

BUSINESS AND THE POLITICS OF HUMAN RIGHTS

THE PROTECTION OF HUMAN RIGHTS DEFENDERS BY STATE AND BUSINESS
AS AN OPPORTUNITY TO BUILD UP A DEMOCRATIC SOCIETY IN BRAZIL

EMPRESAS Y LA POLÍTICA DE DERECHOS HUMANOS

LA PROTECCIÓN DE LOS DEFENSORES (AS) DE LOS DERECHOS HUMANOS POR
PARTE DEL ESTADO Y DE EMPRESAS COMO UNA OPORTUNIDAD PARA CONSTRUIR
UNA SOCIEDAD DEMOCRÁTICA EN BRASIL

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Recebido: 23-02-2016
Aprovado: 29-05-2018

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ABSTRACT:

This paper considers the interplay of international law, politics and national law in the protection of human rights defenders (HRDs) that are challenging businesses practices in Brazil. It argues that the Brazilian State and transnational and domestic businesses have a responsibility to protect HRDs and should adopt robust means of doing this, embracing their work as opportunity rather than a threat in building up a democratic society. To demonstrate the

RESUMEN:

En este trabajo se considera la interacción del derecho internacional, la política y la legislación nacional en la protección de los(as) defensores(as) de los derechos humanos (DDHs) que contestan las prácticas empresariales en Brasil. Se argumenta que el Estado brasileño y las empresas nacionales y transnacionales tienen la responsabilidad de proteger DDHs y deberían adoptar medios robustos de hacer esto, abrazando a su trabajo como una oportunidad más que una

validity of this claim, this paper highlights the role of HRDs in promoting corporate responsibility and in exposing and remedying the adverse human rights (HR) impacts of business in Brazil. It further explains how HRDs working on issues of corporate responsibility and accountability are under threats and attacks from both state and non-state actors as a result of their work. The paper then analyses some of the responses from the organized civil society, business, and the Brazilian State in order to tackle violence against HRDs. The paper considers that the relationship between business and the Brazilian State is dialectical and complementary and, as such, should be arbitrated by the international HR system. In this process, the paper calls for a binding instrument to regulate the activities of transnational corporations and other business enterprises to be adopted at the UN level and argues that it could potentially influence the rhetoric and practices in the politics of HR in Brazil. The final section provides an explanation for how the Brazilian State and transnational and national businesses should protect HRDs.

KEYWORDS:

Business. Human Rights. Human Rights Defenders.

amenaza en la construcción de una sociedad democrática. Para demostrar la validez de esta afirmación, este documento pone de relieve el papel de DDHs en la promoción de la responsabilidad corporativa y en exponer y poner remedio a los efectos adversos causados por actividades empresariales en Brasil. En él se explica con más detalle cómo DDHs que trabajan en cuestiones de responsabilidad corporativa y la rendición de cuentas por violación de derechos humanos están bajo amenazas y ataques tanto de actores estatales y no estatales, como resultado de su trabajo en la defensa de los derechos humanos. En el documento se analizan algunas de las respuestas de la sociedad civil organizada, las empresas y el Estado brasileño con el fin de hacer frente a la violencia contra DDHs. El documento considera que la relación entre las empresas y el Estado brasileño es dialéctica y complementaria y, como tal, debe ser arbitrada por los sistemas internacional y interamericano de derechos humanos. En este proceso, el documento pide un instrumento vinculante para regular las actividades de las empresas transnacionales y otros negocios que se adopten a nivel de la ONU y argumenta que podría potencialmente influir en la retórica y las prácticas en la política de derechos humanos en Brasil. La sección final proporciona una explicación de cómo el Estado brasileño y empresas nacionales y transnacionales deberían proteger DDHs.

PALABRAS-CLAVE:

Negocios (Empresas). Derechos Humanos. Defensores (as) de Derechos Humanos.

1 INTRODUCTION

Brazil is a post-colonial society with a historical legacy of social authoritarianism¹ and, thus, it is still facing high levels of structural poverty, inequality, exclusion and violence, as well as seeking the establishment of an effective human rights regime (DAGNINO, 1993; DAGNINO, 1994; DAGNINO, 2001; DAGNINO, 2007; TERTO NETO, 2015). Human rights (hereafter HR) violations marked the military dictatorship (1964-1985) in Brazil (VIANA FILHO, 1975; SMITH, 1987; SKIDMORE, 1988). While the state repression violated civil and political rights via torture, forced disappearances, summary executions, among others, structural problems related to poverty, inequality, violence, exclusion etc. violated the economic, social and cultural rights.² The fights for democracy and HR fused up and, in this context, activists, militants and human rights defenders (henceforth HRDs) played a decisive role in the country's re-democratization (VIANA FILHO, 1975; SMITH, 1987; SKIDMORE, 1988; GOHN, 1997; DAGNINO, 2000; GONCALVES, 2006; TERTO NETO, 2016). As a new constitutional democracy, Brazil's challenge in guaranteeing the respect for human dignity and, in concrete terms, the enjoyment of fundamental rights by all reflects into two fundamental tasks. The first, initiated with the country's re-democratization, refers to the elaboration of a democratic legal system (BRINKS, 2008; SOMERS, 2008). The second, still developing, refers to the necessity to provide rights bearers with extra-judicial instruments and mechanisms to make them capable of facing the resistance that might come from duty bearers, who usually exercise the political, economic and symbolic power (BRINKS, 2008: 6).³ Consequently, changes to the Brazilian structures are needed in order to create a balance between the legal resources of rights bearers and duty bearers so that effective citizenship can be accomplished. Otherwise, the guarantees brought by the new democratic legal system – via the promulgation of the 1988 Constitution – will continue to be purely formal. The expected changes are possible via facing structural problems and overcoming social authoritarianism. The organized civil society (henceforward OCS) should continue exerting pressure on the State as to the enjoyment of fundamental rights by all under Brazil's jurisdiction. This reflects the indispensability of the fights carried out by HRDs through their articulations with transnational advocacy networks (hereafter TAN) as well as United Nations (UN) and Organization of American States (OAS) HR mechanisms (KECK and SIKKINK, 1998). They play an important role in the struggles for strengthening democracy, fulfilling HR and accomplishing effective citizenship. As they face up the establishment (*status quo*), particularly while chal-

1 The term refers to the Brazilian society as one marked by an 'unequal and hierarchical organization of social relations as a whole [...]. Class, race, and gender differences constitute the main bases for a social classification that has historically pervaded Brazilian culture, creating different categories of people hierarchically disposed in their respective "places" in society. Underneath the apparent cordiality of Brazilian society, the notion of social places constitutes a strict code that reproduces inequality in social relations as a whole', in Dagnino (1994: 240).

