

**LAW AND THE PROTECTION OF HUMAN RIGHTS  
DEFENDERS: AN ANALYSIS OF THE BRAZILIAN LEGAL  
FRAMEWORK FOR THE PROTECTION OF  
HUMAN RIGHTS DEFENDERS**

***DIREITO E A PROTEÇÃO DE DEFENSORES (AS)  
DE DIREITOS HUMANOS: UMA ANÁLISE DO  
MARCO LEGAL BRASILEIRO PARA A PROTEÇÃO  
DE DEFENSORES (AS) DE DIREITOS HUMANOS***

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**Abstract:** Human rights defenders are the protagonists in bolstering democracy and undertaking human rights change. As they face up the *establishment* and challenge the dominant groups controlling economic and political power, human rights defenders are more often than otherwise targets of state and non-state violence and, consequently, they need protection. Yet, what does Brazilian law say about the protection of human rights defenders? To whom belongs the obligation to protect human rights defenders in Brazil exactly? While considering the interaction of international law, politics and national law *vis-à-vis* the protection of human rights defenders fighting for democracy, human rights and social justice, this paper conducts an analysis of the legal framework for the protection of human rights defenders at the level of Brazilian jurisdiction. It does so in order to contend there is a legal obligation for the Brazilian State to protect human rights defenders and that there is a series of rights that are crucial for human rights defenders to be able to conduct their activities. The final section presents a brief conclusion in which this paper's discussions are recapitulated.

**Keywords:** Human Rights; Human Rights Defenders; Brazilian Law.

**Resumo:** Defensores(as) dos direitos humanos são os(as) protagonistas no fortalecimento da democracia e realização das mudanças de direitos humanos. Como eles enfrentam o *status quo* e desafiam os grupos dominantes controladores do poder econômico e político, defensores(as) dos direitos humanos são frequentemente alvos de violência estatal e não-estatal e, portanto, eles(as) precisam de proteção. No entanto, o que a lei brasileira diz sobre a proteção de defensores(as) dos

direitos humanos? A quem pertence a obrigação de protegê-los(as) no Brasil exatamente? Levando em consideração a interação do direito internacional, da política e da legislação nacional vis-à-vis a proteção de defensores(as) dos direitos humanos que lutam por democracia, direitos humanos e justiça social, este trabalho realiza uma análise do quadro jurídico para a proteção de defensores(as) dos direitos humanos na jurisdição brasileira. Fá-lo, a fim de arguir que há uma obrigação legal para o Estado brasileiro proteger os(as) defensores(as) dos direitos humanos e que há uma série de direitos que são cruciais para que eles(as) sejam capazes de conduzir suas atividades. A seção final apresenta uma breve conclusão em que as discussões deste artigo são recapituladas.

**Palavras-Chave:** Direitos humanos; Defensores(as) de Direitos humanos; Direito brasileiro.

**Sumário:** 1. Introduction; 2. An overview of the international and regional legal frameworks for the protection of human rights defenders; 3. The Brazilian transition to democracy; 4. The legal framework for the protection of human rights defenders at federal level in Brazil; 4.1 The 1988 Brazilian Constitution; 4.2 Administrative legislation; 4.3 Resolution 14, of 28 July 2004; 4.4 Presidential decree 6.044, of 12 February 2007; 4.5 Presidential Decree 8.724, of 27 April 2016; 5. The legal framework for the protection of human rights defenders at state level in Brazil; 5.1 Espírito Santo State Act 8.233, of 21 December 2005; 5.2 Bahia State Decree 12.003, of 10 March 2010; 5.3 Ceará State Decree 31.059, of 22 November 2012; 5.4 Pernambuco State Act 14.912, of 27 December 2012; 5.5 Minas Gerais State Act 21.164, of 17 January 2014; Conclusion; References.

## 1. INTRODUCTION

This paper examines the Brazilian legal framework for the protection of human rights defenders.<sup>1</sup> While approaching Brazil's current legal system in light of the country's recent re-democratisation,<sup>2</sup> it analyses the protection of human rights defenders according to Brazilian constitutional and infra-constitutional (statutory and ordinary) law. The first section provides an overview of the international and inter-American legal frameworks for the protection

<sup>1</sup> This paper understands the term *human rights defenders* as explained by TERTO NETO (2016). Thus, it not only adopts the term *human rights defenders* to refer to a person, group or entity that is "doing something" for the protection, promotion and/or defence of human rights, but also understands that Brazilian human rights defenders "come from varied backgrounds including human rights activists, members of the clergy, relatives of victims, community leaders, trade unionists, environmental activists, students, academics, lawyers, journalists and some civil servants. While many defenders work within civil society organisations, much of the human rights defenders activity in Brazil is rooted in grassroots social movements that have organised at the state and federal level to enhance their impact on the local and national policies. [...]", in E/CN.4/2006/95/Add.5, Paragraph 246, page 50. Office of the United Nations High Commissioner for Human Rights. Available at <[http://www2.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.95.Add.5\\_.pdf](http://www2.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.95.Add.5_.pdf)>. Accessed 16 May 2016.

<sup>2</sup> For a description of Brazil's transition to democracy under the *spiral model* of human rights change theory see TERTO NETO (2016) and RISSE; ROPP; SIKKINK (1999; 2013).

of human rights defenders. The second section makes some comments on the Brazilian transition to democracy in order to relate the legal analysis to the argument that despite the Brazilian re-democratisation having brought the legitimate rule of law and some human rights developments, the legal framework for the protection of human rights defenders is still inadequate. The third section analyses the legal framework for the protection of human rights defenders at federal level. The fourth section studies the legal framework for the protection of human rights defenders at state level. The final section makes the point that Brazil's human rights obligations stipulate that everyone under Brazil's jurisdiction must be protected against human rights abuses, particularly human rights defenders who carry out the fight for democracy, human rights and social justice. It argues that in theory Brazil's current legal framework provides for demanding that the Brazilian State take action regarding the protection of human rights defenders and their work.

## **2. AN OVERVIEW OF THE INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

There is no binding international human rights instrument designed specifically for the protection of human rights defenders. There is, nevertheless, a non-binding international human rights instrument that specifically refers to the protection of human rights defenders and their work. Article 2 (1) (2) of the *1998 United Nation's Declaration on Human Rights Defenders* (hereafter 1998 UNDHR-D)<sup>3</sup> stipulates that States have a responsibility and duty to protect, promote and implement all human rights and ensure that they are fully enjoyed by all persons under their domestic jurisdiction by taking all necessary legislative, administrative etc. steps. Although a non-binding instrument, the 1998 UNDHR refers to series of rights that are protected by binding international human rights instruments (OHCHR, 2011). These rights are crucial for human rights defenders to conduct their work for democracy, human rights and social justice.<sup>4</sup> Once binding international human rights instruments that protect those rights have been ratified by a State, they can and should be used to demand that the State protect not only human rights in general, but also human rights defenders and their work in particular (OHCHR, 2011).

<sup>3</sup> UN Resolution A/RES/53/144 of 9 December 1998. Available at United National (UN) <<http://www.un.org/>>. Accessed 22 April 2016.

<sup>4</sup> One should make the legal argument based on binding international and regional human rights instruments. This is to make it legally feasible to demand that State protect human rights defenders and their work.

By the same token, although there is no instrument produced by the Organisation of American States (henceforth OAS) that specifically regulates the rights of human rights defenders, it is generally accepted that the various dispositions present in OAS instruments for human rights protection are fully capable of guaranteeing the required legal conditions for human rights defenders to demand state protection in order to safely continue their work in the Americas. Thus, OAS human rights treaties can also be applied to the protection of human rights defenders and their work. In addition, it is important to consider that the *Inter-American Court of Human Rights* has “duly recognized the importance of the work done by human rights defenders and that the state has a duty to protect them” (QUINTANA; FERNANDÉZ, 2011) in its rulings concerning the cases *Heliodoro Portugal v Panama*<sup>5</sup> and *Myrna Mack Chang v Guatemala*.<sup>6</sup> Likewise, there are several annual OAS General Assembly resolutions regulating, directly or indirectly, themes concerned with the protection of human rights defenders.<sup>7</sup> Consequently, despite the lack of an inter-American human rights instrument to specifically regulate the rights of human rights defenders, the existing regional human rights instruments and mechanisms might be effectively used to protect human rights defenders in the Americas.<sup>8</sup>

Although not specifically designed to do so, the binding UN and OAS human rights treaties can be applied to the protection of human rights defenders and their work. A person, group or entity might be designated as human rights defenders when they do something for the promotion, respect and protection of human rights. In order to develop such activities they must exercise the rights that are protected by the binding international and inter-American human rights instruments. Once they find themselves threatened or vulnerable as a consequence of the activities for the promotion and protection of human rights, there is legal ground to demand protection from the State, which has the obligation to protect all persons under its jurisdiction against state or non-state violence according to the binding UN and OAS human rights instruments. These duties and responsibilities apply to the Brazilian State once it ratified the majority of international<sup>9</sup>

<sup>5</sup> Available at IACHR <[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_186\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_186_ing.pdf)>. Accessed 22 April 2016.

