

Consultant's Report

The Present State of the Oficina de Atención Permanente of the Metropolitan Prosecutor's Division Of the Prosecutor General's Office of Guatemala

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I Introduction

The purpose of this consultancy was directed at evaluating the Oficina de Atención Permanente (OAP) of the Metropolitan Prosecutor General's Office in Guatemala City and determining what, if any, technical assistance would enhance its operations in terms of increased involvement and better reaction times in the investigation of crimes. While the terms of reference called for the production of protocols and guides for the operation there was inadequate time for this component. In any event it was found that there were already adequate internal regulations for the work presently done and any further work would need to be performed as the project develops a concrete roadmap with the institution as the course of any changes in the unit is not clear in light of other advances in the prosecution and investigation process that are mentioned above. The evaluation was limited to the central office in the main building in the capital. Once on the ground it was found that the OAP is a modern well equipped office that performs its basic functions very well *within the strictures of a system that is not efficient*. The action suggested in the report are directed at achieving results taking this reality into account while at the same time looking forward to a time when the political will could exist to reform the system to achieve better results. Either way they are sustainable and would contribute to the improvement of the investigative function.

II Overview of the Institution and Criminal Procedure in Guatemala

The Prosecutor General's Office investigates and prosecutes all crimes in the country. Like most Latin American prosecuting organizations it is responsible for investigating crimes as well as bringing them to trial or seeking other means of resolution. Unlike in the U.S., criminal investigations are "formalized" and require the involvement of a judge at virtually every step. In the Capital prosecution divisions ("fiscalias") are set up by type of crimes (e.g. "property", "organized crime", "crimes against women" etc.).

Also, unlike the U.S. and many other countries, most crimes are investigated by the staff of the prosecutions divisions assigned the case and not by the police. This is, in a sense, a leftover from the old inquisitorial model that prevailed before 1994 where a judge investigated crimes, again with little useful input from the police. Such investigations tended to be formalized plodding affairs where most activities took place within the confines of the judge's office through the taking of what amounted to depositions (with no cross examination or adversarial truth finding). It at this stage (called the "sumario" or "instruccion") that evidence was actually admitted and incorporated in written form into an official case file which later served in many instances as the basis for the trial judge's judgment and sentence.

As is the case, albeit usually to a lesser degree, in most other Latin American countries where similar reforms have occurred, the prosecutor replaced the instructional judge and tended to assume the latter's practice. Indeed it is common for a prosecutor to be assigned the legal duty of supervising every investigation. In practice in Guatemala, it became therefore the norm for the prosecutor not only to direct the investigation to carry it out himself. This is done through assignment to subalterns as it was before 1994. The structure of each prosecution division was, initially, pyramidal with the prosecutor at the top followed by a number of assistants ("auxiliar fiscal"). The Prosecutors are aided by the "DICRI" which is the Prosecutor General's own investigative branch. The Homicide Prosecution Division has recently had assigned to it police officers and from all accounts the experiment is working well so far.

III The OAP

The Oficina de Atención Permanente ("OAP") is a part of the Metropolitan Prosecutions Division, by far the largest operational section of the Attorney General's organization. The Metropolitan Prosecutor Division includes the Capital as well as outlying districts including Chinautla, Villanueva, Mixco, Villa Canales _____. There are outlying offices all have their own OAP however and this report does not consider them, only the OAP in the center of the capital located on the ground floor of the Attorney General's Office. There are a total of ____ employees among which are _____ "fiscales auxiliares", the rough equivalent of assistant district attorneys. These individuals are all lawyers or have at least finished law school ("pensum cerrado") and some of them have been with the institution for more than ten years. Many have actual experience in the investigation and prosecution of crimes by having worked in a prosecution division.

The mission of the OAP is stated on the Prosecutor General's web site: "The OAP is charged with receiving, classifying, registering, analyzing and distributing criminal complaints (denuncias, prevenciones and complaints filed with the courts) and all other documents that enter the Institution as well as notices that it has requested and rendering assistance to the individuals who seek it".

As will be noted later, the OAP is a "reactive" entity which has no investigative powers.

The Office maintains statistics relating to the number of matters processed and where they end up. These are generated by way of the Institution's uniform case management system which is called "SICOMP" and it appears that they are accurate. An integral part of the work of each functionary in the office is data entry and it appears to be routine practice that ensures that no categorized activity escapes capture. Statistics were provided for the entire year of 2009 concerning the activities of the office and appear to accurately reflect its work. This was verified through site visits and direct observation of all facets. The consultant not only interviewed functionaries of each division but was also able to sit with them and observe them at work over a two week period.

