

**United Nations Development Programme for Modernising the  
Prosecution Services for Arab States**

**Regional Conference**

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**The Role of the Public Prosecutor in Formulating and Implementing  
Coordinated Criminal Justice Policies.**

Your Excellency, Ministers, Chief Prosecutors, Ladies and Gentlemen

I am honoured to have the opportunity to address you this morning and continue my long standing involvement in the UN Development Programme to modernise the prosecution services of the Arab nations and enhance the respect for human rights. In particular I would like to thank the Lebanese Government for supporting this conference and affording the warmth and hospitality for which the Lebanese people are so well known.

This innovative and challenging project has been driven by Dr Wassim Harb and his team based here in Beirut, who over the past 3 years have become friends as well as colleagues. I know it has been a long standing ambition to host a conference in Lebanon. It is therefore a tribute to the fortitude and courage of Lebanon to host this important conference in such difficult times.

It would be relatively easy for me to recite a list of many of the usual methods of engagement the prosecution service can engage in to exert influence in the criminal justice system. They are no less important for not doing so, but I decided to present you with a more challenging method that requires us to move outside of our traditional operating arena. In doing so however I also need to provide the intellectual justification that legitimises such a move.

I begin by posing 2 questions

1. Can prosecutors influence criminal justice policies and reform?

And if so

2. Should they?

The reason I ask the second question is because without a clear legitimate justification for us entering the wider remit of influencing of policy we should not do so. Consideration of this point also tells us how we can most powerfully exert our influence.

Every jurisdiction varies in where a prosecutor sits within both the criminal justice system and our wider public role. The ability to influence, at least as a starting point, is therefore somewhat pre determined.

These variances and the advantages or disadvantages of each have been rehearsed many times before, but invariably debate revolves around 2 issues:

- Firstly, what is the extent of the prosecutor's decision making power?
- and
- Secondly, how and to whom should the prosecutor be accountable for the decisions they take?

In each jurisdiction the line drawn to both questions is different.

But there is one common theme and that is no matter how the prosecutor's decision making and accountability is prescribed, the purpose is not only to achieve public confidence in the impartiality, integrity and fairness of those decisions, but to make our decisions in the public interest.

One can have considerable debate about what the expression 'public interest' actually means, but from a high level I would submit that it means 'the decision must benefit society as a whole'. Notably this may not in every case accord with that of the individual.

Unless it be the case that prosecutors are not required or even entitled to take into account the public interest when making decisions, then the prosecutor must know what that public interest is.

Once you accept this point then it is clear that the prosecutor must be able to assess what society as a whole needs.

It is at this point, having established the legitimacy and duty of the prosecutor to understand and act in the interest of the public, that I will move into what I believe is one of the most powerful but most underestimated influences -

- Becoming a key actor and voice within, and for the public.

But what does that look like and how do we do it?

People often talk of the 'public interest' as something that was etched into history as some immovable but rather elusive principle. The reality of course is that it constantly changes in line with the evolution of societies, behavioural norms and values, demographic profiles, economic and educational development, political stability and societies perception of their security; to name but a few. All of which are coloured by the underlying gloss of the cultural heritage of that society.

It is thus both complex and fluid and often varies considerably even within a single society.

Governments and elected persons know that, or at least should. And are required to act in that knowledge. The prosecutor is a powerful arm of the

state and reacts to what the state perceives society requires. But just how far does the prosecutor's reaction extend?

Should the prosecutor accept that it is the sole preserve of the government (be it elected or not) to ascertain societies needs, and proscribe criminal justice policies accordingly which the prosecutor merely applies?

Or

Is the prosecutor under a duty to apply these criminal justice policies but required to apply them in the context of his/her understanding of the 'public interest', having supplemented or modified their understanding of societies needs, especially at a local level, by really engaging with their local communities?

Well I think it is the latter and the public expects their Chief Prosecutor to engage with them, learn their needs and within the confines of the legislative framework, form a judgement as to how best to act in meeting these needs.

If I am correct then the ability of prosecutors to influence and shape criminal justice policy, as well as how it is applied, is considerable indeed. Of course with this comes great responsibility.

If we look at what may be seen as an obvious jurisdiction where prosecutors most communicate with the public, namely the elected Chief Prosecutor in most states within the United States of America, we see that only a few decades ago the prevailing social consensus view taken of the prosecutor, was that they were technocrats. Voters would appoint them on their legal skills, qualifications and experience. Policy relating to the control of crime and the social disintegration caused by crime was not for the prosecutor to concern him or herself with. The public expectation of the prosecutor's role therefore was very narrowly defined.

But that was then! Crime is now a highly politicised issue and at elections the Chief Prosecutor is firmly focussed on ensuring their attitude and approach to tackling crime is in tune with the public they serve. Be this motivated by a sense of heartfelt public service or merely the self interested securing of office.

This makes sense because the public want the Chief Prosecutor to direct effort, focus and resources where they, the public, most want them. They want to know the Chief Prosecutor's approach to matters such as; sentencing recommendations, when prosecutors are likely to divert an offender out of the court system with a sanction set by the prosecutor, the severity of the level of charge likely to be decided upon or how much resources will be directed to recovering the proceeds of criminal activity. Indeed it goes further as the Chief Prosecutor strategy must at least bear an appearance of cohesion and coordination.

