

Annex 2: Brazil: Bill for the protection of defenders (2009)

BILL

Protection Programme for Human Rights Defenders (PPHRD) under the Special Secretariat for Human Rights of the Presidency of the Republic.¹

THE NATIONAL PARLIAMENT DECREES:

Chapter I

On the protection program for human rights defenders

ART. 1 This law establishes a Protection Program for Human Rights Defenders (PPHRD) under the Special Secretariat on Human Rights of the Presidency of the Republic. Its objective is the application of measures to protect persons or entities whose rights are threatened as a result of their activities promoting or protecting human rights.

ART. 2 Under this law human rights defenders are defined as:

- I natural persons who act in isolation or as part of a group, organisation or social movement for the promotion or defence of human rights;
- II legal entities, groups, organisations or social movements which act with the purpose of defending human rights.

ART. 3 The PPHRD focuses on human rights defenders whose rights have been violated or threatened as a result of their actions or aims.

- §1 The PPHRD protection measures may include or be extended to the spouse, companion, ascendants, descendants and dependent persons who live with the human rights defender.
- §2 The protection measures provided by the PPHRD will be based on the seriousness of the coercion or threat, as well as the difficulty involved in preventing or curbing them using conventional public security mechanisms.

ART. 4 Attacks or threats against a human rights defender are defined as any threatening behaviour intended to prevent the defender continuing his/her personal or institutional activities, and may be aimed directly or indirectly at that person, his/her relatives, friends or group members in particular by:

- I threatening his/her physical, mental, moral or economic well-being and cultural freedom or beliefs;
- II adopting discriminatory behaviour of any kind.

- §1 Inclusion in the PPHRD, the adoption of safety restrictions and other measures to protect human rights defenders are subject to their consent.
- §2 The protection of the human rights defender under art. 2, paragraph II, may cover all his/her associates or assets, depending on their relationship to the interests under threat.
- §3 Under art. 2, paragraph II, it is not necessary to seek the consent of the legal entity, institution, group, organisation or social movement for its members to be included in the PPHRD, provided they meet the requirements of article 11.

ART. 5 The PPHRD is a confidential programme of an exceptional nature and priority will be given to cooperation between federal bodies, in order to guarantee the defender's safety and enable him/her to continue to exercise his/her activities and maintain his/her physical well-being.

- §1 The Executive may sign pacts, agreements, modifications or partnerships with states, the Federal District and non-governmental organisations on how to implement the PPHRD in order to adopt the measures included in it.
- §2 To implement the PPHRD on a local level, the federal entities that are parties to the pact should set up a local deliberation council and appoint a local executive coordinator.

¹ This is not an official translation and should not be used for legal purposes..

Chapter II
The bodies of the PPHRD

ART. 6 The highest authority of the PPHRD shall be the National Deliberation Council, chaired by the National Executive Coordinator.

ART. 7 The National Deliberation Council shall be part of the Special Secretariat for Human Rights of the Presidency of the Republic, and will:

- I discuss the implementation of the National Protection Policy for Defenders of Human Rights, in accordance with this law or its regulations;
- II discuss requests for inclusion in the PPHRD;
- III rule on appeals lodged against the decisions of the local deliberation councils;
- IV support the implementation of the PPHRD in the states and the Federal District;
- V function as a PPHRD appeal body;
- VI other functions will be defined in the regulations.

Annex: The National Deliberation Council will have equal representation from the public authorities and members of civil society organisations that defend human rights, in the manner described by this regulation.

ART. 8 The National Executive Coordinator shall:

- I implement the public policy on protection of human rights defenders, complying with the requirements of the PPHRD;
 - II deal with requests for inclusion in the PPHRD and pass them on to the National Deliberation Council for decision;
 - III suggest security measures that match the PPHRD's cases to the deliberation council of the federal entities;
 - IV propose the extension or reduction of security measures to the local deliberation council of the federal entities;
 - V decide on provisional inclusion in the PPHRD in urgent cases, and on the adoption of security measures necessary to ensure the protection of human rights defenders;
 - VI urge the competent authorities to take legal and administrative measures for the protection of human rights defenders;
 - VII monitor, with the cooperation of other federal bodies, the implementation of the recommendations, resolutions and provisional measures of international bodies involved in protecting the work of human rights defenders, of which Brazil is a member;
 - VIII create and maintain databases to consolidate statistics on violations of the safety and physical well-being of human rights defenders;
 - IX promote, in collaboration with other federal bodies, action and policies at local level for the protection of the work of human rights defenders;
 - X propose cooperation with international bodies for the protection of human rights defenders.
- §1 The National Executive Coordinator will be supported by multidisciplinary technical expertise to be defined in this regulation.
- §2 Inclusion in the PPHRD under art. 8, paragraph V, shall not imply monthly financial assistance, and must be ratified by the National Deliberation Council in the first meeting held after the incident.

