Brazilian Prosecutors and the Collective Demands: Bringing Social Issues to the Courts of Justice

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1. Abstract

In the Brazilian re-democratization process, prosecutors have acquired new functions that allow them to defend collective interests and to inspect the executive and legislative branches. Today, the Public Prosecutor’s Office (Ministério Público) is responsible for the majority of actions taken to protect children, the constitutional rights of citizens, the environment, public property, consumers and the physically challenged. The new status of the Public Prosecutor’s Office, new collective rights and judicial mechanisms to enforce them outlined in the 1988 Constitution and a set of laws passed during the 1980s and 1990s introduced a broad scope for prosecutors to intervene in collective and social demands. Prosecutors have become important political actors because they can make use of judicial and extra-judicial procedures, such as negotiations and official agreements with authorities and private parties. They have focused their efforts especially on defending the above collective rights against neglect and abuse by the government sector. They have also focused on the inspection of public authorities to prevent corruption and misuse of government funds.

The following paper has three sections. The first one discusses the emergence of rights in the Brazilian re-democratization process. The second one describes the political and institutional context in which prosecutors have acquired their new functions. Finally, the third one focuses on prosecutors’ efforts to protect children’s rights, which illustrates how prosecutors have become important political actors.1

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1 This article has greatly benefited from many of the observations and discussions in which I was fortunate to participate, specially at the Annual Meeting of the Research Committee on Sociology of Law at University of Antwerp in July 9-12, 1997, the Center for Iberian and Latin American Studies at the University of California, San Diego (UCSD) in 1998, and the Canadian Association for Latin American and Caribbean Studies Conference in Vancouver, Canada, March 19-21, 1998. I am especially grateful to Tamera Marko, a doctoral student at UCSD, for her help and suggestions during our several discussions in San Diego in 1998.

1 This article is based on interviews and qualitative primary research conducted in 1997 about prosecutors’ performance in Brazil. I have interviewed 21 of the 33 total prosecutors who have pursued lawsuits against the government between 1990 and 1997 in the area of children’s rights. At the time these interviews were conducted, these 21 prosecutors were working in several areas (environment, housing, crime, children’s rights, constitutional rights of citizens, and consumers) because they often move to different jurisdictions and cover different judicial issues. This is why my conclusions are not limited to the area of children’s rights. In addition to these interviews, I have analyzed the general information of all the lawsuits pursued by prosecutors between 1990 and 1997 in defense of children’s rights, as well as the initial part of 41 of them, since I couldn’t have access to the entire process. The research has been conducted in the state of São Paulo, Brazil, whose Public Prosecutors Office is recognized as one of the most influential due to, among other reasons, the state’s leading economic status. The results of this research has been presented as a Ph.D dissertation at Universidade de São Paulo in June 1999 (Silva, 1999a).
2. Brazilian re-democratization and the collective demands

The 1980s have been crucial for the Brazilian re-democratization process and, thus, for the emergence of rights in Brazil. In the 1980’s, all the demands for the implementation of political democracy, participation of civil society in public decisions, and recognition of new rights have simultaneously intersected with the reconstruction of the country’s democratic institutions. The 1988 Brazilian Constitution is the result of lobbies, mobilizations, struggles, negotiations and agreements among varied political interests. It is also the result of the demands articulated by organized interests of civil society, ranging from local neighborhood associations to the Catholic Church. The 1988 Constitution has implemented new individual and collective rights and mechanisms to enforce them. It has also opened channels for civil society participation in the policy making process in areas such as health, education and social welfare, from the local to federal level. Thus, the Constitution has been extremely relevant to the assertion of citizenship in several ways. (Doimo, 1995; Alvarez, 1997).

Among all the demands and issues that have emerged in this context, one of them has brought particular changes to Brazilian Law. For the first time in Brazil, a set of laws and the Constitution have introduced and progressively enlarged the possibility of defending and representing collective and diffuse interests. Breaking a private tradition of Brazilian Law, the introduction of collective and diffuse interests has brought litigation related to sensitive and social issues to the judicial arena.

