC
- Monitor implementation of decision by KJC to mandate full utilization of the ESRA by court personnel

**Private enforcement**

Next quarter, CLE will engage in the following activities related to the private enforcement system:

- Continue process to find funding for the cost study to be conducted for the PEA fees
- Support adoption by CPEA of policies and templates for the CPEA communications strategy and outreach plan
- Assist the CPEA to develop and conduct survey with creditors
- Support the Professional Committee to reform how PEAs report to the MOJ
- Continue to monitor MOJ inspections of PEAs

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months or more.

## **B. Component 2: Development of the Contract and Commercial Law Framework and Systems, improvement of contract enforcement systems and functioning of the ADR mechanisms**

In the next quarter, CLE will continue support in Commercial Law areas and will wind down activities on Mediation and Outreach. Planned activities will include:

### **Commercial Law**

- Support CBK in promulgation of the Regulation on Late Payments for Financial Institutions
- Work with MOJ on certification of new Bankruptcy Administrators
- Support MOJ in publication of the Bankruptcy Manual
- Support the passage of the Concept Document and inclusion of the draft Law on Bills of Exchange in the 2018 Government Legislative Program

### **Mediation**

- Advocate for passage of draft Law on Mediation during the Assembly working groups
- Organize meetings with designated mediation clerks, judges, and prosecutors to discuss progress of court-based mediation referrals
- Coordinate with KJC and Court Administration Committee on adoption of Manual on Referral of Cases to Mediation

### **Outreach**

- Assist and mentor ILIRIA College on organizing 4th Annual Western Balkans Vis Pre-Moot

## **MISCELLANEOUS – CONSULTANTS, ENVIRONMENTAL COMPLIANCE AND BUDGET**

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### **Short-term consultants this quarter**

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a statement is required on any short-term consultants, including progress and observations, significant issues, and a description of follow-on activities and plans.

CLE did not engage any short-term consultants in the nineteenth quarter.

### **Environmental Compliance Statement**

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a quarterly statement is required on actions taken related to environmental regulation compliance. Due to the nature of the CLE program's work, its activities are not likely to implicate environmental regulations. Nevertheless, the Program has appointed an Environmental Compliance Officer who continuously reviews Program activities to ensure compliance with relevant environmental regulations. No issues arose in quarter nineteen.

### **Status of Budget Expenditures**

Under subsection F.7.A.3 of the CLE program contract (Contract No. AID-167-C-13-00001), a quarterly statement is required on the status of budget expenditures. As of January 31, 2018, CLE had expended \$8,708,548.89. During Q19, spending was \$381,113.99. CLE anticipates the monthly burn rate to continue to be approximately \$164,088.14 through March 31, 2018.

Concluded during the reporting period were:

*Private Enforcement:*

- Administrative Instruction on the Business and Personal Data of the Private Enforcement Agents (signed by the Minister of Justice on November 16, 2017)
- Strategic objectives and mission statement of the CPEA, approved by the Assembly of the CPEA
- Template for request for proposal recruitment
- Template for job description
- Template for performance evaluation form for probation time
- Template for performance evaluation of employees,
- Template for Executive Board's decision on appointment of the Committee members
- Template for final report of the Committee for the recruitment process
- Template for certification of outside employment status
- Template for declaration confirming the absence of any conflict of interest
- Template for timesheet
- Template for leave request
- Template for scheme on duty travel rates
- Template for request for duty travel
- Template for decision on duty travel approved/rejected by the Executive Board
- Template report on the abroad duty travel expenses
- Template report on expenses for duty travel that last less than 24 hours
- Template Registry for the CPEA to maintain data on PEA subscriptions to use the BAR
- Template Registry that each PEA should maintain, showing the agent's day to day use of the BAR
- Template for decision on freezing debtor accounts,
- Template for decision on transferring the monetary funds to the creditor
- Template for notification of commercial banks to unfreeze bank accounts of debtors

*Mediation:*

- CLE Memorandum to KPC on recommending appointment of Mediation Clerks in each Basic Prosecution office to refer cases to mediation
- KPC decision on appointing mediation clerks in each Basic Prosecution Office (ALB)
- Practice Guide: Step by Step Manual on Referral of Cases to Mediation ( English, Albanian and Serbian)

**ANNEX 2 – DETAILED DATA ON CASES REMOVED PURSUANT TO KJC DECISION**

<b>COURT/BRANCH</b>	<b>Covered Cases by KJC Decision</b>	<b>Covered Cases withdrawn by deadline (31.12.2017)</b>	<b>Covered Cases not withdrawn</b>	<b>Percentage of Covered Cases withdrawn in total</b>
Basic Court Pristina	6,783	6,728	55	99.19%
Branch Podujeva	2,002	2,000	2	99.90%
Branch Lipjan	794	794	0	100.00%
Branch Glogovc	616	615	1	99.84%
<b>Pristina, BC and Branches</b>	<b>10,195</b>	<b>10,137</b>	<b>58</b>	<b>99.43%</b>
Basic Court Prizren	1,958	1,953	5	99.74%
Branch Suhareka	756	756	0	100.00%
Branch Dragash	107	107	0	100.00%
<b>Prizren, BC and Branches</b>	<b>2,821</b>	<b>2,816</b>	<b>5</b>	<b>99.82%</b>
Basic Court Gjakova	1,053	1,053	0	100.00%
Branch Malisheve	764	764	0	100.00%
Branch Rahovec	586	586	0	100.00%
<b>Gjakova, BC and Branches</b>	<b>2,403</b>	<b>2,403</b>	<b>0</b>	<b>100.00%</b>
Basic Court Peja	1,534	1,534	0	100.00%
Branch Decan	1,207	1,207	0	100.00%
Branch Istog	504	504	0	100.00%
Branch Klina	1,041	1,041	0	100.00%
<b>Peja, BC and Branches</b>	<b>4,286</b>	<b>4,286</b>	<b>0</b>	<b>100.00%</b>
Basic Court Ferizaj	2,104	2,104	0	100.00%
Branch Kacanik	386	386	0	100.00%
Branch Strpce	10	10	0	100.00%
<b>Ferizaj, BC and Branches</b>	<b>2,500</b>	<b>2,500</b>	<b>0</b>	<b>100.00%</b>
Basic Court Gjilan	1,381	1,381	0	100.00%
Branch Viti	851	851	0	100.00%
Branch Kamenica	96	96	0	100.00%
Branch Novoberde	104	104	0	100.00%
<b>Gjilan, BC and Branches</b>	<b>2,432</b>	<b>2,432</b>	<b>0</b>	<b>100.00%</b>
Basic Court Mitrovica	203	203	0	100.00%
Branch Skenderaj	5	5	0	100.00%
Branch Vushtrri	537	537	0	100.00%
<b>Mitrovica, BC and Branches</b>	<b>745</b>	<b>745</b>	<b>0</b>	<b>100.00%</b>
<b>TOTAL</b>	<b>25,382</b>	<b>25,319</b>	<b>63</b>	<b>99.75%</b>

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