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Crime Prevention and Criminal Justice Issues:

the UN System and UNODC Mechanisms

-Ajit Joy

Expert, Crime Prevention

UNODC Jakarta

The mandate of the United Nations Office on Drugs and Crime, the organization that I represent is to make the world safer from drugs, crime and terrorism. Crime Prevention and Criminal Justice is central to this. A weak or a malfunctioning criminal justice system cannot counter the threat from organized crime or terrorism. In other words, crime flourishes under a weak or corrupt criminal justice system. Absence of a criminal justice system that is effective, fair and humane is a threat to peace and security.

Crime Congresses have been held every five years since the year 1955 in different parts of the world and have contributed to shaping international and domestic policies and in promoting novel thinking and approaches to the criminal justice system. As Indonesia is preparing for the 12th Crime Congress, in Brazil, it is important to look at the main themes of the congress.

The theme for the Twelfth Congress is "Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world". The three associated themes for the Congress is:

- Establishing firmly the criminal justice system as a central pillar in the rule-of-law architecture;
- Highlighting the pivotal role of the criminal justice system in development;
- Emphasizing the need for a holistic approach to criminal justice system reform to strengthen the capacity of criminal justice systems in dealing with crime



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The provisional agenda for the Twelfth Congress shows that special attention will be paid to: children, youth and crime; smuggling of migrants; trafficking in persons; money-laundering; and cybercrime.

I shall now proceed to elaborate on the three main themes, with emphasis on the standards of the UN and UNODC. I shall draw perspectives from the Indonesian experience and throughout it shall be laced with my own views.

Theme I is:

I. Establishing firmly the criminal justice system as a central pillar in the rule-of-law architecture;

Rule of law is bigger than the criminal justice system. In other words, Criminal justice is a subset of rule of law. Rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are

publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.¹

The primary purpose of the state is to ensure security for its people. Security means not just the absence of war or conflict but peace with justice. The criminal justice system is central to this. A criminal justice system founded on the bedrock of effectiveness and fairness and humaneness can help in establishing this peace. Without such a system all other elements of the rule of law like the dignity of human beings and human rights, accountability, equality and freedoms are all bought to a nought.

¹ The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, S/2004/616



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Edmund Burke said, “bad laws are the worst sort of tyranny.” Therefore, if the law provides for a person who sends an email of frustration against an institution to be imprisoned, or someone who charges his mobile phone in a public place to be convicted of theft of electricity or an old lady who picks up something insignificant to grow in her garden to be sent to jail, then it is tyranny of the law. And it’s by product, the tyranny of the law enforcers. It is then rule by law and not rule of law. Law without justice. Instances like this led someone to comment, ‘Only’ “an earthquake achieves what the law promises but does not in practice maintain - the equality of all men.”²

Therefore, one of the ideas to examine and which could be deliberated in the next 2 days is - **are the laws tyrannical? Also the additional question - The laws may be good and just but does its enforcement lead to tyrannical and unjust consequences?**

The normative foundation of the rule of law as far as the UN is concerned is based on four pillars of the international legal system; international human rights law, international humanitarian law, international criminal law and international refugee law. The wealth of human rights and criminal justice standards and norms established by the UN would also form part of it.³

The UNODC contribution is in the form of the 3 UN Conventions on Narcotics, The UN Convention on Transnational Organized Crime with its 2 famous Protocols relating to Human Trafficking and Smuggling of Migrants, the 16 instruments relating to countering terrorism and the Standards and Norms on Crime Prevention and Criminal Justice.

While Indonesia has made tremendous progress with respect to adherence of most international obligations, it would be a very useful exercise to examine specifically the **Standards and Norms of Crime Prevention and Criminal Justice**.

² Ignazio Silone

³ See, The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, S/2004/616



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Canada in one of the interventions made on the occasion of the eighteenth session of the Commission on Crime Prevention and Criminal Justice referred to the Standards and norms “...as soft law ‘that’... combine the clarity of international legal instruments, with the flexibility of non-binding instruments. They give Member States clear guidance on what they need to do to establish and strengthen the rule of law or implement critical criminal justice reforms. Because they are not binding, the standards and norms also allow each State the flexibility to adapt them to their own needs and individual legal and constitutional frameworks.”

The existing standards and norms, which nowadays include more than 50 instruments, are grouped in the following four clusters:

- (a) standards and norms related to persons in custody, non-custodial sanctions, juvenile justice and restorative justice;*
- (b) standards and norms related to legal, institutional and practical arrangements for international cooperation;*
- (c) standards and norms related to crime prevention and victim issues; and*
- (d) standards and norms related to good governance, the independence of the judiciary and the integrity of criminal justice personnel.*

A judge once remarked, “Justice is open to everyone in the same way as the Ritz Hotel.”⁴ As an exercise, Indonesia may be highly benefited by making a **gap analysis of these standards and norms in order to find out how many of them are in implementation and what could be done in order to give effect to the ones that are currently not in use.** In other words, how many can use the Ritz hotel?