On one hand, the democratization of the judicial apparatus, especially of the Courts of Justice, had been discussed exhaustively in the 1980s by popular judicial assistance organizations, human rights committees, scholars, judges, prosecutors and lawyers, concerned with the poor population’s access to justice. These demands had been intimately related to urban movements that have organized low-income families in their struggle for improving their quality of life in the big cities. Interacting with political parties, unions and institutions such as the Catholic Church, these movements have altered the forms of organization in Brazilian society. The urban movements for housing, transportation, employment, health, and education have brought to the political arena special concerns about changing laws and creating new rights to assure social equality and to protect vulnerable segments of the population (Doimo, 1995).

On the other hand, these issues have emerged at the same time that the prosecutors were trying to change their institutional functions and capacities in the Constitutional Assembly. In competition with other legal groups, such as police

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2 The re-establishment of civilian rule in Brazil occurred in 1985, after 21 years of a military dictatorship. Since 1985, there have been free elections and institutional changes, as well as social transformations. But the re-democratization process still faces obstacles, such as the violation of human rights and enormous social inequalities. For a comprehensive analysis of the Brazilian authoritarian regime and its transition to democracy, see O’Donnell et alii (1986) and Skidmore (1988). For a discussion about the challenges of the democratization process and of the assertion of citizenship rights in Brazil, see Reis and O’Donnell (1988) and Jelin and Hershberg (1996).

3 Doimo is responsible for a broad and excellent study about social movements in Brazil between the 1970s and the 1990s, focusing their roles in the country’s political transformations (1995). A penetrating analysis about Brazilian social movements’ contemporary forms of organization and contributions to democracy is provided by Alvarez (1997).
commissioners and lawyers, prosecutors have successfully redefined and enlarged the role of the Brazilian Public Prosecutor’s Office (PPO). Through these institutional changes, the prosecutors sought to create an institution independent from the political system that could both enforce the new collective rights and hold the executive and legislative branches accountable to society. Since the Constitution, prosecutors have acquired the same constitutional benefits and guarantees as judges and the Brazilian PPO has demanded the role of both ombudsman and attorney for civil society.

3. Defending collective rights against abuse and neglect

Since the 1970s, litigation associated with organized social interests has increased, bringing the problem of the representation of collective and diffuse interests. Demands regarding education, racial and sexual rights and environmental protection, have increasingly appeared as social issues in the judicial arena of western democracies. Thus, the traditional notion of a civil lawsuit, seen as litigation between two equal and autonomous parties defending their individual interests, gradually gave way to a collective notion which allowed individuals, groups and institutions to represent collective and diffuse interests (Cappelletti, 1981).

The 1985 Public Civil Lawsuit Law (Lei da Ação Civil Pública) enabled for the first time the PPO and civil associations to represent diffuse and collective interests - because until 1985, the Civil Lawsuit Code (Código do Processo Civil) did not allow an individual or institution in Brazil to claim the right of a third party. This was a remarkable change. This law allowed prosecutors to investigate and pursue lawsuits regarding violations of certain collective and diffuse interests. Three years later, the prosecutors’ role in these matters was strengthened by the promulgation of the 1988 Constitution, which changed the status of the PPO (Mancuso, 1996).

It is important to reinforce that the Constitution has not only enlarged the field of collective and diffuse interests to be defended, but also has given the Brazilian PPO a new and aggressive institutional profile. The Brazilian prosecutor, traditionally charged with criminal prosecution, has been awarded key functions in civil law. Besides pursuing criminal lawsuits and controlling police activities, the PPO has been granted the legal

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4 Collective interests correspond to common interests held by an identifiable group of people, such as the inhabitants of a residential condominium. Diffuse interests correspond to common and indivisible possessions related to large and non-identifiable groups, such as residents of an entire city. The right of city residents to a healthy environment is, for instance, a diffuse interest. See Cappelletti (1981).