2 The analysis here considers the point on the equal importance of economic and social rights in a context of transitional justice that is made by Schmid (2014). See also U.S. *Department of State's Country Reports on Human Rights Practices for 1988*.

3 The analysis is conducted here under a *gramscian perspective of an amplified State* where civil society 'comprehends the group of social relations that cover the concrete development of everyday life, of life in society, the interweaving of institutions and ideologies in which the relations cultivate and organize themselves' and political society 'indicates the group of mechanisms through which the dominant class exercise violence', in Simionato (1995: 68). See also Semeraro (1999); Gramsci (2004); Bourdieu (1996, 1997, 1998).

lenging non-HR-based business practices, HRDs become targets of violence from state and non-state agents who usually control the political, economic and symbolic powers in Brazil (TERTO NETO, 2016; SIMIONATO, 1995; SEMERARO, 1999; GRAMSCI, 2004; BOURDIEU, 1996, 1997, 1998; KECK AND SIKKINK, 1998).⁴

In this context, this paper considers the interplay of international law, politics and national law in the protection of HRDs who are challenging business practices in Brazil. It argues that the Brazilian State and transnational and domestic businesses have a responsibility to protect HRDs and should adopt robust means of doing this, embracing the work of the HRDs as opportunity rather than a threat in building up a democratic society in Brazil. The second section presents the legal framework for the protection of HRDs in Brazil. The third section sheds light on the role played by HRDs who challenge business practices in Brazil.⁵ The cases of Alexandre Anderson de Souza, Luiz Carlos da Silva, and *Tremembé* indigenous people are analysed in order to portray the most common types of state and non-state violence against HRDs who challenge business practices in Brazil. The fourth section argues the relationship between the Brazilian State and Business is dialectical and complementary and, as such, it should be arbitrated also by the international and inter-American HR systems. Then, it analyses responses to violence against HRDs coming from the OCS, Business and the Brazilian State and makes the point these responses result from pressures exerted by (national and transnational) civil society organizations. Finally, in the fifth section, it presents a brief conclusion.

2 THE LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS DEFENDER IN BRAZIL⁶

There is no specific primary legislation for the protection of HRDs at the federal level. There are nevertheless instruments that have directly guided the legal functioning of the *Brazilian Program for the Protection of Human Rights Defenders* (henceforth PPDDH) at the federal level, such as the 1988 Constitution, administrative legislation, Resolution 14, of 28 July 2004, and the Presidential Decree 6.044, of 12 February 2007.⁷

Concerning rights that impact HRDs and their work directly,⁸ the 1988 Constitution guarantees – at least formally – not only the *right to life with dignity*,⁹ but also *the right*

4 Id.

5 The analysis draws on empirical evidence collected during fieldwork regarding my PhD research on the creation and functioning of the *Brazilian Program for the Protection of Human Rights Defenders* (PPDDH) at the Law School in the University of Aberdeen (UK). It also draws on my own experiences while working as a HR lawyer (2009-2010) for the PPDDH.

6 This legal framework regulates the state protection provided by the PPDDH.

7 There are also several state laws that guide the legal functioning of the PPDDH at the state level such as: *Lei Estadual (ES) n° 8.233, of 21/12/2005*, which created the PPDDH-Espirito Santo; *Lei Estadual (MG) n° 3.811, of 19/12/2013*, which instituted the PPDDH-Minas Gerais; *Lei Estadual (PE) n° 14.912, of 27/12/2012*, which created the PPDDH-Pernambuco; *Decreto Estadual (CE) n° 31.059, of 22/11/2012*, which instituted the PPDDH-Ceará; and *Decreto Estadual (BA) n° 12.003, of 10/03/2010*, which created a State Commission for the PPDDH-Bahia. Due to space constraints, these state laws are not analysed here.

8 Despite these rights are generally applied to everyone under Brazil's jurisdiction, they are particularly relevant to HRDs and their work. Through the full enjoyment of those rights, HRDs might be able to conduct their activities safely in Brazil.

9 Article 1, line III, of 1988 Constitution.

to personal integrity and freedom;¹⁰ the right to organize peaceful meetings or gatherings;¹¹ the right to association;¹² the right to freedom of expression;¹³ the right to access public information (*habeas data*);¹⁴ the right to privacy and to the protection of honour and dignity;¹⁵ the right to a due process of law;¹⁶ the right to access to justice and legal aid;¹⁷ among other legal guarantees (SARLET, 2004).¹⁸ The problem is that the 1988 Constitution provides such guarantees only formally (TERTO NETO, 2010).¹⁹ The gap between what the Constitutional Law expresses and its applicability in reality remains enormous. This affects not only HRDs' activities, but also HRDs themselves, who are victimized by both state and non-state violence.

