

## REMARKS

# Effective Prosecution: Guatemala's Public Ministry in an International Context

Remarks by James A. Goldston, executive director of the Open Society Justice Initiative, in Guatemala City on June 26, 2014, at the public launch of an assessment of reforms at Guatemala's Public Ministry, carried out by the Centro de Estudios de Justicia de las Américas (CEJA).

Not only in Guatemala, but around the world, societies are struggling with how to address serious crime – whether rape, murder, gang violence, narco-trafficking, trafficking of migrants, money laundering, corruption, or terrorism.

Guatemala emerged from its brutal civil war with a broken justice system. Impunity in connection with past crimes was matched by impunity for complex and even common crimes of the present. The Inter-American Commission of Human Rights found that, in 2009, 98 percent of crimes in Guatemala went unsolved. Around that time, Philip Alston, then UN Special Rapporteur on extrajudicial killings, described Guatemala as a “good place to commit a murder because you will almost certainly get away with it.” Since then, Guatemala has shown that, while it is hard, it is at the same time essential and possible to challenge impunity and ensure accountability for the perpetrators of serious crimes. Over the past several years, reforms within the Ministerio Publico have demonstrated that failures of accountability, though entrenched, are not intractable.

The achievements are real:

Guatemala has made significant progress in the battle against gang-related violence, including the extradition from the United States and successful prosecution of notable gang

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leaders.

The Ministerio Publico has also painstakingly prepared a number of important cases against alleged perpetrators of mass atrocities during Guatemala's 36-year civil conflict—previously thought to be unprosecutable.

The Ministerio has succeeded in prosecuting government officials – including prosecutors, judges, police officers, military officers, and others – for corruption and other criminal offenses.

Taken together, these efforts have gone a long way toward demonstrating that no one is above the law.

The challenges have been, and continue to be, many. The prosecution of complex criminal organizations requires significant investigative, technical and financial resources. Prosecutors of serious crimes often face heightened security risks, as do victims, witnesses, judges and others. An effective prosecutors' office requires public faith in its diligence and independence; members of the public play a critical role in reporting on crime and cooperating with law enforcement officials. Perhaps most important, successful prosecution requires political commitment at the highest levels.

The obstacles are significant – covering myriad questions of evidence, of law, of technical skill, of financial resources, of security, of public confidence, and – last but not least – of political will.

And yet, Guatemala is not alone.

The challenge of fighting serious crime in a manner which builds the rule of law is faced by other countries in Central America and in Latin America. And it is a challenge as well for many countries in other parts of the world as well, from Bulgaria to South Africa.

And it is not just so-called developing countries that have struggled to preserve the rule of law in the face of competing pressures—with varying degrees of success. For example, my own country, the United States, has failed as yet to come to terms with the crimes committed after September 11 in the name of a “war on terror.”

So what happens in Guatemala is of importance, not only for Guatemalans, but for people the world over who are struggling for personal security and against impunity.

As in Guatemala, so in other countries, the Ministerio Publico has a central role in addressing these challenges.

In particular, how prosecution offices are structured, resourced and supported, and the manner in which they engage with the public, can make all the difference.

First, an overarching principle governing the role of prosecutors in the criminal justice system is that of managed discretion. In practice, this means that law enforcement should be guided by a policy framework that clearly defines the powers and obligations of different institutions: prosecutors, police, investigators.

Second, in today's world, more and more crime is carried out by complex criminal organizations, often operating transnationally, and using the tools of modern technology. Offices of prosecution and investigation must increasingly structure themselves accordingly. Consistent with United Nations and other international and regional standards, prosecution offices are increasingly developing areas of substantive specialization — whether in respect of corruption, organized crime, and other serious offenses.

Third, the critical obligation of prosecutorial independence demands that the prosecutor's activities are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system. This requires, on the one hand, non-interference by political authorities in decisions about how to handle individual cases; and, on the other, fair and impartial procedures for the hiring, retention, promotion, and mobility of prosecutors.

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Finally, in its Regional and International Standards governing the role of public prosecutors, the International Association of Prosecutors identifies as a central function community engagement to promote public confidence in and engagement with the criminal justice system.

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Over the last several years, and in line with evolving international practice, Guatemala has made admirable strides in modernizing its Public Ministry.

In order to address the historical challenge of impunity for the most serious and complex crimes, the Public Ministry has properly redoubled attention and ensured dedicated resources to achieving accountability.

Equally important, it has strived to ensure that prosecutors act with professionalism and that they may be held accountable to the public.

As a reflection of its commitment to these principles, the Public Ministry established a well-resourced *unidad de analisis* to support the investigation and development of complex cases and complex criminal organizations. It has protected rigorously the independence of its office, mandate and capacities, while developing a close working relationship with law enforcement entities.

The Public Ministry has worked, and continues to work, closely with the Comisión Internacional contra la Impunidad en Guatemala (CICIG) to investigate and dismantle criminal structures. CICIG, the Public Ministry and other Guatemalan entities have been critical in the establishment of specialized high-risk courts.

There is no one agreed method for assessing the effectiveness of prosecutorial offices. Nonetheless, criteria based on good practice developed in various countries include consideration of the rate of prosecution of reported serious crime, the progression of cases, and the uniformity of application of the law in different types of prosecutorial decisions.

As this important new report shows, Guatemala is on the right path.

According to former Argentinean prosecutor German Garavano and the experts at the Centro de Estudios de Justicia de las Américas, Guatemala's Public Ministry has significantly improved criminal prosecutions, reduced impunity for the most serious crimes, increased the level of transparency and accountability, and strengthened the Public Ministry's institutional functioning. Among other successes:

- Guatemala has increased access to the justice system, creating victims' support offices across the country, and dramatically increasing the number of translators working with prosecutors.
- From 2008 to 2013, the number of cases lodged with Public Ministry prosecutors soared by more than a third, from 216,111 to more than 300,000.
- During the same period, the number of cases resolved without going to court increased almost four times, from 5,800 to 27,950.
- Guatemala's approach to the treatment of crimes against women, and to the use of dispute resolution for less serious cases, represents an appropriate response to growing demands.
- Over the past four year, the number of convictions secured more than doubled, from 3,280 to 7,122.

These are significant achievements in and of themselves. And all these steps have contributed to better institutional functioning, and to increased confidence in the justice system.

Prosecutors the world over are struggling to secure similar successes.

Guatemala has demonstrated that accountability is possible even in places where it has been long-absent—but also that it can be fragile and must be vigorously defended.

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