<sup>6</sup> Available at IACHR <[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_186\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_186_ing.pdf)>. Accessed 22 April 2016.

<sup>7</sup> Such as OAS Resolutions AG/RES. 1671 (XXIX-O/99), of 7 June 1999 and AG/RES. 1818 (XXXI-O/01), of 5 June 2001. Available at OAS <[www.oas.org](http://www.oas.org)>. Accessed 22 April 2016.

<sup>8</sup> It is better to work with both UN and OAS human rights systems to demand that States protect human rights defenders and their work.

<sup>9</sup> Available at UN <[www.un.org](http://www.un.org)>. Accessed 12 Maio 2016.

and inter-American<sup>10</sup> human rights instruments. In other words, the Brazilian framework for the protection of human rights defenders is consistent with international and inter-American human rights law.

### **3. THE BRAZILIAN TRANSITION TO DEMOCRACY AND THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

It is generally recognised that Brazil's re-democratisation brought up a legitimate rule of law and some human rights developments.<sup>11</sup> In spite of it and notwithstanding its being consistent with international and inter-American human rights law, the legal framework for the protection of human rights defenders is still inadequate in Brazil (TERTO NETO, 2016).

First, the formation of Brazilian society has been marked by a variety of contradictions regarding, for instance, the killing of indigenous peoples, the enslavement of Africans and native indigenous peoples by Portuguese colonizers, social exclusion, political and economic domination exercised by elite groups that have controlled vulnerable groups etc.<sup>12</sup> Notwithstanding Brazil's re-democratisation and the promulgation of the 1988 Constitution such problems of violence and inequality still persist nowadays. This means Law is not enough to solve contradictions so deeply rooted in the structures of Brazilian society. Social struggles are necessary to tackle those contradictions and this is exactly where human rights defenders play an essential role. Hence, the 1988 Constitution should be seen as a key – but not self-sufficient – tool to advance democracy, human rights and social justice. A tool with which one can demand guarantees for effective protection of human rights defenders.

Second, the paradox “formal constitutionalism *versus* concrete exercise of constitutional rights” is yet to be overcome (TERTO NETO, 2010), mostly due to social authoritarianism (DAGNINO, 2000, 1993). As I explain below, despite their importance for social struggles on behalf of democracy, human rights and social justice, there is no primary legislation to protect human rights defenders against state and non-state violence. This leaves them exposed to violent reactions from dominant sectors that oppose human rights changes or, to put it in legal terms,

<sup>10</sup> Available at OAS <[www.oas.org](http://www.oas.org)>. Accessed 12 Maio 2016.

<sup>11</sup> I argue the rule of law under the military dictatorship was illegitimate. For a detailed discussion on *authoritarian legalism* in Brazil and Latin America see PEREIRA (2005a; 2005b, 2003a, 2003b, 2001, 1998a, 1998b).

<sup>12</sup> For a more detailed analysis of Brazilian history see: MARTINS FILHO (2011); MEADE (2010); DEL PRIORE (2010); BUENO (2010); McCANN (2008); LUNA (2006); GASPARI (2003); DAVIS; PEREIRA (2003); CAMPOS (1988).

that resist the full enjoyment of constitutionally guaranteed fundamental rights by members of dominated sectors. In other words, Brazil's re-democratisation made possible the promulgation of the 1998 Constitution, but the majority of Brazilians, let alone human rights defenders, have not yet fully enjoyed their constitutionally guaranteed fundamental rights due to poverty, exclusion, inequality and violence, which are symptoms of a society aghast by social authoritarianism (DAGNINO, 2000, 1993).

Third, there is a pernicious lack of political will from the Congress to pass primary legislation as well as from federal and state governments to articulate the passing of bills that would regulate the protection of human rights defenders (TERTO NETO, 2016). An example is the reluctance shown by Brazil's House of Representatives to vote the Bill 4.575/2009 (Projeto de Lei nº 4.575/2009), despite the fact the bill has already passed through all internal commissions and thus has been ready to be voted in plenary since 2011.<sup>13</sup>

#### **4. THE LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS AT FEDERAL LEVEL IN BRAZIL**

There is no specific primary legislation for the protection of human rights defenders at federal level. There are nevertheless legal instruments that have directly guided the functioning of the *Brazilian Programme for the Protection of Human Rights Defenders* (hereafter PPDDH)<sup>14</sup> at federal level, such as the *1988 Brazilian Constitution*, *Administrative Legislation* (statutes, decrees, and *portarias* that regulate *convênios administrativos* and the organisational structure of Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat*), *Resolution 14, of 28 July 2004*, *Presidential Decree 6.044, of 12 February 2007*, and *Presidential Decree 8.724, of 27 April 2016*.

##### **4.1 THE 1988 BRAZILIAN CONSTITUTION**

The 1988 Constitution is the core legal instrument in the Brazilian legal system. Particularly on the subject of the legal functioning of the PPDDH, article 5, paragraph 1, determines that the provisions referring to fundamental rights and

<sup>13</sup> Available at Câmara dos Deputados <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=422693>>. Accessed 22 April 2016.

<sup>14</sup> It is responsible to protect human rights defenders who are threatened, vulnerable and/or at risk. It is part of the *Brazilian Public Policy for the Protection of Human Rights Defenders*. For details about the creation, modeling, functioning and current challenges of the PPDDH see TERTO NETO (2016).



guarantees have immediate application to the Brazilian legal system.<sup>15</sup> This means that human rights matters prevail over any other matter in Brazilian constitutional law, which, consequently, impacts on the making and further application of infra-constitutional (statutory and ordinary) legislation. In article 5, paragraph 2, there is express reference to Brazil's human rights obligations derived from international treaties ratified by the country.<sup>16</sup> Article 5, paragraph 3, even gives constitutional status to international human rights instruments, given they have been internalised through the same legislative procedure applicable to Constitutional Amendments.<sup>17</sup> There is, thus, constitutional law regulating Brazil's international human rights obligation to assure the necessary conditions for everyone under its jurisdiction to enjoy their fundamental human rights. Consequently, by the force of the 1988 Constitution Brazil must not only respect, protect and fulfil human rights, but also protect human rights defenders and their work.

According to the 1988 Constitution – and ratified international and regional human rights instruments<sup>18</sup> –, Brazil must assure the necessary conditions for everyone to have a life with dignity.<sup>19</sup> The full realization of the right to a life with dignity is strongly related to the entire (formal and material) enjoyment of all fundamental human rights, as regulated by the 1988 Constitution. Furthermore, the constitutional principles contained in Article 1 of the 1988 Constitution have been set to guarantee the full exercise of *citizenship*<sup>20</sup> and *human dignity*<sup>21</sup> by each and all under Brazil's jurisdiction indiscriminately. In fact, the promotion of the collective well being – irrespective of origin, race, ethnicity, gender, sexual orientation– is expressed in Article 3 of the constitutional text as a core objective of the Brazilian State.<sup>22</sup> As a result, it should be understood that the current 1988 Constitution expressly guarantees the inviolability of the right to a life with dignity.<sup>23</sup>

As to the rights that impact human rights defenders and their work, the 1988 Constitution formally guarantees not only the aforementioned *right to life*

<sup>15</sup> Full text available at STF <<http://www.stf.jus.br>>. Accessed 22 April 2016.

<sup>16</sup> Full text available at STF <<http://www.stf.jus.br>>. Accessed 22 April 2016.

<sup>17</sup> Full text available at STF <<http://www.stf.jus.br>>. Accessed 22 April 2016.

<sup>18</sup> Full text available at STF <<http://www.stf.jus.br>>. Accessed 22 April 2016.