While there is no specific primary legislation regulating the protection of HRDs at the federal level, there is, however, secondary administrative legislation, that is, general regulations that can be applied to allow the PPDDH to carry on its activities in the protection of HRDs.²⁰ As a federal program, the PPDDH must conduct its activities in observance with constitutional and administrative law (LINDBLOM, 1993; BUCCI, 2006; MENDES et al, 2008; SABATIER, 2007; HOWLETT, 2009; BIRKLAND, 2011). In this regard, Resolution 14, of 28 July 2004, is particularly important because it created the PPDDH's *National Coordination*, following up on the guidelines for the establishment of a PPDDH presented by the Working Group (GT) during the ordinary meeting of the *Council for the Defence of the Rights of the Human Person* (CDDPH)²¹ (TERTO NETO, 2016). Hence, the PPDDH has been able to legally operate since Resolution 14/2004 constituted its national coordination with specific competencies related to any issue concerning the protection of HRDs in Brazil.²² Moreover, Presidential Decree 6.044, of 12 February 2007, approved the *National Policy for the Protection of Human Rights Defenders* (henceforward PNPDDH).²³ Its objective is to establish principles and guidelines for the protection of HRDs, according to the Brazilian laws and international HR treaties that Brazil has signed and ratified (article 1).²⁴ The PNPDDH provides for the definition of important concepts such as *human rights*

10 Article 5, *caput*, of the 1988 Constitution.

11 Article 5, line XVII, of the 1988 Constitution.

12 Article 5, lines XVII, XVIII, XIX and XX, of the 1988 Constitution.

13 Article 5, lines IV, VI and IX, of the 1988 Constitution.

14 Article 5, lines XIV, XXXIII, LXXVII, and LXXVII, of 1988 Constitution.

15 Article 5, lines X, of 1988 Constitution.

16 Article 5, lines LIV, of 1988 Constitution.

17 Article 5, lines LXXIV, of 1988 Constitution.

18 Article 5, lines LV and LVI, of 1988 Constitution.

19 The lack of material exercise of constitutionally (formally) guaranteed rights is related to social authoritarianism in Brazil.

20 Portal dos Convênios do Governo Federal <<https://www.convenios.gov.br/portal/legislacao>> accessed 13 February 2016.

21 Lei n° 12.986, of 2 June 2014, has recently transformed the *Council for the Defence of the Rights of the Human Person* (CDDPH) into the *National Human Rights Council* (CNDH).

22 Article 2 of Resolution 14/2004.

23 Presidência da República <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm> accessed 13 February 2016.

24 Presidência da República <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm> accessed 13 February 2016.

defenders (article 2), *protection* (article 2 § 1), and *violation* (article 2 § 2).²⁵ It also indicates the principles and guidelines that must regulate the activities for the protection of HRDs in Brazil (article 3, lines I to VII respectively).²⁶ The *general guidelines* of the PNPDDH are expressly presented in article 4, lines I to XI, whereas the *specific guidelines for the protection of human rights defenders* and the *specific guidelines for bringing to justice the perpetrators of threats or intimidations* are regulated by article 5, lines I to V; and article 7, lines I to VII, respectively.²⁷

It is argued here that the current available laws in Brazil's legal system are sufficient to demand that the State protect HRDs and their work. This is so due to the fact Brazil has ratified and internalized the majority of international²⁸ and regional²⁹ HR instruments, that is, it is committed to international HR law (RISSE, ROPP and SIKKINK, 2013 and 1999). Due to its international HR obligations, Brazil must protect HRDs and their work, particularly when they challenge the *status quo* and, as a result, become targets of violence from state and non-state actors. As for what interests this paper, it also means Brazil must monitor business practices and assure that they occur in compliance with the *Guiding Principles on Business and Human Rights* (hereafter GPs) (OHCHR, 2011). By regulating business practices, Brazil could induce corporations and other business enterprises into having a more responsible attitude towards HR as well as engaging with HRDs while operating in the country. In this sense, it is argued here that the responsibility to protect HRDs rests also on corporations and other business enterprises. This is particularly true for HRDs challenging business practices that violate HR in Brazil. Next section will analyse some case studies of HRDs who challenge business practices and, as a result, face violence by either state or non-state actors.

3 HUMAN RIGHTS DEFENDERS CHALLENGING BUSINESS PRACTICES IN BRAZIL

HRDs play a decisive role in tackling social authoritarianism and pushing forward the HR agenda. This is particularly true for HRDs challenging business practices that violate HR. Their legitimate and peaceful activities should not be obstructed (UN Doc. A/HRC/17/31).³⁰ On the contrary, their role in promoting corporate responsibility and in

25 Presidência da República <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm> accessed 13 February 2016.

26 Presidência da República <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm> accessed 13 February 2016.

27 Presidência da República <http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2007/Decreto/D6044.htm> accessed 13 February 2016.

28 Brazil has ratified/acceded the following UN HR instruments: CPPCG (1952), CERD (1968), CEDAW (1984), CAT (1989), CRC (1990), CCPR (1992), CESC (1992), CEDAW-OPT (2002), CRC-OPT-AC (2004), CRC-OPT-SC (2004), CAT-OPT (2007), CRPD (2008), CRPD-OPT (2008), CCPR-OPT1 (2009), CCPR-OPT2 (2009), and CED (2010). United Nations (UN) <www.un.org> accessed 13 February 2016.

29 Brazil has ratified/acceded the following OAS HR instruments: ICGCRW (1952), ICGPRW (1950), ICPPT (1989), ACHR (1992), ICPPEVAW (1995), AP-ACHR-ESCR (1996), and OP-ACHR-ADP (1996). Organization of American States (OAS) <www.oas.org> accessed 13 February 2016.

30 OHCHR <<http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>> accessed 13 February 2016.

exposing and remedying the adverse HR impacts of business should be embraced. Hence, this section briefly analyses the cases of Alexandre Anderson de Souza, Luiz Carlos da Silva, and *Tremembé* indigenous people in order to portray the most common types of state and non-state violence against HRDs who challenge business practices in Brazil.

3.1 CASE STUDY ANALYSIS

Case 1: Alexandre Anderson de Souza³¹

Co-founder and president of the *Associação dos Homens do Mar do Rio de Janeiro* (hereafter AHOMAR) in Magé/RJ, Brazil (ONU Brasil, 2012: 25). AHOMAR challenged GDK Company³² in the allegedly irregular construction of pipelines in Guanabara Bay, which is a Petrobras' enterprise.³³ GDK was hired by Petrobras and, as claimed by AHOMAR, has put the environment at risk, which could potentially jeopardize any fishing activities in Guanabara Bay. Since 2003, Souza has been challenging business practices in Guanabara Bay in favour of the rights of traditional fishing communities.³⁴ Because of their activities in defence of the rights of those traditional fishing communities, four members of AHOMAR have already been killed and Souza has been receiving several death threats.³⁵ These are believed to have come from local *milícias*³⁶ allegedly hired by GDK. As armed state agents usually compose the *milícias*, police inquiries regarding the killings and death threats were either terminated without bringing anyone to justice or twisted to criminalize AHOMAR's members, particularly Souza. He also survived an assassination attempt at AHOMAR headquarters.³⁷ This led to his inclusion in the PPDDH in 2009 (Cano and Duarte, 2012: 13).