5 For declaring null and void illegal acts against the public patrimony, since 1934, Brazilian citizens could bring a lawsuit through the popular lawsuit (ação popular), but its range was limited (Tacito, 1992). The Act of Public Civil Lawsuit (Act n° 7.347), promulgated in 1985, has enabled civil associations/organizations and the Public Prosecutor’s Office to pursue lawsuits to defend collective and diffuse interests related to the environment, consumers and artistic, aesthetic, historical, touristic and landscaping properties (Mancuso, 1996). Although civil organizations have been given legal competence to represent the collective interests above, the Public Prosecutor’s Office has been acting/performing the main role in this matter because it has the legal duty, qualified professionals and no costs to bring lawsuits to the Courts of Justice. The public civil lawsuit is compared sometimes to the American class action, but it is more complex than this last one. The class action allows a single litigant to represent his/her hole class, while the public civil lawsuit allow associations and prosecutors to represent diffuse and collective interests regulated by law. See Cappelletti (1981).
responsibility to represent all collective and diffuse interests and to inspect the executive and legislative branches (Macedo, 1995). The constitutional changes were the result of a successful organization of groups from the PPO, at the federal and state level. Of all of the PPOs in Brazil, the one in São Paulo has had the most visible participation and its groups have strongly influenced laws regulating collective interests in areas such as consumer and children’s rights and environmental concerns. The political ties between these groups and politicians -- in both the offices of the President and the São Paulo state government – were fundamental to the changes achieved in the Constitution. The prosecutors’ participation in this process was three-pronged. In addition to those working inside the PPO, prosecutors served as representatives in the Constitutional Assembly and worked in important positions at the executive branch – both at federal and state levels. They created an efficient network, especially with some groups from the São Paulo Office, to transform proposals and projects regarding the institutional structure of the PPO into constitutional articles and laws.

It is necessary to emphasize that, unlike judicial systems in other countries, Brazilian prosecutors, as well as Brazilian judges, are not elected or appointed. Today, the offices of judge and prosecutor are the most coveted positions in the judicial system. Usually, only students from the most prestigious law schools are able to pass the rigorous exams required to apply for a position as a judge or public prosecutor. Although the role of the PPO had grown since the 1980s, the Constitution significantly elevated the status of prosecutors. The Constitution granted prosecutors the same income levels and constitutional guarantees as judges: irreducibleness of wages (irredutibilidade de vencimentos), functional independence (independência funcional), irremovability (inamovibilidade) and lifetimes (vitaliciedade). These constitutional guarantees are considered protection against political pressures, since prosecutors are representing the “state inspecting the state” and, sometimes, “the state against the state”.

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6 It does not mean that the Brazilian Public Prosecutor’s Office had no previous functions in civil law, but only that its functions were related to bureaucratic supervision of lawsuits and legal assistance to protect individual interests. Although some alterations in the prosecutors’ role in civil law have occurred slowly during the 1980s, the Constitution has represented the most remarkable change because it has given the Public Prosecutor’s Office increased institutional capacity to perform its new functions. To inspect the executive and legislative branches, prosecutors may make use of the unconstitutional direct lawsuit against illegal political decisions (ação direta de inconstitucionalidade) and of the inspection of public properties, services of public relevance, and the Courts of Accounts (Tribunal de Contas). The Courts of Accounts are in charge of auditing expenses incurred by governments at municipal, state and federal levels (Mancuso, 1996 and Macedo, 1995).

7 The Brazilian Public Prosecutor’s Office (prosecutors) as well as the Courts of Justice (judges) are organized at the federal and state level. The institutional organization of the Public Prosecutor’s Office differs from state to state due to old forms of bureaucratic structure and political traditions. The Public Prosecutor’s Office of the state of São Paulo, the largest and wealthiest one in the country with 1,700 prosecutors, is considered the most politically powerful of Brazil (Ferraz, 1997).

