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Better Representing the “Diffuse and Collective Interests”: Reducing Legalism in Brazil’s Ministério Público to Improve Environmental Enforcement

*Shannon Clark**

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I.

INTRODUCTION

Brazil’s Ministério Público (“MP”), or prosecuting agency, is a unique institution. Unlike public prosecution entities in other countries, such as federal prosecutors in the United States, the MP is the primary enforcer of Brazil’s environmental laws and initiates the vast majority of environmental public civil actions.¹

* UCLA School of Law, Class of 2017. The author wishes to give special thanks to Professor Alex Wang for his assistance with this comment.

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1. Rosangela Batista Calvancanti, *The Effectiveness of Law: Civil Society and the Public Prosecution in Brazil*, in ENFORCING THE RULE OF LAW: SOCIAL

In the United States, most environmental suits are citizen suits filed by private actors, but in Brazil, the MP files almost 96 percent of those same cases.² These actions have improved compliance with environmental laws and helped contribute to the MP's reputation as an independent body, separate from the corruption known to plague other governmental bodies in Brazil.³ While the MP's lawsuits have proven effective, they are adversarial in nature and preclude more cooperative means of regulation. Additionally, prosecutors within the MP feel as if they must respond to every complaint they receive, which keeps them from prioritizing the largest environmental harms.⁴ As scholars like Robert Kagan, John Scholz, and John Braithwaite have noted: a rigid, punitive style of enforcement may not be appropriate in all situations with all regulated actors.⁵ This legalistic manner of enforcement creates tension between the MP, the regulated actors, and environmental agencies; slows the enforcement process; and strains the MP's limited resources.⁶

This paper proposes creating a second branch of the MP's offices: a more mediative style of enforcement for less culpable actors, in line with actions that certain members of the MP's office have already begun to take.⁷ Prosecutors within this mediative branch would go beyond judicial remedies and would collaborate with environmental agencies, government bodies, and community members to solve challenging environmental problems. This plan is already within the range of autonomy

ACCOUNTABILITY IN THE NEW LATIN AMERICAN DEMOCRACIES 34, 38, 43 (Enrique Peruzzotti & Catalina Smulovitz eds., 2006).

2. *Id.* at 43.

3. Lesley K. McAllister, *Environmental Advocacy Litigation in Brazil and the United States*, 6 J. COMP. L. 203, 216 (2011).

4. *Id.* at 216.

5. See generally Robert A. Kagan and John T. Scholz, *The "Criminology of the Corporation" and Regulatory Enforcement Strategies*, 7 JAHRBUCH FÜR RECHTSOZIOLOGIE UND RECHTSTHEORIE, 352, 370 (1980); see generally John Braithwaite, *Responsive Regulation and Developing Economies*, 34 World Development 884, 887, 896 (2006).

6. LESLEY K. MCALLISTER, MAKING LAW MATTER: ENVIRONMENTAL PROTECTION AND LEGAL INSTITUTIONS IN BRAZIL, 142-146 (Stanford Univ. Press, ed., 1st ed. 2008).

7. *Id.* at 186.

given to the MP and would allow the MP to retain its reputation as an independent, un-corruptible enforcer, while also remedying some of the problems and inefficiencies that result from the current rigid, legalistic enforcement style.

II.

THE MINISTÉRIO PÚBLICO

The beginnings of the MP can be traced back to the early sixteenth century, when its purpose was the enforcement of criminal laws on behalf of the royal family during Brazil's colonization.⁸ The modern MP's power has broadened considerably.⁹ The 1988 Constitution expanded the MP's authority beyond criminal matters to also include civil matters, specifically, protecting the "diffuse and collective interests" of the public at large.¹⁰ These "interests" are just as broad as they sound: They encompass environmental protections, consumer rights, minority rights, and many others.¹¹ Further, the MP can direct its enforcement powers at all levels of government. It can file a lawsuit instructing a local government to provide services for the homeless, or sue to dispute an action taken by an agency or other governmental body.¹² Should a government agency fail to provide the MP with documents or technical support regarding a particular matter, the MP can file criminal charges against the agency.¹³

In addition, the 1988 Constitution gave the MP functional and administrative autonomy.¹⁴ All prosecutors in the MP are given

8. Oscar Vilhena Vieira, *Public Interest Law: A Brazilian Perspective*, 13 *UCLA J. INT'L L. & FOREIGN AFF.* 219, 238 (2008).

9. *Id.* at 239.

