IMF/NETHERLANDS PROGRAM
LEGAL AND JUDICIAL REFORM IN INDONESIA
2000 - 2004

EXTERNAL EVALUATION
Final Report

Report Completed: January 16, 2005

Executive Summary

Introduction

The evaluation of the IMF/Netherlands Program for legal and judicial reform in Indonesia was undertaken during July 2004 in Jakarta by a team of three persons appointed by the Government of Indonesia, the Government of the Netherlands, and the IMF. All three are well acquainted with Indonesia and its legal institutions. Together they interviewed over sixty-six persons from twenty-nine institutions and organizations, including IMF and World Bank personnel, judicial personnel, other government officials, private contractors, non-governmental organizations in any way connected with the Program, and foreign donor organizations engaged in relevant programs. The members of the evaluation team and the list of those whom they interviewed can be found in appendixes one and two.

Institutional History

During the first decade of independence, from 1950 until early 1959, Indonesia's parliamentary order sustained a capable legal system, despite difficult problems of inadequate funds and personnel and post-revolutionary chaos here and there. Well educated political leaders, several of them lawyers, were ideologically committed to legal process. Parliament itself generated necessary legislation, and the judicial corps, prosecution, notariat, and private legal profession, despite deficiencies, retained and practiced the skills and integrity essential to a sound legal system.

Weakened by regional rebellions, cold war interventions, political party conflict, and an increasingly active army with political ambitions, the Parliamentary government fell apart in 1957. President Soekarno assumed increasing political responsibility; under army pressure, in 1959 by decree he replaced the provisional parliamentary constitution of 1950 with the strong presidential constitution of 1945. In the new regime of Guided Democracy (1959-1966), characterized by high levels of political tension, concentration of authority in Jakarta, and street level political conflict, nearly all governmental institutions were rapidly shorn of their autonomy and mobilized for political use. During these years Indonesia's prosecution and courts were undermined by political engagement and the rapid spread of corruption as they, like other government institutions, were liberated from effective oversight in a fortress government subject to few limits.

Under the New Order regime (1966-1998), following a coup in October 1965, the structural dimensions of Guided Democracy were maintained, but leadership and control were now vested principally in the army as the base of political authority. As it became clear that General (later President) Suharto had no intention of restoring the independence

and authority of Indonesian judicial institutions, the condition of the prosecution, courts, and notariat quickly declined further, as the corruption begun under Guided Democracy accelerated along with economic growth. At the same time, the private legal profession grew exponentially during the economic boom of the late 60s onwards, diversifying as it multiplied into distinct classes of litigating advocates and commercial "consulting" or office lawyers. While it retained a number of honest senior and junior attorneys, the profession too was quickly and deeply corrupted, widening by degrees the "judicial mafia" that had begun to develop during the mid-1960s of judges, prosecutors, and advocates. No less was true of the quiet but unavoidable notariat. Over a period of about forty years, judicial corruption had become so imbedded that many judges, prosecutors, and private lawyers conceived it less as corruption than as normal interchange or perquisite or simply the way things were done.

Dimensions of the Problem

In the aftermath of the economic crisis begun in mid 1997, followed by the resignation of President Suharto in May 1998, it quickly became evident that Indonesia's economic problems were not economic problems alone. Unlike other countries in the region, Indonesia had suffered something close to institutional collapse. In these conditions there is little choice but to restore and create anew a competent institutional base, but there were few, if any, useful precedents or models to follow. The Indonesian case, as it appeared in 1998, provided no obvious advantages. Apart from the absence of dependable governmental institutions, Indonesia's political and administrative elites resisted the fundamental reforms that would impose limits and might well marginalize them altogether. In the turbulent political, social, and economic conditions from mid-1998 onwards, there was little time to reflect on policy alternatives. Difficult economic issues required immediate attention to a legal system, particularly its courts, whose integrity had long since been vitiated.

Program: Commercial Courts

With Indonesia's economy in a state of collapse, an essential need was an effective bankruptcy regime to assist in the recovery of a distressed corporate sector. This end required statutory reform, capable courts, and knowledgeable receivers. Given judicial conditions, it was decided to establish new commercial courts, but the wish to import new judges from outside the judicial corps was prevented by the opposition of the Judges Association. This meant that the new courts created in late 1998—the first in Jakarta and four more later in major provincial cities—would be linked genetically to the existing fault-ridden judiciary.

Program strategies for development of the commercial courts were varied and necessarily experimental. Apart from advice on improving the bankruptcy law, phase

one preparations included training programs for commercial court and appellate judges, including members of the Supreme Court; information and guidelines for receivers; new source materials for insolvency professionals; a new Manual of Commercial Court Administration; and an evaluation program. A second phase of the program begun in 2003 emphasized further training, including observation tours abroad, refinement of internal organization and administration of the commercial courts, the integration of ad-hoc commercial judges, improved monitoring, and public accountability.

The results were mixed. Selection, preparation, and training of the judges were done too quickly perhaps, but adequately, and an analysis of their decisions demonstrated that, not all by any means, but most of their decisions were soundly based; more so, in fact, than was so of the Supreme Court. Training was also provided for receivers, who created a new association. But after several months it appeared that the new commercial courts had not greatly helped to adumbrate a solid bankruptcy program. Moreover, corruption had begun to seep in, private lawyers and receivers were as likely as not to exacerbate the problem, the receivers association split, and the original purpose of the new courts, to alleviate the bankruptcy problem, was not well served. The number of cases brought to the new courts declined substantially. When needed, commercial court judges were simply called back to their original general courts, which interfered with the creation of an experienced corps and negated the purpose of their specialized training. There was little the Program could do about these difficulties, deeply rooted in the judicial system, short of removing the commercial courts entirely from that environment.

More success was seen in the commercial courts' ability to introduce certain discrete mechanisms of reform into the court system that had long been resisted by an inward looking judiciary. These include time bound procedures, dissenting opinions, ad hoc judges, and public access to written decisions. A professional needs assessment applied to the commercial court of Jakarta, moreover, may in time prove useful as a model for change in other judicial (and administrative) institutions.

A consensus of the sources interviewed by the evaluation team agreed that the commercial courts have not fulfilled the purpose for which they were created. They have neither contributed to an effective bankruptcy regime nor evolved into a competent judicial institution capable of encouraging investor confidence. A primary reason for this failure is that the new courts were never fully separated from a larger judicial system mired in poor ethics and weak professionalism. Specially appointed commercial court judges came from and returned to this system. Nor, as some sources suggested, was there sufficient support within the judiciary for specialized bankruptcy courts to sustain their ongoing development. Consequently, the evaluation team finds it difficult to justify continued support of the commercial courts program and recommends that future funding derive from Indonesian priorities linked with wider judicial system improvements.

Program: Supreme Court

The difficulties encountered in the effort to establish capable commercial courts were largely derived from the judicial order in which they rested on the periphery. The leadership of the Program understood from the start that unless the judicial system as a whole were improved, little could be expected ultimately from any of its parts. The new commercial courts could not operate well for long without reinforcement from the rest of the judiciary. Reform of the judicial center, it followed, would make for a stronger periphery as well. The center in the Supreme Court, however, had little interest in reform.

In 2000 an opportunity to extend the reform program suddenly opened when the chair of the Supreme Court retired, and a non-career judge, an academic, was appointed to replace him. Soon thereafter, moreover, a few additional non-career judges were appointed to the court, creating a small base for reform efforts in the large Court. The new Chief Justice proved enthusiastic about change and welcomed any assistance made available. The Program quickly and flexibly turned its attention to the Supreme Court.

In the first phase of its Supreme Court program, from May 2000 to May 2003, the Program built on the prospect of a new Judicial Commission provided for in an amendment to the constitution. The Program supported workshops, seminars, and parliamentary negotiations between the Supreme Court and Parliament concerning the Judicial Commission, legislation for which was finally promulgated in mid-2004. During this period a close relationship developed between the Program and the Institute for Judicial Independence (LeIP), an integral part of the Indonesian Center for the Study of Law and Policy (PSHK), an NGO consisting of an extraordinarily capable group of young lawyers. Between the Program and the PSHK there is a deep and salutary connection LeIP and the Program focused largely on the future of the Judicial Commission and fundamental problems within the judiciary. In early 2002 LeIP began substantial research on the judicial system, from first instance courts through the Supreme Court, with access assisted by the Chief Justice. The research eventuated in a set of planning recommendations, Blueprints, that provided approaches to reforms of personnel management, financial management, and judicial education, as well as a draft proposal for the Judicial Commission law. Beginning in June 2003, the Program extended its activities to encourage more attention in Parliament to the Judicial Commission, along with workshops on the same subject with the Supreme Court and National Law Commission. Study tours were organized for Supreme Court justices to the Netherlands and the United States.

Although the Program continued to emphasize its concern with the commercial courts, realistically the implications of its work in the Supreme Court were substantially more significant for both the economy and the state itself. Effective reform in the highest court was likely to have more significant impact on the entire judicial system, including the commercial courts, than any other strategy of change.

While the relationship between the Program and the Supreme Court has been productive, it is too early to predict the extent to which Supreme Court reform will take hold. The Chief Justice has supported the reform strategies, to the extent of allowing two young lawyers to assist on the inside with the implementation of the Blueprints. But the retirement over the next two or three years of the Chief Justice and a few other judges critically engaged in remaking the Court renders the pace of change uncertain. Moreover, the judge detailed to work with the outside lawyers in implementing the Blueprints has recently accepted appointment as Attorney General. Within the Court there is imbedded resistance to the overhaul impelled by the Blueprints. Even so, there is also some momentum, to which the Program has contributed substantially.

While implementation of the reform agenda remains to be accomplished, the existence now of a strategic plan for development of the Supreme Court was celebrated by nearly everyone the evaluation team talked with, Indonesians and donors alike. The Blueprints are reform documents produced entirely by Indonesians with the imprimatur of Court leadership. Unlike the experience with the Commercial Courts, the Program's work with the Supreme Court has been characterized by a strong sense of ownership. Reliance on capable local expertise, working with the Court, engaging stakeholders, and producing the Blueprints has been essential.

Program: Anticorruption

Pervasive corruption in Indonesia affects every institution in the country. No reform effort can avoid the problem. Precisely because of the extent and depth of it, however, neither is there an obvious approach to the matter. Corruption in the courts, which soon infected the commercial courts, inevitably compelled the Program's attention. Several innovations in the commercial courts—e.g., ad hoc judges, legitimation of dissenting opinions, oversight of court session, public access to decisions—were intended to check the problem. The Program's engagement on corruption issues, however, was limited and uncertain. It supported a newly formed Joint Investigating Team (JIT), led originally by a respected and recently retired Supreme Court justice, focused on judicial corruption. It also provided assistance to the Office of Public Prosecution in developing capacity to deal with public interest bankruptcy issues. And it prepared a policy paper on judicial corruption. Little came of this initial Phase I program, however. The JIT met much opposition, and by the time it requested Program assistance, it may have been too late. In early 2001 it was challenged in the Supreme Court and dissolved by a much disputed but unsurprising decision. Assistance to the Office of Public Prosecution was ended when it became clear that it had done nothing by way of investigating bankruptcy related issues and was unlikely to do so.

Thereafter the Program's concern with corruption narrowed and became rather more focused. It provided limited assistance to a new Commission for the Audit of the

Wealth of State Officials (KPKPN), largely by way of a study tour to Thailand with the Asia Foundation. A request to the Program for assistance in merging the KPKPN into the Anticorruption Commission was pending at the time of the evaluation. The Program's main focus, however, was to support preparations for development of an Anticorruption Court. The Program's intentions were by and large implemented. It helped to fashion parliamentary and other strategies behind creation of the new court and supported development of a blueprint for the court and plans for its programs. The Anticorruption Court was finally created by Parliament in mid-2004.

Our evaluation of the Program's anticorruption work was hampered by having had too little access to persons with knowledge of it. Stanching corruption was not the Program's primary focus, however, although its effect on the commercial courts was of great concern. Once the Program turned its attention to supporting the Blueprints process, its anticorruption work was grounded in that approach, which emphasized a foundation for comprehensive institutional development constructed entirely by Indonesians. Through the Anticorruption Commission, the Anticorruption Court, the Judicial Commission and the Blueprints, a framework is being structured and mechanisms developed to institutionalize means of addressing abuse and regulating professionalism. The evaluation team thinks it fair to say that the Program has served to catalyze this process and helped to steer it in the right direction.

Evaluation

A principal purpose of this evaluation is to delineate successes and failures of the Program. It is tempting to suggest that there were neither notable successes nor failures, but it is too shallow a view of the complexities of change in Indonesia and the means by which fundamental reforms may be implanted. Given the intractability of political and legal conditions in Indonesia, it is not surprising that few of the Program objectives were met with unmitigated success. What may be surprising is how much the Program has achieved despite the odds against each of its purposes, not to mention the entire gamut. Nearly all of the sources whom the evaluation team interviewed spoke with unmitigated praise of the Program. Well informed Indonesians do not have much sympathy for the IMF or its economic programs. But the IMF/Netherlands Program in legal and judicial reform is separated from the mother institution and celebrated with considerable respect and admiration. The reasons will be addressed shortly.

The failures are evident and were perhaps predictable, but need to be examined amid the conditions of their time. The commercial courts might have been made more effective by separating them entirely from the existing judicial line, relying on recruited ad-hoc judges, as originally intended, and by resorting to a determined Letter of Intent to achieve the purpose. This argument is supported by the experience of several new courts created over the last few years. The Constitutional Court, for example, is not rooted in the existing judiciary and has been notably independent, establishing its own precedents

as it goes. For a few years, at least, the same was at least partially true of the new Administrative Courts (PTUN) that began work in 1990. Many administrative judges, while drawn from the judicial corps, had long periods of training abroad and were designated specifically for the new courts. The commercial courts and the even newer human rights court, however, remained intimately linked to the judicial establishment, and were more likely to carry over older habits of sensitivity to authority and insider compromises. A more rigorous approach to creating new commercial courts might have succeeded. There is no guarantee, however, except in hindsight, for the much larger problem was an institutional environment likely to wear down any effort at fundamental reform.

The experiment with commercial courts did produce side-products that may have broken through some long lasting barricades. Their influence should not be exaggerated, and they have yet to have noticeable impact, but dissenting opinions, public access to decisions, more emphasis on public accountability and transparency are potentially significant throughout the judicial system. While the commercial courts did not help much in dealing with the economic crisis, they helped somewhat in dealing with the more complex crisis of the state's institutional collapse. The significance of this point requires recognition that improving judicial institutions is fundamentally relevant to fashioning a more manageable economy.

The Supreme Court effort was sounder, not least because any success in improving that institution must eventually reverberate throughout the judicial establishment. The close relationship between the Program, its NGO associates, and Supreme Court leadership produced significant steps and measures towards a more competent and influential Court. The Blueprints developed from impressive research and analysis by LeIP, were an important achievement, providing, for the first time, a convincing set of approaches to and concepts of programs of basic reform in the organization and management of the Supreme Court and, by extension, the lower courts. Nothing of the sort had been done previously. They are particularly important now, as full management of the courts has been transferred from the Ministry of Justice to the Supreme Court itself. The idea of blueprints as a strategy of planned change has been adopted by various reform groups concerned with other institutions.

As important as the Program's work has been with the Supreme Court, the process of change there is only beginning. It was mentioned earlier that change ultimately depends on the numerous justices, many of whom may not be interested in or even distinctly hostile to reform. The appointment of non-career judges has slowed markedly. It is not yet clear whether the Parliamentary Commission II in charge of legal affairs will be drawn to non-career candidates. Political support for judicial reform, not least from the Presidential office, remains uncertain.