8 The “irreducibleness of wages” means that prosecutors’ salary levels cannot be reduced for any reason. For example, unless they alter the Constitution, the executive and legislative branches cannot create laws that reduce the income of prosecutors and judges. By law, “functional independence” means that prosecutors are not obliged to an institutional hierarchy to perform their roles. That is, even the Attorney General of State or the Attorney General of the Republic can not interfere in their investigations and acts, unless it concerns to administrative matters. Protected by the guarantee of “irremovability”, administrators
However, the governors are in charge of appointing the Attorney General of State from a list of three prosecutors chosen by the entire body of the PPO. For this reason, there have been accusations of political compromising between the São Paulo Attorney Generals of State, who represented specific groups of prosecutors within the PPO, and the governors Orestes Quércia and Luis A. Fleury between 1987 and 1994. These two governors, the latter one a prosecutor himself, had the cooperation of several prosecutors in their administration and have largely supported the lobbies of the PPO during and after the Constitutional Assembly. Even though prosecutors had acquired constitutional guarantees to perform their functions since 1988, the media and the prosecutors I interviewed have denounced cases in which the Attorney General of State during Fleury’s administration (1990-1994) allegedly interfered in investigations conducted against politicians close to the former governor. Such political compromising was allegedly retribution for the political support given to the PPO by two former governors. Such alleged corruption has caused tension among groups of prosecutors within the PPO itself. The groups of prosecutors close to the former governors lost political power in 1996, when a new Attorney General representing other internal factions was appointed.

Despite these accusations and the fact that the governors can use the final appointment of the Attorney General of State to exert influence on the PPO, prosecutors have been actively investigating cases of corruption. They are conducting investigations against powerful political groups that would not have been possible a few years ago. Although civil associations are eligible to represent collective and diffuse interests, the clear majority of lawsuits taken today to protect them are under the responsibility of prosecutors. One of the reasons for this is that, unlike civil associations, the PPO is legally required to conduct these investigations and does not have to pay the costs of losing a judicial case. Moreover, prosecutors can perform a set of activities in the extra-judicial sphere that give them a broad field of intervention in conflicts related to collective and diffuse interests.

4. The PPO political action in the case of children’s rights

Several laws have regulated collective and diffuse rights in the 1980's and 1990's. These laws have granted prosecutors powers and functions for the defense of
cannot punish prosecutors by moving them into an office in another location. The “lifetime” guarantee means that after two years in office, prosecutors can only be removed from their positions by a judicial lawsuit proving misconduct, a rare case in Brazil. Inside the PPO offices themselves there is a form of administrative control on decisions made by prosecutors in two cases. The Superior Council of the PPO examines prosecutors’ reasons for closing an investigation and for reaching agreements with the defendants (Ferraz, 1997 and Gomes, 1989).

There is no statistical information about how many cases prosecutors have pursued against corruption and misuse of governmental funds and how many have been successful. We can say that the ex-governors Orestes Quercia and Antonio Fleury themselves have been some of the most investigated politicians by the São Paulo PPO. The most recent cases against corruption by famous politicians involved the two last mayors of the city of São Paulo, Paulo Maluf and Celso Pitta. These cases frequently appeared on the first pages of Brazilian newspapers during 1997, 1998 and 1999.

10 The Environmental Law (Law n° 6.938/1981), the Law for Disabled People (Law n° 7.853/1989), the Law of Liability for Damages Caused by an Investor to the Capital Market (Law n° 7.913/1989), the Consumer’s Code (Law n° 8.078/1990), the Child and Adolescent Statute (Law n° 8.069/1990), and the
consumers, citizens’ constitutional rights, children and teenagers, the physically challenged, and public property. The 1990 Child and Adolescent Statute (*Estatuto da Criança e do Adolescente*) was one of the laws that has expanded the prosecutors’ field of action. For the first time in Brazil, the law regulated children’s rights and changed all the judicial and governmental policies related to the members of the population between the ages of zero and eighteen. Sectors of the PPO from the states of São Paulo, Paraná and Rio Grande do Sul allied themselves with non-governmental organizations, social movements and sectors from the Catholic Church in preparation for the passing of the law by the House of Representatives. Prosecutors, especially those from São Paulo, strongly influenced the contents of the Child and Adolescent Statute. Because of this influence and the prosecutors’ active role in civil and criminal cases, judges referred to this Statute as “The Prosecutor’s Statute”.