Case 2: Luíz Carlos da Silva³⁸

Fisherman who has challenged business practices in Sepetiba Bay, Rio de Janeiro, Brazil. He challenged an industrial steelwork and port conglomerate composed by TKS

31 I interviewed him twice, first at AHOMAR headquarters in Mage/RJ, and then when for security reasons he was temporarily taken to Brasília/DF. Both occasions happened while I was working, as a HR lawyer, for the PPDDH (2009 to 2010).

32 GDK S. A. <<http://www.gdksa.com/>> accessed 13 February 2016.

33 Petrobras <<http://www.petrobras.com/en/home.htm>> accessed 13 February 2016.

34 GDK S. A. <<http://www.gdksa.com/>> accessed 13 February 2016.

35 Justiça Global <<http://global.org.br/arquivo/noticias/arrombamentos-na-casa-do-defensor-dos-direitos-humanos-alexandre-anderson-de-souza-e-no-escritorio-da-associacao-homens-do-mar/>> accessed 13 February 2016.

36 The term *milícias* refers to 'groups of armed state agents (policemen, fire-fighters, penitentiary agents, etc) who used to control communities and favelas (slums), offering "protection" in exchange of fees to be paid by tradesmen and residents. These groups made profit also with the monopolistic control over diverse economic activities exercised in these territories, such as selling of cooking gas, alternative transport, and the clandestine cable TV services', in Cano and Duarte (2012: 13).

37 GDK S. A. <<http://www.gdksa.com/>> accessed 13 February 2016.

38 I interviewed with him during fieldwork for my PhD Research at the Law School in the University of Aberdeen (UK).

(ThyssenKrupp Steel)³⁹ and Vale do Rio Doce Company⁴⁰, which invests in steel export and operates globally. This business enterprise has caused damage to indigenous, *quilombola*⁴¹ and fishing communities that reside in Sepetiba Bay. Silva organized the fishermen and challenged business practices conducted by TKS and Vale do Rio Doce Company altogether. As a result, he suffered death threats by armed security staff allegedly hired by TKS. Some among the security staff were identified as members of *milícias*, another serious social issue in Rio de Janeiro State. The business enterprise by TKS and Vale do Rio Doce Company got involved in the construction of the Steel Company of the Atlantic (CSA)⁴² in Sepetiba Bay. According to Silva, this business enterprise has caused various environmental irregularities and violated the HR of more than eight thousand families in the region. As Silva challenged that business enterprise, he suffered death threats and had to leave the area not to be killed by *milícias*. He was included in the PPDDH and removed from the Rio de Janeiro State.

Case 3: *Tremembé* Indigenous People⁴³

They compose the São José and Buriti indigenous communities located in Itapipoca, Itarema and Aracáú region, Ceará State, Brazil. They are at risk and in vulnerability as a result of their fights for the retaking and legal demarcation of their traditional indigenous lands in that region (SANTOS and OLIVEIRA, 2012). The Nova Atlântida Tourism Enterprise⁴⁴ intends to build an international touristic city in the aforesaid area. The *Tremembé* indigenous communities have challenged this business initiative and, as a result, they have either been discredited as ‘indigenous people’ or received death threats.⁴⁵ They have been supported by religious missionaries through the process of rescuing their ethnical identification/recognition, which contributes to exercising indigenous rights guaranteed by the 1988 Constitution. The *Tremembé* indigenous people affirm that the Nova Atlântida Tourism Enterprise economically co-opts residents who do not self-identify as indigenous by offering them jobs at the company, usually as security staff. According to the *Tremembé*, these security employees carry weapons and threaten indigenous leaders who are challenging business practices in the region. The company does not recognize the existence of indigenous communities in the region and, thus, accuses religious missionaries as well as

39 ThyssenKrupp CSA <<http://www.thyssenkrupp-csa.com.br/pt/institucional.html>> accessed 13 February 2016.

40 Companhia Vale do Rio Doce <<http://www.vale.com/EN/Pages/default.aspx>> accessed 13 February 2016.

41 The term refers to slaves who escaped from sugarcane plantation and other agricultural farms and sought refuge in *Quilombos* as well as to their descendants. Nowadays the term has acquired political meaning in race and ethnicity movements due to *quilombolas*' fights for the regularization of their constitutional right to the land title of Quilombos (areas where their ancestors lived after escaping slavery and where they themselves have been living).

42 ThyssenKrupp CSA <<http://www.thyssenkrupp-csa.com.br/pt/institucional.html>> accessed 13 February 2016.

43 I interviewed the leaders of *Tremembé* indigenous people when I was working, as a HR lawyer, for the PPDDH (2009 to 2010).