-Non substantive functions

The OAP **is not** an office that investigates crime. For better or worse it has a series of functions that do not contemplate proactive evidence gathering. Rather it is at present a clearing house for citizen complaints ("denuncias") for "ordinary" crimes and for orienting and channeling the public to the appropriate authority when the matter is not criminal. The matters received by the office do

not include what are considered by the Institution to be high impact such as murder, kidnapping, crimes against women or organized crime, as a rule. These go directly to the special prosecution units. However the office does deal with serious crimes such as car jacking, extortion, armed robberies, aggravated batteries and assaults and the like. It also handles smaller frauds, embezzlements burglaries and larcenies and takes reports of minor thefts particularly of things like cell phones, documents etc. In these latter events the work is limited to documenting the fact of the complaint and issuing a certification so the victim can show that he or she reported the matter to the authorities¹. These certificates are called “constancias” and in December of 2009 alone the OAP issued 5,585. The number ran to almost 7,000 for some months in 2009. Other than documenting the contact for statistical and analysis purposes and issuing the “constancia” there is no further follow-up and usually the victim is not seeking such. It is expected that a certain proportion of the complaints are false, such as when for example, a person loses his cell phone but can get a replacement at reduced cost if it is stolen vs. simply lost. One striking factor that was observed as the constancias were being issued was that a large number of these complaints probably involve actual armed robbery or assault, most of the time with firearms. This became apparent during actual observation when, as a casual aside the victims mentioned how the item was stolen. Even so the nature of the crime, i.e. the armed robbery was not even mentioned in the official document nor was it noted in SICOMP entries. It would appear that such events in the capital are too common to even bother with unless the victims insist on the matter being pursued. The lawyers taking the complaint mentioned that many of the victims are afraid to push a full investigation even when they know or have an idea who the assailants are. In addition it is a widely held belief that many of these complaints are false, motivated by the need to report a theft rather than simple negligence on the part of the victim. Be that as it may, no effort is made to determine circumstantially whether the complaint is false and no details are captured. Some of the victims appeared to be truthful judging from their story’s coherence and the fact that a number of items were taken that would not necessarily be together and lost at the same time through simple absent-mindedness.

Another non-substantive but useful function of the office is performed by the “procesos” (process) section. Here are channeled court notices (mostly hearing and the like, court files and matters that come in from other areas of the country. The matters are analyzed, given a case number, entered in sicomp and sent to the appropriate division. In addition, the matters concerns a notice of hearing the assigned lawyer sends an electronic notice to the assigned prosecutor for docketing.

The OAP has a modern and well organized central filing system where copies of all complaints, case files, notices and certifications are kept as backup and for interested parties who may need copies. Documents are located via an automated index which enables their efficient retrieval.

- **Substantive Functions**

In addition to those “non-substantive” functions described above, the OAP has duties that affect how cases are investigated and prosecuted. These are divided into two basic areas. The first is the initial filter function. At the entrance to the facility one is greeted by a prosecutor who listens to the complainant and decides whether or not the matter is criminal and, if so, whether the complainant

¹ This is similar to what occurs in many metropolitan police departments in the U.S. where the police do not have the resources to respond, such as the case of traffic accidents and minor thefts. A report is issued for insurance purposes but no further action is taken

needs to be sent to the special sex crimes or juvenile intake unit on premises, directly to one of the specialized division (e.g. murder etc) or should take a number and see one of the OAP personnel to make a complaint. or seek a “constancia”. The matter is not criminal the lawyer directs the person to the appropriate public office or otherwise counsels him or her.

If the person has a criminal matter to present, he or she is directed to take a number and is attended in due course by a lawyer². If the complaint is verbal the complainant is called by number to the designated window where he or she describes the event, a written complaint form is prepared and signed. This is then forwarded to the appropriate prosecutions division for investigation. Many complaints are delivered already written up, many times by lawyers and a large number come to the office from police station. These later are called “prevenciones policivas” and have the same force and effect as the verbal and written denuncias. They are in effect denuncias taken by the police at local stations around the metro area.

Even with the filter at the entrance a certain number of denuncias are taken that later must be dismissed and some of these are dismissed before assignation to a prosecution division. Any dismissal at this stage contrary to the case in the U.S. and many other Latin American countries, requires a court order and the OAP director handles these. The process is not as time consuming as it may seem due to high levels of automation.