The Program's work on anticorruption has been useful but limited. Even more than the other projects, there is not yet enough evidence to evaluate. The new

Anticorruption court is barely off the ground. Its successful evolution, however, depends substantially on support from within the administration and Parliament, which remains uncertain. As in the case of judicial reform, anticorruption has substantial pressure behind it from society, committed NGOs, and much of the press. Similar public clamor was lacking for the commercial courts as a stand alone entity. Dealing with corruption in the commercial courts was hardly possible in isolation their wider context**.**

Despite these cautionary notes, it is important to recognize that judicial reform has gained momentum over the last four years, and that the IMF/Netherlands Program has contributed substantially to it. The leadership of the program and its many local partners are frustrated by the pace of change, but it should never have been supposed by anyone that Indonesian circumstances were at all amenable to rapid reform. It is likely that the momentum of judicial evolution will gather speed over the next few years as Indonesia's political elite, both national and local, begins to change with the rise of younger members. The influence of the Program's work may well then become even more evident.

Program Strengths

Effective Program Advisors. It was mentioned earlier that the Resident legal expert and two Resident Advisors were regarded with extraordinary respect and high praise by every source whom the evaluation team interviewed. The regard was not only for their knowledge, seriousness, and capability, but for the quality of the programs themselves, even when they did not work out well. Representing among them approximately eighty years of combined experience in matters of Indonesian law, the three figures knew the legal, historical, and institutional pathologies as deeply as can be imagined. They worked well together and with the numerous organizations that, along with local legal personnel, made up an extensive web of contacts, resources, and alliances. Praise for the Resident Legal Expert was widespread. All sources consulted about Program leadership agreed that his role was critically important and should be retained.

Preference for Local Consultants. The Program team evidently understood that an effective reform effort required local ownership and engagement, a point often missed by too many foreign aid donors and administrators. From the start, the Program relied upon capable NGO expertise for research, planning, and institutional analyses, which served the Program well and helped to strengthen the organizations involved. Relevant government bodies, including the National Planning Council, were intimately involved in the Program. In addition, the Program extended its contacts throughout the network of relevant donor agencies, maintaining close working relationships with those engaged in legal reform projects.

Flexibility. Flexibility of the Program, including the Netherlands funding operation, the Netherlands Embassy in Jakarta, and the IMF legal section in the Washington office, proved to be a significant factor in allowing rapid adaptation to opportunities of change as they became available. At nearly every stage in the Program's evolution, support for strategic changes was quick and smooth. Experimentation was not obstructed. Similarly, the efficiency of Program administration was well regarded by the evaluation team's sources, including NGO partners, contractors, consultants, and other donor agencies.

Simple Funding Procedures: Flexibility and a moderate level of bureaucratic procedure in funding mechanics were cited by program participants as highly positive aspects of the Program. The evaluation team thinks these dual factors important because they facilitate use of local expertise and thereby foster local ownership. As the capacity for project implementation is low in Indonesia—virtually non-existent within the judicial system and weak in other government institutions—complicated, burdensome funding requirements hamper the ability of local partners to undertake and fulfill program activities.

Program Weaknesses

Deficiencies or weaknesses in the Program over the last four years need to be measured against the intractability of the targets of reform. The evaluation team did not always reach a consensus position on certain issues. For example, two members thought more could have been done by way of close monitoring and evaluation of the commercial courts, with a direct influence on Program strategies, while another member concluded that monitoring was adequate and that little more could be done to improve commercial court development at this time because of endemic institutional weaknesses. On a different issue, two members of the team were concerned that the Program had relied too much on a few local consultants and experts, while another thought that among a limited number of available organizations the Program had already found the best among them and had gone some distance to make use of and assist new and developing research organizations.

A weakness in the Program, one that is easily overcome and worth whatever effort it requires, is that it is not widely enough advertised. Concentrated largely in Jakarta and focused on a few institutions, it may be that the Program has not generated enough information or provided it to a large enough interested public to encourage wider support.

Two additional problems do not constitute weaknesses of the Program so much as they conditioned Program efforts. One is legal education, the other the private legal profession. Both are in serious need of attention, and both are imperative influences on

Program concerns over the long run. In neither case could the Program engage, but each constitutes limits on its efficacy.

Projections

The concern addressed here has to do in part with how the Program should direct its remaining funds and efforts through the end of this funded term. Although the term is nearly over, the answers remain useful as an indicator of how various respondents viewed the issues involved. In addition, the evaluation team suggests a few future emphases.

What should the Program do during the last months of the term? The evaluation team's sources generally emphasized strong support for implementing the Supreme Court Blueprints. Continued support is warranted for an implementation team working inside the Supreme Court. In addition, efforts are needed to extend the reach of the Blueprints beyond the Supreme Court to lower courts around the country. Because the Blueprints are voluminous and detailed, it would be useful for the Program to support production of abridged versions, more suitable for review by busy judges and more compatible for widespread public dissemination.

As for future emphases, the evaluation team assumes that support for implementation of the Blueprints will be a long term endeavor. Our sources, however, specified few relevant priorities. Where to begin the implementation process is a matter the Supreme Court should consider with the help of Program supported advisers.

Because the Supreme Court lacks management capacity for project implementation, a future Program should also consider assistance for a project implementation office or secretariat to include coordinating donor activity, thus avoiding additional burdens on judges.

Assisting development of the new Judicial Commission would continue the Program's extensive involvement to date in supporting the enabling legislation. An obvious place to start is support for preparation of a developmental Blueprint.

Another proposal is to adapt and apply the productivity and needs assessment, done for the Jakarta commercial court by a local consulting firm, to other judicial institutions.

The Program should develop a strategy for spreading information about the judicial reform effort more widely both in Jakarta and through the rest of the country, particularly to those groups most directly concerned with legal reform.

Conclusion/Summary

Beginning in the second half of 1998 as a means of addressing bankruptcy issues in a failing Indonesian economy, the IMF undertook to create new commercial courts. From this start there developed a sophisticated and promising approach to judicial reform that evolved beyond the original charge. The new commercial courts, one in Jakarta and four more in the provinces, soon infected by serious institutional weaknesses in the national judiciary at large and within the legal system, did not fare well. If these courts were to have any hope of improvement, the judicial system generally required improvement. In 2001 the IMF/Netherlands program expanded to assist in Supreme Court reform and anticorruption efforts.

Dealing with extraordinarily difficult institutional problems, the Program developed sophisticated and sensitive approaches that won high praise from all sources interviewed by the evaluation team. A principal basis of the Program's effectiveness has been its commitment to working closely with and depending upon Indonesian organizations and skills. The Technical Expert and Resident Advisors, three lawyers familiar with and knowledgeable about Indonesian law, history, and society, have earned impressive respect. So too have the flexibility and support provided by the Netherlands Government and the IMF legal department..

Weaknesses in Program implementation ultimately did not affect overall success or failure. For the most part, Program flaws were dwarfed by the serious institutional weaknesses in the judiciary that confronted reform efforts with strong resistance to change of any sort. To the extent that the evaluation team found a serious defect, it was in the initial premise that the Commercial Courts could function effectively and credibly despite these wider systemic problems.

It is much too soon to assess the end results of the judicial reform Program, all the more so given its relatively brief life thus far. The commercial courts did not succeed as hoped in the short term; the evaluation team's sources by and large agreed that no further support should be given the commercial courts at this time. The Supreme Court effort is beset by difficulties of organization, personnel, and staff, and the retirement within two years of the Chief Justice, who has supported the Program reform effort, and that of two other reform-oriented justices, may well slow the process of change significantly The new anticorruption court and related efforts have barely begun. A great deal depends, moreover, on the commitment of political leadership to legal and judicial reform.

Yet, in its advisory work on a new Judicial Commission, finally established by law in 2004, its training and related programs in the commercial courts, its support for the development, by an Indonesian NGO, of a convincing set of blueprints for administration, judicial education, and financial management reforms in the Supreme Court, among other projects, and its deep reliance on and cooperation with Indonesian

expertise and capacity, the Program has laid significant groundwork for further change that deserves continuing support.

IMF/NETHERLANDS PROGRAM
LEGAL AND JUDICIAL REFORM IN INDONESIA

EXTERNAL EVALUATION

INTRODUCTION

The initial impetus for the IMF/Netherlands program reviewed here was Indonesia's deepening economic distress following the onset of the Asian crisis in mid-1997. A declining economy riddled by corporate collapse and massive debt required immediate attention. Unlike other countries in the region, however, Indonesia's collapse was underlain by the failure of the Indonesian state, whose principal institutions had long since lost integrity and competence during nearly forty years of the Guided Democracy and New Order regimes. In order to address the economic crisis, there was little choice but to deal also with the critically relevant institutional crisis, particularly a legal system in unquestionable disrepair. In one of the most complex countries in the world, the program evolved with its own complexity from a new set of commercial courts, through attention to more basic judicial reform focussed on the Supreme Court (Mahkamah Agung), to the extraordinarily difficult problem of imbedded corruption. Amidst conditions easily described as intractable and with few useful guidelines, the Program had to develop strategies de novo. There were blind alleys and mistakes, but no single approach was simple and none had obvious or convincing precedent elsewhere.

The period with which this evaluation is concerned began in 2000 and runs through mid 2004, with six months remaining in the program until the end of 2004. The purpose of the evaluation is to assess each component of the program, to identify strategic strengths and weaknesses, and, where appropriate, to propose alternative approaches. (See the terms of reference for the evaluation in appendix one.)

The evaluation team studied all documents relevant to the program that were made available. During two weeks in Jakarta, from 12 July through 23 July 2004, the evaluation team interviewed numerous participants in or knowledgeable about the program (see appendix one). Among themselves, the evaluation team frequently discussed and debated the information, views, interpretations, prognoses, and conclusions received from sources, and spent a final weekend, 24-25 July, in further analysis and the preparation of a format for this report.

Members of the evaluation team are Prof. Harkristuti Harkrisnowo, Faculty of Law of the University of Indonesia, appointed by the Government of Indonesia; Patricia Kendall, a private legal consultant with substantial experience in Indonesia, appointed by the Government of the Netherlands; and Prof. Emeritus Daniel S. Lev, a political scientist from the University of Washington in the United States with research experience in Indonesian legal institutions, appointed by the IMF.

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BACKGROUND

Beginning in 1997, as part of the Indonesian economic recovery package and at the request of the Government of Indonesia, the International Monetary Fund (IMF) provided technical assistance for creating a more effective framework for bankruptcy proceedings. In support of the IMF's assistance effort, the Government of the Netherlands agreed to fund a technical assistance subaccount to strengthen the capacity of the judiciary to implement the bankruptcy law.[1] The direct Indonesian counterpart for the Program under the subaccount is the National Development Planning Agency (Bappenas). The principal managers of the Program have been the IMF, Bappenas and the Netherlands Embassy in Jakarta.

The Program consists of two Phases. Phase I began in May 2000 and concluded in March 2003. Its overall goal was to put in place an effective bankruptcy regime and to ensure its proper implementation by means of a competent and objective judiciary. Phase I consisted of five separate projects:

(i) provision of a long-term resident expert to assist the Commercial Court Steering Committee;

(ii) provision of two part time resident advisors to advise on effective implementation and integration of assistance into Indonesia's overall legal reform program;

(iii) preparation of written materials (e.g. manuals, work standards, court decision commentaries) to strengthen the capacity of the judiciary and licensed receivers and administrators who are charged with implementing the bankruptcy law;

(iv) strengthen the capacity of individuals and institutions charged with implementing the bankruptcy law, namely, the Public Prosecutor's Office and the Joint Investigation Team;

(v) assist in assessing, prioritizing and addressing long term institutional needs of the judiciary in the context of designing and establishing a judicial commission.

Some of the work begun in Phase I spilled over into Phase II which began mid-2003 and will conclude at the end of 2004. Phase II consists of one project with three components:

(i) strengthening judicial supervision and management;

[1] All activities undertaken and assistance provided pursuant to the IMF/Dutch technical assistance subaccount are referred to generally in this evaluation report as the Program.

(ii) strengthening Commercial Court performance;

(iii) strengthening anticorruption policies and institutions.

Phase II's stated objective is to strengthen the legal infrastructure and institutional performance of the Indonesian judiciary with the aim of increased restructuring of private debt, enhanced investment, and sustainable economic growth.

Our evaluation of the Program, based on the information provided to us via written materials and interviews with relevant persons, presents an assessment of the Program as of late July 2004, prior to the conclusion of Phase II. This report consists of three principal sections. The first section looks at the three substantive areas in which the Program concentrated its assistance efforts: the Commercial Court, the Supreme Court, and anticorruption. The second section examines cross-cutting themes and issues relevant to all areas in which the Program worked, and the report concludes with some recommendations for a potential Phase III.

HISTORICAL SETTING OF THE PROBLEM

A brief history of judicial decline in Indonesia may make clear how complex and difficult a problem the courts presented by the end of the 1990s. During the post-revolutionary parliamentary period from 1950 to 1959, despite a multitude of problems, Indonesian legal institutions worked reasonably well. From first instance through the Mahkamah Agung, judges were respected, took their independence for granted, decided cases well, and had begun the hard work of adapting colonial law and precedent to the norms and conditions of the newly independent state and the society it governed. The base of strong legal institutions—including the prosecution, police, and private legal profession—was a parliamentary government led by political leaders, many of them professional lawyers, who took quite seriously the need for effective legal process in a diverse society capable of generating dangerous social and political tension.

The parliamentary system came to an end, however, in the years 1957-1959, as the result of regional rebellion, cold war interventions, political party conflicts, and a politically engaged army. In mid-1959 the liberal provisional constitution of 1950 was replaced by the strong presidential constitution of 1945, while recent parliamentary efforts to begin a process of decentralization were overturned in favor of just the opposite, a hyper-centralization of authority and power into Jakarta. In the severe political tensions that defined politics thereafter, nearly all state institutions were transformed into political assets or neutralized and rendered ineffective. A nearly immediate side-effect was corruption and related abused, as some officials took advantage of the leeway their new uses allowed them. In the judicial system prosecutors began to use powers of preliminary investigation to arrest wealthy figures as hostages, in effect, for ransom.. In short time, prosecutors offered judges a share for the sake of procedural efficiency. Once prosecutors and judges were allied, private advocates had little choice but to join what came soon to be called the "judicial mafia."

In 1966, following the coups of late 1965 that led to the fall of President Soekarno and the rise of General Suharto, a small group of judges, prosecutors, police officials, and private lawyers, established an activist organization, the "Servants of the Law" (Pengabdi Hukum), which lasted only two or three years before all of the officials were withdrawn, and the organization was reduced to a few advocates alone before it disappeared. Once the New Order government made clear that the fundamentals of Guided Democracy's structure and procedures would remain intact in the New Order, and (tacitly) that legal process would not be restored to its earlier autonomy but would be subject to the same (equally tacit) rules that applied over the last few years, malfeasance and corruption in the prosecution and courts skyrocketed. Over the next thirty years the whole of judicial process sank into an institutional abyss, as money increasingly defined just about every operation from career mobility through judicial process, decision making, and implementation. There remained honest and capable judges, prosecutors,

police officials, private advocates, and notaries, but they no longer defined their institutions, and citizens came to doubt their existence. By the end of the 1990's, conditions in Indonesia's judicial structure made courts, prosecution, and police principal targets of reform. But as the New Order political elite had little interest in basic reforms that would either eliminate them or impose severe limits, so too were legal officials threatened by change and hard to approach with any reform strategy short of simply destroying their institutions, or emptying them out, and starting anew.[2] The commercial courts represented a variation on this theme. The extension of the Program towards the Supreme Court and corruption issues followed logically from the difficulties encountered in the commercial courts.