Like the consumer and environmental laws, the Child Statute allows prosecutors to conduct civil investigations concerning the potential violation of children’s collective and diffuse interests and, then, to pursue a public civil lawsuit if the damage can be proven. Moreover, the law has granted prosecutors a set of extra-judicial procedures which provides them with enormous flexibility. They can request documents and technical or administrative information from municipal, state and federal authorities and from governmental and non-governmental organizations. From citizens and authorities, they can request statements. They can also subpoena them to testify. These procedures can be used whenever prosecutors want to verify the accuracy of denouncements or pursue an investigation.

Most importantly, however, all these extra-judicial procedures allow prosecutors to conduct meetings, negotiations and official agreements with authorities, non-governmental organizations and communities involved in a specific conflict (*Estatuto da Criança e do Adolescente*, 1990). In relation to children’s rights, prosecutors have been pressing municipal and state governments to create and implement improved basic policies regarding education, healthcare, and social welfare. They also are pressing the municipalities to create the child councils mandated by the new law. The Child Statute requires every municipality in Brazil to create a child council comprised of members of the municipal government and civil associations who decide how to implement all the public policies regarding children and adolescents. The new role has lead prosecutors to channel several social demands to the Courts of Justice, especially to guarantee rights against the abuse and neglect of governmental institutions.

This intervention has transformed some groups of prosecutors into important political actors who work with local and even international organizations to influence public opinion and press authorities to act against several forms of rights violations. A strong example of this comes from the region of Ribeirão Preto, in the state of São Paulo.

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Anti-corruption Law (1992). All these acts have regulated the use of public civil lawsuits and other judicial instruments in their specific areas (Macedo, 1995).

11 Since the beginning of this century, there have been laws concerned with the protection and assistance of minors in Brazil. But the concept of the *rights of children and adolescents* which the Statute targeted was completely new and aimed to provide equal treatment to every child and adolescent, rich or poor. Before the Statute, the Minor’s Code (1979), regulated only the cases of “minors” considered as being in special circumstances, such as being abandoned, orphaned, and youth offenders. Usually the judicial system handled the cases of only poor children and adolescents who did not have the right to legal assistance (Silva, 1994).
In this region, several farms and plantations throughout forty small and medium-size cities traditionally utilized child and adolescent labor, which is forbidden by law. Together, prosecutors from all of this region’s jurisdictions have begun organizing surprise inspections of these farms. During all of these inspections, the prosecutors were able to enlist the participation of police and governmental institutions responsible for enforcing the law, such as the Ministry of Labor (Ministério do Trabalho). They have begun investigations to verify the liability of farm owners as well as governmental institutions for the use of child labor. At the same time, the prosecutors tried to incarcerate people in charge of recruitment and management of child and adolescent plantation laborers. They also allied themselves with national children’s rights groups and international organizations, such as Unicef (United Nations Children’s Fund) and the International Organization of Labor (IOL), to promote meetings and public discussions with authorities and specialists in order to develop solutions to the problem as well as to denounce the illegal situation in the press. Backed by media publicity and the support of children’s organizations, unions and other non-governmental organizations, prosecutors pressed the mayors to implement municipal programs to assist underage laborers and their families. In addition, the prosecutors urged farm owners to sign official judicial agreements (compromisso de ajustamento de conduta) to stop hiring children and adolescents and to pay fines for breaking the law. The money from these fines are placed in governmental funds for public policies geared toward children. All of the above actions have resulted in the removal of about 4,000 underage workers from farms and plantations, one of the most successful operations in the recent efforts to eradicate child and adolescent labor in Brazil. In this case, the prosecutors have performed a role of political actors who mobilized civil organizations and the government in addition to helping establish in some cities non-governmental organizations for assisting and integrating these children and adolescents into schools.