All other complaints are analyzed by the lawyers receiving them. This analysis is limited to determining what crime or crimes may have been committed, logged into SICOMP (but not scanned in – there is no electronic filing system such as exists in the U.S. Federal Courts) a notification is sent to the assigned prosecutions division and the original documents are sent to the prosecutor with copies to the filing room.

If there is a need for physical examination or treatment there is a forensic doctor on the premises and examinations rooms. At this point, as in the case of sex crimes, evidence is gathered. However the lawyers assigned to the OAP do not have the power to order further investigation and their duties are not oriented towards this function as stated above at the outset.

- **The “Modulo de Atención Integral” (Comprehensive Reaction Unit)**

This office is the unit where sex crimes, domestic violence and other crimes against women and children are processed. Victims are channeled directly to these offices which are in a public area next to the filter and orientation desk and are staffed with specialized personnel. In effect this is what has come to be called in the U.S. a “SANE” unit (Sexual Assault Nurse Examiner Unit) which have largely replaced rape crisis centers. These units do collect evidence and provide counseling assistance to victims. They do not, however, come under the purview or supervision of the OAP. These units provide immediate reaction in many cases where physical evidence must be immediately collected. Compared to the number of cases received each month cases remitted immediately to these units is significant considering the probable intensity of intervention they require compared to the run of the mill complaints. For example in December of 2009 178

² These functionaries are classified as “auxiliares fiscales” which is loosely translated as assistant prosecutors. However, they do not prosecute or assist in the investigation of criminal cases.

“denuncias” were taken the majority dealing with domestic violence (135). 15 were sex crimes. 131 adult victim were seen and 6 minors.³

In 2009 140,406⁴ “cases” were registered in the OAP largely consisting of the matters referred to above.

-Prior Efforts to Strengthen the OAP

In 2008 the prior USAID project performed an assessment and made a series of recommendations which gave rise to plan for strengthening the entire Metropolitan Prosecutor’s Office. This plan is attached as annex A. In the project paper ultimately approved but never implemented by the Prosecutor General’s staff, at pages 5 and 13 there appears a brief description of the issues that gave rise to the proposal. According to this list the deficiencies consist of:

- A high proportion of cases dismissed or set aside (“desestimacion y archivo”)⁵
- Inefficient organization and procedures
- Only isolated cases are investigated and prosecuted
- Failure to use available criminal information data bases
- Poor intra and inter-institutional coordination
- Delayed investigations (during the initial period after the crime is committed and consequent loss of key evidence)
- Poorly motivated personnel in the OAP
- lack of knowledge as to the jurisdiction of specialized prosecution units in the OAP
- Poor reaction to the needs of victims of crimes
- Public perception of inefficiency

After reviewing the legal objectives of the OAP, performing numerous site visits and interviews and analyzing available data, one must conclude that this list of deficiencies does not apply to the OAP directly, rather it is a general list of the perceived ills of the prosecution function or the justice system as a whole. The OAP does not nor has it ever had a direct role in the investigation and prosecution of crimes. However, the proposal sought to create within the OAP a capability to conduct initial criminal investigations.

As to each item in the list of deficiencies is instructive to see where the OAP stands within the perceptions of the diagnostic:

-The dismissal of cases at the level where the OAP operates is a well controlled function that weeds out weak cases, minor matters and cases where the acts were not criminal. This is a legitimate and necessary function of any case intake unit in any prosecutor’s office anywhere in the world and it indicates that the Guatemalan Justice System has achieved some level of flexibility that did not exist

³ Source:Unidad de Planificacion el M.P

⁴ Source:Unidad de Planificacion el M.P

⁵ This means that the case is in effect dismissed without prejudice. This has to be authorized by a judge even when it is obvious there is no merit to the case. CPP Art. 310

before⁶. There is however, a real concern with the basic ability of the system itself to solve most crimes through effective investigation. This is not attributable directly to anything that the OAP is charged with. Where a great many crimes, especially armed robberies, carjacking, bus assaults and the like, fall through the cracks within the OAP is in the section that issues “constancia” as will be seen later in this report.

-The issue of inefficient procedures and organization is a global issue that affects the entire system. Whether criminal procedure reform and institutional restructuring would help address the extreme criminality affecting the country is a vital question that is being addressed on a number of different fronts. That fact remains that whether Guatemala decides to take the next step in modernizing its hybrid and partly written criminal procedure or not, the M.P. like any prosecutor’s office, will need efficient case management and intake structures and the OAP presently does this very well. The Institution, when presented with the proposal to turn the OAP into something else declined. This lack of capacity to address the type of everyday criminality that is first seen at the levels of the OAP and the local police stations (“comisarias”) remains largely unaddressed but it is clear that the OAP will not be the entity to assume such a task once it is addressed.

