



## REGIONAL MEETING

# INDEPENDENCE AND AUTONOMY OF JUSTICE INSTITUTIONS: LISTENING TO PUBLIC PROSECUTOR'S OFFICES

Virtual Event  
October 12, 2022  
4 p.m. Chile time

### Background

The independence and autonomy of justice institutions is one of the priority challenges to strengthening democratic systems in the countries of the Americas. In order to address this issue, the **Justice Studies Center of the Americas (JSCA)** is organizing the regional meeting “**Independence and Autonomy of Justice Institutions: Listening to Public Prosecutor’s Offices**”, in collaboration with the Ibero-American Associations of Public Prosecutor’s Offices and the Office of the Attorney General of Colombia, and with the support of Global Affairs Canada (GAC).

### Context

One of the most important aspects of the work that public prosecution services perform in the region is related to the independence and autonomy that these institutions should have so that its primary work -criminal prosecution and the exercise of public criminal action- is free from any pressure or interference by external or internal agents.

There are two models for public prosecutor’s offices in the region. The first positions this institution as an extra-judiciary agency, that is, an entity located outside of the traditional powers of the State. This is the option followed by most of the countries in the region, including Argentina, Bolivia, Chile, Ecuador, El Salvador, Guatemala, Honduras, Peru and Venezuela. The second model regulates the institution as an agency within the judiciary, but with a statute of functional autonomy (basically autonomous budgetary control and regulatory powers). This is the case in Colombia, Costa Rica and Paraguay.<sup>1</sup> Duce states that this inclination in the region is mainly due to avoiding the possible “politicization” of the public prosecutor’s office if it is affiliated with the Executive Branch and, on the other extreme, its “judicialization” if it is institutionally affiliated with the judiciary.

The autonomy and independence of public prosecutor's offices are essential aspects of its proper functioning. The Ibero-American Association of Public Prosecutor’s Offices (AIAMP) has made various statements about the importance of autonomy and independence. On October 11, 2016, the Prosecutors General of Ibero-America met to issue the “Lisbon Declaration,” which states that “*the autonomy of the public prosecutor’s office from the legislative and executive branches guarantees the equality of citizens before the law, the independence of the courts, and the credibility of the justice system.*” (Our translation.) As such, through the aforementioned Lisbon Declaration, the AIAMP has rejected various attempts to pressure public prosecutor’s offices that affect their autonomy and independence in the search for the

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<sup>1</sup> Duce, Mauricio; “¿Qué significa un Ministerio Público autónomo?: Problemas y perspectivas en el caso chileno.”



truth under the principle of objectivity and clarification of events that may constitute crimes.<sup>2</sup>

International entities like JSCA, the Foundation for Justice and the Democratic Rule of Law (*Fundación para la Justicia y el Estado Democrático de Derecho*, FJEDD) and the Due Process of Law Foundation (DPLF) highlight the value of autonomy for combating impunity and corruption and guaranteeing access to justice for both victims and defendants, placing special emphasis on human rights violations:

“The lack of autonomy and professionalization of the agencies responsible for investigating and prosecuting crimes can be part of the structural causes of impunity in Latin American countries because it hinders the performance of comprehensive, exhaustive and timely investigation. Autonomy is a key element of the objective investigation and prosecution of crimes regardless of whether or not they involve high-ranking officials. In this sense, prosecutors’ autonomy is key for:

- Guaranteeing the right to access to justice for victims (especially when the crimes also constitute serious human rights violations);
- Respect for the rights of the defendant in the judicial proceedings (especially their right to be presumed innocent); and
- The fulfillment of the State duty to investigate, prosecute and punish crimes and human rights violations.

The autonomy of prosecutors and prosecution services is a human right and a condition for the proper functioning of the justice systems. It requires that States expressly establish and communicate this in the internal regulations that establish the parameters of, organize and regulate the work of the Prosecutor General’s Office at the constitutional, legal and regulatory levels.” (Our translation.)<sup>3</sup>

Autonomy and independence do not necessarily imply that the public prosecutor’s office is not subject to any form of control. The actions of this institutions in regard to criminal prosecution are subject to oversight of their legality in accordance with the mechanisms established by each set of laws regarding criminal prosecution in which the judge is responsible for ensuring the legality of the procedural acts conducted by the public prosecution service in the exercise of the criminal action. As such, the concept of accountability must be present and is not an obstacle to institutional autonomy and independence.

However, there are some mechanisms by which autonomy and independence can be threatened, such as the processes by which officials and even prosecutors themselves are appointed and removed may reflect efforts to undermine these principles. Efforts must be made to stay alert and avoid any action of this nature that may place the true autonomy and independence that the public prosecutor’s office requires at risk. We must also look at how long officials serve within the institution in order to avoid a correlation between the tenure of political officials and that of the Prosecutor General. Furthermore, steps must be taken to

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<sup>2</sup> Notice No. 74/2022 of National Prosecutor Jorge Abbott to the President and Vice President of the Justice System Commission and the autonomous oversight and constitutional reform agencies of the Constitutional Convention, 2022.

<sup>3</sup> Notice No. 74/2022 of National Prosecutor Jorge Abbott to the President and Vice President of the Justice System Commission and the autonomous oversight and constitutional reform agencies of the Constitutional Convention, 2022.



ensure that certain matters are not excluded from the work of the prosecution service because they require action by a State entity to hear them. This is the case in Chile in areas such as elections issues and tax and customs-related crimes.

## Objective

To describe the situation of the independence and autonomy of public prosecutor's offices in Latin American countries. To identify and describe the explicit or implicit obstacles to the work of these entities in order to reinforce mechanisms that safeguard the investigation and prosecution of crimes as an essential pillar of democracy.

## Target audience

Prosecutors, judges, public defenders, litigators, administrative staff of justice institutions, public policymakers in the field of justice and strengthening democracy, and the academic sector. The legal community in general.



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STRENGTHENING THE INDEPENDENCE AND  
AUTONOMY OF PUBLIC PROSECUTOR'S OFFICES**

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<b>Time</b>	<b>Topic</b>	<b>Participants</b>
4:00-4:05 p.m.	Opening Remarks	Nataly Ponce Executive Director, JSCA
4:05-4:25 p.m.	The Experience of Protecting Autonomy in Guatemala	Telma Aldana Former Prosecutor General of Guatemala
4:25-4:45 p.m.	Autonomy in the Prosecution of Complex Crimes	Ximena Chong Chief of Highly Complex Prosecution, Chile
4:45-5:05 p.m.	The Independence of Public Prosecutor's Offices in El Salvador	Douglas Meléndez Former Prosecutor General Public Prosecutor's Office, El Salvador
5:05-5:25 p.m.	The Role of the AIAMP in the Protection of Independence and Autonomy	Francisco Barbosa Attorney General National Prosecutor General's Office of Colombia
5:25-5:55 p.m.	Reflections and questions. Nataly Ponce, Executive Director, JSCA	
5:55-18:00 p.m.	Closing remarks, representative of JSCA Board of Directors	