To reach the official judicial agreements with civilian defendants, prosecutors have applied the legal prohibitions against underage labor. To achieve the settlement of public policies, prosecutors also have used the Constitution’s rules and rights that define the government as responsible for providing education, health, social welfare, and basic services. Especially interesting, is that they have made exclusive use of extra-judicial procedures throughout these actions, turning to lawsuits only as a last resort to assure that the problem would be recognized not simply as a violation of labor laws in general but as a violation of children’s rights in particular. Often, the majority of actions to defend children’s rights show that when prosecutors are performing their roles, they are compelling the government to provide basic policies and services. However, the defense of these rights occurs precisely in the context of ongoing governmental institutional reform in Brazil which has resulted in the progressive cutting of social programs and policies in the last years.

12 The inclusion of the families in this issue is considered fundamental because children’s earnings often comprise a crucial portion of their families’ incomes.

13 Both the public civil lawsuit (ação civil pública) and the civil investigation (inquérito civil) allow prosecutors to establish such official judicial agreements, (compromisso de ajustamento de conduta) when the defendant agrees to compensate for the legal violation through specific ways regulated by law. This official judicial agreement includes terms which permit the automatic punishment of defendants who violate its conditions to repair damages, even if this violation happens again only years later (Mancuso, 1996).
The judicial arena of this political struggle is the Superior Courts of Justice. This kind of litigation involving collectiveness represents a new kind of demand placed before the Superior Courts. As shown by researches, the Courts have been acting carefully when they have to deal with issues that imply any kind of interference in public administration (Faria, 1994). Some judicial sentences, for instance, recognize the rights demanded by prosecutors, but refuse to compel the municipality to implement services because they argue such demands would provoke other social demands, leading to a chaotic situation for public authorities. Despite the laws allowing the PPO to defend collective interests, some other sentences refer to older laws to deny this function of the institution. Some prosecutors respond these judicial sentences by blaming the conservatism of the Courts of Justice or by explaining the decisions as a consequence of the novelty of collective and diffuse interests’ laws.

The defense of children’s or other collective rights made by the majority of the prosecutors interviewed sought to guarantee rights against neglect or abuse by city hall, governmental services and institutions, and public schools and hospitals. Between 1990, when the Child Statute was promulgated, and 1997, there have been 135 lawsuits concerning the defense of children’s rights pursued in the state of São Paulo. More than ninety percent of these lawsuits have been against the government. All these lawsuits, except one, have been pursued by the PPO. The following table presents some information about them.

<table>
<thead>
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<th>Total number of lawsuits: 135*</th>
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<tbody>
<tr>
<td>Defendants</td>
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<td>Governmental institutions and authorities (municipal, state, and federal levels)</td>
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<tr>
<td>Private organizations</td>
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<td>Individuals</td>
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<td>Issues</td>
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<td>Education</td>
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<tr>
<td>Implementation of child councils</td>
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<td>Social welfare</td>
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<td>Child and adolescent labor</td>
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<td>Entertainment</td>
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<td>Programs for youth offenders</td>
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<tr>
<td>Protection of children at risk (of violence and prostitution)</td>
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<tr>
<td>Others</td>
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* These tables are based on information from the Center for the Support of Prosecutors Specializing in Children’s Rights in the Public Prosecutor’s Office of the State of São Paulo. The total number includes public civil lawsuits and other types of lawsuits to defend children and adolescent’s collective, diffuse and individual interests between 1990 and 1997.14

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14 Since I did not have access to the entire judicial process and since some of the lawsuits above were still in the Courts of Justice, it was impossible to obtain information about their final judicial sentences. Unlike
Governmental institutions and authorities are the defendants in 111 of the 135 lawsuits pursued between 1990 and 1997. Educational issues have represented the greatest concern of prosecutors, who reacted immediately after changes in state public policy that began in 1995. The state government is responsible for the majority of public education and, thus, 47 lawsuits have been pursued against state governmental offices – such as the State’s Secretary of Education (Secretaria de Educação) and the governor’s office. These changes have determined the limitation of the age of children eligible to begin attending public schools. These changes have also begun physically reorganizing public schools, leading students to facilities far from their homes, especially in the periphery of the big cities of the state of São Paulo. These changes have provoked such a big reaction from prosecutors that the state government agreed to discuss the educational policies with the São Paulo’s PPO in 1997.