ART. 9 The local deliberation councils are responsible for, inter alia:

- I discussing requests for inclusion in the PPHRD within their remit;
- II defining the security measures to be adopted for each case in the PPHRD. Financial assistance can only be granted by local deliberation councils;
- III deciding on appeals lodged against the decisions of the local executive coordinator;
- IV implementing and structuring the PPHRD;
- V seeking associations to extend and improve the PPHRD;
- VI requesting that the public authorities adopt measures guaranteeing the work of human rights defenders.

- §1 Appeals against decisions of the local deliberation councils shall be made to the National Deliberation Council.
- §2 The local deliberation council shall define the powers of the local executive coordinator according to the terms of this law and its applicable regulations.

Chapter III
On Protection Measures and Inclusion in the PPHRD

ART. 10 The PPHRD shall include, inter alia, the following measures for human rights defenders, applied in isolation or in combination:

- I police protection;
 - II safe and suitable transport to carry out their activities;
 - III access to private radio frequencies of public security bodies, for the purposes of monitoring and making requests for help, in addition to the supply of suitable telecommunications equipment;
 - IV equipment for personal safety and for the security of the premises of the legal entity or group to which he/she belongs;
 - V adoption of measures to overcome the causes that led to inclusion in the PPHRD;
 - VI confidentiality of identity, appearance and personal data;
 - VII social, medical, psychological and legal support and assistance;
 - VIII monthly financial help to contribute to individual or family subsistence, if it is impossible for the human rights defender to hold a normal job or because he/she has no source of income;
 - IX support to meet civil and administrative obligations which require attendance in person;
 - X for civil servants or military personnel, temporary suspension of employment without forfeiting privileges and with a suspension of expiry dates;
 - XI change of residence or provisional accommodation to a secret location, compatible with protection;
 - XII transfer to the Protection Programme for Threatened Victims and Witnesses under Law 9.807 of 13 July 1999.
- §1 Monthly financial assistance shall be approved for a given period, and the maximum will be set by the National Deliberation Council at the start of each financial year.
 - §2 Measures that lead to the interruption of the human rights defender's work in his/her area of activity will only be implemented if strictly necessary for his/her security or that of his/her collaborators.
 - §3 The police force will provide the necessary collaboration and support to implement the PPHRD.
 - §4 Measures and provisions related to the PPHRD will be carried out and maintained in secret by the human rights defenders and the agents involved in carrying them out.

ART. 11. The following are requirements for the inclusion of the human rights defender in the PPHRD:

- I application for inclusion;
- II proof that the applicant's activities defend or are carried out with the intention of defending human rights;
- III established relationship between offences or threats and the subject's work as defender;
- IV acceptance of and compliance with its rules.

ART. 12. The application for inclusion in the PPHRD may be made by the human rights defender, any member of the organisation, beneficiaries of the defender's action through human rights networks, civil society organisations, the prosecution service or any other public body that has knowledge of the violation of human rights or the defender's vulnerability.

- §1 The application must be accompanied by documents or information to prove the person or the members of the organisation are human rights defenders, with a description of the threat or offence facing them.
- §2 The person concerned may request documents or information proving their involvement in human rights work and the resulting threats or offences against him/her from any public authority with the purpose of making an application.
- §3 The activities carried out in defence of human rights may be confirmed by documents and information and, if necessary, by the statutes of the entity that is to be included in the PPHRD.
- §4 The offence may be proven via statements, documents or any other form of legally admissible proof.

ART. 13. Continued inclusion in the PPHRD shall depend on the persistence of the threat, situation of vulnerability or effects of the offence.

Annex: The human rights defender may leave the PPHRD:

- I through personal choice or a formal decision taken by the majority of the members of the legal entity, institution, group, organisation or social movement;
- II by being forced to do so should they fail to comply with the rules, leading to further risk to the safety of other protected people or public agents responsible for protection.

Chapter IV On General Provisions

ART. 14. The local executive coordinator is responsible for taking suitable protection measures, which should have the consent of the human rights defender.

