

7.3 IF THE MPF WOULD NOT GO FOR IT, WHO WILL?

Interview with Aurélio Veiga Rios, Brazilian Federal Public Ministry

Aurélio Veiga Rios has been a federal prosecutor since 1987 and a close observer of the evolution of the Brazilian Federal Public Ministry (MPF) for the last 25 years. His law degree was obtained from the University of Brasília in 1984 and he received his master of law (LLM) degree from Bristol University, United Kingdom, in 1996/1997.

Since the constituency of the MPF is quite unique in its constitutional guarantees and practical outreach, the interview focuses on the role of this institution as a safeguard for social inclusion, citizenship, implementation of law, and the safeguarding of democratic governance.

Q: Please describe the role of the MPF and, more specifically, your role as a Federal Prosecutor for the Rights of Citizens.

The role of the MPF is being regulated under the Brazilian Constitution (Art. 127). It is a national institution that acts as part of the judiciary in defense of the legal order, of democracy, and the election process. Our department is in charge of the defense of citizenship rights like the social inclusion of all citizens in all areas: health, security, information, anti-racism, anticorruption, etc. It acts mainly in preventive ways and focuses on the mediation of societal conflicts, since the MPF has another branch oriented toward prosecution.

The independence of the prosecutors from state and federal governments – financially and thematically – is guaranteed by the Brazilian Constitution. This is why the prosecution of very well-known corrupt politicians is being promoted by the General Prosecutor of the Republic. The latest example for this practice, named “mensalão,” has involved former ministers and federal deputies from the cabinet of Luiz Inácio Lula da Silva.¹

For 24 years now, the MPF has been empowered by its visible actions and, at the same time, has continually been attacked because of its independence. As the Federal Prosecutor for the Rights of Citizens, my opinion is that it is of great importance to stimulate mechanisms for controlling the acts of the government and

1 | http://en.wikipedia.org/wiki/Mensal%C3%A3o_scandal

its institutions, especially the police. The MPF acts as a kind of federal ombudsman and cannot be arbitrarily removed from any case.

Q: Which kinds of political or administrative limits are imposed on the MPF?

Currently, the MPF is active in the Belo Monte case, where a consensual mediation has failed, and now the battle is being fought in the judiciary. Here, the political and economic interests are so strong that the government is prosecuting the involved prosecutors personally for abuse of their powers.

Additionally, the government is exercising pressure upon the judges. They are independent by law but they need the support of the state governor to be promoted – meaning that a judge who is “too independent” would not make career advancements. Here, the limits of the judiciary are to be seen in the personal integrity of its members.

The same is true for the General State Prosecutors of the Public Ministries of the States, who have to present lists of three candidates for each person to be appointed – and the State Governor will then make the decision. On the federal level of the MPF, there is no such election, but the Brazilian president has to consent to the choice of the General Prosecutor of the Republic. Until now it has never happened that a president interfered, but theoretically it is possible.

A further limit is in the field of criminal investigation – namely, the police. Lately, the professional capacities of the federal police have improved considerably – most of them are on the side of law and not on the side of the government. But the civil and military police of the states are often not reliable. There have even been cases where they act as death squads defending the economic interests of groups – there was recently one in Goiás that was prosecuted by the MPF. In cases like that, the police are directly linked to politics, and politics is linked to the economic power of the state. Those problems are not so straightforward as with conventional crime, since in cases of white-collar crime, the proximity to local power structures of the civil and military police is a real problem. There have been some moves toward professionalization – but there still is a long way to go.

Q: How would you describe the role of MPF to bridge the gap between legality and legitimacy, which is so present in Brazil?

Part of the MPF works proactively in the mediation of those conflicts, generally, by inviting all involved parties and discussing possible solutions to overcome this gap. In the case of Belo Monte, we tried mediation with IBAMA [the environmental agency] because the environmental audit was of such bad quality and the new version did not fulfill the legal conditions. Meanwhile, the government had already emitted the provisional license without caring about the environmental audit, and the construction firms started to “prepare” construction. The government signaled that it was not willing to negotiate, and it was trying to create facts that would inflate the price of any mediation. For us, the main point is the lack of prior consultations with local indigenous populations, namely the Kayapó, who

are against the construction. Brazil signed ILO Convention 169 – and consequently, the government is in contravention of international law – as the human rights court in Washington confirmed. With this verdict, the government became more aggressive and, consequently, the case had to be solved following legal proceedings. Mediation did not work due to the proximity of politics with economics.

Q: How does the MPF deal with the so-called grand corruption of huge clientelistic networks in Brazil?

Each case is a long-term endeavor. First, one has to identify the network: who, how, where, etc. In cases where we identify a political leader who is being influenced by businesses, there is no space left for mediation or negotiation because the person has lost credibility and cannot be a partner at the negotiation table. But in most cases, the networks are predominantly invisible. Then I talk to all participants in the whole network, starting from the assumption that they are willing to listen. If this is not the case, we start to collect proof. For this, we need the federal police, the tax administration, and judges to give us bank data and lift telephone and email secrecy, for example. Depending on the case, further institutions can help, like the federal agency for environmental and land disputes. For the success of the operation, all involved have to cooperate and remain silent about the investigation – it is complicated and may take a long time.

In the MPF we have a colleague, Raquel Dodge, who is in charge of coordination of criminal affairs, and she is mostly involved in those cases of network criminality. It is a non-conditional obligation of the MPF to combat organized and white-collar crimes: “*Se não for o MPF quem fará?*” [If the MPF would not go for it, who will?]

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Regine Schönenberg