10. Maria Tereza Sadek & Rosangela Batista Cavalcanti, *The New Brazilian Public Prosecution: An Agent of Accountability*, in *DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA*, 201, 203–204 (Scott Mainwaring & Christopher Welna eds., 2003).

11. *Id.* at 205.

12. *Id.* Guillermo O'Donnell termed this ability of the MP to police the actions of other state agencies, "horizontal accountability." *Id.* at 206.

13. Lesley K. McAllister, *Public Prosecutors and Environmental Protection in Brazil*, in *Env'tl. Issues in Latin Am. and the Caribbean*, 207, 210 (Aldemaro Romero & Sarah E. West eds., 2005).

14. Vieira, *supra* note 8 at 239.

the same insulation from outside pressures as the judiciary lifelong tenure.¹⁵ For these reasons, the MP is often referred to as a fourth branch of government.¹⁶ However, the amount of independence and resources available to a particular MP office to prosecute environmental harm varies depending on the state in which it is located.¹⁷ For example, the MP office in the state of Pará has found protective environmental practices difficult due to the state government's control over the Pará MP's budget and its ability to appoint the attorney general, the Pará MP's regional head.¹⁸

The MP has been successful at increasing compliance with environmental laws as well as increasing environmental agencies' enforcement of environmental laws. In São Paulo, the number of environmental investigations conducted by the MP rose from 3 investigations in 1984 to 5,890 in 2004.¹⁹ Although many cases resulting from the MP's investigations are settled out of court, the MP has still been able to use the threat of litigation to force violators to mitigate the environmental effects of their activities—for example, by installing pollution reduction technology. In one high-profile case, the São Paulo MP filed a civil action against twenty-four national and multinational companies in Cubatão, Brazil's largest industrial district.²⁰ By pursuing this case, the MP forced all twenty-four companies to install pollution control mechanisms.²¹

Additionally, the MP has been successful at holding environmental agencies accountable. Because prosecutors may request information and explanations about agency decisions, agency officials answer to prosecutors for lax enforcement or

15. *Id.* Given the MP's broad authority and autonomy, many scholars have expressed concerns about the MP's lack of accountability. While these concerns are a part of an important discussion regarding the MP, the MP's lack of accountability will not be addressed in this paper.

16. *Id.*

17. MCALLISTER, *supra* note 6 at 109.

18. *Id.* at 110.

19. *Id.* at 99.

20. ROMERO & WEST, *supra* note 13 at 216.

21. *Id.* at 225.

industry favoritism.²² The prosecutor’s watchful eye has helped reduce corruption in environmental agencies and created a culture where rules are more often followed.²³ Finally, and perhaps most importantly, the MP’s enforcement practices have given the public the sense that crimes committed by powerful interests in Brazilian society—environmental or otherwise—will not be ignored.²⁴ By filing cases against powerful industries and governmental entities, the MP has gained a reputation as above and distant from the corruption associated with all levels of the Brazilian government, and has gained legitimacy in the eyes of the public.²⁵

III.

THE PROBLEM OF RIGID LEGALISM WITHIN THE MINISTÉRIO PÚBLICO

The MP’s success in enforcing environmental laws against some of the most powerful interests in Brazil is due in part to its inflexible application of the letter of the law. While this legalistic approach may be beneficial when dealing with large deviations from the law or with government officials who improperly discharge their duties, it is not beneficial in all situations, such as with minor violators who lack the resources or capacity to comply with environmental laws.²⁶ Additionally, despite the broad manner in which the MP’s authority is defined in Brazil’s constitution, most attorneys working for the MP do not view themselves as having a great deal of discretion in how they approach violations.²⁷ This idea is termed the “principle of obligation”: a prosecutor has the obligation to respond to all allegations that come to her desk and to file criminal charges

22. Sadek & Cavalcanti, *supra* note 10 at 209; *see generally* Andreas Schedler, *Conceptualizing Accountability*, in *The Self Restraining St.*, 13, 14–15 (Andreas Schedler, Larry Diamond & Marc F. Plattner eds., 1999).

23. Sadek & Cavalcanti, *supra* note 10 at 210.

24. *Id.*

25. *Id.*

26. See Kagan & Scholz, *supra* note 5.

27. Fabio Kerche, *Autonomia e discricionariedade do Ministério Público no Brasil*, 50 *Dados* 259, 272 (2007) available at http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0011-52582007000200002, *translated in* SciELO Brazil.

where sufficient evidence of guilt exists.²⁸ While the principle is not mandatory, Brazilian prosecutors in the MP apply it to both criminal and civil cases, including environmental cases.²⁹

This strict application of the letter of the law to every complaint filed with the MP's environmental section has resulted in three main problems that have hindered the MP's ability to enforce environmental violations. First, the MP is unable to prioritize cases with larger environmental harms or more culpable violators. Second, the MP must apply inappropriate penalties to minor offenses. Third, the MP's style of enforcement has created conflicts with environmental agencies.