-As to the issue of only isolated cases being investigated and prosecuted, this is certainly true but not through any deficiency in the OAP (except as noted with respect to the contravenciones, more on that topic later). Indeed, in reviewing procedures it was apparent that the unit has clear instructions and guidelines allowing the identification of important matters that require the assigning of priorities that in turn assure rapid processing of these types of cases. The most important are attached hereto as annexes. As is mentioned elsewhere herein, Guatemalan criminal procedure is a hybrid model and the investigation process is largely written and formalistic. This makes the process of investigating comparatively minor crimes overly complicated. To the degree the OAP contributes to this problem, it is more a function of MP policies and procedures and the overwhelming criminality presently affecting the country. The proposal seems to overemphasize the importance of the OAP in the scheme of things, at least as it perceives it as an investigative body.

-Concerning the use of available data bases this may well be true of some prosecutors and police investigators but it is not an large issue presently within the OAP because the OAP has little need of such data except to see whether parallel complaints have been filed with the institution to avoid duplication. If the unit is ever converted into an investigations agency then this would be a concern.

-Poor intra and inter-institutional coordination is not presently much of an issue with the OAP although system-wide it surely is, especially with the PNC and INACIF (the newly established forensic institute). The main short term concern for the OAP is the receipt of poorly drafted or factually deficient “prevenciones” from local police “comisarias”. This is addressed below.

-Delayed investigations is certainly a system wide concern and has been effectively (and hopefully, permanently) addressed at the level of special prosecutions divisions where CICIG is involved. The fact that some serious violent crimes are reported to the “comisarias” and the lag time for the report (prevencion) to get to OAP is often five to ten days is that type of delay. The OAP is aware of this

⁶ In traditional inquisitorial models of criminal procedure such as that that existed in Guatemala before 1994 any criminal matter that came to the attention of the authorities not matter how unsubstantiated or unfounded had to be pursued to the fullest extent of the law. This was one of the extreme manifestations of the “principio de estricta legalidad procesal” that caused absurd and negative results and practices that had nothing to do with the law.

but lacks authority on its own to effectively address the problem. Lag time between the taking of a denuncia and transmittal to the appropriate prosecutions division is also a constant concern of the OAP. Ideally, the unit that receives a denuncia would immediately investigate, as occurs in the U.S. at least where serious crimes and even misdemeanor domestic violence cases are concerned. Guatemalan criminal procedure does not, in the main, function this way and the PNC does not have the same unfettered field of play that U.S. police have. Improved means of transmittal would shorten the time between denuncia and investigation (i.e. paperless electronic files such as exist at the U.S. Federal court system). This is presently possible for the prosecutions divisions located in the main MP building in Guatemala City. Direct reception of denuncias would also shorten reaction times. The fact remains though, that the investigation of the types of crimes that reach the MP through OAP are largely deskbound operations and until this changes inefficient investigations overall will endure. The best hope here is the example of the CICIG prosecutions divisions. In the long term these models could, if preserved, show the way to increased success through better investigations and reduced reaction times.

-Poorly motivated personnel in the OAP is also relative. The job is basically data input and document transmittal. Where improvement is needed should the present model endure, is in the interview process itself as addressed below. The extended shifts on weekends and afterhours are onerous and no doubt affect morale, and the director is perfectly aware of this. Even at its present level of limited responsibility, the OAP is short of personnel. However, on site observation over the period of this consultancy showed generally good morale reflected in the humane and efficient processing of work and treatment of victims. In this consultant's experience, motivation is always an issue in written systems where the task of investigation is divided into many bureaucratic steps.

-Lack of knowledge as to the jurisdiction of the specialized prosecution units of the MP does not presently appear to be a problem in the OAP. The staff is aware of the organization of the MP and what division any particular crime should be remitted to. Personnel are trained to recognize especially important matters and call them to the attention of the director immediately. Where a case is mistakenly sent to the wrong division procedure seems excessively formalistic as the matter is sent back to OAP instead of simply forwarded to the appropriate division. This is not a frequent occurrence though. What appears to be a problem is the failure to take immediate action when physical evidence is brought into the OAP. This is addressed elsewhere. Suffice it to say that many of the staff have little or no experience in criminal investigations and therefore underperform through deficient interviews and lack of recognition of key evidence that must be preserved.⁷

-Poor reaction to the needs of victims does not appear to be especially dire in the OAP. The personnel are trained to send victims obviously in need of medical or psychological help to the on site units charged with this function. How well these units operate is not known at this time. It does seem to be true that the OAP in many cases is not particularly proactive in identifying needs. For example extortion seems to be a terrifyingly common offense and is handled at the OAP where the initial complaint is lodged (if it has not already been lodged in a comisaria). Victims are not advised as to protective measures of where to seek help.