[2] One kind of difficulty faced by the Program was made plain in an early effort to encourage the Chief Public Prosecution (Kejaksaan Agung) to address public interest delinquency issues in bankruptcy cases. Investment in training had little consequence, and the project was sensibly ended in 2001 when it became evident that the Public Prosecution had not taken up any cases and most likely had no intention of doing so. Little more could be expected from courts and police too long inured to corruption and political subservience.

THE COMMERCIAL COURTS

Setting

Established in 1998, the Commercial Courts were an integral part of a bankruptcy and debt restructuring plan constructed by the international community to put Indonesia's financially crippled corporate economy back on its feet. Initially, jurisdiction in these specialized courts was limited to bankruptcy proceedings.[3] As Indonesia lacked a credible legal system, specialized bankruptcy courts were intended to provide competent, quick, reliable decision making and thereby serve as a means of restoring investor confidence. Two obstacles stood out: the existing bankruptcy law was outdated, and the existing judiciary was inadequately prepared to deal with issues of corporate insolvency. The law was amended, and the new Commercial Courts were inaugurated.

It is important to bear in mind that during this time when a new bankruptcy regime was being put in place, Indonesia's financial system was on the brink of collapse. The financial crisis begun in mid-1997 created a turbulent environment that was hectic and high pressured with little time for consensus decision making. It was within this context of urgency that immediate solutions were sought for bankruptcy reform.

Because the amended law significantly altered the status quo (new procedures, a separate court, private receivers), an interdepartmental supervisory committee was formed to oversee implementation, build consensus and instill a sense of ownership in these radical changes that some Indonesians saw as imposed by outsiders. The Steering Committee for the Preparation of the Operation of the Commercial Courts ("Steering Committee") formed in June 1998 was composed of members of the Supreme Court, State Secretariat, Ministry of Justice and Bappenas. With technical support from the IMF, the Steering Committee drafted an action plan to establish the first Commercial Court. The new Court began operation in August 1998 in Jakarta. During the first three months, thirty one bankruptcy cases were filed, and in the following year approximately one hundred cases.

Although initial public reaction, particularly within the business community, was positive, the new Court's weaknesses began to draw attention early on. Within months of beginning operation, indications of ineptness among judges, receivers and private lawyers, inconsistencies in applying the law, and signs of corruption provoked widespread criticism. To strengthen Commercial Court operations and improve their performance, the Government of Indonesia sought support from the IMF which responded with assistance through the IMF/Netherlands technical assistance subaccount.

[3] Eventually, four additional courts were established in major cities around the country and jurisdiction was expanded to include intellectual property disputes. This evaluation addresses only bankruptcy jurisdiction, and courts outside Jakarta were not examined.

Original Program Goals and Activities

The Program formally began in May 2000 and was created for the primary purpose of assisting development of the Commercial Court. Indonesia's financial condition, while still fragile, was no longer in a state of acute crisis. Although the reach and scope of the Program evolved over the years, program documents state the general objective of the technical assistance remained substantially unchanged throughout the Program: to put in place an effective bankruptcy regime and to ensure its proper implementation by means of a competent and objective judiciary. The focus of this objective was to be the Commercial Courts, although auxiliary entities with influence on the Courts' work also received assistance. Project documents indicate the technical assistance provided to the Commercial Courts in Phase I sought to achieve the following:

> (i) improvement of the operations of the Commercial Courts and of other institutions related to their work;
>
> (ii) coordination of training and related projects for the judiciary, especially the Commercial Courts and the Supreme Court;
>
> (iii) preparation of legal materials relevant to the Commercial Court, including work standards and codes of ethics for insolvency professionals, a Manual of Commercial Court Administration ("MOCCA"), commentaries on Commercial Court decisions, and guidelines for the relationship between supervisory judges and receivers.

While the general objective begun in Phase I remained, in Phase II, the Program's focus expanded. Phase II's stated purpose was to strengthen the legal infrastructure and institutional performance of the judiciary with the aim of increased restructuring of private debt, enhanced investment, and sustainable economic growth. Phase II recognized the need to work outside the Commercial Courts under a broader agenda in order to meet the objectives for the Commercial Courts. Program assistance outside the Commercial Courts sphere is discussed in following sections.

In Phase II, Commercial Court activities were largely a continuation of activities begun during Phase I, but with more focus on strengthening the Courts' institutional operations. In addition to further training of judges and receivers, Phase II activities emphasized improving the Commercial Court's ability to function as an institution in order to improve its ability to function as a competent judicial body. These activities included engaging in strategic planning, publishing annual reports, commissioning expert commentaries on Commercial Court decisions, examining personnel management practices, conducting a productivity and needs assessment, and sponsoring overseas study tours. For the most part, these activities were implemented by local consultants under the authority of the Steering Committee and with close supervision of Program Advisers.

In both Phase I and Phase II, then, objectives and activities outlined in formal project documents and reports basically adhered to the goal of creating competent and effective Commercial Courts in support of resolving corporate insolvency issues in order to strengthen Indonesia's financial system. This comported with the IMF's focus on restoring financial stability to Indonesia's troubled economy.

Discussions with Program Advisers, however, indicate they believed that establishing the Commercial Courts created an opportunity to deal with wider systemic deficiencies within the judiciary. While this was not an overtly stated or prominently pursued goal by the IMF, it was anticipated that the Commercial Courts could become model courts from which wider reform would emerge. The possibility of wider court reform emerging from the Commercial Court experience hovered near the surface, but only gradually entered into Program activities as opportunities for wider court reform opened up under a reform minded chief justice.

Program Problems

At bottom, our interviews made clear that, despite some useful contributions, the Commercial Courts are widely perceived as having failed to operate as intended. They did not succeed in creating a competent and objective judiciary to implement an effective bankruptcy regime, and we found little support for contending the Commercial Courts had been an influential factor in restoring investor confidence. None of our sources thought that the Commercial Courts had evolved into model courts. Rather, all thought the new Courts had succumbed to wider systemic faults. This is not to say that nothing useful resulted or that the Program's technical assistance was poorly executed, only that both Indonesians and internationals expressed disappointment at the Courts' performance.

The Indonesian judiciary was not ready for wholesale change in 1998 when the financial crisis highlighted the system's deep inadequacies. Nor was the IMF, pursuant to its mandate, in a position to undertake full-fledged rebuilding of an entire judicial institution in total disrepair. Carving out specialized courts to handle insolvency matters and providing technical assistance to make them function effectively seemed a more reasonable solution given the urgency of the times. Nevertheless, the challenges were immense and many factors frustrated the ability of the Program to meet the stated objectives for the Commercial Courts.

A major factor in the Commercial Courts' inability to achieve the objectives set forth was their continued attachment to the general judicial system. Some view the decision to select Commercial Court judges from among the existing judiciary a key factor in the new Courts' inability to shed former bad habits. This meant that Commercial Court judges continued to be subject to standard promotion and transfer

policies, so that despite being specially selected and trained, Commercial Court judges were rotated back into the weak professional environment from which they came.

In addition, Indonesia's level of commitment to the Commercial Courts hampered development. Knowledgeable court observers reported they doubted improvement of the Commercial Courts was a priority of court leaders. Powerful business interests balked at having corporate debt issues resolved by the courts. And civil society lacked enthusiasm for bankruptcy reform. Thus, a weak sense of ownership for specialized bankruptcy courts diluted the widespread support needed from court leaders, government decision makers and civil society activists to make the Commercial Court a credible and viable separate institution. Without sufficient local commitment, technical assistance was unlikely to make the difference envisioned.

A separate case management system and administration staff were attempted for Commercial Courts to try to isolate them from problems of a weak case administration system. Because limited commitment existed within the judiciary to fully separate Commercial Courts, a separate administration system was seen to impose on limited resources and as undermining the work of the judiciary and its administration as a whole. Equipment and space needs remained unmet, and little or no training was provided to strengthen the weak administrative skills that dogged the Courts. As bankruptcy filings declined, the regular district court encroached on the separate space and staff set aside for the Commercial Courts, further blurring the boundaries.

Factors outside the judiciary also impacted the Commercial Courts' development. Weak professional skills and questionable ethics of receivers and private attorneys contributed to the Commercial Courts' poor performance. Adequately tackling the many problematic practices of these insolvency professionals was beyond the Program's capacity, although efforts were undertaken to enhance their skills and curb abuses.

Realistically, the rather ambitious goals projected for the Commercial Courts probably were not achievable with technical assistance alone, especially considering the intractable nature of the problems infecting Indonesia's judicial system and the absence of strong local buy-in. As designed, then, the Program's mission was premised on the misperception that technical assistance concentrated on the Commercial Courts could bring about the intended results without widespread structural change in the general court system. To some degree, Program design was dictated by the IMF's institutional mandate which required justice sector interventions be tied to strengthening Indonesia's overall financial health and stability. Technical assistance eventually provided to the Supreme Court was justified as necessary to improve Commercial Court performance.

Despite these many complicating factors, the Program managed to achieve discrete, yet important, advances in judicial procedures, laid foundations for improved self-management capacity and facilitated broader stakeholder participation in reform efforts. Imposing institutional change is rarely easy, and the Program's efforts to

facilitate these initiatives encountered stiff and persistent opposition. As a result, each of these innovations ultimately had marginal impact on the functioning of the Commercial Courts. Nevertheless, all are seen as systemic contributions enabled by the Commercial Courts with Program support.

Assessment of Program Quality

There was widespread agreement among sources consulted by the evaluation team that despite failure of the Commercial Courts to function as intended, they nevertheless succeeded in introducing several concepts previously unaccepted within Indonesian judicial practices. These were the use of ad hoc judges, the ability to issue dissenting opinions, the publication of written decisions, and the imposition of time bound procedures for the administration of cases. Additionally, we note contributions which are not directly related to court operations and so are less apparent to reform advocates. These include an interdepartmental steering committee, a professional productivity and needs assessment, and strategic planning for institutional development, or blueprints. All are important steps beyond the Commercial Courts in progressing towards systemic judicial reform and increasing management competency.

Ad Hoc Judges. Ad hoc judges were intended to increase competence on complex financial matters and help check incidents of corruption by incorporating into the judicial process lawyers who were commercial law experts and scrupulously honest. The amended bankruptcy law provided appointment of an ad hoc judge from an approved list of legal experts to serve alongside career judges at the request of either party.

Complications frustrated use of ad hoc judges. The judiciary actively fought the concept, and the ad hoc judges resisted serving until clear procedures governing their service were in place. The Program worked steadily to overcome the many obstacles, and the first ad hoc judge was finally called to sit on a panel almost two years after the Commercial Court opened its doors. Thereafter, only one ad hoc judge was ever assigned to hear cases; she participated in a total of nine or ten cases and issued two dissenting opinions. No ad hoc judges have been appointed since 2002, and currently no ad hoc judges are available, as the initial appointments have expired.

Such limited use provided little opportunity for ad hoc judges to influence the Commercial Courts. There is no indication, however, the Program failed in any way to support integration of ad hoc judges into the Commercial Courts. Certainly, once all the barriers had been removed parties could have requested an ad hoc judge more often than they did. Exploring why they did not could have been instructive. The use of ad hoc judges was repeatedly cited in interviews as a means for exposing a closed judiciary to alternative ways of thinking. Ad hoc judges, with some variation on appointment, have been adopted by the Human Rights and Anticorruption Courts.

Dissenting Opinions. The ability to issue dissenting opinions was cited consistently as an important breakthrough for improving the wider judiciary. Prior to the Commercial Courts, any dissenting views were closeted – neither part of the decision nor available to the parties. Commercial Court ad hoc judges insisted on the right to issue public dissenting opinions before accepting appointment, and the Program facilitated enactment of this procedural change.

Once open dissents were permitted, very few dissenting opinions actually were issued. Out of 300 bankruptcy decisions, there were only five dissenting opinions, four within the Commercial Courts and one in the Supreme Court. Although the dissenting views were upheld on appeal, overall, introduction of dissenting opinions seems to have added little to the Commercial Courts' performance. Yet, dissents are gradually seeping into the judicial consciousness. Outside the Commercial Court, three dissents have been issued in criminal cases, the Constitutional Court has issued dissents, and dissents are now institutionalized by Supreme Court law.

Publication of Court Decisions. Although written court decisions are considered the norm throughout much of the world, unavailability of written decisions in Indonesia helped perpetuate a closed and unaccountable judiciary. Program policy conceptions led to critical procedural reforms that emphasized both judicial openness and efficiency. In the first instance, the amended bankruptcy law required that Commercial Court decisions be written, that they make legal reasoning explicit, and that they be made available to the public. These formally specified requirements were unprecedented in Indonesia. The Program facilitated accessibility and transparency by supporting internet publication of Commercial Court decisions and by commissioning expert reviews and analysis of decisions. Publicly available written decisions was another step in opening Indonesia's judiciary to scrutiny. The widely held negative perception of the Commercial Courts may stem, in part, from the availability of written decisions and, concomitantly, the widespread publicity resulting from egregious decisions in high profile cases. The new Supreme Court law provides for publication.

Time Bound Procedures. Expedited bankruptcy proceedings were considered essential to dealing with financial crisis corporate debt issues. Yet, trials of civil cases in Indonesia's courts are notoriously lengthy. Program emphases favored timely decisions. The amended bankruptcy law provided tight time limits at all stages of insolvency proceedings, reducing the total time including appeal to 180 days. Providing strict procedural time frames for bankruptcy cases sought to curtail delays while offering a model of efficient judicial behavior. The Program contributed to these goals by developing and publishing a Manual for Commercial Court Administration to assist court personnel, receivers and practitioners in navigating the new bankruptcy procedures.

To a large degree, the Commercial Courts abided by the time frames provided in the bankruptcy law, and insolvency matters moved through the system in a reasonable amount of time. These gains were diminished, however, when the Supreme Court held

that lateness bore no legal consequence and, thereafter, exceeded the time limit in a bankruptcy case on appeal. While the declining number of bankruptcy filings in a post-crisis environment makes this a less urgent issue, the apparent lack of high level support for improving court efficiency has concerned court reformers. Still, time bound procedures now exist in both the Human Rights and Anticorruption Courts.

Interdepartmental Steering Committee. From the beginning, efforts to establish the Commercial Courts strove to gather input from outside the judiciary which was insular and resistant to reform. The interdepartmental Steering Committee (Supreme Court, Commercial Court, Ministry of Justice, Bappenas) was intended to counter these tendencies and to provide a more comprehensive approach to identifying problems and agreeing upon measures to be taken by relevant agencies. Coordinated interaction among the respective institutions was uncommon in Indonesia, and lack of cooperation was seen as frustrating sustainable implementation of reform efforts. Originally instituted by the IMF, support for the Steering Committee was assumed by the Program.

To strengthen the Steering Committee's functional capacity, the Program supported a secretariat which involved NGO assistance. This helped breakdown reluctance to outsiders participating in court business. Eventually, the Steering Committee expanded to become a Joint Steering Committee for the Commercial Court and for the Establishment of the Anticorruption Court ("Joint Steering Committee"). This enabled planning for the Anticorruption Court to learn from the experience of creating the Commercial Courts. Moreover, the Joint Steering Committee provided a structured forum for involving non-government participation. Although the Steering Committee was slow to engage in its mission, performed inconsistently, and seemed at times to serve as a front for the IMF and this Program, the Program's support, along with strong assistance from Bappenas, helped to keep it operating and enabled it to become a productive vehicle for channeling stakeholder participation.

