



*NGO in Special Consultative Status
with the Economic and Social Council
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The National Association of Members
of the Public Prosecution Service of Brazil
(CONAMP)

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Dear President,

I am writing this letter in my capacity as President of the International Association of Prosecutors (IAP), the only worldwide association of Prosecutors, of which CONAMP and other Brazilian Prosecutors organisations have been active and significant members for several years.

According to its Constitution, the IAP 's objects include the following:

- to promote the effective, fair, impartial and efficient prosecution of criminal offences;
- to respect and seek to protect human rights as laid down in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;
- to promote high standards and principles in the administration of criminal justice, including procedures to guard against or address miscarriages, in support of the rule of law;
- to promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences;

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- to assist prosecutors internationally in the fight against organised or other crime, and for that purpose:
 - to promote international co-operation in gathering and providing evidence; in tracking, seizing and forfeiting the proceeds of serious crime; and in the prosecution of fugitive criminals;
 - to promote speed and efficiency in such international co-operation;
- to promote measures for the elimination of corruption in public administration.

In furtherance of the execution of these objects, the IAP has cooperated with international and juridical organisations and has encouraged its organisational and individual members, spread throughout more than 140 countries on all continents, to perform their functions in accordance with its constitutional rules and principles.

Recently I was informed that there is currently a proposal to amend the Brazilian Constitution (PEC 37/2011) which, if passed, would remove the power to conduct and direct crime investigations from the Public Prosecution and other public agencies exclusively to the police. I was further informed that the CONAMP and other Brazilian prosecutors' organisations had expressed their concerns with the negative consequences of the proposal for the effective, fair, impartial and efficient investigation of criminal offences, in particular in relation to the fight against organised crime and corruption. They also expressed their concern that the proposal would undermine efforts to prevent and repress violation of human rights, especially where abuses, including torture, have been carried out by elements within or linked to the police.

The IAP has always recognised that prosecutors perform their functions in many different ways according to the particular system of justice which operates within each jurisdiction. In national jurisdictions which are a part of the civil law tradition, prosecutors play an essential part in the criminal investigation, whether by directing or supervising the work undertaken by the police, or by conducting their own parallel investigative procedures, which role is of particular importance in cases where the police may be subjected to political or other improper outside pressures which can prejudice its independence or its impartiality.

Accordingly, where investigation has been a traditional function of the prosecutor (as in the case of Brazil), any change in this arrangement should be introduced only after careful study of the alternatives and only if it can be ensured that before the prosecutor's functions are reduced steps have been taken to ensure that an effective system of investigation will take its place. To do otherwise would create a risk that the criminal justice system will be seriously compromised.

Further, unless there are clear and cogent reasons to warrant such a change, it could lead to suspicions that the changes in question have been brought about for a hidden motive or are politically engineered, rather than to improve the effective functioning of the criminal justice system without which the rule of law cannot operate. This could lead to a crisis in public confidence - particularly since it has been reported that the public generally support the prosecution service retaining the power to investigate criminal offences.



Besides that the establishment of an absolute legal monopoly by the police on criminal investigation also could hinder the requirement that investigations of complaints and reports of torture and other types of ill-treatment involving police agents be made in an independent way by prosecutors or other public officials who do not belong to police agencies, as recommended by the Istanbul Protocol (Articles 2, 3, B, and 5, A. See Annex below.)

Finally, I share the concern of CONAMP that a prohibition on prosecutors carrying out their own investigative procedures and even taking part in crime investigation task forces could represent a particular obstacle to the application in Brazil of very important instruments of international law, including the United Nations Convention Against Corruption (Mérida Convention), the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the United Nations Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

I am content that this letter may be shared with those who have an interest in this matter, and that it can be made public if required.

Yours sincerely,

JAMES HAMILTON
President, International Association of Prosecutors

Annex: Istanbul Protocol

UN PRINCIPLES ON THE EFFECTIVE INVESTIGATION AND DOCUMENTATION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Article 2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

Article 3. (b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Article 5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.