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Conference on “Breaking the wall of impunity”



Statement by

Ms. Navi Pillay

United Nations High Commissioner for Human Rights

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Honourable Attorney General and Head of the Public
Prosecutor's Office

Honourable President of the Supreme Court

Honourable Commissioner of the International
Commission against Impunity in Guatemala

Ladies and Gentleman,

Impunity is a condition in which most human rights are affected, from the right to an effective remedy to the rights to food and life, as well as to freedom of expression and political participation. From this perspective, impunity can be defined in different ways: It is the prevalence of private interests – be they political or economic – over the application of the rule of law. Impunity is the preservation of injustice, unfair, unequal and discriminatory economic, social and political structures that

favour only the small part of the population at the expense of the majority, and it is the failure of the State to take action to reverse them.

In order to combat impunity and achieve justice, the State must then overcome the structural obstacles that prevent people from exercising their rights. This broad affectation of rights implies a notion of justice that should not be limited to institutions, norms and procedures.

Ladies and gentlemen,

In Guatemala, impunity is still the biggest obstacle to adequate respect for human rights. The State's lack of capacity to prosecute crimes in a timely and effective manner, as well as its

non-compliance in its duties of crime prevention, is of serious concern.

Experiences from around the world have led us to understand that without justice, human rights violations persist, and consequently, peace and security cannot be attained. Impunity for past crimes only emboldens perpetrators and breeds new violence. In this regard, perpetrators who get away with grave human rights violations often transfer their criminal behaviours to illegal activities, such as drug trafficking and trafficking of weapons and human beings, which also undermine stability in the country.

Moreover, organized crime increasingly challenges the State's authority and imposes its own laws. With its brutal actions and methods, it threatens the very core of the State, the rule of

law and attacks the basic human rights we are struggling so hard to protect. It also has an impressive ability to corrupt State institutions whose function is precisely to control and combat it. In the opinion of these criminal groups, everything can be bought and everything has a price, including justice. Where it is difficult to buy, they threaten, attack or kill, as was the case with the auxiliary prosecutor who was killed in Alta Verapaz in May of last year.

This case however, has given hope in the fight against impunity, as it showed that effective cooperation between the Public Prosecutor's Office and the National Civilian Police can yield positive results. A few days after his murder, the authorities detained more than a dozen people allegedly linked to the case, and formal charges were presented against 13 people in November 2011. Decisive political will and adequate resources

are needed to guarantee that these effective actions against impunity are sustainable.

Ladies and gentlemen,

The fight against impunity also requires that no one is above the law and that therefore, justice operators enjoy the necessary guarantees to maintain their independence from other branches of government or pressure from external sources of power. In this sense, it is crucial for the State to ensure that judges are in reality able to decide matters before them impartially, on the basis of facts and in accordance with the law,

without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any sector or for any reason. Thus, an end to impunity can only be achieved if justice is accessible to all, and individual interests do not prevail over the rule of law.

However, while judicial independence is one of the central pillars in a democratic system, it should not be construed as a license for judges to work without control mechanisms, democratic processes of accountability and public scrutiny. Thus, whenever a judge decides a case without adequate justification and in an arbitrary manner, it directly affects the rule of law, the legitimacy and confidence in the justice system and the image of judges who fulfill their duties with integrity.

In short, the purpose of an effective application of the principle of judicial independence is to ensure a proper enforcement of justice, with integrity, objectivity and full impartiality, with the end goal of combating impunity.

The weak professional career system in the Judiciary and the Public Prosecutor's Office undermines the independence and impartiality of the staff. In this regard, the authorities must be fully aware of their public role as duty bearers and human rights guarantors, and make progress towards a comprehensive legal reform that is urgently needed for the effective implementation of a professional career for judges, magistrates and prosecutors. The legislation in force still does not ensure the application of objective criteria, leading to discretionary decisions regarding selection, disciplinary regime, performance evaluation, transfers and promotions, and other processes.

Ladies and gentlemen,

The progress achieved in the past few years within the justice system with regard to the investigation, prosecution and trial of those responsible for serious human rights violations committed during the internal armed conflict is commendable, and essential to confront and break current schemes of impunity. It sends an encouraging message that it is possible to open the way for justice in Guatemala, particularly to victims who were often reluctant to come forward because they had little confidence that justice would be done. The ongoing process in the country, as well as experiences from throughout the region prove once again that the consolidation of democracy necessarily includes the construction of and knowledge by the population of its historic memory, as well as the enjoyment of the rights to truth, justice and reparation, with the full participation of the victims and their families throughout the processes. Only by working for justice can sustainable peace be achieved.

Ladies and gentlemen,

We have analyzed some of the causes and consequences of impunity in the country. But from a human rights perspective, what does justice stand for in Guatemala? What should justice mean for the 60 per cent indigenous population in the country? It denotes overcoming centuries of discrimination and exclusion of indigenous peoples. It implies recognition by the State and, in practical terms, the full enjoyment of their collective right to land and territories. It also implies creating spaces for meaningful participation of indigenous peoples in decision-making processes that affect them. It means that their lives will not be threatened when they defend their rights and their communities.

What should justice mean for women living in Guatemala?

It means adequate protection for the lives and physical integrity

of the 45 per cent of women who suffer from violence. It signifies surmounting the barrier of male chauvinism, as a key preventive measure.

What should justice mean for peasant workers? It means receiving prompt and adequate responses by an independent institution to their claims regarding working conditions and social benefits. It also translates into protection from forced evictions if they are not given the opportunity to previously defend themselves before a judge.

The biggest challenge in breaking the wall of impunity for the justice system as a whole, from an auxiliary prosecutor to a magistrate of the Constitutional Court, is to ensure that those in the most disadvantaged or vulnerable groups no longer suffer from persecution, violence, exclusion and abuse. In order to do

this, the State must realize that it is by providing an adequate protection of the rights of its people that its main object is achieved. Only by protecting these rights will people trust and support it, and the rule of law will prevail.

Thank you.