Needs Assessment. A principal difficulty in comprehensive planning for any judiciary is quantifying workload so as to apply appropriate staffing and financial support. To address this, the Program sponsored an innovative productivity and needs assessment of the Jakarta Commercial Court, as a pilot project. Conducted by a Jakarta consulting firm in two phases between 2002-2004, the Assessment gathered detailed information to support calculations relating to productivity and needs, including reasonable minimum judicial salaries, annual operations budgets, the time it took to handle an average bankruptcy case, and the number of staff actually needed to manage the court's workload. Among other things, the research concluded that the Jakarta Commercial Court's budget was grossly under funded, the judges underpaid, the court overstaffed and substantially higher judicial salaries could be supported by paring down the number of court personnel from seventy-six to twenty-eight.

While the evaluation team sees real merit in developing an objective basis for instituting reform, it is not apparent how the Assessment will be used. Perhaps during the

Program's final months the Steering Committee will consider recommendations in the Assessment, although we were told budget constraints would restrict implementation.

Strategic Planning and Blueprints. Court personnel had no experience with strategic planning for routine development, let alone major institutional reform. The Steering Committee offered an appropriate vehicle for undertaking institutional planning exercises, which evolved into the blueprint process.

With Program support, the Steering Committee produced the first blueprint for development of the Commercial Courts in May 2001. More a matrix for donor support than a true strategic planning document, this first judicial Blueprint was nonetheless, after some coaching, a departure from the usual request for computers, cars and comparative study tours. Prepared by the Steering Committee (without wider stakeholder participation), this Blueprint was a first attempt to produce an Indonesian-led strategic plan for structural development of a judicial institution. With a stated goal of making the Commercial Court a modern court to serve as a model for other Indonesian courts, the Blueprint identified five areas of development: human resources, organizational restructuring, improved infrastructure and facilities, performance assessment, and expansion of Commercial Court jurisdiction. Composed largely of generalizations and high concepts, this first Blueprint lacked concrete details and fixed timelines. According to one source involved in the process, the first Blueprint proved difficult to implement and inadequate to address the institutional problems in operation of the Commercial Courts. Nevertheless, the process was engaged.

When the Joint Steering Committee was tasked with establishing the Anticorruption Court, the first Blueprint was revised and improved in conjunction with preparing a Blueprint for the Anticorruption Court. This second Commercial Courts Blueprint was produced through a more sophisticated and participatory process. Using local NGOs as consultants, extensive research, consensus building workshops and stakeholder participation were funneled into the process. As a consensus based product, the end result, while perhaps not perfect, is nonetheless a document for change reflecting Indonesian priorities and created in partnership between the judiciary and civil society.

Capacity Building/Training. The Program placed heavy emphasis on capacity building, mainly in the form of direct training combined with workshops, seminars and a handful of comparative study tours abroad. The bulk of the Program's training assistance was directed toward instructing judges and receivers in application of the amended bankruptcy law, management of insolvency issues and complex commercial matters. The primary focus, however, was on developing professional expertise among specially selected judges. Training designed with Program support was remarkable for creating a standardized curriculum with consistent materials and using more professional local trainers. This was an advancement in continuing training provided to sitting judges.

Due to lack of evaluative follow-up assessments, it is difficult to understand or comment on the impact of training. The Program's training consultant stated there is no way to know if the training has had any impact. While we have no reason to doubt the content of the training was well developed and delivered, neither strengths nor deficiencies of the training program (including methodology, materials, and the trainers themselves) are known with any confidence.

Preparation of Relevant Legal Materials. The Program assisted efforts to expand legal literature relevant to practitioners and receivers. These included a Manual on Commercial Court Administration ("MOCCA"), guidelines on the relationship between supervisory judges and receivers, professional work standards for the Receivers Association ("AKPI"), and a standardized reporting format for receivers. Reportedly, these materials were well prepared and useful in clarifying procedures and setting performance standards. It is unclear, however, what impact these materials have had on improving the work of the Commercial Courts.

While useful, these materials cannot effectively – nor were they expected to – alter problems of corruption and weak advocacy that many believe detrimentally impact the Commercial Courts' performance. Nevertheless, the Program is working with AKPI to devise means of controlling unprofessional and illegal conduct. The existence of standards of conduct did enable AKPI to take disciplinary action against one of its members. Disciplining legal professionals is practically nonexistent in Indonesia. As a result, some receivers left AKPI to form a competing association, further complicating the ability to exert effective controls. These issues, largely outside the Program's reach, touch on longstanding and complex matters of regulating private practitioners that remain a problem for the entire legal sector.

Annotated Court Decisions/Commentaries. While publication of decisions opened the Commercial Courts to criticism, it did not succeed, as hoped, in generating scholarly debate and written commentary on the problems and issues revealed. Program Advisers expected debate and commentary from academia and the legal community as a by product of accessibility to written decisions.[4] This in turn would contribute to advocacy for change and provide input for policymaking. Such analyses might also begin to form a basis for merit based personnel decisions on judges. In the absence of written commentaries, the Program posted relevant materials on the internet, published case annotations and commissioned a study to analyze Commercial Court decisions.

For this study, the Steering Committee appointed a team of seven noted practitioners ("Team of Seven") to review the legal soundness of 300 Commercial Court decisions. Despite finding more than two thirds of these decisions defensible under the law, Team of Seven members found the judges generally lacked basic legal knowledge and were highly critical of the judges' level of competence, including the Supreme Court

[4] One book on Commercial Courts neither cited nor discussed a single decision.

whose bankruptcy decisions were more problematic than those of the lower court. These results as reported to the evaluation team were long delayed and not well conveyed through the commissioned study. The end product did not meet the terms of reference and so was not published by the Program.[5] The Program's effort to spur commentary from the legal community so far has not generated greater interest in writing about Commercial Court decisions.

Evaluation

The experience of the Commercial Courts has been distinctly mixed. As viable judicial institutions, they are widely perceived as disappointing and as having succumbed to the deficiencies of the wider judicial system. Ultimately, improving the Commercial Courts' performance required greater attention to the structural makeup of the entire court system, especially the Supreme Court. With the appointment of a more open minded chief justice, the Program began turning its focus away from the Commercial Courts alone and started looking towards the wider judiciary and how to support a process for instituting structural reform.

Apart from their explicit functions, the Commercial Courts were implicitly expected—though 'hoped' may be more appropriate—to serve as a model of sorts for the established judiciary. The IMF's role as lender of last resort accorded it a unique status and level of influence unmatched by any other donor or assistance provider. Creating a new court provided opportunity to introduce mechanisms to foster transparency, efficiency, competence and accountability. Procedures for ad hoc judges, public access to written decisions, dissenting opinions, case administration time frames were purposefully channeled into the Commercial Court framework to combat the entrenched habits of the system to which the new Courts were still attached. According to our interviews, the conditionality provisions set forth in Letters of Intent provided a powerful mechanism for leveraging these changes.

As laboratories for reform, then, the Commercial Courts have had some meaningful impact by introducing certain discrete operating procedures that have influenced the larger judicial culture. Although these mechanisms have not significantly impacted the performance of the Commercial Courts, their importance should not be dismissed entirely. The fact that published decisions are required, dissents are permitted, ad hoc judges are being funneled into some courts and cases are moving more promptly in specialized courts is progress. Moreover, they are building blocks of institutional change, albeit one brick at a time.

Potential exists, however, for backsliding on some of the advances made through the Program. While court observers consistently cited time bound procedures as a

[5] Some of the commentaries (58 of 300) are posted on the internet.

positive contribution toward improved efficiency, court leadership seems unconvinced. Rather, some believe overburdened judges require leeway and contend that courts require more judges to decide cases more quickly under time bound procedures. Objective data detailing and analyzing court productivity, such as the Commercial Court Needs Assessment, could help alter these beliefs, but at this point the Needs Assessment seems unlikely to generate much follow on activity. Yet, its importance is not so much as an implementable plan, but as a tool for approaching comprehensive reform. Its value lies in convincing court leaders to use real data to inform choices and shape views on day-to-day judicial activity. A campaign may be needed to better acquaint judicial decision makers with the Assessment and how it can serve the Indonesian reform agenda.

Additional concerns were raised as to sustainability of the current training regimen once Program support ends. With a limited budget for the entire judiciary, the Supreme Court will be hard pressed to continue this dedicated training program for a specialized court with a dwindling case load. Moreover, the judiciary lacks a professional training staff. The Supreme Court training unit is staffed by judges who lack skill and expertise in developing training programs and, to some, appear more interested in their next promotion out of the training unit.

Views on the continued usefulness of the Commercial Courts are mixed. Some contend their usefulness has subsided with the end of the financial crisis. Others countered that globalization requires specialized Commercial Courts for Indonesia to be competitive. Still others felt specialized courts irrelevant because what matters is that all courts work well. All agreed, however, Indonesia's justice system requires fixing and that Commercial Courts alone were not the answer. Until there is stronger commitment to the Commercial Courts from court decision makers, further training of judges and support for institutional development will likely continue to achieve limited results. Without such commitment, continued support for their development is not advisable.

Overall, technical assistance provided by the Program to the Commercial Courts has been well applied and approaches – emphasis on local experts, reliance on an interdepartmental Steering Committee, cohesive training curriculum – well conceived. Even though these innovations may not have impacted the Commercial Courts as expected, and even though no clear impact is yet discernible, these innovations are potentially beneficial to the process of judicial reform. Thus, we do not exaggerate their effect, nor do we negate their importance, but we recognize these as steps toward sustainable results.

Conclusion

From all sources available to the evaluation team, our finding is that today, six years after amendment of the bankruptcy law, Indonesia's Commercial Courts have not contributed as intended to creating an effective bankruptcy regime. As the center piece

for resolving insolvency issues, the Commercial Courts failed to evolve as a competent institution and model court. This failure is attributable to many factors. The operations of the Commercial Courts remain permeated by the long entrenched problems of the entire judicial complex. Judges and court personnel alone are not at fault; other performers such as lawyers and receivers contributed to the failure of the Courts' effectiveness. And Indonesians generally lacked sufficient commitment to specialized bankruptcy courts to secure their proper development. Ultimately, assistance to the Commercial Courts was grounded on a faulty premise that technical assistance could succeed without wider structural reforms to the judicial system. Certainly, the stated objectives were overly ambitious and not realistically achievable.

Given that institutional reform is a process that takes time, faces many obstacles and often results in partially fulfilled expectations, through technical assistance to the Commercial Courts, the Program made notable strides on two fronts. It introduced certain discrete mechanisms to strengthen transparency and accountability that have taken root and sprouted in other courts, and it has seeded a process for reform that opened the judiciary to outside input and, under a more reform minded chief justice, grew into the blueprints process. On balance, these are sound contributions and it is doubtful much more could have been achieved.

THE SUPREME COURT

Setting

From the beginning, in 1998, it was clear that at some point, if the commercial courts were to render effective service, the core judiciary must necessarily become a focus of reform attention.[6] Had existing courts proved competent to manage bankruptcy cases, there would have been no need for new Commercial Courts, whose creation was an emergency stopgap measure that still required a favorable institutional environment. Sustaining capable new courts required restoration of the competence and integrity of the judicial system generally. The defects that soon appeared in the Commercial Courts grew in large part out of the weaknesses of the judiciary at large.

The difficulty, however, was that the judiciary, from top to bottom, seemed impregnable. Most importantly, at the top, the Supreme Court (Mahkamah Agung) was made up of justices whose careers had developed through the New Order years, when judicial authority and integrity had lost meaning. Until an opening occurred into which a wedge of reform impetus could be inserted, little could be done.

The opportunity came suddenly in 2001, during the short-lived presidency of Abdurrachman Wahid, when the chair of the Supreme Court retired and a non-career judge, the academic Bagir Manan, was chosen to replace him. Soon thereafter a few more non-career justices were appointed who, while still a small minority among forty plus members of the Court at the time, provided potentially useful support for change.[7] As new Supreme Court justices were selected by Parliament in an uncertain process, the results did not always predict success in transforming the Court, but the breakthroughs nevertheless made possible the introduction of a reform agenda to which the new Chief Justice made clear that he was enthusiastically committed.

Program Goals and Activities

The primary purpose of the Program with respect to the Supreme Court was nothing less than to assist strategically in restoring its institutional capacity and efficacy, with implications for the whole of the Indonesian judiciary, but with little hope of achieving goals quickly. In its existing state, no single attribute of the Court could be taken for granted or left unexamined, from selection and skills of judges through judicial

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[6] "judiciary" here refers to the civil judiciary, by contrast with religious courts.

[7] The new justices were not actually the first non-career judges on the Supreme Court. In 1974 President Suharto appointed to the Court his civilian Minister of Justice and several military officers with degrees from the academy of military law. None was a career judge. The non-career appointees of 2001 and thereafter were civilians with legal training and experience, two of them in the Legal Aid Institute Foundation long known for its reformist commitments.

habits, organization, administration, and oversight of appellate and first instance courts. Nor, given the size of the court along with the complexity, size, and organization of the judicial corps, could anyone hope for consistent improvement or immediate accomplishment of the goals of the Chief Justice, his allies on the Court, and the Program.

The Program adapted quickly to the possibilities generated by the new Chief Justice and promising signals from elsewhere in the government during 2001. Program adjustments were made, strategies worked out, some projects were set aside, and the focus on Commercial Courts began to shift to the Supreme Court and anti-corruption issues. It speaks particularly well of the funding structure of the Program that when new conditions encouraged useful changes of course, budgets could be adapted accordingly, as a matter of policy.

Phase I projects, from May 2000 to May 2003, demonstrate the shift in attention after May 2001, as meetings in the Supreme Court became more numerous. In November 2001 the People's Consultative Assembly (MPR) amended the Constitution to provide for a new Judicial Commission, which the Program actively supported through workshops, seminars, and negotiations in the Supreme Court and Parliament, and between them, to facilitate Parliamentary enactment of a law on the new institution; the statute was finally promulgated only in mid-2004. The prospect of a Judicial Commission and the consideration of its responsibilities stimulated more attention to institutional development of the judiciary and the issues to which the Commission would eventually pay attention. Discussions involving Supreme Court leadership, the Resident Expert, the Parliamentary drafting committee, and representatives of the NGO Institute for Judicial Independence (LeIP) focussed increasingly on the future role of the Judicial Commission, personnel management in the judiciary, continuing education for career judges, financial transparency, and judicial accountability.

During the same period, beginning in March 2002, research was begun on the judiciary, from first instance courts through the Supreme Court, that provided the substantial data and analysis for the sectoral judicial planning now known as the Blueprints. The work was done by LeIP, associated with the Indonesian Center for the Study of Law and Policy (PSHK), whose support by the Chief Justice substantially helped the researchers to gain access to the lower courts as well. LeIP's work represents much of the deepest and most competent research done on Indonesia's judiciary in the half-century plus since independence.

Phase II activities, beginning in June 2003, flowed naturally from the work in Phase I, with workshops intended to encourage Parliamentary attention to the Judicial Commission; assistance to the Supreme Court, in part by way of a workshop with Supreme Court and National Law Commission participation to deal with the Judicial Commission effort; still another workshop on judicial commissions to which the chair of

the Netherlands judicial commission was invited; and study tours for Supreme Court justices to the Netherlands and the United States.

In addition, the Supreme Court Blueprints were published to considerable acclaim. As the Program neared the end of Phase II, it contracted to place two persons well acquainted with the Supreme Court Blueprints in the Court to assist in their implementation. In a Court hardly sympathetic to outside interference, much less presence, the Chief Justice assured a place for the outside personnel. What he could not assure was that their work among the justices would proceed easily.