44 Grupo Nova Atlântida <<http://www.gruponovaatlantida.com/brasil/index.htm>> accessed 13 February 2016.

45 According to the leaders of *Tremembé* indigenous people themselves.

Tremembé leaders of having forged an ethnical identity to appropriate lands in the region.⁴⁶ The company made use of local and state media to discredit the *Tremembé*.⁴⁷ Since the process for the retaking of their traditional lands started, the *Tremembé* indigenous people have either received death threats or been discredited as ‘indigenous people’.⁴⁸ This led to their inclusion in the PPDDH.⁴⁹

These case studies highlight the role of HRDs in challenging business practices that violate HR in Brazil. They demonstrate not only that HRDs demanded state action to protect HR and themselves, but also that they helped push forward the corporate responsibility agenda via exposing and challenging the adverse HR impacts of business in Brazil. For instance, cases 1 and 2 describe challenges to the business practices of corporations (Petrobras and third parties involved) and of an industrial steelwork and port conglomerate (TKS and Vale do Rio Doce Company) respectively. In both cases, HRDs sought out state and federal authorities and tried to engage with business representatives in order to reach a negotiated solution. Although they were faced with violence, their efforts demanding respect for HR and protection for themselves put the corporate responsibility issue into the official agenda. The state responded by including Alexandre Anderson de Souza and Luíz Carlos da Silva in the PPDDH. The cases above also pinpoint the role of HRDs in exposing the adverse HR impacts of business in Brazil. For instance, case 3 describes challenges to business initiatives based on indigenous rights. Issues of identity and cultural rights became evident. This has helped expose (and at least until now prevent) the adverse HR impact regarding the identity and culture of *Tremembé* indigenous people. Had the Nova Atlântida Tourism Enterprise been successful, HRDs would have to exert pressure on the federal government to remedy the violation of their indigenous rights. In any case, HRDs (leaders of *Tremembé* indigenous people) demanded that the Brazil take action regarding the recognition of their indigenous rights and their own protection. The state responded by including the *Tremembé* indigenous communities in the PPDDH.

3.2 VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS CHALLENGING BUSINESS PRACTICES IN BRAZIL

The most common and historical causes of violence against HRDs are identified as those deriving from *agrarian conflicts* (possession, use and control of land and natural resources), *environmental issues* (preservation of natural resources and prevention of environmental degradation), *cultural rights* (preservation of the rights of minorities and indigenous and *quilombola* communities), and *urban conflicts* (activism against police violence, the issue of the organized crime, “extermination groups”, among others) (MOSER and McILWAIN, 2006: 96-97; BOURDIEU, 1996, 1997, 1998; UN Doc. A/HRC/4/37/Add.2: para. 14).⁵⁰ It is generally accepted that the first three (*agrarian conflicts*, *environmental issues* and *cultural rights*) usually occur in rural areas and the latter (*urban conflicts*) predominantly in

46 *ibid.*

47 *ibid.*

48 *ibid.*

49 I together with other members of the PPDDH's Technical Team wrote a report recommending the inclusion of the leaders of the *Tremembé* indigenous people in the PPDDH, which was further on confirmed by the PPDDH's National Coordination.

50 The United Nations (UN) <<http://www2.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm>> accessed 13 February 2016.

urban ones, despite the fact violence against HRDs is spread countrywide,⁵¹ being possible to identify all kinds either in urban or rural areas in Brazil (UN Doc. A/HRC/4/37/Add.2: para. 14⁵²; ADORNO, 2002).

Irrespective of being rural or urban, violence against HRDs (including those challenging business practices) may come from either state (UN Doc. E/CN.4/2003/104; UN Doc. E/CN.4/2002/106)⁵³ or non-state (UN Doc A/65/223)⁵⁴ actors. In this respect, the case studies analysed above demonstrate how HRDs working on issues of corporate responsibility and accountability are under threats and attacks from both state and non-state actors. There are several types of state and non-state violence against HRDs in all three cases analysed. In case 1 (Alexandre Anderson de Souza), it can be identified the occurrence of *death threats, killings, attempt of murder* and *criminalization*. In case 2 (Luíz Carlos da Silva), it can be recognized the incidence of *death threats* and *intimidation*. Finally, in case 3 (*Tremembé* Indigenous People), it can be found *death threats* and *smear campaigns*.

The actions of national and transnational private corporations are particularly relevant for HRDs challenging business practices (UN Doc. A/65/223: para. 9).⁵⁵ Private corporate-led HR violations of traditional communities such as indigenous peoples and *quilombola* as well as fishing ones are common in Brazil. The actions of national and transnational private corporations 'have allegedly been impeding the activities of defenders working, inter alia, on labour rights, the exploitation of natural resources, the rights of indigenous peoples and minorities'.⁵⁶ Case 3 (*Tremembé* Indigenous People) is an example, as explained earlier. Oil and steel private corporations have also violated the HR of fishing communities as, for instance, in case 1 (Alexandre Anderson de Souza) and case 2 (Luíz Carlos da Silva). This demonstrates that HRDs are key actors in carrying out fights for HR, democracy and towards the construction of a *new citizenship* in Brazil (DAGNINO, 2007: 549).⁵⁷ This is certainly true for those HRDs challenging business practices that violate HR.

This might explain also why they have historically been the targets of violence coming from state and non-state actors in Brazil. Although identified here specifically against HRDs who challenge business practices, the truth is that these kinds of state and non-state violence are interconnected and may occur against HRDs who work on any area promoting and defending HR in Brazil. Irrespective of being in rural or urban areas and regardless of its kind, the fact is that the Brazilian State and Business have the responsibility to protect

51 The United Nations (UN) <<http://www.un.org/en/>> accessed 13 February 2016.

52 *ibid.*

53 *ibid.*

54 The ways in which *non-state violence against HRDs* might manifest depend on the categories of non-state actors found in Brazil. 'The term "non-State actor" encompasses people, organizations, groups and corporations not composed of State agents or not being State organs' in Paragraph 1 of UN Doc A/65/223 (4 August 2010). The United Nations (UN) <<http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>> accessed 13 February 2016.

55 The United Nations (UN) <<http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>> accessed 13 February 2016.

56 The term "private corporations" is considered here as 'consisting of companies, whether national or transnational, not owned or operated by Governments', in UN Doc. A/65/223: para. 9. The United Nations (UN) <<http://www2.ohchr.org/english/issues/defenders/docs/A-65-223.pdf>> accessed 13 February 2016.

57 A citizenship defined by the agents of dominated groups (the poor, the excluded, the victims of violence and so forth) as opposed to that defined by agents from dominant groups (elites who usually control the state apparatus).

HRDs. State and Business should protect HRDs against any kind of violence coming from either state or non-state actors. Next section elaborates on this point.