<sup>19</sup> Article 1, line III, of 1988 Constitution. See also SARLET (2005, 2004); SARLET; FURIAN; FENSTERSEIFER (2006).

<sup>20</sup> Article 1, line II, of 1988 Constitution.

<sup>21</sup> Article 1, line III, of 1988 Constitution.

<sup>22</sup> Article 3, line IV, of 1988 Constitution.

<sup>23</sup> In Title II (Fundamental Rights and Guarantees), Chapter I (Individual and Collective Rights and Duties), Article 5 (*caput*); and Chapter II (Social Rights), Article 6 (*caput*) there is formal constitutional guarantees to the inviolability of the right to life.

with dignity, but also the right to personal integrity and freedom;<sup>24</sup> the right to organize peaceful meetings or gatherings;<sup>25</sup> the right to association;<sup>26</sup> the right to freedom of expression;<sup>27</sup> the right to access public information (*habeas data*);<sup>28</sup> the right to privacy and to the protection of honour and dignity;<sup>29</sup> the right to a due process of law;<sup>30</sup> the right to access to justice and legal aid;<sup>31</sup> among other legal guarantees.<sup>32</sup> Therefore, the 1988 Constitution provides formal guarantees for the full enjoyment of fundamental human rights by each and all (including human rights defenders) under Brazil's jurisdiction.<sup>33</sup> The problem is that despite the formal guarantees provided by the 1988 Constitution, the gap between what the Constitutional Law stipulates and its applicability in reality remains enormous. And this impacts not only human rights defenders' activities, but also human rights defenders themselves, who are victimised by both state and non-state violence in Brazil.<sup>34</sup>

#### 4.2 ADMINISTRATIVE LEGISLATION<sup>35</sup>

As a federal program, the PPDDH must conduct its activities in observance with constitutional and administrative law.<sup>36</sup> Concerning the latter, there is a series of laws and decrees that provide the legal framework for the realization of a *convênio administrativo* (BANDEIRA DE MELLO, 2004; MENDES; COELHO; BRANCO, 2008), which is a kind of formal accord signed between a state entity from the federal public administration and another state entity from the state,

<sup>24</sup> Article 5, *caput*, of the 1988 Constitution.

<sup>25</sup> Article 5, line XVII, of the 1988 Constitution.

<sup>26</sup> Article 5, lines XVII, XVIII, XIX and XX, of the 1988 Constitution.

<sup>27</sup> Article 5, lines IV, VI and IX, of the 1988 Constitution.

<sup>28</sup> Article 5, lines XIV, XXXIII, LXXVII, and LXXVII, of the 1988 Constitution.

<sup>29</sup> Article 5, line X, of the 1988 Constitution.

<sup>30</sup> Article 5, line LIV, of the 1988 Constitution.

<sup>31</sup> Article 5, line LXXIV, of the 1988 Constitution.

<sup>32</sup> Article 5, lines LV and LVI, of the 1988 Constitution.

<sup>33</sup> SARLET (2005, 2004); SARLET; FURIAN; FENSTERSEIFER (2006); MENDES; COELHO; BRANCO (2008, 2002).

<sup>34</sup> UNA/HRC/4/37/Add.2 (19 December 2006) page 7 or paragraph 14. Available at UN <<http://www2.ohchr.org/english/>>. Accessed 22 April 2016.

<sup>35</sup> Statutes, decrees, and *portarias* that regulate *convênios administrativos* and the organisational structure of Brazil's Ministry of Justice and Citizenship's Human Rights Secretariat. Available at Portal dos Convênios do Governo Federal. <<https://www.convenios.gov.br/portal/legislacao>>. Accessed 22 April 2016.

<sup>36</sup> Available at Portal dos Convênios do Governo Federal. <<https://www.convenios.gov.br/portal/legislacao>>. Accessed 22 April 2016.



district or local public administration (such as a state legal aid office) or between a state entity from federal, state, district or local public administration and a non-profitable private entity (such as a human rights NGO) in order to execute common objectives as, for instance, to implement state actions, programs and public policies. The PPDDH's functioning is crucially dependent on the realization of *convênios administrativos* between state entities as well as between state entities and human rights NGOs (TERTO NETO, 2016). Perhaps due to the lack of specific primary legislation to regulate its structure and functioning, the PPDDH neither have sufficient infrastructure nor enough budget and human resources to conduct the protection of human rights defenders on a national scale efficiently (TERTO NETO, 2016). Thus, it needs to sign *convênios administrativos* with other state entities or human rights NGOs to carry out its activities. This is true for the PPDDH's functioning either at federal or state level (TERTO NETO, 2016).

The core administrative legislation that regulate the realization of *convênios administrativos* and, thus, regulate the legal functioning of the PPDDH are *Lei n°13.242, of 30/12/2015*, which provides for the guidelines to elaborate and execute the 2016 Budgetary Law;<sup>37</sup> *Lei n° 13.019, of 31/7/2014*, which establishes the legal regime for partnerships between the public administration and civil society organizations;<sup>38</sup> *Lei n° 12.101, of 27/11/2009*, which regulates the certification of beneficent entities of social assistance and normalizes the procedures of exemption of contributions to social security;<sup>39</sup> *Lei n° 9.790, of 23/03/1999*, which regulates the qualification of non-profitable, private law juridical persons (entities) as *Civil Society Organizations of Public Interest*, and institutes and disciplines the *Termo de Parceria* (Term of Partnership);<sup>40</sup> *Lei n° 8.742, of 7/12/1993*, which regulates the organization of Social Assistance in Brazil;<sup>41</sup> *Lei n° 8.666, of 21/06/1993*, which regulates article 37, XXI, of 1988 Brazilian Constitution for public bids and contracts of the Public Administration;<sup>42</sup> *Decreto n° 7.237/2010, of 20/07/2010*, which regulates *Lei n° 12.101, of 27/11/2009* on providing for

<sup>37</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>38</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>39</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>40</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>41</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>42</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

the certification of beneficent entities of social assistance to obtain exemption regarding social security contributions;<sup>43</sup> *Decreto n° 6.170/2007, of 25/07/2007* and posterior partial amendments brought by consecutive decrees such as, for instance, *Decreto n° 6.428/2008, Decreto n° 6.497/2008, Decreto n° 6.619/2008, Decreto n° 7.568/2011, Decreto n° 8.180/2013, and Decreto n° 8.244/2014*, all of which regulate the norms related to transferral of funding from the Federal Budget via *convênios administrativos* and transferral contracts;<sup>44</sup> and *Portaria Interministerial n° 127, of 29/05/2008*, which establishes norms for the execution of the regulations contained in *Decreto n° 6.170/2007*.<sup>45</sup> Thus, the PPDDH has also functioned in observance with administrative law.

Finally, the core administrative instruments that regulate the organizational structure of Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat* and, thus, regulate the organisational structure in which the PPDDH legally operates at federal level are *Medida Provisória n° 726, of 12/5/2016*, which alters and repeals dispositions contained in *Lei n° 10.683/2003*;<sup>46</sup> *Lei n° 10.683, of 28/5/2003*, which regulates on the organization of the Presidency of the Republic of Brazil and its Ministries;<sup>47</sup> *Lei n° 12.462, of 04/08/2011*, which institutes a Differentiated Regime of Public Hiring (RDC) and alters dispositions contained in *Lei n° 10.683/2003* and regulates on supplementary matters;<sup>48</sup> and *Lei n° 12.314, of 19/08/2010*, which alters dispositions contained in *Lei n° 10.683/2003* and regulates on additional matters.<sup>49</sup>

#### 4.3 RESOLUTION 14, OF 28 JULY 2004

Resolutions are also part of administrative law in Brazil's legal system. Resolution 14/2004 is particularly important because it established a *National Coordination* for the PPDDH (TERTO NETO, 2016). This happened even before

<sup>43</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>44</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>45</sup> Available at Portal dos Convênios do Governo Federal <<https://portal.convenios.gov.br/pagina-inicial>>. Accessed 15 May 2016.

<sup>46</sup> Available at Presidência da Republica <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

<sup>47</sup> Available at Presidência da Republica <[http://www.planalto.gov.br/CCIVIL\\_03/LEIS/2003/L10.683.htm#art28](http://www.planalto.gov.br/CCIVIL_03/LEIS/2003/L10.683.htm#art28)>. Accessed 15 May 2016.