Program Problems

From within the Program at least two constricting influences have affected its work in the Supreme Court, though not enough to hinder seriously its basic goals. The first was that the IMF Program's charge was principally the Commercial Courts, and the expansion of its purview had constantly to be justified in terms of that first economically linked purpose. In reality, the flexibility of the Netherlands funding and of the IMF legal department enabled the expansion without undue difficulty or delay, though the narrower terms of the first project had some constricting influence on later program additions.

The second problem, possibly related to this last point, is that the Program may have been strategically too confined, on the one hand to Jakarta and on the other to a judicial order too narrowly defined. While the initial research done by LeIP extended a bit to the lower courts beyond the capital, and later increasingly more so, for the most part Jakarta based institutions absorbed most of the Program's attention. Similarly, a point that will be taken up briefly again later, although a legal system consists of more than judicial institutions, the Program could not easily justify moving far beyond judicial and statutory confines.

The most basic difficulties encountered by the Supreme Court program, however, were imbedded in the structure, administration, and history of the Court itself. Support from the Chief Justice and a very few other judges, including, significantly, other non-career appointees, was critically important, but resistance or nonchalance among the rest made efforts at reform difficult. Interest in and responsiveness to the changes proposed in the Blueprints were limited, even as the Chief Justice insistently urged the entire Court to take them seriously, study them, and assist in their implementation. At the same time, however, judges committed to reform also bore continuing judicial responsibilities that divided their attention. Consequently, for example, while the Chief Justice's agreement to have the two outside assistants placed directly in the Court to help with the Blueprints was a major breakthrough, one unimaginable earlier in the long history of the Court, it proved very difficult for them to make headway because the justice with whom they were to work most closely could not easily find time away from his other responsibilities. Moreover, this same justice, following the election of a new President in late 2004, was

appointed Chief Public Prosecutor, removing a key reform figure from the Supreme Court. Within the next two years, moreover, the Chief Justice himself is due to retire, with no assurance that he will be replaced by another justice as fully committed to the Blueprints.

Program planning for repairing the Supreme Court was complex, sophisticated, and imaginative, engaging a network of resources well-suited to an intractable problem. While the new emphasis on the Supreme Court was still explained, or perhaps justified, in the light of its economic purposes, gradually the Supreme Court itself became the centerpiece and tentatively—also uncertainly— drew from commercial court experience such innovations as dissenting opinions and public access to decisions. Very little about the Supreme Court program was simple, however. Even apart from corruption problems, the Court required serious attention to recruitment, organization, management, and selection of personnel, all made the more problematic and demanding by the transfer of full authority over the entire judicial hierarchy, in the so-called "one roof" principle, from the Ministry of Justice to the Supreme Court itself.

Assessment of Program Quality

The evaluation team and its sources identified several distinct strengths and weaknesses in Program approaches to Supreme Court reform.

*Program Leadership***.** The evaluation team was impressed by the significant program strength provided by a combination of Resident Expert and two Resident Advisers who, between them, share as much as eighty years of relevant experience, knowledge, expertise, and sensitivity. Our sources frequently called attention to their skills and capable direction and decision making with respect to Supreme Court reform.

Local Expertise. Working closely with, indeed depending upon, local knowledge, skills, and expertise was a principal base of Program strength. The relationship particularly with the PSHK/LeIP organization was strategically significant and accounts for key measures of success, not least the Supreme Court Blueprints developed by LeIP. A side-effect of the Blueprint concept is that it has begun, however slightly, to influence other organizations interested in planning change and may in time become common as a serious orientation more than a cliché.

Expert Assistance in Implementation of the Blueprints. The placement of consultants in the Supreme Court to help and encourage adaptation to the Blueprint requirements is an important breakthrough. How well it works in practice will depend on how amenable Supreme Court Justices are to the assistance thus made available. Sustainability has yet to be demonstrated.

Judicial Commission. A Judicial Commission has been approved, its statute promulgated, and its members are soon to be selected. Its influence, and how it deals with the resistance it is likely to meet, is for a future assessment. It is possible that the Judicial Commission will prove to be a significant institution whose evolution might benefit from Program support. Efforts have already begun to improve its stature and influence by amending the statute that defines its authority.

Adoption of Innovations. The Supreme Court's adoption of innovations originated in the Commercial Courts may take permanent hold, but it is not yet a certainty. Adoption is not necessarily adaptation. Dissenting opinions are now validated in law, but are not yet at all common. Nor have Supreme Court decisions become as readily available as they were in the 1950s. The appointment of non-career judges, which originated in the Supreme Court and accounts for important change, has not held its own

Observation Tours. Some doubts exist about the utility of observation tours abroad by judges. A more rigorous assessment is needed of their purposes, which judges should participate, and what exactly is expected of them.

Needs Assessment. The useful needs assessment of the Commercial Courts by PT Nagadi Ekasakti might be extended to the Supreme Court and routinely to other judicial institutions. In addition, the interest of the young MAPPI team from the University of Indonesia Law Faculty in analyzing Supreme Court career patterns and issues should also be encouraged if possible. Their work is useful, but in addition it is an opportunity to help strengthen a promising group of young legal researchers and analysts.

Supreme Court Management. One source interviewed by the evaluation team raised a question about the implementation of the Supreme Court management Blueprint: shouldn't the Court be a Court instead of a management team? The point, well taken on several grounds, occurred earlier to the drafters of the Blueprint, who realized, however, that for several reasons the justices would likely oppose outsourcing management of the court.

Information Strategy. At least one member of the evaluation team believes that a flaw in the Program is its lack of an adequate strategy for making information on the reforms widely and consistently available both in Jakarta and the provinces. In its meeting with the members of a Jakarta law firm, the evaluation team became aware that few of its members knew much about the program and its purposes. One of the team members has found the same to be true of other major law firms in Jakarta. Albeit inadvertently, detailed knowledge of the reform effort in the Supreme Court and its implications appears to be locked in Jakarta among relatively few people directly engaged. Regular reports to as many as possible law firms and practitioners, major newspapers, interested NGOs, existing law journals, and law faculties around the country, constitute an essential means not only of building an interested audience but of generating pressure on legal institutions undergoing change.

Evaluation

The Program's decision to rely on the research skills and imagination of the Institute for an Independent Judiciary (LeIP) and the Center for the Study of Law and Policy (PSHK) was strategically significant, quite apart from LeIP's convincing competence, because it kept the center of gravity of the reform effort within Indonesia and among the country's most committed reformists. LeIP produced five Blueprints published in the second half of 2003: one, supported by the Asia Foundation (funded by USAID and the Partnership for Governance Reform), on overall reform of the Supreme Court, and four more, supported by the Program, on financial management, personnel management, permanent judicial education, and a last volume, essentially a draft statute, on the proposed judicial commission. Well researched and thoughtfully presented, these Blueprints are a major achievement in the process of judicial reform.

Interested observers and the sources whom the evaluation team interviewed regard these Blueprints as the single most impressive and promising steps towards reconstruction of the Supreme Court and, in time, the lower civil courts; and perhaps too a useful planning model for other judicial institutions in and out of Indonesia.

Promising as they are, however, the influence of the Blueprints and the sustainability of the reform momentum ultimately depend upon the capacity of the Supreme Court itself to implement these maps of change. The Chief Justice has stated emphatically that the entire Court must orient itself to the Blueprints. The evaluation team found substantial concern among its sources, however, about the willingness of all fifty-one Supreme Court justices to read, study, or implement the plans.

As was mentioned earlier, the outside assistance meant to help in implementing the Supreme Court Blueprints has not worked out well, in part because justices were often busy with other work, or uninterested, and more recently because the liaison justice has left the Court to become Chief Public Prosecutor. The work of applying changes required by the Blueprints, then, has not yet become routine, nor is it likely to do so without resistance. Moreover, during the next two years, the Chief Justice and one or two other key personnel will retire, with no obvious strategy in place that might assure a succession of Supreme Court justices fully committed to the Blueprints.

It is too early to render judgment, then, on program results in the Supreme Court. At best, the odds are roughly even that deep reform will occur, a reconstruction of the Supreme Court that will promote similar results down the judicial line, and conceivably reinforce and extend the influence of new specialized courts already at work and others in the making. The new Judicial Commission, once fully constituted, may prove to be a significant factor in promoting change within the Supreme Court, not least by exercising influence over the selection of justices, but it is still in process of formation. Ultimately,

moreover, empowerment of judicial institutions, whatever happens from within, must depend on willing accommodation by political leadership during a period of unpredictable political transformation.

Uncertain as the results may be in the near future, a process of change ignited by the Program and its partners is likely to continue, albeit uncertainly, partly under limited momentum from within, but primarily because of continuing pressure from younger generation reform NGOs, the press, and a public in need of better institutions. Conceivably the new generation of specialized courts—particularly, for example, the Constitutional Court—at work or in the making may generate even more pressure. But it would be a mistake to underestimate resistance to change from within the courts themselves and from political leadership aware that it will not benefit from fundamental institutional reform.

The sources consulted by the evaluation team were generally in agreement that Program strategies for Supreme Court reform have been well conceived and placed, and sensitively injected, with impressive reliance on local knowledge, expertise, and capability. Whatever happens, and however slowly, the work of the Resident Expert and Resident Advisors, along with the network of NGOs, and additional sources of knowledge and advice, constitute a useful model of how complex reform efforts might be undertaken.

Two relevant problems have not been addressed by the Program, however, in part at least because the original definition of its portfolio rendered them beyond its reach. None of the institutions addressed by the Program can conceivably stand alone. As the Commercial Courts depend in some measure on the efficacy of the Supreme Court, so too judicial institutions generally rely on all other sectors of legal activity. One obvious problem that was not addressed is legal education, which is in need of repair throughout the country. Expensive and difficult, attention to major law faculties and their libraries is essential, as they constitute primary sources of capable judges, prosecutors, notaries, and private lawyers. If the IMF/Netherlands Program cannot address the need, it might make sense to encourage other support for the law schools.

The second problem is that of the private legal profession, now divided among seven or eight organizations, none of which may be fully aware of just how many members it has, or regularly collects dues, or publishes a journal, or applies a code of ethics, which in any case may not exist in a few of the organizations. The legal profession is no less subject to accusations of corruption than the prosecutors and judges with whom they interact. A new statute dealing with the profession, promulgated in 2002, has stimulated some professional attention to licensing and bar examinations under the aegis of the Supreme Court. The same law calls for unification within two years, but little progress has been made towards that end. It is not at all clear how a donor program might help. A substantial paper, an unpublished blueprint of sorts, has been developed in the PSHK, however, and may well deserve attention at some point. It needs to be held in

mind that legal systems and judicial systems are in fact systems, whose constituent parts play essential roles in system maintenance. Indonesia's private legal profession is no less part of a solution than it has been part of the problem. Again, the IMF/Netherlands Program cannot easily expand towards the legal profession, and it may be that no other donor program can or should, but some attention to the problem may be worth serious thought.

A question posed to the evaluation team's sources asked what the IMF/Netherlands program should do during its last six months in operation. By the time this report is submitted, any answer may be beside the point as time runs out. Even so, a number of sources suggested that the remaining funds should be devoted to implementation of the Blueprints. It is not quite clear, however, what might have been added to the effort other than to maintain the outside advisors assisting in the implementation of the Supreme Court Blueprints. As has been indicated, that effort has not worked out well. Alternatively but tangentially related, it may be that the funds and energy remaining could have been better spent in spreading information about the Supreme Court program and related reform efforts to the larger audience they deserve and need.

Conclusion

Given the seriousness of the institutional problems and the short time the IMF/Netherlands Program has had to deal with the Commercial Courts, the Supreme Court, and corruption issues, it is far too soon to pronounce a secure view of its achievements. The basic goal at the onset of the program was to establish Commercial Courts meant to serve a narrowly defined economic purpose. Had the Program stopped there, it would have amounted to an unquestionable failure. That it did not stop there, but rather moved on directly, when it became possible to do so, to the Supreme Court, makes the effort particularly noteworthy. Its purpose then broadened substantially towards the purpose of creating effective judicial institutions, or, more modestly, to set in motion a pattern of institutional reform towards that end. At the pinnacle of this effort was the Supreme Court. At present, the most optimistic assessment is that a platform for further change has been created, in which a coalition of participant reform oriented organizations, mainly local, may well prove increasingly effective in accelerating the process of change.

ANTICORRUPTION

Setting

The prevalence of corruption throughout Indonesia's judicial system is well known and requires little introduction. The Program's involvement in anticorruption measures stems from the specific need to tackle judicial corruption as it affected the Commercial Courts. Clean, well functioning Commercial Courts – not only to manage and resolve insolvency proceedings, but also as a stick to drive debt restructuring negotiations – were considered a key ingredient to restoring Indonesia's macroeconomic health during the Asian financial crisis.

Yet, early on, Commercial Court decisions raised the specter of improper influence. As these disquieting signs persisted, the Program struggled with ways to bring the listing Courts right. Advocating for the appointment of ad hoc judges with the ability to issue dissenting opinions, fostering and disseminating written commentaries on court decisions, monitoring of court sessions, and support for the Joint Investigating Team (JIT) were all attempts, in part, by the Program to stanch corruption within the Commercial Courts. Concern about judicial corruption is ongoing throughout the Program's mission to enhance the Commercial Courts' performance. Indeed, Program Advisors stated that they regarded corruption in the judicial system a key impediment to reform and development of the Commercial Courts, in particular, and the judiciary as a whole.

Despite this concern, the Program's approach to addressing corruption in the Commercial Courts was constrained. Overall, anticorruption activities are neither a major emphasis of the technical assistance Program nor do they garner significant resources. Other donors and multilaterals were active in the sector and governance issues were not directly encompassed in the IMF's focus on macroeconomic stabilization. During Phase I, no clear, cohesive strategy frames anticorruption activities. In Phase II, the Program carves out a well-defined niche and directs its assistance to development of the Anticorruption Court.

Further discussion of the Program's anticorruption component requires a caveat. Despite our specific requests, no one knowledgeable about Phase I activities involving the JIT and the Public Prosecutor's Office was able to meet with us. Consequently, our evaluation of the anticorruption component relies primarily on information provided and the Resident Technical Assistance Team (Legal Expert and Advisors). And while we are aware that the IMF pursued an anticorruption agenda in cooperation with other donors and multilaterals as part of its economic support package to Indonesia, we received no information about these activities because they were not part of this technical assistance program and so were excluded from the scope of this evaluation.

Program Goals and Activities

Phase I

The stated purpose of Phase I's third component was to strengthen the capacity of individuals and institutions charged with implementing the bankruptcy law. Reporting documents state this component is directed to anticorruption efforts. Originally, this component consisted of three activities: (i) support for the JIT and its emphasis on investigating judicial corruption complaints, (ii) assistance to the Public Prosecutor's Office in pursuing public interest bankruptcy prosecutions, and (iii) preparation of a policy paper on judicial corruption. Efforts to support the JIT and the Public Prosecution Office did not materialize as planned. The policy paper on judicial corruption has been completed.

The Program assisted the Public Prosecution Office in developing materials and training prosecutors on how to handle public interest bankruptcy cases. No cases, however, were ever filed, and further assistance was deemed unwarranted.

