

7. ガバナンス改革のためのパートナーシップ「STRATEGY FOR LEGAL/JUDICIAL REFORM」  
及び「WORKPLAN 2002-REGAL/JUDICIAL REFORM」

STRATEGY FOR LEGAL/JUDICIAL REFORM

**A. INTRODUCTION**

**A.1 Vision**

All people have access to justice systems. These systems protect rights and dispense justice fairly and speedily. They are free of corruption and operate independently of political interference.

**A.2 Problem statement**

The current state of the justice sector is one of the biggest barriers to the nation's economic recovery and democratic transition. Corrupt and inefficient handling of investigations, prosecutions and cases deters both domestic and foreign investment. Justice can be bought by the highest bidder. The public's lack of confidence and trust in the agencies of the justice system has created a cycle of violence, lawlessness and conflict which threatens democratic processes and ultimately could threaten national unity. And those members of the elite who are the ultimate beneficiaries of the status quo resist moves towards more democratic, accountable and transparent arrangements.

The key problems can therefore be identified as:

1. an incomplete constitutional framework which is not conducive to democratic governance reform
2. a lack of strong political leadership, bureaucratic commitment and an overall strategy for reform of the justice sector<sup>1</sup>
3. weaknesses in accountability mechanisms and low levels of transparency
4. inefficient, ineffective agencies requiring organizational strengthening and institutional development
5. a lack of public trust and confidence in the agencies of the formal system
6. inaccessibility of the justice system, especially to the poor and vulnerable<sup>2</sup>.

**A.3 Strategic role of Partnership**

A key challenge for moving justice sector reform forward is incorporating and reconciling the different agendas and roles of different organisations within and outside the government. Co-operation amongst government agencies and between government and civil society organisations in this area is essential. The Partnership's role is in facilitating co-operation between government, civil society, the private sector and donors: in bringing these actors together around a common framework for action and in facilitating efforts towards an integrated approach to justice reform, both at national and at local level.

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<sup>1</sup> The term "sector" is used to include the many stakeholders who play a role in the delivery of justice: the Ministry for Justice and Human Rights, BPHN, legal bureaux of line Ministries, the judiciary, alternative systems for dispute resolution, legislatures, the KHN, other commissions including Komnas-HAM, the police, prison and prosecution services, lawyers, paralegals, civil society organisations/NGOs and media.

<sup>2</sup> There is evidence that many people use alternative, customary and other informal systems e.g. adat, mediation, ADR, arbitration (BANI) or other quasi-judicial agencies.

The Partnership structure is also uniquely placed to assist the government to co-ordinate donor efforts and translate government priorities into effective donor assistance. Several donors are active in this sector. For example: JICA is conducting a preparatory study on cooperation to the sector; AusAid finances a Legal Reform Programme facility providing short-term, flexible technical support and research services; USAID is particularly active in economic and commercial law; the Netherlands is providing technical assistance to the courts through the IMF; the Asia Foundation is active across the sector. The World Bank, under the auspices of the Partnership, convenes meetings of the Working Group on Legal/Judicial Reform.

## **B. OBJECTIVES**

### **B.1 Medium term (3-5 Years)**

Conditions for *successful implementation of reform* improved, through:

1. constitutional amendments which provide a more conducive basis for reform
2. transformation of KHN reform plans into a sector-wide reform strategy and comprehensive, prioritized, budgeted action plan
3. wider stakeholder participation in policy development
4. strengthened core justice agencies with increased capacity to deliver justice to the people
5. strengthened mechanisms to hold core agencies to account
6. increased levels of public trust and confidence in the administration of justice and improved access to justice, in particular for the poor and vulnerable.

### **B.2 Short term (0-18 months)**

Conditions for *reform* improved, through:

1. strengthened coalition(s) for justice reform
2. support to development of a strategic framework for reform of the justice system, through facilitating establishment of a 'forum hukum komunikasi'
3. demonstration to government agencies (in particular police and prosecutors) through pilot projects that cooperation can bring mutual benefits
4. demonstration to local communities that the justice system can dispense justice fairly and can help to protect their rights.

## **C. IMPLEMENTATION STRATEGY**

The Partnership's Legal/Judicial Reform strategy is based on the combined activities under the Facility and the Trust Fund.