<sup>48</sup> Available at Presidência da Republica <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2011/Lei/L12462.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/Lei/L12462.htm)>. Accessed 15 May 2016.

<sup>49</sup> Available at Presidência da Republica <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2010/lei/l12314.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12314.htm)>. Accessed 15 May 2016.

the Presidential Decree 6.044/2007 came about to regulate the *National Policy for the Protection of Human Rights Defenders* as well as the Presidential Decree 8.724/2016 came to existence to institute the PPDDH and create the PPDDH's *Deliberative Council* (TERTO, NETO, 2016).<sup>50</sup> The creation of that national coordination preceded the PPDDH's official launching by Brazil's Human Rights Secretariat.<sup>51</sup> It followed the guidelines for the PPDDH's establishment presented by the Working Group (GT) during the ordinary meeting of the CD-DPH<sup>52</sup> that took place on 28 July 2004 (TERTO NETO, 2016). Notwithstanding the fact there has never been any specific primary legislation regulating the protection of human rights defenders at federal level, the PPDDH has had an administrative-organisational arrangement – that form a *de facto* infrastructure – that legally works based on the realization of *convênios administrativos* and the publication of resolutions by Brazil's Human Rights Secretariat (TERTO NETO, 2016). In short, despite the lack of primary legislation to specifically regulate its activities at federal level, the PPDDH has been able to legally operate since Resolution 14/2004 constituted its *National Coordination* with specific competencies.<sup>53</sup>

Resolution 14/2004 has established that the PPDDH's *National Coordination* is competent to monitor the cases of communications involving human rights defenders; submit the received communications of cases involving human rights defenders to the pertinent State Coordination; take necessary measures, in cases where there is not yet a State Coordination; constitute and operate a database with information about human rights defenders, as well as received communications; implement, with the cooperation of states, the recommendations from international human rights protection bodies, to which Brazil is part; engage Brazilian states with the development of actions and local policies for the protection of human rights defenders; and develop training/capacitating programs for human rights defenders (article 2). This resolution established the PPDDH's *National Coordination's* composition as follows: a representative of the Legislative Power; a representative of the Federal Police Department; a representative of the Highway Federal Police Department; a representative of the Federal Prosecution Office; two representatives of civil society organizations; a representative of the Judiciary Power; and a representative of each

<sup>50</sup> See Section 3.5 below.

<sup>51</sup> For a detailed account of the political history of the PPDDH see TERTO NETO (2016), Chapter 4.

<sup>52</sup> Later converted into the *National Human Rights Council* (CNDH) by Lei nº 12.986/2014. Available at Secretaria de Direitos Humanos da Presidência da República <<http://www.sdh.gov.br/sobre/participacao-social/cddph>>. Accessed 15 May 2016.

<sup>53</sup> It also means the PPDDH started functioning before its official launching in 26 October 2004.

existing State Coordination (article 3). This resolution determines that the PPDDH's *National Coordination* must implement its activities through its *Executive Secretary*, who is directly subordinated to the office of the head of Brazil's Human Rights Secretariat (article 4).<sup>54</sup> The PPDDH's *National Coordination* refers to the head of Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat*, to whom it must present reports regarding its activities (article 5).<sup>55</sup> Thus, the PPDDH's legal functioning is also dependent on the publication of resolutions by the head of Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat*.<sup>56</sup> It means the PPDDH's legal functioning is strongly dependent on the political performance of Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat* (TERTO NETO, 2016).<sup>57</sup>

#### 4.4 PRESIDENTIAL DECREE 6.044, OF 12 FEBRUARY 2007

The Presidential Decree 6.044/2007<sup>58</sup> approved the *Brazilian Policy for the Protection of Human Rights Defenders* (PNPDDH) and defined a period of 90 days for Brazil's Human Rights Secretariat to set a *National Plan for the Protection of Human Rights Defenders*.<sup>59</sup> The PNPDDH's *objective* is to establish principles and guidelines for the protection of human rights defenders, according to Brazilian laws and international human rights treaties that Brazil has signed and ratified (article 1). The PNPDDH provides for the definition of important concepts such as: *human rights defenders* as being all individuals, groups and organs of socie-

<sup>54</sup> Medida Provisória nº 726/2016 placed the *Human Rights Secretariat* under the administrative competence of the new *Ministry of Justice and Citizenship*. Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

<sup>55</sup> With the advent of Medida Provisória nº 726/2016, the PPDDH's *National Coordination* must refer to the head of the new *Ministry of Justice and Citizenship*. Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

<sup>56</sup> Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016. See also TERTO NETO (2016).

<sup>57</sup> As Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat* is susceptible to pressures from national and transnational advocacy networks (organised civil society and UN and OAS human rights mechanisms), it can be inferred that through the domestic politics of human rights, organised civil society can bring about policy changes as to the protection of human rights defenders in Brazil. See KECK; SIKKINK (1998, 1999); KECK (1995); TERTO NETO (2016).

<sup>58</sup> Available at Presidência da República <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2007/Decreto/D6044.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm)>. Accessed 10 May 2016.

<sup>59</sup> Available at Presidência da República <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2007/Decreto/D6044.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm)>. Accessed 10 May 2016. The deadline established by the aforementioned decree has not been observed. In fact, it should be noted that Brazil's *National Plan for the Protection of Human Rights Defenders* has never been elaborated.

ty that promote and protect human rights and fundamental liberties universally recognized (article 2); *protection* as being something that intends to guarantee the continuity of the work of the defenders, who promote, protect and guarantee human rights, and, as a result of their work and activities under these circumstances, find themselves in a situation of risk or vulnerability or suffer violation of their rights (article 2 § 1); and *violation* as being any conduct offensive to personal or institutional activity of the human rights defender or to that of organization and social movement, which manifests, even if indirectly, over the relatives or persons of close relation to the defender, by the practice of homicide, attempted or committed, torture, physical aggression, threat, intimidation, defamation, illegal or arbitrary arrest, false accusation, attempts or retaliations of political, economic or cultural nature, of origin, ethnicity, gender or sexual orientation, colour, age, among other forms of discrimination, disqualification and criminalization of their personal activity that might offend their physical, psychological, and moral integrity, their honour or patrimony (article 2 § 2).

The PNPDDH also sets the principles and the guidelines for the protection of human rights defenders in Brazil. The PNPDDH's *principles* are respect for human dignity; equality and non-discrimination of any kind; protection and assistance to human rights defenders, irrespective of their nationality and collaboration in lawsuits; promotion and guarantee of citizenship and human rights; respect for regional and international human rights treaties and conventions; universality, indivisibility and interdependence of human rights; and transversal nature of the gender, sexual orientation, disability, ethnical and social origin, precedence, race, and age dimensions in public policies (article 3, paragraphs I to VII respectively).

The PNPDDH's *general guidelines* are the strengthening of the federal pact through common and articulated action by all governmental spheres in the protection of human rights defenders while facing the causes that generate the state of risk or vulnerability; stimulate bilateral or multilateral international cooperation; articulation with national and international NGOs; organization of a network for the protection of human rights defenders, involving all governmental levels and civil society organizations; verification of the condition as human rights defender and the respective protection and assistance; incentive and realization of surveys and diagnosis, considering regional diversities, organization and sharing of *data*; incentive to the formation and training of professionals to conduct the protection, as well as to verify the condition of defender and for their assistance; harmonization of related legislations and administrative procedures in the federal, state and municipal spheres; incentive to civil society participation; incentive to the participation of class bodies and professional councils; and

assurance of ample and adequate access to information and establishment of channels of dialogue among State, society and the mass media (article 4, paragraphs I to XI respectively).

*These specific guidelines for the protection of human rights defenders* are the implementation of preventive measures in public policies, via an integrated and inter-sectoral manner, in the areas of health, education, labour, security, justice, social assistance, communication, and culture; support and realization of socio-educative awareness-raising campaigns in local, regional, national and international spheres, considering their specificities, which value the image and action of human rights defenders; monitoring and evaluation of campaigns with the participation of civil society; support for social mobilization and the fortification of civil society; and the strengthening of existing projects and stimulus for the creation of new ones (article 5, paragraphs I to V respectively). The *specific guidelines for bringing to justice the perpetrators of threats or intimidations* include the cooperation among public security bodies; national legal cooperation; secrecy of judicial and administrative procedures, according to legal regulations; and integration with policies and actions of repression and prosecution of perpetrators of correlated crimes (article 6, paragraphs I to IV respectively). Finally, the *specific guidelines for assistance to human rights defenders* address the protection to life; guarantee of social, medical, psychological, and material assistance; initiatives aiming to overcome the causes that generate the state of risk or vulnerability; preservation of identity, image and personal *data*; support for the fulfilment of civil and administrative obligations that require personal attendance; temporary suspension of work activities; and the changing of residence or provisional accommodation to a secret location, in extraordinary situations, which must be compatible with the protection (article 7, paragraphs 1 to VII respectively).

