

**Comments of the Indonesian Authorities  
on the External Evaluation Report on the Legal and Judicial Reform  
Program Funded by the IMF's Netherlands Technical Assistance  
Subaccount**

**February 2006**

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**A. Comments on the Introduction to the External Evaluation Report**

1. **Page 1, first paragraph, third sentence:** With regard to the collapse of the Indonesian economy during the Asian financial crisis in mid-1997, the external evaluation report states that: "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." The authorities' view is that this sentence should not be included in the report unless it also mentions other factors that contributed to the economic crisis, such as the manipulation of currency exchange values and the breakdown of the private sector.
2. **Page 1, first paragraph, fifth sentence:** In describing the evolution of the IMF technical assistance program (hereinafter, "TA program), the report states: "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 focused on the Supreme Court (Mahkamah Agung), to the extraordinarily difficult problem of imbedded corruption." The authorities find the reference to Indonesia as "one of the most complex countries in the world" to be unrelated to the rest of the sentence. They would prefer this phrase to be substituted with: "In one of the States that suffered the greatest impact of the 1997 economic crisis, . . ."
3. **Page 1, first paragraph, seventh sentence:** Finding that the problems the TA program was designed to address were intractable and that there was little useful guidance on how to tackle them, the external evaluators noted: "There were blind alleys and mistakes, but no single approach was simple and none had obvious or convincing precedent elsewhere." The authorities state that the sentence incorrectly implies that no guidance whatsoever could be found within the Indonesian legal system, and point out that the experience of the Supreme Court and the bankruptcy regime in Indonesia provided useful precedent.

**B. Comments on the Section of the Report Regarding the Commercial Courts**

4. **Page 7, first paragraph, third sentence:** With regard to the establishment of the Commercial Courts in 1998 to handle bankruptcy cases, the report states that, at the time, 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." The authorities emphasize that Indonesia did have a credible legal system at the time that was capable of handling bankruptcy cases, but that the unprecedented crisis engendered an overwhelmingly detrimental impact upon the legal system. The sentence should be rephrased along these lines.
5. **Page 10, first paragraph, first sentence:** In discussing problems faced by the TA program in relation to its Commercial Court activities, the evaluators were of the view that "Indonesia's level of

commitment to the Commercial Courts hampered development.” The authorities question how their commitment to the development of the Commercial Court was measured by the evaluators and whether there are any tangible indicators for reaching such a conclusion. If there are such indicators, the report needs to state them.

6. **Page 10, first paragraph, fourth sentence:** Still in the context of discussing problems faced by the TA program in relation to its Commercial Court activities, the evaluators observed that “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.” The authorities find these statements to be undue generalizations of the views of civil society and public officials, including court leaders. Moreover, the authorities point out that civil society in Indonesia is relatively young and some of the perceived lack of enthusiasm and ownership stems from the fact that civil society organizations are still in the process of finding their way. The sentences, therefore, need to be more comprehensive and balanced and should be based on thorough research.

7. **Page 13, first paragraph, first sentence:** In assessing program quality in relation to the TA program’s Commercial Court activities, the report found that: “From the beginning, efforts to establish the Commercial Courts strove to gather input from outside the judiciary which was insular and resistant to reform.” While acknowledging that the public and the judiciary may be rather slow in digesting reforms that are happening, the authorities emphasize that neither the public nor the judiciary are, however, insular or resistant to reform. The sentence should thus be rephrased accordingly.

8. **Page 13, second paragraph, sixth sentence:** Still also in assessing program quality in relation to the TA program’s Commercial Court activities, the report found, with respect to an interdepartmental steering committee supported by the TA program that: “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.” The authorities believe that this statement should be balanced by pointing out some of the factors that slowed the work of the steering committee, such as time constraints and technical problems.

9. **Page 15, third paragraph, fourth sentence:** In connection with the TA program’s work with relevant insolvency professions, a further finding in the section of the report assessing program quality was that: “Disciplining legal professionals is practically nonexistent in Indonesia.” In the context of the particular paragraph, the authorities find that this sentence is unnecessary and irrelevant and should, therefore, be omitted.

10. **Page 16, second paragraph, first sentence:** In evaluating program outcome with respect to the Commercial Court, the evaluation found that: “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.” In the view of the authorities, the use of the phrase,

“—though ‘hoped’ may be more appropriate word—”, is an unnecessary comment and should be omitted.

11. **Page 18, carry-over paragraph, sixth sentence:** In concluding their evaluation of the TA program in relation to the Commercial Court, the evaluation team stated that “Indonesians generally lacked sufficient commitment to specialized bankruptcy courts to secure their proper development.” The authorities’ view is that this sentence should be omitted as it over-generalizes, is indiscriminate, and is ineffective.

12. **Page 18, carry-over paragraph, eighth sentence:** The evaluation team also concluded with respect to the TA program’s Commercial Court activities that: “Certainly, the stated objectives were overly ambitious and not realistically achievable.” The authorities response is that the sentence needs to be omitted unless put into context by emphasizing the short duration of the TA program relative to the tasks at hand and the level of expertise available within the judicial system.

### **C. Comments on the Section of the Report Regarding the Supreme Court**

13. **Page 19, first paragraph, second sentence:** The evaluation makes the point that it became clear to the IMF that, if the commercial courts were to render effective service, the core of the judiciary would, at some point, have to become a focus of reform attention. In this regard the report states: “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.” The authorities believe that this statement should be rephrased as it seems to focus blame exclusively on the credibility of the Indonesian legal system at the time, but fails to take into account the extraordinary nature of the massive number of bankruptcy cases, the role of external speculators, and the role of other state organs.

14. **Page 19, third paragraph, third sentence:** In the context of a discussion of a window of opportunity for reform opened up by the appointment of a new Chief Justice and of new Supreme Court justices, the report notes: “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.” The authorities find this sentence to be biased, inconsiderate, and without any showing of proof. They assert that the fact of the matter is that the Indonesian parliament has its own mechanism to appoint Supreme Court Justices, which is legally regulated based on the Constitution. While this system may differ from that employed in other countries, that is not sufficient reason to question it. At a minimum, the basis for the statement should be clarified.

### **D. Comments on the Section of the Report Regarding Anticorruption**

15. **Page 27, first paragraph, first sentence:** The report introduces the section evaluating the TA program’s anti-corruption-related activities with the statement that: “The prevalence of corruption throughout Indonesia’s judicial system is well known and requires little introduction.” The

authorities suggest that the words “and requires little introduction” are gratuitous and should be omitted.

16. **Page 29, third paragraph, third sentence:** In describing the problems faced by the TA program in relation to its anti-corruption-related activities, the evaluators state that: “As an institution, the Public Prosecution Office had been notoriously resistant to reform and an unreliable development partner.” The authorities’ view is that this sentence is not based on factual evidence since, from the early 1990s, there were already ongoing reforms taking place in the Public Prosecution Office. The authorities point out that, while the reform progress has been slow, this does not mean that the Public Prosecution Office is “notoriously resistant to reform”. The sentence should either be rephrased accordingly or omitted.

17. **Page 30, third paragraph, second sentence:** With regard to the assessment of program quality in relation to anti-corruption-related activities, the report, referring to KPKPN (the agency responsible for the administration of the wealth declarations of public officials), observed that: “The KPKPN’s uncertain future as part of the Anticorruption Commission made ongoing assistance difficult.” The authorities recommend that this sentence should elaborate further on what kind of difficulties the KPKPN is said to have caused for program assistance.