As scholars have noted, unwavering loyalty to the principle of obligation can seriously weaken a regulatory body's ability to prioritize problems.³⁰ This problem has become very clear in the MP's environmental divisions. Anywhere from 75 to 90 percent of its investigations and cases begin with complaints, mostly from nongovernmental organizations or private citizens.³¹ Many of these complaints report small environmental problems, such as noise pollution from a neighbor, or the cutting down of a small number of trees.³² In São Paulo, for example, the largest category of environmental cases concerned deforestation or devegetation. Of these cases, fifty percent concerned less than a hundred trees.³³ In an effort to respond to each and every one of these problems, prosecutors often file civil actions for relatively minor harms. Consequently, they are prevented from adequately addressing serious environmental violations.

Additionally, the rigid application of the law does not allow prosecutors to tailor regulatory responses to less culpable violators. Authors Robert Kagan and John Scholz argue that a

28. JULIA FIONDA, PUBLIC PROSECUTORS AND DISCRETION: A COMPARATIVE STUDY 9 (1995).

29. MCALLISTER, *supra* note 6, at 94–95.

30. *See generally*, Eugene Bardach & Robert A. Kagan, Going by the Book: The Problem of Regulatory Unreasonableness 166–72 (1982); Bridget Hutter, The Reasonable Arm of the Law?: The Law Enforcement Procedures of Environmental Health Officers 132–133 (1988).

31. MCALLISTER, *supra* note 6, at 162.

32. *Id.*

33. *Id.* at 163.

legalistic regulatory approach is best reserved for “amoral calculators,” actors whose decision on whether to follow the law is purely motivated by a rational calculation of costs and opportunities.³⁴ Strict adherence to the law in these limited situations can effectively deter sophisticated amoral calculators from viewing noncompliance as a cost-effective solution.³⁵

Kagan and Scholz also argue that strictly applying penalties for every offense does not effectively deter the actor when he does not have the capacity to understand or follow the law, or views the regulations as unreasonable.³⁶ In Brazil, where environmental violations are often a byproduct of poverty, violators frequently fall into one or both of these categories. For example, when an environmental prosecutor in northeastern Brazil confronted a hundred small shrimp farmers operating on a federally-protected mangrove with legal proceedings that would force them to shut down or relocate, they informed him they would simply refuse to leave.³⁷ These farmers were dependent on this new shrimp farming industry for their livelihoods. With no other recourse available to them, fighting the relocation was their best option.³⁸ Additionally, because the enforcing the law would take away their only source of income, the environmental regulation appeared very unreasonable to them, which made them inclined to fight it.³⁹ To move forward with the law’s required response would completely remove this community’s means of support and cause a potentially dangerous and controversial confrontation with police.⁴⁰ Thus, strict

34. Kagan & Scholz, *supra* note 5, at 69–70.

35. *Id.*

36. *Id.* at 73–74. *See also* Braithwaite, *supra* note 5, at 887 (arguing that regulation should begin with a more persuasive approach, and then escalate to more punitive options only after the initial approaches fail).

37. Salo V. Coslovsky, *Relational Regulation in the Brazilian Ministério Público: The Organizational Basis of Regulatory Responsiveness*, 5 REG. & GOVERNANCE 70, 74 (2011).

38. *Id.*

39. *Id.* This response is indicative of the type of regulated actor Kagan and Scholz termed “political citizens.” Kagan & Scholz, *supra* note 5, at 68. In response, Kagan and Scholz suggest that the regulator act as a politician, willing to suspend enforcement or adapt regulations to the circumstances. *Id.*

40. Kagan & Scholz, *supra* note 5, at 68.

adherence to penalties for environmental violators frequently results in undesired outcomes for both the MP and regulated entities.