#### 4.5 PRESIDENTIAL DECREE 8.724, OF 27 APRIL 2016

The Presidential Decree 8.724/2016<sup>60</sup> instituted the *Brazilian Programme for the Protection of Human Rights Defenders* (PPDDH) (article 1) and created the PPDDH's *Deliberative Council* under the competence of Brazil's *Ministry of Women, Racial Equality, Youth and Human Rights*<sup>61</sup> (article 3). It states that the PP-

<sup>60</sup> Available at Presidência da República <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2016/Decreto/D8724.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8724.htm)>. Accessed 15 May 2016.

<sup>61</sup> With the advent of Medida Provisória nº 726/2016, Brazil's *Ministry of Women, Racial Equality, Youth and Human Rights* was terminated and the *Human Rights Secretary* placed under the administrative competence of Brazil's new *Ministry of Justice and Citizenship*. Therefore, the PPDDH is now under the administrative competence of Brazil's *Ministry of Justice and Citizenship's Human Rights Secretariat*. Available at Presidência da República <<http://www.planalto.gov.br/>



DDH will be executed, preferably, through voluntary cooperation among Union, States and the Federal District, to articulate measures to protect human rights defenders and assure that they continue their activities in defence of human rights (article 2, paragraphs I and II). To do so, the PPDDH can firm formal accords for technical cooperation, *convênios administrativos*, and terms of partnership with Union, States, the Federal District, and public or private entities (article 2, sole paragraph).

The PPDDH's *Deliberative Council* is composed of two representatives of the *Ministry of Women, Racial Equality, Youth and Human Rights' Human Rights Secretariat*, being one of them the PPDDH's coordinator, and one representative of the *Ministry of Justice's National Secretariat of Public Security* (article 3, § 2, paragraphs I and II).<sup>62</sup> In addition, one representative of the *Prosecutor Office* and one representative of the *Judiciary Power* could be invited to integrate the PPDDH's *Deliberative Council* (article 3, § 3).<sup>63</sup> It is with this composition that the PPDDH's *Deliberative Council* must coordinate the PPDDH at federal level (article 3). To do so, it can formulate, monitor and assess the PPDDH's actions; define strategies for the political engagement and formal cooperation with the Union, States, the Federal District, and municipalities regarding the PPDDH's execution; and deliberate on inclusion or exclusion of threatened human rights defenders in the PPDDH (article 3, § 1, paragraphs I to IV).

The *Ministry of Women, Racial Equality, Youth and Human Rights*<sup>64</sup> can create complementary norms in order to fulfil the dispositions contained in the Presidential Decree 8.724/2016 (article 4). By the same token, the *Ministry of Women, Racial Equality, Youth and Human Rights*<sup>65</sup> will provide technical and administrative support for the functioning of the PPDDH's *Deliberative Council*, through Brazil's Human Rights Secretariat<sup>66</sup> (article 5).

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CCIVIL\_03/\_Ato2015-2018/2016/Mpv/mpv726.htm#art16>. Accessed 15 May 2016.

<sup>62</sup> Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

<sup>63</sup> Notwithstanding the PPDDH came to existence due to organised civil society's efforts, the latter has been left out of the PPDDH's *Deliberative Council*. Not even the *Brazilian Committee of Human Rights Defenders* (CBDDH) has been included; despite the fact the CBDDH monitors the PPDDH since its creation and is composed by human rights NGOs with great expertise on the protection of human rights defenders in Brazil. For details see TERTO NETO (2016).

<sup>64</sup> Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

<sup>65</sup> Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

<sup>66</sup> Available at Presidência da República <[http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2015-2018/2016/Mpv/mpv726.htm#art16](http://www.planalto.gov.br/CCIVIL_03/_Ato2015-2018/2016/Mpv/mpv726.htm#art16)>. Accessed 15 May 2016.

## 5. THE LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS AT STATE LEVEL IN BRAZIL

At the state level only 5 out of 27 states have already passed laws or decrees regulating the protection of human rights defenders. They are Bahia (*Decreto Estadual (BA) n° 12.003, of 10/03/2010*), Ceará (*Decreto Estadual (CE) n° 31.059, of 22/11/2012*), Espírito Santo (*Lei Estadual (ES) n° 8.233, of 21/12/2005*), Minas Gerais (*Lei Estadual (MG) n° 21.164, of 17/1/2014*), and Pernambuco (*Lei Estadual (PE) n° 14.912, of 27/12/2012*).

### 5.1 ESPÍRITO SANTO STATE ACT 8.233, OF 21 DECEMBER 2005<sup>67</sup>

This State Act instituted the *Programme for the Protection of Human Rights Defenders of the State of Espírito Santo* (PPDDH-ES) under the Secretary of Justice of the State of Espírito Santo (SEJUS-ES) (article 1).<sup>68</sup> It defined *human rights defenders* as those who exercise activities directed at the implementation, maintenance or remedy of rights contained in the Universal Declaration of Human Rights (article 2). It provides for the inclusion of human rights defenders in the PPDDH-ES as long as they have their lives or physical integrity at risk due to their activities for the promotion and defence of human rights (article 3). The inclusion can be requested by human rights defenders themselves, a police officer, a member of the Prosecutor Office or a Judge who know the situation, and by representatives of public or private entities that conduct activities in defence of human rights (article 4, *caput*, paragraphs I to III respectively), as long as the application contains a detailed account of the facts with evidence, if possible, and a *Termo de Compromisso* (Term of Commitment) filled in and signed by human rights defenders themselves, or their family and dependents, in case the latter intend to be included as well (article 5, *caput*, paragraphs I and II respectively). This protection can be extended to human rights defenders' spouses, partners, ascendants, descendants, relatives and dependents (article 3, sole paragraph).

This State Act also instituted a *State Coordination for the Protection of Human Rights Defenders in Espírito Santo* (article 11), which is formed by a representative from the State Legal Aid Office (DPE), State Secretary of Justice (SEJUS), Secretary of Public Security and Social Defence (SESP), State Judiciary Power (TJES), State Prosecutor Office (MPES), State Legislative Power (ALES), Brazilian Bar Association/Espírito Santo (OAB/ES), State Human Rights Council (CEDH),

<sup>67</sup> Available at Governo do Espírito Santo <[http://www.al.es.gov.br/antigo\\_portal\\_ales/images/leis/html/LO8233.html](http://www.al.es.gov.br/antigo_portal_ales/images/leis/html/LO8233.html)>. Accessed 22 April 2016.

<sup>68</sup> Available at Assembleia Legislativa do Estado do Espírito Santo <[http://www.al.es.gov.br/antigo\\_portal\\_ales/images/leis/html/LO8233.html](http://www.al.es.gov.br/antigo_portal_ales/images/leis/html/LO8233.html)>. Accessed 22 April 2016.

and the National Movement of Human Rights (MNDH) (article 11, *caput*, paragraphs I to IX respectively and article 11, sole paragraph). This *State Coordination* handles the management of the PPDDH-ES, and defines the policies for the protection of human rights defenders in Espírito Santo (article 12, *caput*, paragraphs I and II respectively). This State Coordination also assesses applications for inclusion in the PPDDH-ES. Before authorizing the inclusion of applicants, it must consider the gravity of the risk to life or physical integrity of the applicant, the difficulty of preventing or repressing the facts or risky situation via conventional channels, the relevance of the activities developed by the human rights defender in state and federal contexts, the compatibility of personality and/or of conduct of the applicant, in relation to the behavioural restrictions demanded by the PPDDH-ES, and the availability of human, technical, and/or operational resources that make possible the realization of effective protection for the person(s) to be included in the PPDDH-ES (article 6, *caput*, paragraphs I to VI respectively). Once included in the PPDDH-ES, human rights defenders under protection must always provide data regarding their agenda in advance so that their protectors can evaluate the risk of the mission and verify the convenience or not of the keeping of their scheduled commitments, on security grounds; respond to the recommendations by their protectors in matters related to their protection, renouncing the protection and protectors formally in case of disagreements, assuming voluntarily the risks to which they are submitted; and communicate to their protectors the occurrence of whatever uncommon or potentially dangerous fact or situation (article 7, *caput*, paragraphs I to III respectively). The inclusion in the PPDDH-ES covers specialized protection, psychological support and social assistance (article 8). The exclusion from the PPDDH-ES might occur by the request of human rights defenders themselves or their legal representative in the case of minors, when the motives that originated the inclusion had ceased, and by the protected human rights defenders' incompatible conduct with norms, restrictions and recommendations of the PPDDH-ES (article 9, *caput*, paragraphs I to III respectively).