4 The Responsibility to Protect Human Rights Defenders as an Opportunity to Build Up a Democratic Society in Brazil

The case studies portray the most common types of state and non-state violence against HRDs who challenge business practices in Brazil. They demonstrate that the relationship between Business and the Brazilian State is dialectical and complementary. It is dialectical because, on the one hand, notwithstanding existing domestic laws and regulations, business practices still violate HR of traditional communities (fishing, indigenous and *quilombolas*) whilst seeking profit through its activities in Brazil; and, on the other hand, the Brazilian State must enforce domestic laws, engage with corporations and other business enterprises, and monitor business practices in order to effectively protect HR and HRDs domestically. At the same time, it is complementary because the Brazilian State depends on business practices to bring economic development internally. The challenge is then how to make possible for business practices to be effectively engaged, monitored and, simultaneously, conduct their activities within a HR framework.

As an alternative, it is argued here that the relationship between Business and the Brazilian State should be arbitrated also by the international and regional HR systems. The Brazilian legal system, as a whole, commits itself to international and regional HR law.⁵⁸ It is, therefore, formally in consonance with international and regional norms and mechanisms. It does not denote, however, that Brazil is fully compliant with international HR law. That's why Brazil must now act upon its international and regional HR obligations (commitment to international HR law) in order to respect, protect and fulfil the HR of all (including but not limited to HRDs) under its jurisdiction (OHCHR, 2011). To do so, Brazil must guarantee the full assistance and effective protection for HRDs (including those challenging business practices) who might find themselves under threat or vulnerability within its territory (moving, thus, to compliance with international HR law) (RISSE, ROPP, and SIKKINK, 2013; OHCHR, 2011).

Notwithstanding that, available laws within Brazil's legal system make it legally possible to demand that Brazil protect HRDs and their work, this paper, nonetheless, calls for the adoption of a *UN Business and Human Rights Treaty*.⁵⁹ Such a binding legal instrument could regulate the activities of transnational corporations and other business enterprises

58 Article 5, *caput*, paragraphs 1 to 4, of 1988 Constitution.

59 John Ruggie has a cautious approach on the subject. His critique seems to be on the practical difficulties to realise such a *UN Business and Human Rights Treaty*, as follows: 'Even with the best of "political will," the crux of the issue is that the category of business and HR is not so discrete an issue-area as to lend itself to a single set of detailed treaty obligations. It includes complex clusters of different bodies of national and international law—for starters, HR law, labour law, anti-discrimination law, humanitarian law, investment law, trade law, consumer protection law, as well as corporate law and securities regulation. The point is not that these are unrelated, but that they embody such extensive problem diversity, institutional variations, and conflicting interests across and within states that any attempt to aggregate them into a general business and HR treaty would have to be pitched at such a high level of abstraction that it is hard to imagine it providing a basis for meaningful legal action', in Ruggie (2014: 3).

covering all pertinent aspects and, potentially, influence the Brazilian politics of HR.⁶⁰ First, regardless of business and HR issues dealing with different branches of law (RUGGIE, 2014), a *UN Business and Human Rights Treaty* would regulate the activities of corporations and other business enterprises according to a HR-based perspective, which could guide such an interconnected legal framework. This could help (transnational and national) HR advocacy networks to push forward the protection of HRDs agenda globally (KECK and SIKKINK, 1998; OHCHR, 2011). This political engagement between transnational and national HR advocacy networks and their interactions with UN and OAS HR mechanisms could reach social and popular movements (and HRDs), which (who) challenge business practices in Brazil (KECK and SIKKINK, 1998; OHCHR, 2011). As a result, the Brazilian OCS's power of influence could be potentially enhanced and, thus, affect the politics of HR in Brazil. A good example is the political history of the creation of the PPDDH.

In fact, OCS' pressures made Brazil launch the PPDDH in 2004. Subsequently, the pressures have aimed to demand Brazil pass the PPDDH Bill⁶¹ into primary legislation to regulate the protection of HRDs domestically. Second, the Brazilian OCS's enhanced power of influence derived from the political engagements from and around a *UN Business and Human Rights Treaty* could potentially lead to Brazil signing and ratifying the aforesaid binding legal instrument. Then, it would have to be internalized into Brazil's legal system, potentially as primary legislation. Corporations and other business enterprises operating in Brazil would have to conduct their activities accordingly. This could also affect the politics of HR in Brazil. Here as well, the political history of the creation of the PPDDH can be a useful example. Although there is not yet any specific binding international HR instrument for the protection of HRDs, the *UN Declaration on Human Rights Defenders* (UN Doc. A/RES/53/144)⁶² has been central in current discussions as to the elaboration of primary legislation for the protection of HRDs in Brazil. In fact, the *UN Declaration on Human Rights Defenders* has been "internalized" into Presidential Decree 6.044/2007 and guided the aforementioned discussions. These are usually carried out by the OCS, which exerts pressures on Brazilian State demanding concrete action to tackle state and non-state violence against HRDs in Brazil. Overall, it is argued here that the adoption of a *UN Business and Human Rights Treaty*, its internalization into Brazil's legal system and the consequent empowerment of the Brazilian OCS could strongly contribute to the protection of HRDs in Brazil.

Currently the primacy is, therefore, the state duty to protect against HR abuses, including those by business (UN Doc. A/HRC/8/5-Ruggie Report 2008; UN Doc. A/HR-C/11/13-Ruggie Report 2009; UN Doc. A/HRC/14/27-Ruggie Report 2010; UN Doc. A/HRC/17/31; OHCHR, 2011; BUSINESS & HUMAN RIGHTS INITIATIVE, 2010; CERNIC, 2011: 28); and, consequently, to protect HRDs against violence coming from

60 Regarding the adoption of a *UN Business and Human Rights Treaty* John Ruggie makes two cautionary suggestions, as follows: '[...] my first suggestion is that the Council arrange for an assessment of major changes in policies and practices that have resulted from the uptake of the GPs, and where such efforts are falling short. [...] In 2007, I wrote in the *American Journal of International Law* that international legal instruments must and will play a role in the continued evolution of the business and HR regime, but to be successful they should be "carefully constructed precision tools," addressed to specific governance gaps that other means are not reaching. [...] While this gap may not lend itself to immediate treaty negotiations, it would be highly beneficial for the Council to gain greater clarity on the key questions that any future legal instrument might address. That it do is my second suggestion', in Ruggie (2014: 5).