### **C.1 Facility activities**

- a) Facilitating multi-stakeholder support for a strategic framework

The current political environment is not conducive to justice sector reform. Before we can work to support technical improvements in the justice agencies, we have to interest the agencies in reform. Otherwise, technical inputs will be unsustainable, or even worse, will merely serve to strengthen corrupt and self-serving systems.

The first step is therefore to engage the agencies in constructive dialogue about reform. The Coordinating Minister for Political and Security Affairs is convening a meeting in January 2002 between GoI and the Partnership at which the Chief of Police (KAPOLRI), Attorney General, Chairman of the Supreme Court and Minister of Justice and Human Rights will attend, along with the Chairman of the KHN. It is hoped [update in January] that this meeting will lead to the establishment of a mechanism to continue the dialogue between the government, civil society, private sector and donors.

Once a mechanism is agreed with all the stakeholders, its functions could include:

- preparation of an integrated strategy for justice reform
- formalizing dialogue between KHN and government agencies to strengthen government buy-in to KHN proposals
- supporting pilot projects including piloting of KHN proposals
- facilitating vertical exchange between different levels of government to "scale up" learning about new approaches to justice delivery.

Facilitating broad multi-stakeholder support for a strategic framework for the sector, developed through a consultative process, could be one objective of the Partnership's role in this initiative.

Many stakeholders should participate in this dialogue: government agencies (including the Ministry of Justice and Human Rights, BPHN, judiciary, POLRI, Attorney General's Office, BAPPENAS and legal bureaux in line Ministries), quasi-governmental agencies (including the National Law Commission (KHN), National Ombudsman Commission and Komnas-HAM), DPR, private sector and civil society including justice and human rights NGOs, legal activists, legal professionals and their associations, legal aid providers etc.

A small Select Steering Committee will be established, consisting of Board Members and others, to assist in realizing this and other Partnership objectives.

#### **b) Catalyzing multi-stakeholder reform efforts**

The Partnership will respond flexibly to issues in justice sector reform as they arise. The Partnership's role is to respond to demand from our clients and to provide a forum for different stakeholders to share information and reach consensus on issues of common concern. For example, workshops which the Partnership has been asked to facilitate during the first few months of 2002 will cover issues including:

- the autonomy and accountability of state auxiliary functions ('lembaga negara mandiri')
- the role of adat law

- respective roles and responsibilities of state oversight mechanisms.

#### **c) Donor coordination**

The Partnership, through the World Bank, also facilitates a Donor Working Group on legal/judicial reform. The Donor Working group is a forum for frequent information exchange. In 2002 the Partnership will support donor-Government-civil society dialogue by:

- organising monthly donor working group meetings
- supporting the process of formulating a joint donor framework for support to the justice sector
- supporting links between the donor working group and the process of producing a strategic framework for the sector
- establishing smaller working groups to liaise with individual institutions which would also serve as a forum for peer review of planned assistance.

#### **C.2 Trust Fund activities**

The Trust Fund will be used to support proposals which share the objectives of the Partnership in the justice reform area, and in particular to support pilot projects which can produce lessons to be shared and models to be scaled-up.

### **D. CONSTRAINTS/RISKS**

- The cycle of lawlessness further undermines public faith in the law
- The current and planned change processes are too weak relative to the prevailing legal culture (viz the absence of a rules-based system in the public sphere) to establish the supremacy of law
- We are relying on the KHN to play a role in supporting formulation of a strategic framework for reform. There is a risk that it may fail to find support for its proposals; and that the political leadership necessary to champion a comprehensive law reform movement fails to transpire
- Individual government agencies refuse to cooperate or obstruct progress towards an integrated approach to justice reform
- The current elite perceives too great a threat from justice sector reforms and manoeuvres to block them
- Government changes or a political crisis obstruct dialogue with government

**WORKLAN 2002**  
**LEGAL/JUDICIAL REFORM**

**A. SHORT-TERM OBJECTIVES**

Conditions for reform improved, through:

1. strengthened coalition(s) for justice reform
2. support to development of a strategic framework for reform of the justice system, through facilitating establishment of a 'forum hukum komunikasi'
3. demonstration to government agencies (in particular police and prosecutors) through pilot projects that cooperation can bring mutual benefits
4. demonstration to local communities that the justice system can dispense justice fairly and can help to protect their rights.