Finally, prosecutors' adherence to the view that they lack discretion to enforce environmental laws creates conflicts with environmental agency officials, who often reject the strict application of the letter of the law.⁴¹ Prosecutors often make large demands of agency regulators for technical information and investigatory assistance that are difficult to accommodate given the agency's lack of resources.⁴² When an agency doesn't respond immediately to the prosecution's request, or fails to respond to even a small violation, prosecutors accuse agency officials of being inept, corrupt, or simply working against environmental interests.⁴³ These conflicts strain the relationships between prosecutors and agency officials, as well as hamper environmental enforcement. Agency officials are more likely to resist cooperating with prosecutors' requests or to limit communication with prosecutors to the minimum required.⁴⁴

IV.

CREATING THE COMMUNITY RESPONSE DIVISION

Despite the prevalence of legalism within many MP offices, some prosecutors have adopted a more cooperative approach to regulation. Several prosecutors have gone beyond strict legal work, reaching out to other institutional players to creatively address compliance issues case-by-case. These prosecutors have demonstrated the possibilities for more cooperative and creative enforcement methods within the MP.

In light of these successes, this paper proposes dividing the environmental sections of MP regional offices into two separate

41. MCALLISTER, *supra* note 6, at 142.

42. Romero & West, *supra* note 13, at 226.

43. *Id.* In one particularly severe but well-remembered case, an environmental prosecutor used his contacts with the environmental secretary to get an agency employee demoted because he wouldn't provide information to the prosecutor regarding issues that the employee viewed as within the agency's jurisdiction. MCALLISTER, *supra* note 6, at 135.

44. *Id.*

sections. The first division would continue using the MP's current legalistic method of enforcement, and would handle cases with more culpable violators who have more capacity to change, such as governmental entities and large companies. The new second division would handle cooperative regulatory work, termed for the purposes of this paper the "Community Response Division" (CRD). The CRD would be responsible for cases with less culpable violators who do not have the capacity to identify their violations, or who would be unduly burdened by the costs of compliance. While the CRD would be separate from the traditional, rigid sector of the MP, it could be composed of existing MP staff who already use a more cooperative regulatory approach and further developed through hiring. The decision on whether to send a case to the CRD or the traditional division would be based on standardized criteria, such as whether the violator is an individual, company, or governmental agency; the resources of the violator; and the potential for environmental harm.

Ultimately, the CRD's methods of operating would differ in three ways from its traditional, legalistic counterparts. First, the CRD would not be tied to the idea of the "principle of obligation" and would have the discretion to filter out lower priority cases, such as noise pollution complaints and minor deforestation violations. Prosecutors then could prioritize more serious violations. Second, the CRD would work with community leaders, local and regional governments, and agency employees to develop solutions to environmental violations. Third, the CRD would seek non-legal, less punitive methods of addressing noncompliance when appropriate, based on the specific facts of any given case. Through this distinct way of operating, the CRD would address many of the problems facing the MP as a result of its legalistic regulatory style.

By relaxing rigid compliance with the principle of obligation, prosecutors in both environmental divisions of the MP would have the ability to better prioritize their cases. Currently, as a result of the principle of obligation, Brazilian prosecutors feel that external complaints from organizations and citizens govern

their workloads.⁴⁵ As one environmental prosecutor in São Paulo stated, “[t]he Ministério Público does not choose its agenda. . . . The institution does not have a mechanism that allows the few existing prosecutors to pay attention to the most significant issues.”⁴⁶ By giving prosecutors within the CRD the freedom to adjust formalized, legal responses for each and every case, prosecutors would be able to group lower-priority cases (i.e. complaints with lower environmental costs such as noise complaints) and streamline how they are processed—through templates, standardized responses, and delegation to non-attorney legal personnel. When the amount of time spent on lower priority complaints is reduced, prosecutors will have more time to work on higher impact projects.⁴⁷ Additionally, prosecutors within the legalistic division will also benefit from the CRD, as they will have more time to devote to larger violators when the minor violators are taken care of by the CRD.

Next, the creation of the CRD would allow prosecutors to address cases with methods more tailored to the needs of specific enforcement problems and to develop solutions beyond what the legal system offers. These solutions may exist in the form of community programs or non-legal resolutions with community members, local governments, or agency officials. Several prosecutors, upset with the current limitations of the more legalistic culture of the MP, have already used creative thinking and more cooperative means of regulation to come to better outcomes than a strict legal interpretation would allow. In some cases, prosecutors have worked outside of their offices with organizers in the local community to reduce crime.⁴⁸ In other situations, prosecutors have utilized the resources of environmental agencies to develop methods of shifting the costs of compliance away from actors who are unable to support those

45. This contrasts with U.S. attorneys who provide public legal services for the poor and have much more autonomy in deciding which cases or clients will receive particular allocations of time and resources. Carrie Menkel-Meadow & Robert G. Meadow, *Resource Allocation in Legal Services: Individual Attorney Decisions in Work Priorities* 5 L. & Pol’y. Q. 237, 247 (1983).