- §1 In the event of the human rights defender disagreeing with any of the protection measures proposed by the local executive coordinator, the adoption of other methods will depend on the signing of a statement of responsibilities and will only apply if the risks for the agents involved in the implementation of this measure do not increase.
- §2 In the case of legal entities, groups, organisations or social movements, the implementation of the protective measures can only be applied to members who give their consent.
- §3 The protective measures adopted within the scope of the PPHRD may be extended or withdrawn by the local executive coordinator according to the varied level of risk to which the defender is exposed.

ART. 15. The local executive coordinator shall make requests for appropriate protective measures to the competent authorities.

ART. 16. The Executive Power of the signatories to the agreement to implement the PPHRD shall provide the necessary training, resources or equipment to guarantee the safety of the public agents responsible for protecting the human rights defenders at risk.

ART. 17. The PPHRD may adopt measures to improve the training of the human rights defender under its protection with the intention of enhancing his/her safety.

ART. 18. Generally speaking the protective measures in Art. 10 are intended to:

- I facilitate mutual access to the intelligence systems of the different public entities responsible for public safety in the areas of activity of the human rights defender protected by the PPHRD;
- II enhance public safety;
- III provide the necessary public services to reduce the risks to human rights defenders;
- IV address the structural causes underlying the offences against the human rights defender, through comprehensive and coordinated action with the appropriate bodies and entities, including other federal entities.

Annex: Priority shall be given to the administrative and legal processes governing the assessment of the offences and the responsibility of the perpetrators, especially criminal investigations and trials in which the defender is involved as a victim or threatened witness, whether he/she is included in the PPHRD or the programme under Law 9.807 of 1999.

ART. 19. The Special Secretariat for human rights may set up a national inter-sectoral commission for the coordination of public bodies and federal entities with powers related to policies for human rights protection programmes.

ART. 20. The resources required for the implementation of the PPHRD shall come from the budget of the Special Secretariat for Human Rights.

ART. 21. The Union, the States and the Federal District, according to their respective powers, shall adopt measures to protect the work of legal entities and members of groups, organisations or social movements who find themselves in situations of risk or vulnerability as a result of their work promoting human rights.

ART. 22. This Law shall become definitive within ninety days of its publication.

ART. 23. This Law shall come into force on the date of its publication.

Brasilia,

MJ MPOG SEDH 00191 2008 PROTECION PROGRAMME FOR THREATENED HUMAN RIGHTS DEFENDERS

Brasilia, 30 October 2008

Most Excellent President of the Republic,

We submit the attached Bill "establishing the Programme for the protection of human rights defenders under threat – PPHRD– under the Special Secretariat for Human Rights of the Presidency" for the consideration of Your Excellency.

The issue emerged from discussions and debates held by members of the Working Group set up by Decrees nos. 66 and 89, both in 2003, tabled by the Special Secretariat for Human Rights, with the aim of presenting proposals for policies, actions and measures intended to guarantee the protection of human rights defenders.

The Working Group, coordinated by the Special Secretariat for Human Rights of the President of the Republic, was made up of representatives of the National Public Security Secretariat, the Federal Police, the Federal Traffic Police, the National Attorney Generals' Council, the National Council of Police and Fire Service Commanders, the Military, the National Association of Police Officers, the Federal Prosecution Office, the Parliament, the Magistrates' Association of Brazil, UNICEF, the Brazilian Bar and the NGOs 'Tierra de Derechos', 'Movimiento Nacional de Derechos Humanos' and 'Centro de Justicia Global'.

International legislation was taken into account – particularly Resolution 53/144 of the UN General Assembly of 1998 – and the format of the Special Representations, both of the UN and Inter-American organisations at the heart of Resolution 1842 of the OAS. The result of this Working Group was that in October 2004 the Brazilian government, after making considerable progress with civil society organisations, officially implemented the National Programme for the Protection of Human Rights Defenders to be carried out within the remit of the Special Secretariat for Human Rights.

This programme supports the preparation of Bills n°. 2980 (2004) - which establishes the National Programme for the Protection of Human Rights Defenders and other matters, the work of MP Eduardo Valverde - n°. 3616 (2004) - which inserts a chapter in the Law governing the Programme on the Rights of Victims and Witnesses Under Threat - law n°. 9807/99 and other measures proposed by MP Iriny. Bill n°. 3616 (2004) was annexed to section 2980 (2004), and these are currently being examined by the parliamentary Constitution and Justice Commission, according to a report by MP Nelson Pellegrino, appointed on June 17th 2004.