**B. STATUS OF ACTIVITIES END-2001**

The Partnership has made substantial progress towards achieving the goals it set for itself this year.

- It has been working on the design of a mechanism to facilitate communication between justice sector agencies. Although progress was impeded by the frequent changes of government personnel in the first half of the year, the outlook is now more promising.
- Some dialogues have been conducted on constitutional reform (eg CPPS Paramadina in 6 cities) to provide a more conducive basis for reform.
- Implementation of two large projects has started. One supports the KHN in developing a comprehensive plan for reform in the field of law. The other provides funding for institutional strengthening of the KON.
- Other projects supported from the Trust Fund have aimed to strengthen the coalition for justice reform (eg Judicial Watch and the Institute for Judicial Monitoring in Medan) and improve civil society participation in government processes (eg joint Supreme Court/LeIP governance audit).

In 2002 the Partnership plans to build on this progress by working collaboratively with government, civil society, the private sector and the international community.

One lesson learned through 2001 was that there is a need for more formalized, continuous high-level guidance to the Executive Office on strategic issues. In 2002, we will establish a small Select Steering Committee to help provide this.

**C. PLANNED ACTIVITIES 2002**

**C.1 Facility activities**

#### **a) Facilitating multi-stakeholder support for a strategic framework**

- establish a Select Steering Committee consisting of Board and non-Board Members, and representing experience from the fields of government, civil society and the private sector including the legal profession (February). Consultations will be held once per month thereafter
- facilitate establishment of forum komunikasi hukum to develop a strategic framework for reform of the justice system, through a dialogue between the government, civil society, private sector and donors (starting March and regular meetings will be held once every month)<sup>3</sup>
- support dialogue between KHN and government agencies to strengthen government buy-in to KHN proposals through the forum komunikasi hukum, finance piloting of KHN proposals and facilitate vertical exchange between different levels of government to “scale up” learning about new approaches to justice delivery
- support regional workshops starting in North Sumatra (February) and West Sumatra (April), to be followed by 4 workshops (in June, August, October, and December) on the topic of an integrated justice system, and aiming at producing pilot projects of inter-agency cooperation. piloting of KHN proposals

#### **b) Catalyzing multi-stakeholder reform efforts**

- support civil society participation in governance audits of justice agencies, in implementation of recommendations, and in monitoring of implementation (eg joint Supreme Court/LeIP governance audit)
- facilitate multi-stakeholder workshops, on Hukum Adat (March), state auxiliaries function (April) and specific issues on demand-led basis in July and November
- help to access and disseminate international comparative experience on issues related to justice system reform

#### **c) Donor coordination**

- support the monthly donor working group meetings (led by the World Bank) to support the process of formulating a joint donor framework for support to the justice sector and producing a strategic framework for the sector
- establish smaller working groups to liaise with individual institutions which would also serve as a forum for peer review of planned assistance.

### **C.2 Trust Fund activities**

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<sup>3</sup> Establishment of a forum komunikasi hukum to develop a strategic framework for reform of the justice system, through a fully participative dialogue, is a ‘best case scenario’ outcome from the Law Meeting and follow-up meetings. Other possible outcomes would include establishment of a forum which brings a wide variety of stakeholders together to focus on individual issues such as juvenile justice or prison reform. And if efforts at interesting the central government agencies in comprehensive reform encounter difficulties, we would maintain our support to pilot initiatives at the regional level with the objective of catalyzing reform from below, and continue to help access comparative international experience to inform the reform process.

The Trust Fund will be used to support proposals which share the objectives of the Partnership in the justice reform area, and in particular to support pilot projects which can produce lessons to be shared and models to be scaled-up.