46. McALLISTER, *supra* note 6, at 162.

47. See Coslovsky, *supra* note 37, at 79.

48. *Id.* at 83.

costs. For example, in the case of the shrimp farmers who refused to abandon their farming location, the prosecutor collaborated with the state environmental agency to gather data on the farmers and the surrounding area.⁴⁹

Using this data, the prosecutor found another plot of land that could accommodate the farms and was close enough to maintain their business connections with the local community.⁵⁰ In short, the prosecutor helped create a better, more tailored response to the problem than could not be achieved by simply punishing the shrimp farmers. Had the prosecutor gone forward with removing the shrimp farmers from the mangroves, the removal would have been confrontational, potentially dangerous, and taken away the income of an entire community. Additionally, the prosecutor would have no way of monitoring the mangrove to ensure that the farmers did not simply return to the area, making the show of force potentially both harmful and ineffective. The CRD would formalize a section of the MP where similar actions could become more commonplace and prevent inappropriate legalistic responses to violations.

Finally, an additional division to encourage collaboration with entities outside the MP would improve the MP's relationships with environmental agencies. Most agency officials are not the corrupt anti-environmentalists that many prosecutors think they are but are instead simply overworked government employees.⁵¹ In interviews, many agency staffers have expressed that they are more willing and more likely to enjoy working with prosecutors under collaborative circumstances.⁵² When agency staff feel as if the MP acknowledges their expertise and does not overstep into the agency's jurisdiction, they are more likely to provide prosecutors with the needed information and manpower to go forward with cases.⁵³ As one agency staffer put it, “[w]hen. . . we sit down together and agree on how the case should proceed, it is perfect—we are participating, we are given the chance to say

49. *Id.* at 74–75.

50. *Id.* at 75.

51. MCALLISTER, *supra* note 6, at 133–34.

52. *Id.*

53. *Id.*

what we have to say.”⁵⁴ This proposal would likely not improve relationships between agency staffers and prosecutors that remain in the traditional, legalistic section of the MP’s office. However, since the MP does maintain suits against agencies and the governmental entities that oversee them, an adversarial relationship between the traditional section of the MP’s office and environmental agencies is not only inevitable but also desired to prevent corruption.

V.

CRITIQUES OF THE COMMUNITY RESPONSE DIVISION

There are several valid critiques of this proposal. First, resources to support the CRD are limited. As any governmental body implementing environmental concerns, let alone one in a developing country, the MP has limited resources.⁵⁵ Behind concerns regarding prioritization of cases lies an unspoken truth—if the MP had the resources to hire more attorneys, they would have the manpower to handle all the complaints they receive and give additional consideration to those claims that merit them. As a result, many could argue that splitting the MP’s office into different sections will not ease this burden. One could argue it would stretch resources even more thinly, as the fact-specific regulation this proposal recommends for the CRD is very time-intensive.

These are valid points; however, they do not render the proposal infeasible. As mentioned earlier, this proposal envisions initially staffing the CRD with MP prosecutors who believe that the traditional, legalistic practices need to be re-evaluated. By utilizing these prosecutors to fill spots in the CRD initially, and adding more prosecutors to the CRD through normal hiring practices, there will be no need to hire specifically to create the CRD. Additionally, the CRD’s increased ability to prioritize more impactful cases and streamline less important ones will free up additional resources. Overall, while the CRD may lack the staff to give every case its due attention, the practices it would adopt

54. *Id.* at 134.

55. *See* Coslovsky, *supra* note 37, at 75–76.

through this proposal will allow it to allocate more resources to the cases that need attention most.

Critics also contend that creating a more cooperative section of the MP opens the door to corruption. After all, the argument for an adversarial, independent MP is to hold other government entities and powerful interests accountable.⁵⁶ There are instances where an MP’s office has become too close to local government officials, resulting in corruption. For example, the Pará State MP’s office, which receives funding from the local municipal government, has failed to pursue rampant allegations that local government officials are involved in illegal logging.⁵⁷ While these criticisms are compelling, such concerns have been incorporated into this proposal. The entire purpose for creating a separate section of the MP dedicated to cooperative, responsive regulation—rather than suggesting that all prosecutors within the section should act more cooperatively—is to mitigate the risk of corruption. Under this proposal, the legalistic section of the MP will continue to prosecute corrupt officials and big business. When regulating these types of rational actors, the MP should act as a policeman rather than a politician or a counselor.⁵⁸ Should corrupt dealings begin between the CRD and local officials, the traditional, legalistic arm of the MP should step in.⁵⁹