The JIT was a task force created as an external expert team within the Public Prosecution Office to investigate and prosecute corruption cases law enforcement institutions had shown little inclination to pursue, especially judicial corruption. It was to serve as an interim anticorruption body until the Anticorruption Commission was formed. Initially, the JIT sought to proceed independently. After encountering vigorous opposition to its work, the JIT requested Program assistance, but by then it was out matched by forces committed to destroying it. A court challenge ended in dissolving the JIT in March 2001. The Program then funded an audit of internal operations of the JIT and supported research to produce a draft law on the anticorruption court. When the JIT formally disbanded in July 2002, the Program shifted assistance to the Commission for the Audit of the Wealth of State Officials (KPKPN) and co-sponsored a study tour to Thailand with the Asia Foundation. No further activities were taken with the KPKPN. Legislation promulgating the anticorruption commission provided the KPKPN would be folded into the new commission.

Phase II

Phase II contains an anticorruption component which aims at strengthening anticorruption policies and institutions. The stated goal is to assist the Joint Steering Committee to establish an independent, merit based, professional, well resourced, transparent, accountable, effective and respected Anticorruption Court. The primary activity is to assist in supporting work on design of the Anticorruption Court by undertaking the following: (i) completion of an action plan for establishment of the Anticorruption Court, (ii) development of a blueprint for the Anticorruption Court, (iii)

preparation of a terms of reference template for implementing programs under the Blueprint, (iv) strengthening managerial capacity of the Joint Steering Committee, and (v) assisting in defining the relationship between the Anticorruption Court and the Anticorruption Commission/KPKPN.

For the most part, Phase II activities have proceeded according to plan. All activities relating to establishment of the Anticorruption Court (Action Plan, Blueprint, activity terms of reference) are in place. As the evaluation team concluded its mission in Jakarta, the selection of judges was being finalized and a donors meeting was being planned to discuss implementation of the Blueprint. Reportedly, activities to strengthen the managerial capacity of the Joint Steering Committee have been ongoing. To date, no assistance has been provided to define the relationship between the Anticorruption Court and the Anticorruption Commission/KPKPN. The Anticorruption Commission informed us, however, that it has submitted a proposal for the Program's assistance in merging the KPKPN into the Anticorruption Commission.

Program Problems

The problems of judicial corruption are vast, and the Program's attempt to tackle small portions of the problem in conjunction with strengthening the Commercial Courts was unlikely to have much impact. Powerful vested interests continued to oppose enforcement efforts. This was confirmed by the post-dissolution audit of the JIT which cited absence of commitment for this anticorruption task force from key institutions and active opposition from the judiciary, Ministry of Justice, Ministry of Religious Affairs, Public Prosecution Office, portions of Parliament and private sector lawyers. Ultimately, the political will to address corruption did not exist.

From the beginning, efforts to assist the Public Prosecution Office and the JIT involved risks. Both efforts depended on cooperation from the Attorney General and the bureaucracy he led. As an institution, the Public Prosecution Office had been notoriously resistant to reform and an unreliable development partner. Due to unresponsiveness to public interest bankruptcy filings, the Program declined further assistance.

Phase I's anticorruption activities were forced to evolve as conditions changed, producing what seems to be a string of activities without clear linkages. This results in part from an initial Program design that did not emphasize an integrated approach. Rather, each program component was constructed as a stand alone project with its own budget and terms of reference containing proposed activities and outputs. This stove pipe arrangement meant funds could not move easily across projects. When JIT assistance did not progress as anticipated and opportunities with the Public Prosecutor's Office did not develop, these funds remained tied to the original terms of reference which complicated expenditure options.

Assessment of Program Quality

Public Prosecution Office. We obtained no qualitative information concerning the Program's assistance for the prosecution of bankruptcy cases.

JIT. Unlike its work with the Prosecution Office, which was discontinued entirely, the Program salvaged some useful activity with the JIT. The Program's assistance to the troubled JIT eventually migrated to producing materials in support of a draft law for establishment of the Anticorruption Court. This thread was picked up and followed in Phase II with development of the Anticorruption Court Blueprint under the auspices of the Joint Steering Committee. Of less apparent value was the audit of internal operations conducted to strengthen JIT performance, although perhaps this audit does point out optimum conditions for failure. The information was passed on to teams working to establish the Anticorruption Commission.

*KPKPN Study Tour***.** Although the study tour sought to build relationships by joining government officials with an NGO activist and parliamentarian on the trip, the KPKPN study tour to Thailand does not seem to have produced much of value. The KPKPN's uncertain future as part of the Anticorruption Commission made ongoing assistance difficult.

Judicial Corruption Paper. During the course of the evaluation, it was never clear how this study, prepared by the Resident Legal Expert, fit into the overall scheme of Phase I or what contributions it made to the Program's wider goals. The study has been shared with donors, law reformers and Indonesian officials, used as input for World Bank policy documents, and relied on in a UN report on judicial independence, but this wide exposure does not speak to the study's ultimate purpose or what it intended to achieve and whether it did so. Having read the paper, however, we suspect it was instructive in shaping Phase II and steering the Program's eventual focus toward addressing the courts' structural deficiencies as an approach to strengthening accountability and transparency and reducing opportunities for arbitrary or abusive behavior.

Anticorruption Court Blueprint. Planning for development of the Anticorruption Court was joined with the existing Commercial Court Steering Committee, which funneled Program assistance through an established and familiar vehicle, more reliable than the Public Prosecution Office. It also enabled planners to learn from the experience in setting up the Commercial Court. Through the Joint Steering Committee, the Anticorruption Court Blueprint benefited from wide stakeholder participation.

Evaluation

Intended as a temporary vehicle for pursuing corruption investigations until the Anticorruption Commission could be established, the JIT lacked any real base of support. Appended to a Public Prosecution Office headed by an increasingly uncooperative

Attorney General, the JIT's work had no champion and no institutional constituency. In addition, it was predicated on a presidential decree, a weak legal foundation which left it open to attack and eventual dissolution. In contrast, the blueprint process for the Anticorruption Court (as well as other blueprints) was anchored by a supportive chief justice and a core constituency of court leaders. Formation of the Anticorruption Court is solidly grounded in a decree of the People's Consultative Assembly. While these conditions portend a sustainable foundation, the Anticorruption Court has not yet begun the hard work of enforcement, which will test the level of political support.

That assistance opportunities with the JIT and Prosecution Office did not materialize as planned results, in part, from a shifting political environment that breeds unpredictability. Weak institutions mean personnel changes have impact, both negative and positive. These conditions advise incorporating flexibility into a project to cope with unexpected developments. Although initially hampered by rigid budget constraints and a cumbersome project design, the Program managed to redirect Phase I resources to produce a draft law on the Anticorruption Court, which fed into Phase II's work on establishing the court. Overall, experience with the JIT and Prosecution Office highlights the need for maneuverability to react to evolving situations. Phase II's project design reflects this adjustment.

In Phase II, the Program's focus becomes sharper, its range more limited, its activities better connected to a clearly stated objective, and its budgeting strictures loosened. As a result, the Program's assistance to the Anticorruption Court fits well into the overall scheme for institutional development and makes a useful contribution to comprehensive systemic reform. Phase II's attention to assisting structural change better addresses the roots of corruption than do isolated activities.

As a temporary approach to combating judicial corruption, the JIT attempt to short cut around a complex and complicated problem underscores that quick fixes are rarely sustainable. There is no substitute for the hard slogging, step by step process needed to develop consensus and build constituencies for change. The blueprint process embraced toward the end of Phase I and continued in Phase II is more firmly grounded in these principles.

Conclusion

Although concern over judicial corruption as it affects the Commercial Courts pervades the course of the Program, not until the blueprints process begun at the end of Phase I and continued during Phase II does a focused approach emerge. This approach emphasizes laying a foundation for comprehensive institutional development constructed entirely by Indonesians and was employed in producing the Anticorruption Court Blueprint, as well as the other Blueprints. Ultimately, corruption in the courts, which remains a significant (and some claim worse) problem, must be contained. Through the

Anticorruption Commission, the Anticorruption Court, the Judicial Commission and the Blueprints, a framework is being structured and mechanisms developed to institutionalize means of addressing abuses and regulating professionalism. These are important and necessary steps. We think it fair to say the Resident Technical Assistance Team has served as catalyzers for the process and the Program has helped to steer it in the right direction.

CROSS-CUTTING THEMES AND ISSUES

Having reviewed the Program's main substantive components, this section examines aspects of the Program that cut across all Program activities and strategies. We start by assessing the effectiveness of technical assistance and follow with a discussion of program achievements and program weaknesses.

Effectiveness of Technical Assistance

Assessing each technical assistance activity and provider is not possible within the parameters of this evaluation. From our interviews, however, the evaluation team is able to draw general conclusions about the technical assistance and to identify successful patterns and practices.

Experts, Consultants and Trainers: Local vs. Foreign

For the most part, recipients of technical assistance under the Program (such as the Supreme Court and Joint Steering Committee) expressed preference for local consultants, experts and trainers over foreigners less familiar with Indonesia. The general consensus on training was that local consultants are better equipped to integrate new material into the larger Indonesian experience and better able to navigate tricky institutional politics.

Opinions were fairly consistent, however, that foreign consultants and experts can serve a useful purpose. Some Program sponsored foreign experts were better received and more effective than others. Foreign short term expertise was cited as helpful to introduce new concepts and practices unfamiliar to the Indonesian legal community. Outside experience seemed especially useful when building new institutions (such as the judicial commission) or thoroughly rebuilding existing ones (such as the Supreme Court's self-management under the "one roof" system). In addition, local reformers claim presenting a concept or practice as common outside Indonesia or as standard international practice helps convince a balky judiciary. Short term foreign expertise may be used best, then, in conjunction with and in support of local consultants to transfer knowledge and shore up support for reform ideas while tempering the potential for diminished impact due to lack of familiarity with Indonesia.

The benefits of using local talent must be juxtaposed against limited local expertise available and concern that lack of exposure to other systems fosters inward looking tendencies. Overall, the Program seemed to employ a proper mix of foreign and local technical assistance. The Program's experience suggests that foreign technical assistance should not be the first resort and preference should be given to local consultants when possible, but when used selectively and strategically, foreign experts can prove useful allies and worthwhile investments.

Long Term Technical Assistance: Resident Legal Expert and Resident Advisors

By all accounts, the full-time Resident Legal Expert and two part-time Resident Advisors, who were responsible for day-to-day Program direction and implementation, were essential to successes achieved. They were largely credited with engendering an overall positive impression of the Program by those familiar with or involved in its work.[8] The high marks given the Program's Technical Assistance Team – with the Resident Legal Expert often receiving specific mention – cut across all levels of Program participants, and included funding counterparts, domestic and international NGOs, donor agencies, Indonesian government officials and judges.

Our evaluation further revealed the Program team benefited from the valuable participation of its Bappenas counterparts, particularly the Director of Law and Human Rights, who was consistently singled out for praise and credited for her tireless and skillful efforts to keep things moving on the Indonesian side.

Ongoing Technical Assistance: Training

Since 1998, training Commercial Court judges has been a staple of IMF technical assistance and an ongoing Program activity. The effectiveness of training can be viewed from two perspectives: (i) an objective determination of the quality of the material and how well it was absorbed, and (ii) whether sounder judicial decisions result.

Concerning the first view, our comments are limited by the lack of objective testing of training participants. Our overall impression, however, from interviews, observation, press accounts and other written materials, is that Commercial Court judges are still widely perceived and portrayed as unknowledgeable or confused about the law and prone to unpredictable decisions, raising concerns about judges' competence and susceptibility to corrupt influence. Perceptions may be skewed somewhat by attention accorded the most controversial cases. Nevertheless, this anecdotal evidence suggests widespread dissatisfaction with the Commercial Courts' performance continues despite substantial training. While public perception is a barometer of sorts, more objective data is needed to adequately assess the effectiveness of the Program's training efforts.

Whether training has improved the quality of judicial decisions is the harder question. Public opinion seems to think not. But two studies funded by the Program[9]

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[8] This praise comes despite the Program's direct association with the IMF, which continues to evoke negative reactions among Indonesians.

[9] One study resulted from the Program's monitoring of the Commercial Court; its preliminary findings are published in, Marie-Christine Schroeder-van Waes and Kevin Omar Sidharta, 'Upholding Indonesian Bankruptcy Legislation,' in Business in Indonesia: New Challenges, Old Problems. M. Chatib Basri and Pierre van der Eng (eds.) (2004). Singapore: Institute of Southeast Asian Studies. The other study, performed by the Team of Seven, reported its conclusions in an interview with team members.

attempted a more structured analysis of the competency and integrity of Commercial Court decisions. Both concluded that approximately 70% of the decisions were in accordance with or justifiable under the law. Both also found bankruptcy decisions rendered by the Supreme Court more problematic than rulings by the lower court.[10] While not focused on the role of training in decision making and so not definitive verdicts on the effectiveness of the Program's training regimen, these studies suggest training probably had some beneficial impact.

Whatever value training may offer, its impact is compromised when judges routinely transfer out of the Commercial Court. This creates endless training needs. Considering the steady decline of bankruptcy case filings on top of these transfer policies, it is doubtful whether continued training of Commercial Court judges is the best use of resources.

Technical Assistance: Study Tours

As is common with comparative study tours, those offered by the Program present mixed results. Some participants said they gained new insights. Some felt the selection of participants (when left to the Supreme Court) excluded lower court judges and those in charge of relevant research issues. While we assume a formal reporting process occurred at the conclusion of the study tours, we are not aware how the knowledge acquired was applied, and so we cannot comment on their technical value. A conscious attempt to use study tours for wider purposes may have had some benefit, however.

The Program sought to generate intangible benefits from its study tours by mixing together different stakeholders to encourage productive working relationships. Reportedly, such benefits did accrue to the Supreme Court and its young NGO consultant and useful time was spent together focusing on important issues while traveling. Other trips, such as the one for the Commission on State Officials Wealth Disclosure (KPKPN) did not produce much of value. Also, at least two of these trips were co-sponsored by the Asia Foundation (with USAID funding), thereby encouraging cooperative donor efforts.

Technical Assistance: Program Operations

Generally, high marks were accorded the Program's administrative operations and procedures. Some fairly minor complaints voiced about funding issues and bureaucratic delays appear to be nothing more than inevitable snafus attendant to activity funding. None was characterized as a serious problem. Overall, technical assistance recipients, consultants and contractors stated they had no actionable complaints, noted bureaucracy was less than experienced with other donors or funding entities, and all would be willing to cooperate again with the Program.

[10] Team of Seven members were sharply critical of judges' abilities, but felt the Supreme Court largely responsible for confusing procedural practices.

Despite these apparently smooth operations, we are aware of significant burdens on the Resident Legal Expert in serving both as manager of the Program and its chief technical advisor. Spreading administrative duties among additional staff could help alleviate pressures of program implementation borne largely by the Resident Expert. Consideration should be given to whether the same lean staffing pattern makes sense in a future phase.

Program Achievements

Program achievements discussed above in the context of the Program's three substantive components are highlighted here. Given the many factors and political realities influencing the ability to effect change in Indonesia's courts, the Program probably achieved as much if not more than could be expected.

*Ownership of a Court Reform Agenda***:** While Indonesians did not seem to commit fully to the Commercial Court concept (specialized forums for bankruptcy issues), the reform agenda arrived at through the Blueprints process is more firmly grounded in local commitment. Although implementation of the Blueprints remains open to question, and many doubt the depth of support within the Supreme Court, there is a strong sense of buy-in from court leadership and civil society. With a more comprehensive plan in place for institutional reform, the Supreme Court is positioned to sequence donor assistance in a coordinated fashion and in accordance with court needs, rather than in response to whatever donors may offer. Having achieved a thoroughly Indonesian designed strategic plan for development of the Supreme Court is the Program's chief achievement.