⁷ The possession at the time of interview of physical evidence by the victim is probably rare (except for bodily fluids etc on rape victims). One instance was observed where extortionate threats were in the form of text messages on the victim's cell phone. They were neither read nor photographed and the victim left with his phone.

-Public perception of inefficiency is a systemic issue. Within the confines of present practice the OAP performs its function efficiently. There are clearly a great many serious violent offenses that are never investigated and equally important there are certainly a great many where the lack of application of investigative resources (or the simple lack of resources to investigate) lead to non-prosecution of failed prosecutions. However, this is not attributable to OAP.

As concerned the OAP, the project proposed a complete reorientation of its function, in effect turning it into an investigative agency with broad powers and vast responsibilities. Indeed the better part of the reform project was based on the premise that this office would handle most criminal investigations during the initial stages of the case. In retrospect it appears that the idea of creating a super investigative agency out of the OAP was misdirected and, indeed, with the strengthening of the specialized prosecutorial divisions, especially those where CICIG is operating and the Homicide Units, another possible avenue for more efficient investigations and prosecutions is being demonstrated. The incalculable benefit of this experience is that it is operational and not theoretical. To the degree it represents a legitimate national effort it may also be of great value from the standpoint of institutionalization.

IV Perspectives for Improvement

Crime in Guatemala is one of the biggest issues its government and people face at this moment. By all accounts violent crime is rampant and the capacity of the criminal justice system to successfully investigate and prosecute it is continually under question. According to the Supreme Court of Guatemala 99.75% of crimes go unpunished.⁸ The Prosecutor General accepts a lower figure of 75%. But a prominent NGO, Convergencia de los Derechos Humanos holds that 93% of all crimes go unpunished.⁹ Regardless of the correct figure (the Prosecutor General's Figures are based on the number of complaints that are actually accepted for investigation and prosecution) the issue of efficiency has been addressed only for high profile matters. The advent of CICIG, a joint Guatemala – United Nations effort to tackle high profile crimes has resulted in limited re-structuring of some prosecution divisions, limited legislative reform to enable the authorities to use more effective methods of investigation and the integration of what amount to police – prosecutor task forces.¹⁰ As noted earlier, other high profile prosecutions divisions have integrated police teams into their operations with apparent success. Whether the impact of this experience will result in permanent institutional change after CICIG's mandate ends is open to question since it is not an institution-building program per se (although it is charged with assisting the MP in improving its capabilities to prosecute high profile crimes¹¹) and is not charged with direct analysis of the ills that plague the investigative function.

In the meantime so-called “ordinary crimes”, those which pass through OAP and on to regular prosecution divisions are handled in the usual manner with little input from the police. Indeed, except for the specialized CICIG aided units, there seems to be little effective collaboration between police and prosecutors when dealing with other crimes.

⁸ Siglo Veintiuno April 13, 2010, “*Fiscal Desmienta CICIG en Cifras de Impunidad*”

⁹ Ibid, page 3.

¹⁰ See generally “*The International Commission Against Impunity in Guatemala*”, Taylor and Hudson, Journal of International Justice, 2010.

¹¹ See CICIG.org “mandato”

A series of suggested programs are set for the below based on the conclusions of this consultancy. The first are directed at improving the services offered by the OAP during off hours and at reducing time lags in the delivery of criminal matters to the appropriate prosecution divisions for investigation.

The remainder are directed at improving the quality of the information documented and transmitted by the OAP, achieving the same as to the “prevenciones” received from local agencies of the PNC and undertaking a series of actions which would eventually lead to better reaction times at the local level in the types of crimes handled by OAP and the comisarias of the PNC (local police stations) as well as creating intelligence gathering and limited investigative capabilities at that level as well.

-Key Areas Where Project Assistance Would be Appropriate at This Time

Action Plan

1. Improvements in Victim Assistance and Transmittal of complaints within the M.P.

The OAP’s regular hours of operation are from 8:00am to 4:00pm. Monday through Friday. The rest of the time there is coverage by reduced staff. One issue that confronts the operation is that peak hours during the weekdays are after 4:00 p.m. During the after hours shifts there are far fewer personnel and the efficient distribution and orientation desk at the entrance is not staffed. Therefore the public is left pretty much to it’s own devices in figuring out where to sit and who will be attending. By the same token the off hour and weekend shifts are 24 hours which impacts staff efficiency.

