

Model Protocol on Human Rights for Public Prosecutors

The purpose of this Model Protocol on Human Rights for Public Prosecutors is to create a practical framework that prevents public prosecutors from becoming complicit in human rights abuse. It shall provide reference to possible solutions for public prosecutors when they are confronted with human rights abuse and guide them on how to comply with international human rights standards in their day-to-day work.

Rule 1

Public Prosecutors have the professional responsibility to respect human rights pursuant to the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors¹. This should be reflected in all their actions.

Rule 2

Public prosecutors should act independently, without unlawful interference from government, parliament and other external influence to carry out their professional responsibilities.

Rule 3

Public prosecutors should uphold the rule of law, in particular the right to a fair trial, protect the defendant from all forms of discrimination and respect human rights standards at all stages of their work, including:

- Police investigations, such as ensuring a person's right to privacy, guaranteeing that torture or other ill-treatment are not used and that the right not to incriminate oneself is respected;
- Arrest and pre-trial detention, such as that the freedom from torture or other ill-treatment is respected;
- Pre-trial procedures, such as bringing individuals promptly before a judge;
- Trial procedures, such as guaranteeing that statements that were made as a result of torture are not used in proceedings, the equality of arms, not to hold back evidence that can discharge a person standing trial, and respecting the presumption of innocence;
- Sentencing, such as not demanding a sentence for a convicted offender that includes torture and being aware of non-custodial measures;
- Convicted offenders who are sentenced to prison should, for instance, not be subject to torture or other ill-treatment and be treated with humanity and respect.

¹ IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, rule 1(h). Available from: <<http://www.iap-association.org/Resources-Documents/IAP-Standards>>.

Rule 4

Public prosecutors should attend educational programs on human rights (such as continuing legal education programs), operated by their national professional associations or external (and accredited) providers (such as universities and non-profit organizations), to better understand:

- the international human rights framework, including all applicable laws, principles and standards at the international, regional and national levels;
- the role that public prosecutors have in promoting human rights, particularly in identifying, preventing and mitigating actual and potential human rights violations associated with their work.

Rule 5

When national law is absent, weak, unenforced and in tensions with human rights standards, public prosecutors should apply international human rights law and interpret applicable laws, principles and standards from a human rights perspective respectively.

Rule 6

Public prosecutors who became aware of a human rights violation should take all necessary steps to ensure that those responsible for the wrongdoings are brought to justice. In particular, public prosecutors should ensure at all stages of their work that any person who used torture or other ill-treatment during the investigation is brought to justice. The way in which the human rights abuse should be addressed will depend on the particular circumstances, including the severity of the human rights abuse. This may include the following actions:

- Interpreting applicable laws, principles and standards from a human rights perspective;
- Preventing any risk of human right violations, as part of the public prosecutor's supervision over the legality of investigations and the execution of court rulings, by reminding police officers, lower-ranked public prosecutors and others who are involved in the respective case of their duty to respect human rights under international law and the severe consequences their actions could have for them, such as being removed from their position;
- Drawing the prosecution service's attention to the human rights abuse, such as involving superior public prosecutors and/or the attorney general in the case. This might include to communicate to them how the human rights abuse could be avoided or mitigated, and explain to them the (national and international) consequences that the prosecution service could face when the human rights abuse should be ignored;
- Communicating the human rights violation to the presiding judge(s);
- Withdrawing from representation of the respective case, as a last resort, when the prosecution authority or superior public prosecutor persists in violating human rights, notwithstanding the public prosecutor's expressed concerns about the respective case;

Rule 7

Public prosecutors should support the efforts of national prosecutors associations, other (professional) associations and initiatives to protect and promote human rights standards within their profession. Additionally, public prosecutors who are involved in international prosecutorial cooperation should actively uphold human rights standards, in particular with regard to the protection of human rights defenders.

Rule 8

Depending on the severity of the human rights abuse and the exhaustion of domestic remedies, public prosecutors should report the respective human rights abuse to regional and international human rights mechanisms, such as the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the European Court of Human Rights, the International Criminal Court, international professional associations or international human rights groups.

Rule 9

In case the public prosecutor is not able to further her/his investigation into a human rights abuse because of internal pressure and/or being subject to intimidation (such physical threats or surveillance of the public prosecutor and/or her/his family members), she or he should carefully consider her/his actions, keep back-up the information on the human rights abuse (by using, for instance, an external server), inform her/his network, international organizations, professional organizations, human rights groups and the media about the human rights abuse and her/his threat, identify and analyze the threat and its perpetrators, and, if possible, confront the threat. Under certain circumstances, public prosecutors should also consider to suspend their investigations and leave the area or go into hiding.

This document is produced in the framework of the Initiative "Increasing Accountability and Respect for Human Rights by Judicial Authorities" by the Netherlands Helsinki Committee (NHC) and the Helsinki Foundation for Human Rights (HFHR). © NHC, HFHR, 2016.