We can assure you that the preparation of the parliamentary initiatives is intended to satisfy social demands for the formal establishment of a programme that protects the physical well-being, freedom and dignity of human rights defenders. It is obviously an initiative that we consider worthwhile.

Given that the proposals made by the MPs deal with issues that have their origin in a private initiative taken by the head of the executive, they suffer from what is known as 'inherent defects'. Consider this: article 1 of Bill 2980 (2004) sets out to create a National Programme for the Protection of Human Rights Defenders within the remit of the Special Secretariat for Human Rights, and article 5 of Bill 3616 (2004) assigns new functions to the Federal Police and the Federal Traffic Police.

These provisions therefore suffer from the defect of not being not constitutional, in accordance with the terms of article 2 of the Federal Constitution, under which the powers of the Union are independent of each other yet act in harmony, and article 84, VI, also from the Political Charter, which gives the President of the Republic the power to determine, through a decree, the organisation and functioning of the Federal Administration when this does not increase costs and neither creates nor eliminates institutions, in the event of the initiative having its origins in ordinary law.

Progress was made in 2007 in the construction of the programme's legal framework through wide-ranging debates in society, as a direct result of the vulnerability and threats suffered by our human rights defenders and social demands for the institutionalisation of guarantees for and protection of these citizens.

This process led to the creation of a National Policy for the Protection of Human Rights Defenders through Presidential Decree No. 6044/2007, which recognised the work of the defenders and highlighted the general principles of respect for human dignity, non-discrimination for reasons of gender, sexual orientation, ethnic or social origin, disability, nationality, occupation, race, religion, age, migratory status or any other status. It also recognised the promotion and guarantee of citizenship and human rights, respect for international treaties, human rights conventions and legislation and the universal dimension of human rights.

The PPHRD sets out to provide protection and assistance to individuals or groups, organisations or social movements for the promotion and protection of human rights and who are in a situation of risk or vulnerability as a result of their activities.

As a basic premise to understanding this policy, it is important to underline that all the efforts of the protection network for defenders are based on guaranteeing their physical well-being as agents that promote and protect human rights and denounce atrocities, eliminating delays in dealing with social issues, and impunity.

The PPHRD works along three lines: prevention, which basically consists of designing policies that deal with the causes of violations of the rights of human rights defenders and denouncing them, investigation of the threats and violations of human rights and the combination of public and federal policies to deal with the causes of these violations. There is therefore an urgent need for a law that establishes rules for organising and maintaining the protection of human rights defenders, establishing a programme and obtaining a commitment from the stakeholders involved.

At national level, the PPHRD has three state-level Coordinators and a General Coordination Institution committed to guaranteeing and protecting 45 (forty-five) defenders who are either under threat or in a vulnerable situation.

Sadly, we recall human rights defenders whose struggle was cut short, and whose deaths publicly highlighted the urgent need to find solutions for the social and economic problems that people experience in situations of vulnerability.

A symbol of the struggle for human rights was Dorothy Stang, a missionary from the Congregation of Notre Dame and a recognised defender of environmental causes and landless peasant farmers against timber merchants and stockbreeders. In 2004 she received the title of “Citizen of Pará” from the Legislative Assembly of the State of Pará and the “José Carlos Castro” Prize, awarded by the Brazilian Bar. Irma Dorothy, who had worked in Pará since 1966, died at the age of 73 in 2005, shot six times in an ambush when she was walking along a path together with two peasant workers.

Mr. President, there cannot be any democracy if the state and society do not guarantee, for all citizens, respect for the right to be safe. In addition to complying with international legislation on the protection of human rights, it is essential for the consolidation of our young Brazilian democracy to have a public policy that guarantees the dignity of the defenders of the rights of us all. The defenders of human rights play a vital role in the consolidation of the Rule of Law, supported by the separation of powers, the supremacy of the constitution and the guarantee of basic human rights.

Members of human rights organisations, lawyers, journalists, rural and indigenous leaders who protect victims and other people who work in the defence and promotion of human rights often become victims themselves. Recognising that many find themselves in a precarious situation in their work is essential for the protection of their struggle. Rights that are recognised and guaranteed for all citizens, such as freedom of speech, of conscience and religion, the right to demonstrate and hold peaceful assembly, or the right to property, physical well-being and safety are precious to human rights defenders. By defending our dignity, we refuse to be humiliated and excluded.

Mr. President, these are the reasons why we are presenting the attached Bill to Your Excellency for your consideration,

Yours respectfully,

Tarso Fernando Herz Genro, Paulo Bernardo Silva, Paulo de Tarso Vannuchi