Another administrative issue is that the messenger service is not well staffed. This impacts the speed with which matters are referred to prosecutions divisions for investigation and prosecution. SICOMP and an adjunct communicator called DICOMP) serves the purpose of notifying the respective prosecution division that a matter is on its way, transmission of hard copies is done by runner or, where the matter is sent to the interior of the country, by mail. The feasibility of going “paperless” for this process should be investigated. The system is in fact paperless for the all of the prosecutions divisions in the at the central office building in Guatemala City but not for the outlying prosecutions divisions of the capital area. Paperless docketing systems already exist for some court systems. For example, since 2006 all federal court filings are done by internet and all files are electronic.

Objective: Provide the Same Services after Hours That are Provided During the Regular Shift

Objective: Reduce Time in Transmitting Criminal Complaints (denuncias, prevenciones, querellas) from OAP to the assigned prosecutions division

Activities:

A. Implementation of Full Coverage at Times of Peak Usage

- Initial Needs Detection. Determine Equipment Needs and viability of , and organization of, swing shifts to cover peak periods. Month One
- Implementation of revised shifts – Months Two - Five
- Review and adjustment – Months Six -Twelve

Benchmarks: Institutional buy -in achieved, New Shifts Implemented.

Indicators: “Acuerdos” (internal intuitional regulations)implementing New “Swing Shifts” to cover peak periods, Personnel assigned and working in new shifts.

B. Improved Transmittal of criminal complaints and other documents to appropriate divisions of the M.P.

- Review and Evaluation of Present Procedures - Month One
- Proposal and validation for short term improvements – Month Two
- Feasibility Study – paperless system for transmission of criminal complaints Month Three
- Implementation (training, software purchase, equipment purchase, shake down periods and transition) Months Three – Fifteen

Benchmarks: Institutional buy-in, Program Design and approval, software purchase, Most matters scanned and transmitted electronically

Indicators: Criminal investigations started sooner

Base line Indicator: Time between receipt of compliant by OAP and Receipt by assigned prosecution divison

Critical Assumptions: Legal framework exists for electronic “filing” or transmittal of criminal complaints.

2. Increased input for investigative cooperation and impact

The initial interview of a victim or the victim’s representative is usually one of the most important phases of any criminal investigation except for the crime scene investigation. In countries where, unlike Guatemala, the criminal investigation is mostly unfettered by written quasi inquisitorial formalities, it is generally the police who conduct such interviews and the purpose is to learn what happened, to identify possible leads for follow-up and identify the existence of any physical evidence that may need to be seized or examined immediately. Of course the medical and safety concerns of the victim and potential witnesses are addressed at this time as well. As a rule, in the United States and many other countries, this interview takes place at the scene of the crime, a hospital or where the victim or witness happens to be located and is usually in response to a phone call which triggers a central dispatch radio instruction responded to by a uniformed officer who, depending on the nature of the crime may or may not hand the matter over to detectives for further investigation. The statement of the victim is not a formal charging document and may be recorded, hand written by the victim or simply summarized in a subsequent report.

This is not the case in Guatemala, at least in connection with the investigation of the types of crimes that are channeled through the OAP. The “Denuncia” by the victim actually commences the formal process of investigation and prosecution and serves as the initial criminal complaint. This is the apparent mindset of the personnel of OAP when they receive the initial statement or denuncia¹². The main objective is to get the actual case underway by taking down the barebones elements of the crime and getting it to the appropriate prosecution division as soon as possible so that that division can begin to investigate the case.¹³ The actual investigation of these crimes (as versus those higher profile matters handled by the specialized prosecution divisions) is generally carried out by MP personnel with little help from the police.

As a further indication of the non-investigation mindset of the unit, there is no provision for the reception of physical evidence. Victims are instructed to keep the evidence until they can turn it over to the assigned prosecution unit. This is reasonable from the perspective of the limited responsibility of the OAP. Moreover, to enable the reception of evidence, a major investment for little return would be required. Viewed from the global perspective, this is another indicator of the built in inefficiencies system wide where the responsibility to investigate crimes is fractured and bureaucratic.