After educational issues, the implementation of the child councils represents the prosecutors’ greatest concern. Prosecutors have pursued 21 lawsuits against the municipal governmental institutions and authorities. As the child councils have been regulated by the Child Statute as part of public policies, prosecutors give priority to their implementation. Prosecutors I interviewed identify mayors’ enormous resistance to implement the child councils and share policy making and budget decisions with associations and citizens chosen to represent the community. The third most important issue is social welfare. The 17 lawsuits in this area sought to implement and improve programs and services to assist children or to include poor families in municipal assistance policies. The 13 lawsuits related to health concerns demand that health care and medicines be provided to some poor children and their families.

5. Conclusion

Although legal renovations discussed above date to the beginning of the 1980s, the new kind of prosecutor’s action has been gaining visibility only in the last years. The slowness of this process is related, among other reasons, to the internal transformations and adaptation of the PPO to the new functions; to the Courts of Justice’s irregular absorption of new types of litigation; and the political impacts both of the social demands defended and of the inspection of executive and legislative branches. Since the new attributes of the PPO lead prosecutors to engage in both the enforcement of laws and the accountability of the government, political and cultural resistance from private and governmental institutions is considerable.

other laws to protect collective rights, the Child Statute allows prosecutors to defend the interests of children and adolescents because they are considered a group with “special rights” that has “absolute priority” in all governmental and judicial policies. These individual rights are called homogeneous individual interests because they are the extension of children’s collective rights to individual children and adolescents. From all the lawsuits mentioned above, 34 were related to individual cases. However, even these individual cases are considered an extension of children’s collective rights. One example are the lawsuits pursued to defend the individual right of some children to begin public school when they are between the ages of six and seven, rather than at the age of seven as mandated by a new governmental decree. This governmental decree was considered unconstitutional by the majority of prosecutors I interviewed and by the PPO’s Center for the Support of Prosecutors Specializing in Children’s Rights. This Center conducts research about law and provides information to prosecutors.
The defense of children’s rights shows prosecutors acting mainly to ensure the implementation of social policies. However, in areas such as the defense of public patrimony, the actions are against corruption and misuse of governmental funds. In these cases, the mayors and municipal representatives are likely the main target of lawsuits, since their conduct and decisions are more visible to prosecutors. The fact that governmental institutions and authorities are the most investigated by prosecutors has political consequences. The new type of inspection made by prosecutors seems to be so uncomfortable to Brazilian politicians that several law projects trying to reduce or modify prosecutors’ functions are circulating in the House of Representatives and in some state legislative branches. A recent law project called *Silence Law* (*Lei do Silêncio* ou *Lei da Mordaça*) has been actively contested by Brazilian PPO and strongly supported by politicians. The House of Representatives is still discussing the law project which forbids prosecutors and other legal agents for giving public information about their investigations.

In addition to these projects, some aspects of the Constitutional reform are indirectly related to the prosecutors’ functions as they concern social rights and the responsibilities of governmental institutions. This causes prosecutors to be very sensitive to the theme of constitutional reform because it can represent a threat to the collective rights they are defending.

These threats reflect an ironic face of the constitutional achievements made by the PPO. The same political ties that were behind the new institutional design later became weakened. To give prosecutors independence to act against authorities and public power, the new rules have forbidden prosecutors who began practice after the promulgation of the new Constitution to engage in political activities. But without strong political representation at the federal and state levels, the Brazilian PPO may lose all the institutional conditions that assure its independence from the executive and legislative branches. Perhaps the challenge of prosecutors is to transform their increased visibility into societal recognition which enables them to preserve and further expand their institutional guarantees and functions.

**References**


Silva, C.A.P. (1994) Os conselhos tutelares da criança e do adolescente de São Paulo e os segmentos pró-cidadania: conflitos, negociações e impasses na construção de espaços públicos (São Paulo’s Child and Adolescent Guardian Councils and the Pro-Citizenship