To fully execute the activities of the PPDDH-ES, Espírito Santo State may sign *convênio administrativo*, accords, adjustments, *termos de parceria* (terms of partnership), or other instruments with the Union, other States, Distrito Federal, Municipalities, NGOs, and International Organisms (article 10). Espírito Santo State Act 8.233 provides for the possibility of human rights defenders to be transferred to the *Program for the Protection of Threatened Witnesses and Victims* (PROVITA), as long as they are at risk and became a threatened witness (article 13). Finally, Espírito Santo State Act 8.233 determines the creation of a database to gather information on threatened human rights defenders, which will be ma-

naged only by PPDDH-ES' members (article 14, *caput*, and article 14, sole paragraph).

## 5.2 BAHIA STATE DECREE 12.003, OF 10 MARCH 2010<sup>69</sup>

This State Decree created a *State Commission* for the State of Bahia's *Programme for the Protection of Human Rights Defenders* (PPDDH-BA) under the *Secretary of Justice, Citizenship and Human Rights of the State of Bahia*. Note that it did not institute the PPDDH-BA, but only a state commission for it (article 1). This means there is still no specific primary or secondary legislation regulating the PPDDH-BA.

The PPDDH-BA's *State Commission* is composed by two representatives (holder and alternate) from Secretary of Justice, Citizenship and Human Rights; Secretary of Public Security, civil society organization that executes the PPDDH-BA; State Prosecutor Office; State Tribunal of Justice; Brazilian Bar Association, Bahia Office (OAB-BA); and State Legal Office (article 3, paragraphs I to III and § 1, paragraphs I to IV). With this composition, the PPDDH-BA's *State Commission* receives communications of violations of the rights of human rights defenders; assesses the appropriateness of the case to the PPDDH-BA; justifies the inclusion of threatened human rights defenders in the PPDDH-BA and defines what protection measures are necessary; and engages with the PPDDH-BA and police forces the provisory, immediate, injunctive and investigative protection to the threatened human rights defenders (article 2, paragraphs I to V). Decisions occur by absolute majority and participation is voluntary and considered of relevant public interest (article 3 §§ 2 and 3).

Human rights defender themselves, police officers, prosecutors, or judges as well as representatives of public or private entities that work on the defence of human rights can require the inclusion of threatened human rights defenders to the PPDDH-BA (article 4, lines I to III). The requests must contain a detailed written report of the threats with proof, if possible, and the *Termo de Compromisso* (Commitment Term) signed by the human rights defender or their family and dependents (article 5, paragraphs I and II).

Before authorizing inclusion of applicants in the PPDDH-BA, the created *State Commission* must consider the gravity of the risk; the difficult to prevent or repress the threat; the relevance of the work done by the human rights defenders at the local, state and national contexts; the adequacy and commitment of the

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<sup>69</sup> Available at Governo do Estado da Bahia <<http://www.legislabahia.ba.gov.br/>>. Accessed 18 May 2016.

applicant to the rules of the PPDDH-BA; and the existence of human, technical and/or operational resources necessary for the conduction of an effective protection to the person to be included (article 6, paragraphs I to V).

Finally, the PPDDH-BA's *State Commission* must engage with the competent bodies and the human rights NGO that executes the PPDDH-BA in order to articulate protection measures – such as police protection, safe and adequate transport, tackling of the threats, secrecy of identity, image and personal data, psychological and legal support as well as social assistance – to the benefit of the included human rights defender (article 7, paragraphs I to V).

### 5.3 CEARÁ STATE DECREE 31.059, OF 22 NOVEMBER 2012<sup>70</sup>

This State Decree instituted the *Programme for the Protection of Human Rights Defenders of the State of Ceará* (PPDDH-CE) and also the *State Coordination* for the PPDDH-CE, bearing in mind the dispositions contained in Presidential Decree 6.044/2007 (articles 1 and 5 respectively). Considering a human rights defender to be a person, group or human rights NGOs that work on the promotion and defence of human rights (article 3, lines I and II), the PPDDH-CE's main objective is to protect threatened and/or vulnerable human rights defenders and, by doing so, guarantee that they continue their work on the defence of human rights (articles 2 and 4). Protection measures could be extended to the human rights defenders' family and dependents and consider the gravity of threats and the difficulty to suppress them (article 2, §§ 1 and 2; article 15, paragraphs I to XIV, §§ 1 to 6).

The PPDDH-CE's *State Coordination* is composed by two representatives (holder and alternate) from the Secretary of Justice and Citizenship; Secretary of Public Security and Social Defence; Special Coordination of Human Rights Public Policies; the Human Rights NGO that executes the PPDDH-CE; and two representatives from civil society organizations that work on human rights in Ceará (article 5, paragraphs I to V). It also has a General Coordinator, elected by absolute majority among its members, for a two-years term, alternating between representatives from civil society and state (article 6). Other federal and state authorities – such as State Legal Aid Office; State Prosecution Office; State Judiciary Power; General Controllershship of Discipline of the Security Bodies Penitentiary System; State House of Representatives' Human Rights and Citizenship Commission; Federal Prosecution Office; and Secretary of Labour and Social Security –

<sup>70</sup> Available at SEJUS-CE <<http://www.sejus.ce.gov.br/index.php/cidadania/40/1518>>. Accessed 18 May 2016.

could be invited to participate in PPDDH-CE's *State Coordination's* meeting, but it is not clear whether they have the right to vote on matters discussed there (article 7, paragraphs I to VII). In addition, meetings are not open to the public in general, with only PPDDH-CE's *State Coordination's* members and invited guests being able to attend (article 8, §§ 1 and 2).

In any case, PPDDH-CE's *State Coordination's* attributions involve deliberating on the implementation of the state public policy for the protection of human rights defenders; monitoring the cases of violence against human rights defenders; deliberate on the inclusion, permanence and exclusion of human rights defenders in the PPDDH-CE; defining what protection measures are appropriate for each case at analysis; demanding other state bodies take action to assure their protection and continuation of the human rights defenders' activities; engaging politically with GOs and NGOs seeking the protection of threatened human rights defenders; requesting from public bodies the information necessary to protect human rights defenders efficiently; working on the full implementation and resourcing of the PPDDH-CE; creating and maintaining a confidential database regarding human rights defenders in Ceará; and elaborating periodical reports on the situation of human rights defenders in Ceará (article 9, paragraphs I to XI, sole paragraph; article 11, paragraphs I to IV; article 12, paragraphs I to III; article 13, paragraphs I to V; article 14, paragraphs I and II). In the conduction of these tasks, the PPDDH-CE's *State Coordination* counts on the support of Ceará's Secretary of Justice and Citizenship and Secretary of Public Security and Social Defence (articles 10 and 16). Finally, the State of Ceará could sign accords, terms of partnership, *convênios administrativos*, and other legal instruments with Union, other States, Federal District, municipalities, NGOs, and/or international organisms in order to guarantee the full execution of the PPDDH-CE (article 17).

#### 5.4 PERNAMBUCO STATE ACT 14.912, OF 27 DECEMBER 2012<sup>71</sup>

This State Act created the *Programme for the Protection of Human Rights Defenders of the State of Pernambuco* (PPDDH-PE) to protect persons and entities that have their rights threatened as a result of their work on the promotion and defence of human rights in Pernambuco (article 1). In fact, considering a human rights defender to be a physical or juridical person(s) that work on the promotion and defence of human rights and universal liberties, the PPDDH-PE's main objective is to guarantee the continuity of the work of threatened and/or vulnerable human rights defenders (article 2, §§ 1 and 2; article 15). Note that

<sup>71</sup> Available at Assembleia Legislativa do Estado de Pernambuco <<http://legis.alepe.pe.gov.br/>>. Accessed 18 May 2016.



protection measures could be extended to human rights defenders' family and dependents and consider the gravity of threats and the difficulty to suppress them (article 7, §§ 1 and 2).