Blueprints Process: Indonesian NGOs, working as consultants, provided capacity lacking in judicial counterparts to conduct thorough research and facilitate a highly participative – and somewhat painstaking – series of workshops and interviews with judges and other appropriate stakeholders. This iterative, inclusive process has helped create a sense that change, while still resisted, at least is being managed from within Indonesia, rather than by outsiders. The Blueprints may still not succeed in bringing the reform demanded by the public, but sustainable next steps require this foundation.

The Blueprints process has provided an acceptable Indonesian model for constructing a consensus based plan for institutional change and development. The Indonesian Government issued a White Paper, end-2003, outlining its plans upon being graduated from the IMF financial assistance program. This Paper identified blueprints for both the Commercial and Anticorruption Courts as indicators of commitment to continued structural reform. The Danish government has committed to funding a blueprints process for development of the Human Rights Court. And replicating the process to create blueprints for the lower courts is being discussed.

Interdepartmental Steering Committees: The interdepartmental structure of the Commercial Court Steering Committee was a significant breakthrough from prior Indonesian approaches to justice sector reform, normally addressed internally, solely by the affected institutions. Moreover, the Steering Committee established an ongoing structure for interdepartmental cooperation that did not exist previously. When the Steering Committee expanded to include establishment of the Anticorruption Court, the door opened to wider participation from outside government to include representatives from civil society on the Joint Steering Committee.

Judicial Commission: The Program was instrumental in assisting efforts to inform debate on the shape and duties of a judicial commission to serve in an advisory and supervisory function over the judiciary. Through the Program, a wide array of resources and information were made available to fully engage government and non-government stakeholders in the process. This led to preparation of materials for a draft law, and legislation establishing the Judicial Commission passed in July 2004.

Ad Hoc Judges: While ad hoc judges have not had much impact on the functioning of the Commercial Courts, the concept generally is considered a positive one and potentially useful for infusing a closed judiciary with fresh perspective and relevant expertise. Following from the Commercial Court experience, both the Human Rights and Anticorruption Courts use ad hoc judges, but with different appointment procedures. Whether participation of non-career judges will have the desired effect on these specialized courts remains to be seen. Nevertheless, the Commercial Court experiment with ad hoc judges, and the Program's support for its implementation, helped acquaint the legal community and decision makers with this alternative.

Dissenting Opinions: Regardless of whether the use of dissenting opinions had any marked effect on the Commercial Court, the prerogative is nonetheless an important contribution to improving judicial practices. The value of dissenting opinions may be debatable in jurisprudence. Arguably, dissents infringe on consensus decision making and erode legal certainty; yet, dissents also spur debate and advance interpretation of the law. More practically, dissents enable judges to take a stand in opposition to colleagues subject to improper influence.[11] Within the context of Indonesia, public dissents are another tool to chip away at the courts' secretive tendencies. Once considered taboo and an assault on judicial collegiality, use of dissents within the Commercial Courts helped dismantle opposition and acquaint the Indonesian legal community with their use and potential benefit. Although still rarely used, dissenting opinions have been codified in the new Supreme Court law.

[11] Paradoxically, dissents also enable crooked judges to shield themselves from suspicion in cases with questionable outcomes. In one high profile case, it appears a corrupt Commercial Court judge issued a dissent solely to seem in opposition to the widely criticized result.

*Publication of Court Decisions***:** No court can inspire trust and confidence without making its decisions publicly accessible. The Program addressed this problem by supporting online publication of Commercial Court decisions and encouraging written commentaries on decisions. Lack of accessibility to court decisions has long frustrated reformers and practitioners. Over the years, donor efforts to support publication of decisions repeatedly hit dead ends due to Supreme Court resistance. The requirement in the amended bankruptcy law that Commercial Court decisions be in writing and publicly available helped to undercut longstanding evasion of this essential judicial practice. Inculcating the process of decision writing into a regular practice through the Commercial Courts helped reduce intransigence and active resistance to the idea. Moreover, it demonstrated the importance of embedding the requirement in legislation. Publication is now provided in the Supreme Court law, although accessibility has been slow to materialize.

Time Bound Procedures: The Commercial Courts' adherence to time bound procedures generally was viewed favorably. Program assistance to preparation of the MOCCA was seen as a useful contribution to effecting the new administrative scheme. Although ultimately the Supreme Court undermined enforceability of procedural deadlines, the Commercial Courts' experience with time bound procedures indicates that they are a useful mechanism for minimizing delay and instilling court discipline. As a result, legislation for both the Human Rights and Anticorruption Courts provides specific procedural timeframes to avoid backlogs, shorten delays and accord speedier justice.

Needs Assessment Pilot Project: The needs and productivity analysis piloted in the Jakarta Commercial Court is an important beginning to building a process that bases institutional planning on real data and equates budgets to actual needs. The approach is potentially applicable to all other courts, as well as other justice sector institutions and government agencies. Currently, there seems real risk, however, that this useful study will not advance beyond the pilot stage.

Continuous Education/Training: With Program assistance, a cohesive continuing education concept was introduced into the judiciary using knowledgeable local trainers instead of current or retired judges and visiting internationals. This dedicated training curriculum for the Commercial Courts replaced prior training regimens that were largely one-off and dealt with specific legal topics. Exposure to a more rigorous and professionally designed training program may yet influence implementation of the Supreme Court's Blueprint on Judicial Training. Despite improving the educational framework, little can be said about the impact of the training itself.

Program Weaknesses

As previously indicated, the Program was called upon to achieve unrealistic objectives and would have been well served with more concrete achievable targets.

Additionally, initial problems in Phase I with funding flexibility were largely rectified in Phase II. Overall, we found implementation of Program technical assistance strong in most respects. Nevertheless, we note here some areas that could be strengthened.

Lack of Monitoring and Evaluation

We found this Program weak in monitoring and evaluation and believe more could have been done. Admittedly, justice sector strengthening programs do not lend themselves to easy methods for quantifying results, and some activities are not appropriate for measuring effectiveness. For example, creation of the Blueprints and support for the Steering Committee/Joint Steering Committee ultimately have to be justified for reasons perhaps difficult to quantify. Nevertheless, certain elements of this Program are more easily measured and could have been routinely evaluated, yet were not. These include the number of hits on websites posting Program materials,[12] surveys of Commercial Court users, post study tour questionnaires, and objective training evaluations. Although training was a significant part of the Program, training organizers stated the Program did not request such evaluations.

It would not be accurate to say the Program conducted no monitoring. The Program commissioned surveys of bankruptcy receivers to identify issues involving receivers and supervisory judges. Survey results were developed into published guidelines on the responsibilities of supervisory judges and receivers. Yet, it does not appear this survey information was used to feed back into the Program nor was it determined whether the guidelines produced any effect. The Commercial Court was monitored for three years. The problems and issues identified in court operations were given to the Steering Committee for consideration and solutions, but it is not clear whether or to what purpose the information was ever used. Conceivably, an audit could have been done to assess how and to what extent the identified problems were addressed and resolved. Overall, these exercises seem aimed at identifying issues without evaluative follow-up as to results.

In general, we found the Program's monitoring emphasis oriented toward tracking the progress of activities. Internal reporting documents reflected an over reliance on progress indicators and under reliance on evaluative tools. While the Program's activities were well tracked through these regular reporting mechanisms, for the most part, they were a bit too "rosy." The Program may well have benefited from an independent mid-term evaluation to point out some of the weaknesses noted here.[13]

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[12] Apparently, Program Advisors recently made a request for this website information. The webmaster stated he had not received any request to collect this information, but that he could do so. Regardless of this miscommunication, to date, no such data exists.

[13] Phase II's design differs markedly from Phase I. Phase II is more seamless (no stovepipe budgeting), objective oriented and tightly focused. No doubt, experience gained during Phase I helped shape these changes; however, the arrival of a new foreign ministry official at the Dutch

An end of program external evaluation such as this does not function well in place of ongoing monitoring and evaluation. Although not always easy, the Program would benefit from a more regular habit of obtaining feedback and assessing impact. Seeking advice from experienced monitoring and evaluation specialists on appropriate assessment tools could prove useful.

Over Reliance on Certain Local Consultants and Experts[14]

The Program tended to rely heavily on a limited number of local consultants, as the same groups and individuals were called on repeatedly to provide technical assistance and implement activities. Realistically, locating qualified technical assistance providers can prove difficult due to the limited capacity of many local organizations. Moreover, continuity and quality usually benefit when working with familiar entities. Still, there is danger in going to the same well too often.

We provide two examples. Originally, the Supreme Court Blueprints were to take six months; they were more than one year late. No doubt a number of factors contributed, but the consultants undertaking this work were overcommitted with this Program and elsewhere. Similarly, the Team of Seven, a select committee ostensibly operating under the guidance of the Steering Committee, took two years to complete critical annotations of Commercial Court decisions planned under a six month schedule. In addition to being late, the Team had problems completing the work in accordance with the terms of reference. Had this activity been competitively contracted perhaps a different result would have obtained. Because over time cozy relationships can damage a program's reputation and productivity, we flag this as a consideration going forward.

We think more competition would be beneficial, not only as a good services procurement practice, but also to further develop local capacity. We would hope the positive experience gained by local NGOs in working with the Program could be shared more broadly by opening opportunities to a wider group of providers.

Insufficient Engagement of Wider Constituency

Embassy to take over responsibility for the Program provided a fresh outlook and distanced perspective which also seems to have contributed.

[14] Two of the three evaluation team members agree that this issue is a Program weakness. The third member takes the view that capable organizations of the sort required by the Program are relatively rare, that fly-by-night firms cause innumerable problems, and that the Program had already found the most reliable organizations to work with effectively and efficiently. The evaluation team could not, or in any case did not, identify alternative firms or organizations that should have been invited to bid on Program work.

A deficiency in the Program is its lack of a strategy for informing and generating support among those groups in the country likely to favor legal reform efforts. Confined largely to circles in Jakarta more or less engaged in Program work, the Program has done relatively little to attract the attention of a potentially large and sympathetic audience in and beyond Jakarta. There are many constituencies in the country with strong interests in more effective legal process and competent and honest courts. They include numerous professional lawyers, now numbering about 20,000 throughout Indonesia, other professionals, businessmen long burdened with extra-legal costs, labor organizations, and assorted other reform oriented groups. An effort should be made to develop a consistent means of supplying periodical reports on Program developments and problems to law firms, law faculties, the press, various professional organizations (professional associations of lawyers, accountants, doctors, among others), and business and labor groups. The more Program information is available throughout the country, the more likely it is that legal and judicial reform will generate interest and support.

RECOMMENDATIONS FOR FUTURE STRATEGIES

Our evaluation mandate includes providing assistance to determine the best strategies for continued implementation of the law reform agenda. We were also asked to make recommendations on what should be done during the final months of the Program and after its completion in anticipation of a future phase of technical assistance. We did not understand this to request detailed project design (which may well deserve its own mission) and believe much of the discussion within this evaluation provides counsel on best strategies. Due to scheduling difficulties, we were unable to meet with Chief Justice Bagir Manan and the head of the blueprints implementation team, Justice Abdul Rahman Saleh, two key persons on court reform. This limits, somewhat, our ability to make fully and well informed recommendations. Based on information gathered during the evaluation, our recommendations address both substantive and operational components.

Substantive Components

Implementing the Blueprints was, by far, the overwhelming response of persons asked what a future program should focus on. This obvious and expected answer still leaves a vast number of possible options because the Blueprints are many, comprehensive and far ranging. Where to begin is for the Indonesians to decide, and that painstaking process is underway. Because the strength of the Blueprints was in the process that produced an all Indonesian product we are reluctant to impose our priorities into the mix. Once a more structured implementation plan is formulated, determining appropriate directions for donor assistance will make more sense. In the near term, continued attention to and support for this implementation process is recommended.

Support the Blueprints Implementation Process. With Program support, an implementation structure is in place. During our evaluation, we heard no specific ideas concerning Blueprint priorities, as the implementation advisors currently are struggling with difficult dynamics inside the Supreme Court. It may be useful for these advisors to have at their disposal shortened versions or executive summaries of the Blueprints, which in their original form are a somewhat overwhelming read for most judges. This should be done as soon as possible.

After priorities are determined, it would be useful to provide professional assistance to the current implementation advisors who are not “change management” experts. With the Supreme Court’s limited capacity for project management, the ability to implement an ambitious institutional reform agenda requires an experienced team.

Many of our sources cautioned against tolerating a long planning process as implementation will likely suffer, not benefit, from delay. While getting it right rather than getting it fast may have made sense while putting the Blueprints in place, the momentum needed for implementation counsels for a quicker pace, especially

considering the chief justice and other key reform supporters are scheduled to retire over the next 2-3 years.

Spread Reform to Lower and Provincial Courts. Although not widely mentioned by those we interviewed, devolving reform to lower courts and courts outside Jakarta must be addressed. With the Blueprints to undergird reform generally, how to begin this process is a topic ripe for a future phase.

Judicial Commission "Blueprint." A future iteration of this Program should consider assisting development of the Judicial Commission under the newly enacted law. The Program's involvement from the beginning, helping to shape the course of the burgeoning judicial commission concept and informing the debate on its role, structure and duties, warrants continued support now that the law has passed – assuming its final version is acceptable. To some extent, the Program has staked a claim to the Judicial Commission territory which it should abandon only if convinced the Commission will serve no useful purpose. Because the current "Blueprint" is an academic draft law, not a strategic planning document, the obvious place to start is with a development blueprint to include shoring up the Commission's role as an effective check on the judiciary.

Anticorruption Court Blueprint. Development of the Anticorruption Court is just underway. While Program assistance contributed to laying the ground work for establishing the Anticorruption Court and preparing its Blueprint, at this point, we are not convinced further involvement is needed from this Program. Other donors have shown strong interest in anticorruption and been active in efforts to launch the Anticorruption Commission. We do not discourage involvement should a particular niche be apparent, but anticorruption has not been this Program's strong suit, and activity of other donors in this sector suggests no compelling need exists.

Commercial Court Blueprint. Widely perceived as having failed to perform adequately,[15] we see little utility in singling out the Commercial Courts as a core focus in a future program. Sustainability issues also make it difficult to justify directing resources and significant technical assistance toward improving the Commercial Courts' performance. Because bankruptcy case filings have declined steadily,[16] it has become hard to justify a separate court, and Commercial Court judges now hear general jurisdiction cases. This raises questions about the need for and commitment to maintaining a specialized bankruptcy court.[17]

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[15] Indeed, the Blueprint for the Establishment of the Anticorruption Court recognizes the Commercial Court has been the subject of criticism and admits there is a widely held perception it has failed to perform properly. See Introduction, p.1.

[16] As of July 20, only 27 bankruptcy cases had been filed in the Jakarta Commercial Court for 2004.

[17] Commercial Court jurisdiction has expanded to include intellectual property disputes. The role of Commercial Courts in handling these and/or other types of cases is beyond the scope of this evaluation.

Moreover, at the time of the evaluation, momentum for general court reform appeared stronger than momentum for reforming the Commercial Courts. Given that the level of institutional capacity within the courts is thin, the number of reform minded individuals low, and the burdens imposed by self management and the Blueprints high, it is fair to ask whether the Commercial Courts should be a program priority at this time. In addition, we see civil society's priorities rooted in combating corruption, including judicial corruption, and sense that within the activist community attention and energy will likely be directed toward establishing the Judicial Commission and Anticorruption Court rather than improving the Commercial Courts. Sustainability, reform capacity, local priorities and ownership, all counsel rethinking the Commercial Courts' role in a future program.