This “denuncia” enters the OAP in one of three ways, as an oral statement taken by one of the “auxiliares” (lawyers or persons who have actually completed law school) on the premises, as a written statement delivered to the OAP at the installation or as a police report (“prevencion policiva”) delivered through official channels to the OAP. A small number of complaints enter via the courts which forward them on to the OAP which in turn processes them in the same way as a prevencion or a written denuncia.

The taking of verbal denuncias from actual victims of crimes is the most “operational work of the OAP. This is the closest it gets to actual investigative work. However, from observation of these interviews, not unexpectedly, the consultant was able to see that there is very little real probing with a view towards garnering investigative leads etc.¹⁴ The complainant gives his or her statement, key locating and identification information is garnered such as the VIN number and license plate of the stolen vehicle, the location of the armed assault etc and the matter is written up, entered into the uniform case tracking systems (SICOMP) and printed for signature and physical transmittal to the appropriate prosecution division.

The Director of OAP is concerned with paucity of information and has issued written instructions for the taking of more thorough complaints. However, as he himself acknowledges, this is not enough. The most thorough products come from those individuals who have actual experience in working in a prosecution division. As would be expected, these people, through their experience, know what is needed to get an adequate prosecutable case prepared.

¹² Naturally, the safety concerns and health needs of the victim are also addressed and if there are injuries the person is immediately sent to the forensic doctors who are on site who also document the extent of the injuries as an evidentiary matter. Sex crime victims are immediately sent to a special office on site for immediate documentation and psychological help

¹³ This is in part due to press of business. If matters are not handled expeditiously the number of victims waiting to present their complaints backup very quickly.

¹⁴ Some of the “auxiliares” conduct more thorough interviews than others. They are usually persons who have actually worked in fiscalias in actual investigations.

This consultant did not have the opportunity to receive input from the prosecutions divisions that receive denuncias from the OAP. However, as can be expected, the complainants (victims usually) are often cited in to give additional statements once the case reaches the investigative stage. This, of course, reduces the motivation of anyone who has knowledge or experience as a victim to report serious crime.

This could be improved in the short term through the preparation of check lists, manuals and through training and periodic spot checks. It was noted that, other than the instructions and memos regarding aspects of the work performed by the OAP, and the basic denuncia or constancia format (which, for the limited functions of the office are efficient) there are no investigative guides. Each functionary appears to have his or her criminal code available for consultation. This is not as practical as simple check list type manuals setting out the elements that should be included in a complete interview. Given the lack of personnel and resources to take on the additional work this would entail, the political will to provide any additional resources is critical assumption and would be key in achieving this improvement.

OAP personnel are not generally permitted to attend trainings during work hours. This is due to personnel shortage and is an expedient and rational measure in light of the 24 hour coverage required. Any training initiative must take this into account and consider alternatives.

Actions

Objective: Verbal Denuncias taken by the OAP contain complete information from the perspective of a criminal investigation

Objective: “Constancia” and Denuncia process captures basic information concerning type of crime, location where it occurred, modus operandi and identification information for Criminal Mapping Program

- A. Development and Implementation of More Efficient Formats and Guides To Assure Capture of Complete Information.
 - Review of all existing regulations and present formats and design and validation of new formats and new regulations that may be required, Month 1 – Month 6¹⁵
 - Preparation of Manual for Verbal Denuncias and Constancias, Month 1 – 12
 - Training in Use of manual and new Formats Months 6- Month 14
 - Revision of Formal Instructions and Circulars (‘regulations’) Months 1- 6
- B. Training of key staff in Forensic Interviewing Techniques (month 1-3)
- C. Design and Implementation of Data Capture in all Areas Including Constancias, Denuncias and prevenciones that will Permit Effective Input from Point of Origen to Criminal Mapping System Being Implemented at MP

¹⁵ Note that basic guides per type of crime should accompany the formats for reference purposes. This should be a simple manual.

- Define Information to Be Captured During Constancia Interviews for Entry into Criminal Mapping Data Bases Months 1 - 2
- Design and implementation of New Formats Incorporating the enhanced information, Months 2-6
- On the Job Training of Personnel Month 2
- Implementation Nationwide – Months 24 - 26

Benchmarks: New Formats Implemented, Enhanced Information Gathering Required by Internal Regulation, Data from OAP Incorporated in Criminal Mapping System. Basic manual for denuncias and constancias approved and distributed

Key Indicators: Fewer victims cited to appear at prosecutions division to provide information not gathered by OAP. Data from OAP being “geo-enabled” and placed on criminal activity map of capital

Key Players: OAP, Supervisory and Planning Secretariats, Unidad de Analisis, Metropolitan Prosecutor’s Office

3. Increased Efficiency on the Part of the PNC in the taking and transmission to OAP of “Contravenciones”

A fairly large proportion of citizen complaints are made at local police stations around the metropolitan area. In 2009, according to the statistics of the OAP, 29,640 prevenciones were received and processed. During the same time period 16,802 verbal denuncias were received. It is not known what proportion of prevenciones were judged not to be crimes and therefore not forwarded to a prosecution division although overall statistics would indicate that is not significant. Nor is it known how many of these were serious violent offenses but it can be assumed that a fair proportion were.