While this may mean that the legalistic arm of the MP would have to oversee the CRD’s dealings, the burden would not fall on them completely. As in the past, citizens and NGOs can and will report any possible unscrupulous dealings.⁶⁰ In addition, cooperative relationships with agency staff may actually help reduce corruption. One prosecutor from São Paulo knew an agency employee who would give him a copy of any impact assessment on a permit application.⁶¹ The employee would do so

56. Sadek & Cavalcanti, *supra* note 10, at 206.

57. MCALLISTER, *supra* note 6, at 111.

58. Kagan & Scholz, *supra* note 5, at 68.

59. *Id.*

60. McAllister, *supra* note 3, at 20. Environmental nongovernmental organizations in Brazil, even those with lawyers on staff, generally pass on environmental complaints to the MP to file as civil suits. *Id.*

61. Coslovsky, *supra* note 37, at 81.

because higher up corrupt officials could alter the assessment later so that the permit would be granted, and this way the prosecutor had the correct copy and proof of any dishonesty.⁶² In this way, this prosecutor's close relationship to an agency employee actually helped him root out corruption higher up in the agency.

Finally, critics could say that these legalistic beliefs have permeated the culture of the MP's office, are deeply rooted, and will not be relaxed or changed so quickly. After all, many prosecutors firmly believe in the need for an independent and adversarial prosecutorial force. Other prosecutors have even published articles upholding the necessity of the principle of obligation.

There are more and more attorneys, however, who are beginning to question whether steadfastness in these ideals is the best way to regulate and advocate for change.⁶³ In fact, scholars have observed two camps developing within the MP's office: the "hardliners" (who believe the letter of the law should be followed rigidly) and the "cooperators" (who make an effort to work collaboratively with agencies to adapt regulations to particular circumstances).⁶⁴ The hope of this proposal is that by creating a separate section of the MP's office where this more cooperative culture can be embraced, and by hiring prosecutors who also believe in these principles, the MP will embrace these ideas.

Additionally, because certain "hardliners" may not approve of the new section within the MP, they should not be required to operate within this new section. In fact, these "hardliners" would be given more time and resources to focus on what they so strongly believe in—ensuring that the strongest, wealthiest interests in Brazil are not above the law. Thus, there is a strong argument to be made that there is a place for the CRD within the current MP.

62. *Id.*

63. *Id.* at 163.

64. *Id.* at 133–34; *see also* Coslovsky, *supra* note 37, at 71 (dividing MP prosecutors into "fact oriented" prosecutors, who wish do think creatively about individual cases and "office bound" prosecutors, who are more focused on addressing every case and remaining independent from other governmental entities).

VI.

CONCLUSION

The Ministério Público in Brazil has managed to do what many developing countries still struggle to do—create a system that holds violators of environmental laws accountable for their illegal actions despite corruption and a lack of resources. The MP has become the place to turn to for many groups and citizens in Brazil struggling with environmental problems. As one representative of a Brazilian environmental group described it, “first you send a letter to the responsible agency, looking for action to be taken [on an environmental violation], and when you don’t get any answer, then you look for help at the Ministério Público.”⁶⁵ The same strict, punitive approach of the MP upon which environmental groups and citizens rely, however, has also created barriers to effective enforcement. As Kagan, Scholz, and Braithwaite suggest, not all regulated entities respond best to strict, legalistic environmental enforcement.⁶⁶

This proposal seeks both to preserve the MP’s successes in prosecuting Brazil’s worst polluters and to remedy some of the problems that prevent the MP from regulating efficiently and effectively. Beyond simply improving how the MP currently operates, this paper seeks to institutionalize many of the steps that current prosecutors have already taken in seeking better solutions outside of the legal context. By creatively addressing environmental violations through community programs and other non-legal remedies, the Brazilian MP can develop a regulatory regime that tailors its response to the violation at hand. While this proposal may not entirely address Brazil’s regulatory enforcement challenges, it may provide a way for the MP to truly represent the “diffuse and collective interests” of the Brazilian public with regulatory methods that are just as diverse.

65. McAllister, *supra* note 3, at 20.

66. Kagan & Scholz, *supra* note 5, at 68; Braithwaite, *supra* note 5, at 884.