While enthusiasm for the Commercial Courts and their potential has largely lain with the IMF and, subsequently this Program, recently the Supreme Court has taken greater interest in the Steering Committee, and the Steering Committee in turn has shown signs of increased vigor. In addition, Program Advisors and some observers contend the Commercial Courts are a useful laboratory for testing reforms and initiating controversial ideas. The impetus for these interventions, however, should come from the Indonesians, rather than a donor supported program. Working with the Commercial Courts should only be part of a larger court reform process, not its hub. Our recommendation, then, is that Commercial Court initiatives, if any, be part of wider reform efforts identified by the overall Blueprints implementation process.

Commercial Court Needs Assessment. Integrating a simplified version of the Needs Assessment into the court reform agenda is something a future program should consider supporting. A complex and many faceted analysis, the Needs Assessment is not particularly applicable in its present form. We could not gauge the level of support or interest within the Supreme Court or Steering Committee for furthering the Needs Assessment. Yet, it would be worthwhile for a future program to explore how to engage the Court in its use by refining its methodology and expanding its application to other courts. By so doing, the Program builds on existing work and expertise and avoids leaving an interesting study to sit on the shelf. Moreover, it is a tool to use in conjunction with implementing the Financial Management Blueprint which weaves together and furthers current Program activities.

Operations Components

Ultimately, the particular substantive areas targeted in a future judicial strengthening program may matter less than structuring a facility that operates effectively. Poorly conceived assistance projects routinely fail to make meaningful contributions, regardless of the substantive issues addressed. Consequently, we highlight certain operational features that were key factors in promoting this Program's overall positive presence.

We begin by noting strong expression of support for continuing the existing Program, as is – implemented by the current long term Resident Advisors, managed by the IMF, supported by the Dutch. This was the overwhelming sentiment voiced by those associated with or knowledgeable about the Program. Consequently, we recommend constructing the next phase of this Program so as to preserve those elements we found through our interviews with Program participants were fundamental to the Program's successes and contributed to its positive reception, especially among Indonesians.

Guided Flexibility: *A program design that permits flexibility within well-defined strategic parameters*.

The current context for judicial reform initiatives remains unsettled. Indonesia's political situation has stabilized, but remains fragile. This year's elections have spawned coalition building that gives rise to new uncertainties. Key reform minded court leaders, including the chief justice, face mandatory retirement. Major institutional changes are on the Supreme Court's doorstep with transfer of management authority to the Supreme Court under the "one roof" system and the Blueprints. Newly developing judicial bodies (Constitutional Court, Judicial Commission, Anticorruption Court) further alter the judicial landscape. This suggests the need for a nimble program to respond to opportunities and readjust to unexpected developments. Unfettered flexibility, however, is not recommended. Thus, the next phase should balance flexibility with concrete, achievable objectives.

Moderate Bureaucracy: *Minimizing "red tape" facilitates flexibility, responsiveness and local participation.*

Significant "red tape" constrains flexibility. Both assistance recipients and providers found the Program's bureaucratic process generally reasonable and timely. Resident Advisors spoke favorably, as well, about the relative simplicity of bureaucratic requirements and the responsiveness of IMF and Dutch counterparts. Attempts to minimize bureaucracy have to be tempered by the need to assure accountability and follow sound procurement practices. But fairly simple procedures contributed to the Program's ability to engage Indonesian partners and to work effectively with local consultants whose stretched capacities and limited staff resources make it difficult to meet onerous bureaucratic requirements. To maintain these productive working relationships, efforts should be made to limit administrative procedures needed to implement activities.

Localized Decision Making: *Formalize local decision making authority to maintain local focus.*

Flexibility and limited bureaucracy are augmented by local decision making. Our sense is Washington and The Hague set broad policy outlines, but accorded a high degree of deference to the technical team on the ground as to how to meet those broad initiatives.

According to the Resident Expert and Advisors, the IMF and Dutch were supportive and highly engaged, but did not interfere. Limiting involvement of a distant headquarters or home office also helps ground the focus in the needs of Indonesian reform, rather than serving broader political agendas and institutional priorities. Clear delineation of decision making responsibilities delegated to the program would help retain the distinctly local emphasis which was the face of this Program. To further support commitment to local priorities, a separate stand alone office should be considered.

Maintain a Low Profile: *Downplaying foreign involvement promotes consensus and boosts local acceptance.*

Whether purposeful or not, the distance kept by the IMF[18] and the Dutch served the Program well. Neither the IMF nor the Dutch overtly publicized their involvement. Similarly, the Resident Team maintained a low profile by remaining in the background and not cultivating a credit taking culture. Even when the Resident Legal Expert actively engaged in shaping outcomes, he kept under the radar. Undoubtedly, this contributed to the Program's high degree of acceptance among Indonesians (especially within the Supreme Court), instilled activities and outputs with a sense of being distinctly Indonesian, and helped forge consensus

Knowledgeable Program Implementers: *Retain appropriate personnel with a high degree of Indonesian specific knowledge and experience to build credibility and local acceptance.*

The high regard of the long term technical team has already been discussed. We revisit the point because we were told that the success of a future program depends on who runs it. Retaining similarly qualified technical advisors will be essential to how well a next phase succeeds and is received by Indonesians.

Preference for Local Consultants: *Use foreign experts strategically to augment local providers.*

Although the point has been addressed elsewhere in this evaluation report, we list preference for local consultants here as a key factor in structuring an effective technical assistance program.

[18] It is noteworthy that the IMF Resident Representative was not actively associated with the Program. In fact, the Resident Representative was not mentioned in any of our meetings with Program participants.

Appendix One

Indonesia: Technical Assistance in Law Reform Supported by the Netherlands Technical Assistance Subaccount

Terms of Reference for External Evaluation

Background

In response to the Asian Economic Crisis in 1997, the International Monetary Fund ("the IMF") and the Government of Indonesia agreed on a program that aimed to restore macroeconomic stability and to address structural weaknesses. The core of the structural reform program encompassed bank restructuring, corporate restructuring, deregulation, privatization, and improved governance. With particular regard to corporate restructuring, an effective framework for financial restructuring and an efficient bankruptcy regime had to be put in place. The Indonesian authorities recognized that corporate financial restructuring would require the application of the Bankruptcy Law in a predictable and impartial manner. The authorities further recognized that the Bankruptcy Law could not play a deterrent role unless the perception of pervasive corruption in the judiciary was decisively addressed, institutional and administrative weaknesses in judicial governance resolved, and substantive law strengthened and modernized.

Accordingly, since 1997, Indonesia's IMF-supported programs have included a strong component of legal reform measures required for effective corporate restructuring. The IMF's Legal Department has provided significant technical assistance for such legal reform. Initially, assistance was provided towards necessary amendments to the Bankruptcy Law and training in the Bankruptcy Law. In May 2000, Phase I of the current Law Reform Program was initiated with external financing from the Netherlands through the Netherlands Technical Assistance Subaccount established at the IMF. Phase I focused on the following:

- Assistance in the operation of the Commercial Court and coordination of various projects related to the enhancement of the capacity of the judicial system, including in the development of work standards and a code of ethics for receivers and insolvency professionals. These activities commenced in May 2000.

- Assistance in the design of working procedures and the development of training courses and materials for the Attorney General's Office with respect to corruption cases and bankruptcy suits brought by the Attorney General in the public interest and in conducting a study on judicial corruption. Activities in this regard commenced in September 2000.

- Assistance to the Indonesian judiciary in assessing, prioritizing and addressing the long-term institutional needs of the judiciary in the context of designing and establishing a judicial commission and with particular focus on the operation and supervision of the Commercial Court. These activities commenced in January 2002.

Phase II began on May 16, 2003, with additional funding from the Netherlands. The principal objective of the second phase is to strengthen the legal infrastructure and institutional performance of the judiciary with the aim of increased restructuring of private debt, enhanced investment, and sustainable economic growth. The program consists of three complementary program components—Strengthening Judicial Supervision and Management, Strengthening Commercial Court Performance, and Strengthening Anti-Corruption Policies and Institutions. Phase II will run until December 2004.

Tasks

The evaluation will examine results to date, and will assist the Steering Committee for the Development of the Commercial Court, other relevant Indonesian authorities, the Embassy of the Netherlands in Indonesia, and the IMF to determine the best strategies for the continued implementation of the law reform agenda. In particular, the evaluation will:

i) Review the quality, timeliness and relevance of the inputs provided, activities undertaken, and outputs produced;

ii) Assess the effectiveness of the technical assistance provided, including short and long term outcomes and results, the sustainability of the TA provided, and its integration into Indonesia's overall law reform program;

iii) Outline achievements and lessons learned;

iv) Identify any problems (internal and external to the TA provided) that have arisen;

v) Make recommendations to resolve any such problems; and

vi) Make recommendations on what should be done in the final months of Phase II and after the completion of Phase II in December 2004.

The evaluation team will be assisted by the IMF's experts in Indonesia. The team shall meet with relevant government officials, officials of the judiciary, representatives of the legal profession, NGOs, the business community, other members of civil society, the IMF resident representative, officials of the Embassy of the Netherlands in Indonesia, and other relevant donor and technical assistance providers.

Documentation

The evaluation team will be given access to the IMF project documents; progress reports; review documents; documents prepared with the support of the program; and other relevant documents.

Evaluation team

The evaluation will be undertaken by three independent experts. The Government of Indonesia, the Embassy of the Netherlands in Indonesia, and the IMF will each nominate an expert. The IMF-nominated expert will be the team leader.

Timing and output

The evaluation will take place in July 2004 over a period of two weeks. The output of the evaluation will be an evaluation report with the evaluation findings, lessons, and recommendations. The report will be prepared in English. A draft report will be submitted to the Government of Indonesia, the Embassy of the Netherlands in Indonesia, and the IMF three weeks after the completion of the in-country visit. Comments will be submitted to the evaluation team within two weeks after which the report will be finalized.

Once completed, the report will be made available to the IMF's Executive Board for its information, and, subject to the Executive Board's approval, the report will be published on the IMF's public website.

Appendix Two

List of Participants in External Evaluation Meetings
Jakarta, July 12-25, 2004

	IMF Resident Office:
Mr. David Nellor	*Senior Resident Representative*
	IMF Technical Assistance Team:
Mr. Sebastiaan Pompe	*Resident Legal Coordinator*
Prof. Mardjono Reksodiputro	*Resident Advisor*
Mr. Gregory Churchill	*Resident Advisor*
	Royal Netherlands Embassy:
H.E. R. J. Treffers	*The Ambassador of the Royal Netherlands Embassy*
Mr. Remco van Wijngaarden	*First Secretary, Political Affair of the Royal Netherlands Embassy*
	The Ministry of National Planning and Development (Bappenas)
Dr. Djunaedi Hadisumarto	*Advisor to the Minister of National Planning and Development*
Mr. I Dewa Putu Rai	*Deputy of Political, Defense & Security Affair*
Mrs. Diani Sadiawati	*Director of Law & Human Rights* (*Bappenas*) & *Secretary of the Joint Steering Committee for the Development of the Commercial Court and the Anti-Corruption Court (JSC)*
Mr. Aryo Bimo	*staff of Directorate of Law & Human Rights*
Mr. Budiman	*staff of Directorate of Law & Human Rights*
	Joint Steering Committee (JSC):
Prof. Paulus E. Lotulong	*Chairman JSC and Junior Chief Justice of the Supreme Court*
Mrs. Marianna Sutadi	*Vice-Chairman JSC and Deputy Chief of the Supreme Court*
Prof. Mardjono Reksodiputro	*Chairman JSC WG on Anti-Corruption Court*
Mrs. Diani Sadiawati	*Secretary JSC*
Mr. Parwoto S. Gandasubrata	*Former Chairman JSC and Former Justice*

	Anti-Corruption Commission (KPK):
Mr. Taufiequrochman Ruki	*Chairman KPK*
Mr. Amien Sunarjadi	*Commissioner KPK*
	Commission for the Audit of the Wealth of State Officials (KPKPN):
Mr. Amir Muin	*Secretary-General KPKPN*
	Supreme Court:
Mrs. Marianna Sutadi	*Deputy Chief Justice*;
Prof. Paulus E. Lotulong	*Junior Chief Justice*
Mrs. Susanti Adi Nugroho	*Appellate Judge and Head of Judicial Research and Training Center*
Mr. Purwoto	*Director of Commercial Court at the Supreme Court*
	Australian Aid Agency (AUSAID):
Mr. Shayne McKenna	*Second Secretary (AusAid)*
Mr. Verdy Yusuf	*Program Manager for Legal Sector*
	The Asia Foundation:
Mr. Zacky L. Hussein	*Director of Law*
	The World Bank:
Mr. Anthony Toft	*Counsel*
	Team for Evaluation Commercial Court Decisions:
Mrs. Kartini Muljadi	*Private Sector Bankruptcy Lawyer*
Mrs. Retnowulan	*Former Justice*
Mrs. Elijana Tansah	*Former Judge and Former Commercial Court Ad Hoc Judge*
Mr. Ricardo Simanjuntak	*Private Sector Bankruptcy Lawyer*
	Commercial Court Needs Assessment Team:
Mr. Kapitan	*Director*, *PT Nagadi Ekasakti ~ Consultant*
	Partnership for Governance Reform:
Mr. Mas Achmad Santosa	*Senior Adviser Legal and Judicial Reform*

	Indonesian Association of Receivers (AKPI):
Mr. Timur Sukirno	*Private Sector Lawyer and Receiver*
Mrs. Marjan E. Pane	*Private Sector Lawyer and Receiver*
Mr. Fred B. G. Tumbuan	*Private Sector Lawyer and Receiver*
Mr. Yan Apul	*Private Sector Lawyer and Receiver*
Mrs. Sandra Nangoy	*Second Secretary AKPI*
	National Law Commission (KHN) (Ad Hoc Judges of the Commercial Court):
Prof. J.E. Sahetapy	*Head*
Mr. Frans Winarta	*Member*
Mr. Mujahid	*Staff*
	Center for Legal Studies (PPH) (Training of Judges and Other Legal Professionals):
Mrs. Emmy Ruru	*Lawyer, Training Consultant*
	PANTAU (Training of Media on Bankruptcy and the Economy):
Mr. Andreas Harsono	
	MAPPI (Career Development in the Commercial Court):
Mr. Junaedi	*Head Harian*
Mr. Asep Rahmat Fajar	*Member*
Ms. Anisa	*Member*
	Yayasan ABNR (Support of Libraries for Various Institutions):
Prof. Mardjono Reksodiputro	
Mr. Firoz Gafar	
	Supreme Court Coordination Team for the Implementation of Blueprints:
Mr. Ibrahim Assegaf	*Lawyer, Former NGO Executive, Founder Hukum Online*
Ms. Wiwiek Awiati	*Lawyer*, *Former NGO Executive*
	Indonesian Institute for an Independent Judiciary LeIP (Supreme Court Blueprints):
Mr. Rifqi Assegaf	
Ms. Tita	

	Hukumonline (Publication of Various Program Outputs):
Mr. Hasan Yahya	*Business Development*
Mr. Leo Faraytody	*Journalist*
	Ministry of Justice and Human Rights:
Prof. Abdul Gani Abdullah	*Director-General of Law and Legislation*
	Commercial Court:
Mr. I Made Karna	*Chairman of the Commercial Court*
Mr. Budiman L. Sijabat	*Registrar*
Mr. Adi Wahyono	*Registrar*
	Indonesia Corruption Watch (ICW) (TA to KPKPN):
Mr. Teten Masduki	Executive Director
Mr. Didi Dermawan & 13 associates	
	Asian Development Bank (ADB):
Mr. Steffan Synnerstrom	*Deputy Country Director and Senior Governance Advisor*