61 PL nº 4.575/2009 regulates a unified PPDDH that would work nationally (federal and state levels).

62 OHCHR <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>> accessed 13 February 2016.

either state or non-state actors. Brazil's duty to protect HR and HRDs can be argued on the grounds of international HR law already internalized and, thus, that now is part of Brazil's legal system (OHCHR, 2011; BUSINESS & HUMAN RIGHTS INITIATIVE, 2010). In this context, a question remains unanswered: *What role should business practices play as to the protection of HRDs in Brazil?*

It is commonly accepted that business practices should comply with domestic law, pay taxes and so forth (BUSINESS & HUMAN RIGHTS INITIATIVE, 2010). Even so, as things legally stand today, although corporations and other business enterprises have the corporate responsibility to respect HR (OHCHR, 2012; UN Doc. A/HRC/14/27-Ruggie Report 2010: paras. 58 and 65; BUSINESS & HUMAN RIGHTS INITIATIVE, 2010; OHCHR, 2011; CERNIC, 2011: 28), they do not necessarily have to comply with international HR obligations,⁶³ for these obligations rest solely on the State.⁶⁴ Due to their economic power, businesses can – and generally do – influence politicians by committing bribery, financing their political campaigns or personal projects and so forth in Brazil. For this reason, corporations and other business enterprises might not only influence on the law-making process, but also interfere with federal government's official affairs (public policy level). In this respect, they might have either a malign or benign impact on the politics of a country. A malign impact might occur when they interfere in the law-making process to either prevent HR legislation from or encourage business-friendly legislation to being passed into law. Bills that seek to weaken labour rights are a good example. A benign impact might occur when they pursue *Corporate Social Responsibility* (hereafter CSR) and, this way, engage with both government bodies and civil society organizations to implement, for instance, social projects for the population residing where they operate their business activities (CARROLL, 1999; CROFT, 2003: chapter 3). Regardless the sort of influence, due to its HR obligations, Brazil must monitor business practices and assure they conduct their activities in compliance with the GPs and, thus, engage in building up a benign kind of impact in Brazilian society.⁶⁵

Besides, in fulfilling its duty to protect HRDs who challenge business practices, Brazil should construct a strong regulatory framework in compliance with international HR law (CERNIC, 2011: 27). This regulatory framework could not only draw on the GPs, but also comply with binding international and regional HR instruments. Further, Brazil could enforce this regulatory framework so that corporations and other business enterprises would

63 The term "responsibility" to respect, rather than "duty", is meant to indicate that respecting rights is not an obligation that current international HR law generally imposes directly on companies, although elements may be reflected in domestic laws. At the international level, the corporate responsibility to respect is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, and now affirmed by the Council itself', in UN Doc. A/HRC/14/27 (9 April 2010 – Ruggie Report 2010), para. 55. OHCHR <www.ohchr.org> accessed 13 February 2016.

64 This is a controversial topic, for there is an ongoing debate on (direct and/or indirect) international legal obligations of corporations and other business enterprises. On one side there are those following the traditional paradigm of indirect responsibility. Good examples are UN Doc. A/HRC/4/035 (19 February 2007), para. 44; Declaration of C. Greenwood, *Presbyterian Church of Sudan v. Talisman Energy Inc.*, Civil Action No. 1 CV 9882 (AGS), (7 May 2002) 8, para. 20; and Vasquez (2005: 930). On the other side there are those following the new paradigm of direct responsibility. Good examples are Jagers (2002: 75-95); Weissbrodt and Kruger (2003: 913-915-921); Kinley and Tadaki (2004: 962-992); Stinnet (2005), Clapham (2006), and Muchilinski (2007: 519-524). The examples and the point on the prevalence of the traditional paradigm of indirect responsibility come from Herik and Cernic (2010). To make their point, the authors draw on Ratner (2001: 395), Vasquez (2005: 930), and Knox (2008: 3).

65 This is particularly true because currently 'any attempt to regulate corporations must focus primarily on the domestic level and only secondarily within the approaches of international law', in Cernic (2010: 1279)

have to conduct their activities accordingly. This implies a (moral) claim for a *good business practice* as opposed to a *bad business practice*. The latter would seek profit at all costs, whereas the former would seek profit complying with domestic laws within a HR framework and, thus, contribute to the construction of a more democratic society. Only in the face of a business-led HR violation that cannot be dealt with by the legal order domestically, civil society organizations or HRDs themselves would communicate the case to the OAS or UN HR mechanisms to demand Brazil fulfil its international or regional HR obligations (UN Doc. A/HRC/8/5-Ruggie Report 2008: para. 3; UN Doc. A/HRC/14/27-Ruggie Report 2010: paras. 101 and 117; HERIK AND CERNIC, 2010: 728; CERNIC, 2010: 1272).⁶⁶

The logic behind the argument is that if businesses comply with the GPs, they would not obstruct the work of HRDs. On the contrary, they would operate (while seeking profit) within a HR framework (UN Doc. A/HRC/8/5-Ruggie Report 2008: para. 3; UN Doc. A/HRC/14/27-Ruggie Report 2010: paras. 101 and 117; HERIK AND CERNIC, 2010: 728; CERNIC, 2010: 1266; BUSINESS & HUMAN RIGHTS INITIATIVE, 2010). To do so, they could not only respect HR, but also embrace the work of the HRDs. They could respect and protect HR and HRDs. This would be an important step towards a rights-respecting democracy.