Through its activities, the PPDDH-PE must comply with a series of principles as well as general and specific guidelines as contained in Presidential Decree 6.044/2007 and received by Pernambuco State Act 14.912/2012 (article 3, paragraphs I to VII; article 4, paragraphs I to X; article 5, paragraphs I to V; article 6, paragraphs I to III; article 7, paragraphs I to VII).

The final decision-making body of the PPDDH-PE is its *State Deliberative Council*, composed by Executive Secretary of Justice and Human Rights (who is its president); one representative of the State Legal Aid Office; three representatives from the Secretary of Social Defence, being one from the Military Police, one from the Civil Policy, and one from the Ombudsman; one representative from the Federal Police; Highway Federal Policy; State Judiciary Power; State Prosecutor Office; State Legislative Power; two representatives from civil society, with a current mandate in the State Human Rights Council; and one representative from each class council of professional categories that compose the Technical Advisory Body of the Presidency of the PPDDH-PE's *State Deliberative Council* (article 10, paragraphs I to X). The PPDDH-PE's *State Deliberative Council* is responsible to deliberate on the implementation of the state public policy for the protection of human rights defenders as well as on the requests of inclusion and exclusion in/from the PPDDH-PE; define what the appropriate protection measures are for each case; determine the limit of financial aid according to pertinent laws; decide on appeals against decisions by the PPDDH-PE's Executive Coordination in matters related to article 11; work on the implementation and resourcing of the PPDDH-PE; seek for partnerships to improve the PPDDH-PE; and demand the adoption of measures by the State Power that assure the protection of human rights defenders (article 9, paragraphs I to X). The simple majority of members decide matters in the PPDDH-PE's *State Deliberative Council* (article 9, sole paragraph; articles 14, 16 to 19, 21).

In the conduction of its activities, the President of the PPDDH-PE's *State Deliberative Council* counts on the support of an *Executive Coordination*, which is integrated by one *Executive Coordinator* as well as a *Technical Advisory Body* that is formed by a multidisciplinary team with four public servants with university degrees and two ones with high school degrees (articles 11, 12, 13 and 23).

An interesting innovation is that the PPDDH-PE can adopt measures such as seminars, conferences, etc. to capacitate human rights defenders to conduct self-protection (article 20). Another innovation is that there is specific funding

for the functioning of the PPDDH-PE, which will be annually included in the Multi-Annual Plan and the Annual Budgetary Law, under the budgetary competence of the Secretary of Social Development and Human Rights, which is responsible for the PPDDH-PE's execution (article 22).

Finally, Pernambuco State could sign *convênios administrativos* with the Union, other States, Federal District, municipalities, or international and national NGOs to guarantee the PPDDH-PE's implementation (article 22, sole paragraph).

### 5.5 MINAS GERAIS STATE ACT 21.164, OF 17 JANUARY 2014<sup>72</sup>

This State Act instituted the *Programme for the Protection of Human Rights Defenders of the State of Minas Gerais* (PPDDH-MG) to protect physical or juridical persons, groups, institutions, organisations and social movements that have their rights violated or threatened as a result of their work for the respect, recognition, protection, promotion or enjoyment of human rights (articles 1, 2, 3 and 4). Protection measures could be extended to human rights defenders' family and dependents according to each case (article 4, sole paragraph).

In the pursuit of its objectives, the PPDDH-MG must comply with principles and general and specific guidelines as stated in Presidential Decree 6.044/2007 (article 5, paragraphs I to VII; article 6, paragraphs I to XXVI).

The final decision is made by PPDDH-MG's *Deliberative Council*, which has parity of composition vis-à-vis members that come from civil society and state; with members from the latter being permanently, among others, the Federal and State Legal Aid Offices; Federal and State Prosecution Offices; Civil Police; Military Police; and Federal Police (article 8). The PPDDH-MG's *Deliberative Council* is responsible to deliberate on the requests of inclusion and exclusion in/from the PPDDH-MG; define what the appropriate protection measures are for each case, having the final word on the concession of financial aid; decide on appeals against decisions by the PPDDH-MG's Coordinator; work on the implementation and resourcing of the PPDDH-MG; sign terms of partnerships to improve the PPDDH-MG; demand the adoption of measures by other state bodies that assure the continuation of the work done by human rights defenders; demand the adoption of juridical and administrative measures by the competent state bodies that are necessary for the protection of human rights defenders (article 7, paragraphs I to VII; articles 9 to 11). In the conduction of its activities, the PPDDH-PE counts on the support of state police bodies (article 13).

<sup>72</sup> Available at Diário Oficial de Minas Gerais <<http://jornal.iof.mg.gov.br/xmlui/handle/123456789/111729>>. Accessed 18 May 2016.

An interesting innovation is that there is specific budget allocation for the functioning of the PPDDH-MG (article 15). Finally, further matters related to the composition, decision-making, competences, and functioning of the PPDDH-MG, its *Technical Team* and *Deliberative Council* will be object of regulation by the State of Minas Gerais (article 14).<sup>73</sup>

Summing up, the instruments that have directly guided the legal functioning of the PPDDH at federal and state levels are depicted in *Table 1*.

**Table 1 - Legal Framework for the Functioning of the PPDDH at Federal and State Levels**

Protection Programmes	Specific Legal Framework	General Framework
PPDDH-Federal	Presidential Decree 8.724, of 27 April 2016	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Bahia	State Decree 12.003, of 10 March 2010	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Ceará	State Decree 31.059, of 22 November 2012	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Espírito Santo	State Act 8.233, of 21 December 2005	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Minas Gerais	State Act 21.164, of 17 January 2014	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Pará <sup>74</sup>	NONE	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Pernambuco	State Act 14.912, of 27 December 2012	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.
PPDDH-Rio de Janeiro <sup>75</sup>	NONE	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.

<sup>73</sup> This regulation would be in the form of a state decree, but it has not been published yet.

<sup>74</sup> The PPDDH-Pará worked from 2005 to 2012 via the realization of convênios administrativos (as, for instance, Convênio n° 051/2008-CGPDDH/SEDH/PR) between Brazil's HR Secretariat and Legal Aid Office of the State of Pará (DP-PA). There has never been any specific state legislation to regulate the PPDDH-PA's functioning. Available at Defensoria Publica do Estado do Pará <[http://www.defensoria.pa.gov.br/conteudos.php?area=direitos\\_humanos](http://www.defensoria.pa.gov.br/conteudos.php?area=direitos_humanos)>. Accessed 18 May 2016.

<sup>75</sup> The PPDDH-Rio de Janeiro had been implemented via the realization of a convênio administrativo (Convênio n° 009/2009) between Brazil's HR Secretariat and Secretary of Social Assistance and Human Rights of the State of Rio de Janeiro. According to informal talks I had with members of the PPDDH at Caritas Brasil, Brasília/DF, in September 2015, the PPDDH-RJ functioned until 2011. Nonetheless, there have been talks between Brazil's HR Secretariat and the State of Rio de Janeiro to re-activate the PPDDH-RJ. In any case, there is still no specific state legislation to regulate the PPDDH-RJ's legal functioning. Available at SEASDH-RJ <<http://www.rj.gov.br/web/seasdh>>. Accessed 18 May 2016.

Protection Programmes	Specific Legal Framework	General Framework
PPDDH -Rio Grande do Sul <sup>76</sup>	NONE	1988 Brazilian Constitution; Administrative Law; Resolution 14/2004; Presidential Decree 6.044/2007; Presidential Decree 8.724/2016.