#### D. IMPLEMENTATION PLAN AND BUDGET 2002

ACTIVITY	INPUTS	ESTIMATED BUDGET	ESTIMATED TIMEFRAME
Select Steering Committee	Honorarium	Rp. 36,000,000	Established February 2002, consultations approx. once per month
Convening of forum komunikasi hukum: 10 meetings plus one retreat	Honorarium	Rp. 60,000,000	Meetings approx. once every month starting in March, retreat in December.
	Meeting Facilities	Rp. 10,000,000	
	Retreat	Rp. 20,000,000	
	Travelling for staff / consultants	Rp. 40,000,000	
		<u>Rp. 130,000,000</u>	
General Consultant <sup>4</sup> on Legal-Judicial Reform (part-time)	Salary	Rp. 150,000,000	January - December
Consultants on specific issues (part time)	Salary	Rp. 80,000,000	Recruited on flexible basis, January - December
Workshops on integrated justice system (75 participants) x 6 (aimed at producing plans to implement pilot projects on inter-agency cooperation)	Travelling Expenses	Rp. 15,000,000	February, April, June, August, October, December
	Hotel Facilities	Rp. 15,000,000	
	Honorarium	Rp. 65,000,000	
	Printing of workshop documentation	Rp. 5,000,000	
		<u>Rp. 100,000,000 x 6</u> = Rp. 600,000,000	

<sup>4</sup> It is suggested to turn this into a staff position

ACTIVITY	INPUTS	ESTIMATED BUDGET	ESTIMATED TIMEFRAME
Workshop on specific issues (75 participants) x 4	Travelling Expenses	Rp. 30,000,000	March, April, July, November
	Hotel Facilities	Rp. 15,000,000	
	Honorarium	Rp. 20,000,000	
	Printing of workshop documentation	Rp. 5,000,000	
		<div style="border-top: 1px solid black; display: inline-block; width: 100%;"> Rp. 70,000,000 x 4  = Rp. 280,000,000 </div>	
<b>Total Budget</b>		<b>Rp. 1,276,000,000</b>	

## 8. 第1回LAW SUMMIT開催の概要(JICA奥山専門家作成)

### Law Summit 開催の概要 (要点)

1. 2002 年 1 月 31 日に開催された司法改革フォローアップ会合において、Partnership For Governance 事務局から、司法・法務執行機関、司法行政機関の長および関係団体の代表等が出席した会合（「Law Summit」）が、2002 年 1 月 28 日に開催された旨の報告があった。その概要は以下のとおり。
2. 同会合は、パートナーシップ事務局の主導により、司法改革のための総合的アプローチの一環として、司法に関係する各機関間の連携強化を図ることを目的として開催されたもの。ユドヨノ政治治安調整大臣、ユスリル法務人権大臣、バギアル・マナ最高裁判所長官、最高検事総長、国家警察本部長官、Bappenas 担当局長などに加えて、KHN（国家法制度委員会）などの関係団体の代表等も参加し、率直な意見交換がなされた。
3. 同会合の中で、ユドヨノ調整大臣は、法務執行機関、行政機関間の総合調整機能を同調整大臣府が果たすことを改めて確認するとともに、今後とも活発な情報交換や率直な意見交換を行っていくことは重要である旨強調。ユスリル大臣もこうした会合を有効に活用し、関係各機関との間でガバナンスに関するオープンな議論を行っていくことは有意義である旨発言。
4. 同国の司法改革計画を策定するために 2000 年に設立された KHN（国家法制度委員会）から、法制度改革に関する中期的かつ総合的な計画案が提案された。また、Bappenas 担当局長からは、関係各機関間の連絡・調整機能の向上がこうした総合的計画のアクションプランを実行に移していく上では重要であるとの認識が表明された。
5. 今次会合を通じて、関係各機関との間の情報交換や意思疎通の活性化、調整機構の早期確立の必要性・重要性が改めて確認された。昨年 of CGI 会合等の結果も踏まえ、主要な課題に対する同国政府の取組み・フォロー状況等に関するフォローアップ・ペーパーを調整大臣府を中心に取りまとめて報告することとなった。
6. また、パートナーシップ事務局がかねてより提案している、主要な司法関係機関に加え、行政機関や関係団体、市民団体等の多くの参加者を得た「司法コミュニケーション・フォーラム（Forum Komunikasi Hukum）」の開催について、今次会合への参加者の基本的な理解が得られた由。
7. 次回もまた、こうした Law Summit を適当な時期に開催することとなった。

以上