We now go to the second theme;

II. Highlighting the pivotal role of the criminal justice system in development;

⁴ Judge Sturgess



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Rule of Law is not expressly mentioned in the Millennium Development Goals. However, it is an integral part of it, a cross cutting issue vital to the achievement of each of the 8 goals. Mr. Antonio Maria Costa, Executive Director of the UNODC argued while addressing the 17th session of the United Nations Commission on Crime Prevention and Criminal Justice in Vienna, that "bottom billion" of the world's poorest people were suffering the most from the effects of crime and corruption.

Economic analysis has consistently shown the clear correlation between weak rule of law and weak socio-economic performance. In countries ravaged by crime and corruption, and where governments lost control of their land, the poor suffer the most, and the services provided to them get delayed, or never arrive. They -- the so-called "bottom billion" -- have no access to justice, health and education and face rising food prices: how can such countries meet the MDGs?⁵

There is a clear correlation between poor criminal justice system and poor development. Poorly governed countries are the most vulnerable to crime, and pay the highest price in terms of erosion of social and human capital, loss of domestic savings, reduction of foreign investment, white-collar exodus, increased instability, and faltering democracy.⁶

We are very good and knowledgeable in handling conventional crime. But when it come to tackling organized crime especially transnational organized crime our skills and knowledge is limited. We are unable to determine the modus operandi of international organized criminals or even the volumes involved. It is easier to commit huge white collar crimes and offences like illegal logging, and even terrorism than simple crimes like theft, robbery or traffic offences. When it comes to theft of our natural resources or wealth of our nation from banks, we are complacent we are ignorant.

⁵ Mr. Antonio Maria Costa, Executive Director of the UNODC, address to the 17th session of the United Nations Commission on Crime Prevention and Criminal Justice, Vienna.

⁶ *Id.*



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The recent banking collapse and the resultant economic challenges that engulfed the world and decelerated development show that the banks cannot be trusted to self regulate themselves. World over the countries came forward to pump ordinary peoples money to rescue these banks. The very same banks and financial systems that have been behind the growth of organized crime, money laundering, offering safe havens to the wealth of sophisticated criminals and blocking law enforcement investigations and efforts to recover such illegal wealth, and further contributing to drug trafficking, serious crime and terrorism.

Two issues are of relevance here, which may be deliberated:

1. There is a vested interest in promoting weak governance where a country is rich in resources.

2. Transnational organized crime is a serious challenge to development which needs effective criminal justice response. Transnational problems require transnational solutions. All aspects of the market chain need to be assessed and addressed strategically. Criminal Justice system focuses on the criminals. But the crime itself is much bigger than the criminals involved or the groups involved. How can this be addressed?

This brings me to the last theme:

III. Emphasizing the need for a holistic approach to criminal justice system reform to strengthen the capacity of criminal justice systems in dealing with crime

You will agree with me when I say that to counter terrorism, it is not enough to just have effective laws and an effective anti- terrorism agency. A holistic criminal justice system with effective prosecution, judiciary and correction system is also as important as having effective laws and an anti-terror police force.



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Classic case study here to consider is the problems encountered in MLA requests. There are multiple agencies involved. Serious coordination and leadership problems have so far restricted the success of the country in extradition and asset recovery. This will continue to be the case unless we have a holistic response.

Let me elaborate on this “holistic approach”.

Criminal Justice System is a combination of:

The Legal context: Criminal Laws, Laws of Evidence, Criminal Procedure

The Institutional context: Police, Prosecutors, Judges, Corrections

The Target context: Women, Children, Youth, Migrants, Indigenous people, Minorities

If I leave it at this I would be badly mistaken with regard to the crime in the modern context. Financial regulations, the banks and the non-banking financial institutions are also important from the angle of money laundering, terrorist financing, and therefore cannot be excluded from the holistic approach that is very important. An agency, which is extremely important but which remains in the shadows are the intelligence agencies. With enormous powers and resources at their disposal, they are at the forefront of fighting crime and terrorism. No consideration or reforms of the criminal justice system would be complete without the intelligence agencies being a part of it.

An idea that could be pursued here is the strategy to bring in agencies like banks and intelligence agencies within the holistic criminal justice response.

Again it is not enough if we have islands of effective criminal justice efficient countries, transnational nature of crime being what it is. Crime will migrate to areas where there are weak laws, weak law enforcement and weak judiciaries and easy correctional institutions.



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In this context a question that is important to deliberate is the fact that **most terrorists involved in terrorist activities in Indonesia are from outside the country. Why were they not active in their own countries?**

Internal reforms within institutions charged with crime prevention and administering criminal justice is also very important when you talk about the holistic response. One has to look within institutions. If they are highly militaristic, traditional, status quoistic, rule bound, orthodox, what is the change that they can bring. "Be the change that you want to be" said Gandhi. Its not merely democracy in the outside world and tyranny and autocracy within our institutions that is desirable. Within the requirements of discipline; freedom, equality and merit should be pursued. **Examining the internal structures of our law enforcement agencies** would be a worthwhile exercise.

Finally let me make the point that having an effective crime prevention and criminal justice strategy is not merely an the interest of the law enforcement agencies. It is a national and international requirement in which apart from governments, civil society, media and ordinary people and even the Facebook has a key role to play. Transparency, accountability, freedom of information, public participation and public education must contribute to building of the Taj Mahal of the criminal justice system.