On the whole, the Presidential Decree 6.044/2007 is the sole instrument referring to the *National Policy for the Protection of Human Rights Defenders* (PNPDDH), of which the *Brazilian Programme for the Protection of Human Rights Defenders* (PPDDH) is part in Brazil's current legal system. There is no specific primary legislation to regulate the PPDDH's activities at federal level, only the Presidential Decree 8.724, of 27 April 2016, which is secondary legislation. Notwithstanding the existing state legislations, the absence of primary legislation to regulate the functioning of the PPDDH at federal level strengthens demands from organised civil society for a specific legal framework to regulate the protection of human rights defenders nationwide. The lack of primary legislation for the protection of human rights defenders is a problem for organised civil society. For that reason, organised civil society keeps pushing for it. As the creation of the PPDDH itself has demonstrated (TERTO NETO, 2016), pressures exerted by organised civil society in articulation with transnational advocacy networks (TAN) might be a positive strategy to force the Congress to finally pass into law the Bill 4.575/2009.<sup>77</sup>

## CONCLUSION

This paper outlined the legal framework for the protection of human rights defenders (TERTO NETO, 2016).<sup>78</sup> It analysed the protection of human rights defenders according to Brazilian constitutional and infra-constitutional (statutory and ordinary) law. It considered that the above studied legal framework regulates the state protection provided by the PPDDH. It did so by describing the Brazilian legal framework for the protection of human rights defenders at federal and state levels. It is important to keep in mind that the Brazilian framework for the protection of human rights and human rights defenders relates to Brazil's human rights

<sup>76</sup> The PPDDH-Rio Grande do Sul has been implemented via the realization of a convênio administrativo (Convênio nº 021/2011) between Brazil's HR Secretariat and Secretary of Justice and Human Rights of the State of Rio Grande do Sul. There is not yet any specific state legislation to regulate the PPDDH-RS' legal functioning. Available at SJDH-RS. <<http://www.sjdh.rs.gov.br/?model=conteudo&menu=1&id=1919&pg>>. Accessed 22 April 2016.

<sup>77</sup> Available at Câmara dos Deputados <<http://www.camara.gov.br/proposicoesWeb/fichade tramitacao?idProposicao=422693>>. Accessed 10 May 2016.

<sup>78</sup> See also RISSE; ROPP; SIKKINK (1999, 2013).

obligations brought up with the ratification of the majority of international and inter-American human rights instruments. Therefore, it can be argued Brazil's framework for the protection of human rights defenders is in formal agreement with international and inter-American human rights law. *Table 2* depicts it below.

**Table 2** – Overview of the International, Inter-American, and Brazilian Legal Frameworks for the Protection of Human Rights Defenders with influences/effects in Brazil.

International Legal Framework <sup>79</sup>		Regional Legal Framework <sup>80</sup>		Brazilian Legal Framework	
Biding	Non-Binding	Biding	Non-Binding	Federal <sup>81</sup>	State
- CPPCG (ratified/1952). - CERD (ratified/1968). - CEDAW (ratified/1984). - CAT (ratified/1989). - CRC (ratified/1990). - ICCPR (acceded/1992). - ICESCR (acceded/1992). - CEDAW-OPT (ratified/2002). - CRC-OPT-AC (ratified/2004). - CRC-OPT-SC (ratified/2004). - CAT-OPT (ratified/2007). - CRPD (ratified/2008). - ICRPD-OPT (ratified/2008). - ICCPR-OPT1 (ratified/2009). - ICCPR-OPT2 (ratified/2009). - CED (ratified/2010). - Convention relating to the Status of Refugees (Refugee Convention). - Convention nº 87 on the Freedom of Association and Protection of the Right to Organize of the International Labour Organization, 1948 (Co87).	-Universal Declaration of Human Rights.  -UN Declaration on Human Rights Defenders (A/RES/53/144, March 8 <sup>th</sup> , 1999).  -Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief.	-ICGCRW (ratified/1952).  -ICGPRW (ratified/1950).  -ICPPT (ratified/1989). -ACHR (acceded/1992). -ICPPEVAW (ratified/1995). -AP-ACHR-ESCR (acceded/1996). -OP-ACHR-ADP (ratified/1996). -IACFDP (ratified/2013).	OAS Resolutions on Human Rights Defenders, such as:  1. AG/RES. 1671 (XXIX-0/99, June 7 <sup>th</sup> , 1999).	-1988 Constitution. -Administrative Law. -Resolution 14/2004. -Presidential Decree 6.044/ 2007. -Presidential Decree 8.724/2016.	-Bahia State Constitution.  -Bahia State Decree 12.003/2010.  -Ceara State Constitution.  -Ceara State Decree 31.059/2012.  -Espírito Santo State Constitution.  -Espírito Santo State Act 8.233/2005.  -Minas Gerais State Constitution.  -Minas Gerais State Law 21.164/2014.  -Para State Constitution.  -Pernambuco State Constitution.  -Pernambuco State Law 14.912/2012.  -Rio de Janeiro State Constitution.  -Rio Grande do Sul State Constitution.

<sup>79</sup> Available at UN OHCHR <<http://www.ohchr.org/EN/countries/LACRegion/Pages/BRIndex.aspx>>. Accessed 9 May 2016.

<sup>80</sup> Available at OAS <[http://www.oas.org/dil/treaties\\_signatories\\_ratifications\\_member\\_states\\_brazil.htm](http://www.oas.org/dil/treaties_signatories_ratifications_member_states_brazil.htm)>. Accessed 9 May 2016.

<sup>81</sup> Available at STF <<http://www.stf.jus.br/>>. Accessed 9 May 2016.

*Table 2* shows that there is only soft law specifically regulating the protection of human rights defenders globally. Despite the lack of a specific (international or regional) human rights treaty (hard law) for the protection of human rights defenders, the existing international and inter-American human rights treaties can and should be used for the protection of human rights defenders and their work. Once ratified by States and incorporated into their respective domestic legal systems, these human rights instruments provide the legal ground to demand that States fulfil their negative and positive obligations towards human rights and human rights defenders. These responsibilities and obligations contained in those aforesaid human rights instruments apply to the Brazilian State, for it has ratified the majority of those instruments and, thus, is committed to international human rights law.

In addition, the 1998 UNDHRD, solely applied, might not be strong enough – once it is soft law (non-binding), not hard law (binding) – to demand that Brazil take concrete measures to protect human rights defenders. As Brazil's case has demonstrated, it was only due to pressures exerted by (national and transnational) civil society organizations and transnational advocacy networks that the Brazilian government created the PPDDH back in 2004 (TERTO NETO, 2016). Legal obligations *per se* did not force the government to create that protection programme. In the absence of hard law, soft law might be useful to demand human rights change politically.

Soft law can and should be turned into a reference point from which transnational and domestic human rights advocacy networks and human rights defenders themselves can exert pressure on States and bring about human rights change. As the creation of the PPDDH demonstrates, sometimes soft law might be able to influence policy change domestically (TERTO NETO, 2016). Although soft law is non-binding, it might provide principles and guidance for social movements (transnational and national advocacy networks) and UN and Inter-American bodies in order for them to exert pressure on national states and bring about policy change. These political articulations might have an impact at domestic level. It seems to be the case with Brazil, which created the PPDDH due to internal and international pressures (TERTO NETO, 2016). These were based on a human rights discourse on the grounds of the *1998 UN Declaration on Human Rights Defenders* (TERTO NETO, 2016). This is not to say, however, that there is no need for specific hard law to regulate the protection of human rights defenders. A specific international human rights instrument could contribute even more to the protection of human rights defenders. The same logic applies to organised civil socie-



ty's demands that the Congress pass into primary legislation Bill 4.575/2009<sup>82</sup> to regulate the protection of human rights defenders nationally.

Brazil's human rights obligations stipulate that each and everyone under Brazil's jurisdiction must be protected, particularly human rights defenders who carry out the fight for democracy, human rights and social justice. In theory, Brazil's current legal framework formally guarantees that the Brazilian State take action as to not only protect human rights, but also human rights defenders and their work. This is so due to the fact that Brazil has ratified the majority of international and regional human rights instruments, which were incorporated into Brazil's legal system according to the 1988 Constitution. International human rights law has thus been internalised into Brazil's legal system according to constitutional law. This means Brazil is, therefore, committed to international human rights law.<sup>83</sup> It also means the problems in Brazil regarding human rights violations and state and non-state violence against human rights defenders seem to be ones of compliance,<sup>84</sup> not of commitment to international human rights law.

<sup>82</sup> Available at Câmara dos Deputados <<http://www.camara.gov.br/proposicoesWeb/fichade tramitacao?idProposicao=422693>>. Accessed 22 April 2016.

<sup>83</sup> "By 'commitment', we mean that *actors accept international human rights as valid and binding for themselves*" (RISSE; ROPP; SIKKINK, 2013, p.9).

<sup>84</sup> "'Compliance' is defined as *sustained behaviour and domestic practices that conform to the international human rights norms, or what we called 'rule-consistent behaviour'* in the original spiral model" (RISSE; ROPP; SIKKINK, 2013, p.10).

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