At first blush this may appear unique to the elected prosecutor model. But the fact that criminal justice policy is determined by the majority voter is universally true; certainly in any democracy. The difference is the elected prosecutor has to more closely mirror the public needs, especially at a local level. Whereas the unelected prosecutor relies on the Government to get the policy right.

Although I am not an advocate of the election model, for there is much to be critical of within it, I would venture there is a third way that draws on the lessons to be learned from it.

Chief Prosecutors hold considerable public resources in their hand. Should they wish to focus on domestic violence, drug dealers, human trafficking or low level conduct that disproportionately affects peoples quality of life, they can do so. In the UK, prosecutors can now decide in certain fairly low level offences, where a person admits their guilt, to apply a conditional caution. This means the offender agrees to perform, for example, unpaid work in the community, apologise to the victim or repair damage they caused. If they fail

to do so then the prosecutor can subsequently decide to place the person before the courts.

But the prosecutor exercises that judgement call by understanding their community in sufficient detail and at that time. The same holds true for decisions made on where resources should be focussed. But the public will only continue to engage if they see the prosecutor genuinely listens and acts.

Of course the prosecutor must always decide how to act within the law and this must be made clear. I also stress here that this is not about an individual Chief Prosecutor bringing to bear their own personal views.

Having gone this far let us make it more challenging. What if the wider criminal justice policy does not accord with the local community views? This could put the Chief Prosecutor at odds with nationally set priorities or policies.

It may be the nationally understood priorities of government simply do not reflect those of the community. They may be too soft, outdated or uncoordinated so do not deliver the outcomes needed. Equally, it may be that the typical mantra of 'tough on crime' and the consequent aggressive prosecution of all offences is not working in a community and they want something different.

This happened when the former Chief Prosecutor of San Francisco was elected twice to a total of 8 years in office on the back of a campaign for alternative sentences for drug offences and prostitution. This is in stark contrast to the usual 'tough stance' adopted and upon which prosecutors were usually elected. But it reveals the ever shifting nature of public opinion and how prosecutors can rapidly become out of touch.

By prosecutors being reactive in this way and applying the considerable discretion they have locally, what may be needed only locally can often gather momentum if it reduces crime, such that it becomes a nationally adopted and applied policy. Indeed in some instances lead to changes in sentencing

practices and the law. To be a legitimate actor in this way requires the establishment of a sustainable and effective direct communication line with communities. There is, I believe, a body of opinion that the role of the prosecutor is and should develop such that Chief Prosecutors take a leading role in repositioning their agencies and gaining some greater and more lasting leverage over shaping criminal justice policies

So what prevents it happening? Well one can probably list many, but to my mind the most inhibiting one (and ironically the one we have most control over), is the mindset of the traditional prosecutor.

It requires a move into risky and uncharted waters where the prosecutor lacks either the political or moral authority, or perceives they do, to push the established boundaries to achieve the solution that most benefits society.

It requires the prosecutor to learn much more about the causes and effects of crime and the interdependencies between his/her own agency and the multitude of others necessary to find solutions.

It requires prosecutors to really invest their thought time in understanding and considering the long term interests of local communities. Taking a lead in building institutions in a coordinated manner across the criminal justice arena will be resisted by some. Agreements including self interested parties will be difficult, well intentioned people and organisations will challenge the prosecutor's legitimacy and motivation, political sensitivities will inevitably be touched. Equally, deciding on the key institutions to focus on marshalling together will be hard. Knowledge, conviction and clarity of direction will be central to bringing together local institutions that link to criminal justice such as health, education, housing, youth development and the police. The prosecutor is therefore opening his/her mind to consider and act in the interests of building social cohesion, preventing the collapse of institutions and reversing misplaced public perceptions. All of which tend to accompany increasing levels of crime.

This may seem wildly ambitious but the prosecutor naturally sits centrally in the criminal justice system and is well positioned to draw institutions together.

I have focussed on an aspirational approach which I accept is in part to challenge traditional thinking. There are of course many more traditional ways for prosecutors to influence criminal justice policies, such as; building strong multi agency relationships, engaging in formal consultation arrangements in legislative reforms, securing membership of influential review committees and regulator boards or attaining of high media profile. The list is extensive and each in itself could justify detailed analysis.

However before I conclude there is one very important influence mechanism that due to its importance warrants specific, if brief, mention.

In most jurisdictions prosecutors at minimum, decide who is charged and with what. They also hold power over whether to continue or stop a prosecution once it has commenced. A theme I have previously and I hope passionately addressed in this UN programme is that of the courageous prosecutor acting as the guardian of human rights. Time does not permit a rehearsal in any detail, but criminal justice policy is heavily influenced by how the police operate. How they undertake investigations, conduct interviews of suspects, search persons and property, techniques deployed in gathering evidence, levels of supervision internally and accountability externally are integral to the trust and confidence the public have in the criminal justice system.

The prosecution is in a unique position to influence this by refusing to both consider or utilise any 'evidence' obtained by the police in contravention of international standards of human rights. In its most basic form by doing so the prosecutor is removing a key motivating factor from those engaging in the abuse.

In conclusion, I have sought to provide a glimpse into where the prosecutor may be in the future as a driving force behind shaping criminal justice policy. Doing so by really understanding societies needs, building institutions to

support the reduction in crime and being a wholly legitimate and powerful voice on societies behalf.

This UN programme is in essence about progress and challenging the status quo is after all the lifeblood of progress.

Thank you for your very kind attention.

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