These complaints are received too late for any immediate action, usually five to ten days after they are made. Moreover, they often suffer from a paucity of information. In other words, the interview upon which they are based is often deficient and much in the way of investigative leads and necessary information is left out. These prevenciones are analyzed and assigned to the appropriate prosecution division in the same way as are other written complaints.

In addition to the delay caused by slow remittal to the OAP and the lack of a true investigator’s approach to this opportunity to gather complete information, the fact that these complaints are received at local, neighborhood police stations offers another more important opportunity for initial investigation that is not taken advantage of. That would be, assuming there were personnel assigned to the task, the performance of initial investigation to gather any evidence immediately available and seize any physical evidence that would otherwise be lost.

The creation of even a limited investigative capacity at the local neighborhood level would address a number of factors that presently conspire to leave a great many of these crimes either unprosecuted or with little viable evidence upon which a successful prosecution could be based. The National Police has some recent experience with such mechanisms through the community policing programs that have given rise to the Division Cuadrante de Seguridad Preventiva. This program is designed to create a local neighborhood policing capability that is familiar with the people and conditions of the assigned area. This program appears to be based on a similar initiative of the Carabineros in Chile.

A recent description of that program is attached to this report. Part of the idea of such units is to inspire trust and confidence on the part of the local populace in these local police units, something that is patently lacking in most areas of the capital city. Another aspect that favors more adequate response to investigative needs is that the local units are charged with knowing their jurisdiction including crime patterns and actors, making the identification of suspects far easier than is the case presently, and maintaining effective coordination with the Prosecutor's Office. As to the actions suggested below, PAVI's involvement, if any, should be to assure uniformity and to promote coordination between OAP and the police in developing uniform approaches and appropriate data links. In the long run anything that tends to create functional integration would greatly contribute to the efficiency of criminal investigations. Such programs naturally require high level decision and clarity. No specific work plan is included here because this is a long range issue where OAP would be a minor but necessary player.

Actions

Objective: Capture all Pertinent Information from Victims or Persons Reporting Crimes to the PNC at the time the report is taken

(Note, this objective could best be achieved by a joint program with OAP taking advantage of the manuals, check lists and training proposed above, which would be virtually the same for police)

Objective: Rebuild police credibility at the local level in neighborhoods whether there are police stations

Objective: Create Basic Capability to Perform Initial Investigations in Certain Cases at the Local level

Objective: Create Basic Intelligence Gathering Capability at Local Level Concerning Criminal Activity Affecting Area Served

4. Diagnosis of the Present Criminal Procedure with a View towards determining it's impact on Investigative Capacity

The OAP operates within the present structure with notable efficiency. The structure together with the formalistic nature of the present model of criminal procedure, however, conspires to present a different picture. Any framework that passes criminal complaints through so many hands before any investigation is done is bound to be less efficient than those where less vertical organizations exist. These built in delays contribute to the perception of inefficiency that Guatemala justice suffers from in the eyes of the public.

In the long term the functions presently carried out by the OAP are representative of the division of powers and duties that negatively affects the capacity of the system to effectively investigate crimes. As has been mentioned above, real change is taking place outside of the area served by the OAP in the prosecutions divisions that deal with high profile matters. In the cases it is telling that the OAP is outside the loop because of the need to react rapidly. These experiences should eventually be adapted to improve capabilities for the more serious types of crimes that pass through the OAP. As

a strategic matter, the possibility and means of achieving structural and procedural reform using the OAP experience as one of the inputs is suggested. The components of this activity are:

- Analysis of crimes processed by the OAP to determine the proportion that are serious violent offenses or serious property and economic crimes.
- Analysis of case disposition for the same crimes (i.e. convictions, dismissal reasons for dismissals, pleas and mediation etc.)
- Quantification of results from PAVI programs with OAP (and police)
- Obtain results and conclusions from institution building program of CICIG and from specialized prosecutions divisions to determine effectiveness.
- Formulate recommendation for institutional and procedural reforms