A rights-respecting democracy is good for business. First, it is based on the rule of law (ALLAN, 2001). This means there is legal security regarding contracts and other deals that are involved in business activities. Eventual disagreements could be resolved through laws and regulations, which makes easier for businesses to plan and execute their strategic endeavours. Second, it is based on a *constitutional* rule of law (ALLAN, 2001; MENDES et al, 2008). As the 1988 Constitution protects the fundamental rights of all under Brazil's jurisdiction, once business practices comply with the constitutional normative while pursuing their activities, particularly those referring to HR, they could fearlessly engage with HRDs. As HRDs are the ones who carry out the fights for HR, democracy and social justice, business practices could confidently engage with HRDs in order to find the best ways to conduct their operations without violating HR.

For this reason, the (moral) claim for a *good business practice* means corporations and other business enterprises could operate (seek profit) considering HR issues and, simultaneously, complying with the domestic legal system, which must reflect a strong HR framework.⁶⁷ By dialoguing with HRDs and embracing their work, *good business practices* could contribute to the protection and promotion of HR as well as the strengthening of democracy in Brazil. It is in this sense, therefore, that the paper argues State and Business have a responsibility to protect HRDs and, thus, should adopt robust means of doing this, embracing the work of HRDs as opportunity rather a threat in building up a democratic society in Brazil.

The paper takes a HR approach towards the reduction⁶⁸ of violence against HRDs, which comes from state and non-state actors in Brazil (MOSER and McILWAINE, 2006: 96-97; BOURDIEU, 1996, 1997, 1998; UN Doc. A/HRC/4/37/Add.2: para. 14; SI-

66 OHCHR <www.ohchr.org> accessed 13 February 2016.

67 Meaning international and regional HR instruments have already been ratified and internalized into Brazil's legal system.

68 Broadly implying international HR law can and should be used in facing and reducing violence against HRDs in Brazil and abroad.

MIONATTO, 1995; SEMERARO, 1999; GRAMSCI, 2004; TERTO NETO, 2010).⁶⁹ Responses vary depending on what sort of actor perpetrates the violence. Once it is accepted that the responsibility to face structural problems and overcome social authoritarianism belongs to both State and OCS together,⁷⁰ it becomes apparent that the responses might come from State or civil society (including business practices). Responses could yet come from both of them working together. Hence, this paper highly regards the role played by OCS. It also considers the attempts made by business practices. Overall, aspects that generate violence against HRDs in Brazil are analysed considering that OCS' pressures on the Brazilian State have been decisive for its re-democratization as well as for recent domestic HR developments (DOIMO, 1994; DAGNINO et al, 2006; GOHN, 1997).

4.1 ORGANIZED CIVIL SOCIETY'S RESPONSES TO VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS⁷¹

Civil society's responses to violence against HRDs have occurred in a context where there have been the strengthening of democracy and the building up of a domestic HR regime (VIANA FILHO, 1975; SMITH, 1987; SKIDMORE, 1988; DAGNINO, 1993; DAGNINO, 1994; SIMIONATO, 1995; BOURDIEU, 1996; BOURDIEU, 1997; GOHN, 1997; BOURDIEU, 1998; SEMERARO, 1999; DAGNINO, 2000; DAGNINO, 2001; GRAMSCI, 2004; GONCALVES, 2006; DAGNINO, 2007; TERTO NETO, 2015). Although civil society organizations have historically protected HRDs inside its own HR networks in Brazil and abroad, in recent years civil society's responses to violence against HRDs are commonly observed in the form of pressures exerted on all levels of government (state) as well as through the monitoring of HR public policies in the country. By constructing and occupying public spaces, some of which made available with the advent of the 1988 Constitution (DAGNINO, 1994; 2007; FEDOZZI, 1997; SANTOS, 1998, ABBERS, 1998), OCS might not only question the causes of violence against HRDs, but also contest in practical terms poverty, inequality, exclusion, and, ultimately, social authoritarianism itself (DAGNINO, 1994: 240; TERTO NETO, 2016). While exerting political pressure on and exercising social control over the State, OCS (social movements, human rights NGOs etc.) is enacting a new 'cultural politics', for they 'intervene in policy debates, attempt to re-signify dominant cultural interpretations of politics, or challenge prevailing political practices' (DAGNINO and ESCOBAR, 2000: 6). As the relations between culture and politics are challenged and re-signified by civil society organizations, the main causes of violence against HRDs might eventually be overcome (DAGNINO and ESCOBAR, 2000: 47; SCHERER-WARREN, 2012). This might radically change the excluding, unequal and violent basis of Brazilian society. Therefore, civil society's responses to violence against HRDs need to be understood as occurring within a strategic process of changing the 'cultural politics' towards the construction of a new citizenship in Brazil (TERTO NETO, 2016; DAGNINO, 2007; DAGNINO, 2000).

69 The United Nations (UN) <<http://www2.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm>> accessed 13 February 2016.

70 Regarding HR and, by extension, HRDs. See Ratner (2001: 395); Herik and Cernic (2010: 729).

71 Civil society, as opposed to political society, is understood here under a *gramscian perspective*, that is, it is 'the space where the interests in conflict organize themselves, it is the place where the conflicts and contradictions become conscious', in Simionato (1995: 66).

4.2 BUSINESS' RESPONSES TO VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS⁷²

Business' responses to violence against HRDs should be analysed within the afore-said strategic process of changing the Brazilian 'cultural politics' in order to make effective citizenship a reality in Brazil.⁷³ In this context, however, the question still remains as to what it means for corporations and other business enterprises to be responsible for the protection of HRDs in Brazil. To answer such a challenging question business and HR issues should be perhaps perceived in a way that could lead to a new sociability towards effective citizenship in Brazilian society (DAGNINO, 1994; BRINKS, 2008; SOMERS, 2008; SIMIONATO, 1995: 68; SEMERARO, 1999; GRAMSCI, 2004; BOURDIEU, 1996; BOURDIEU, 1997; BOURDIEU, 1998; ALESSIO, 2008). The logic behind the argument is that the responsibility to tackle social problems rests on us all and, consequently, businesses could not successfully operate unless the basic needs and fundamental rights of everyone are fulfilled (United Nations Global Compact, Principles 1 and 2).⁷⁴ In this sense, their compliance with the GPs and their pursuit of CSR might help corporations and other business enterprises not obstruct the work of HRDs, who are the ones carrying out the fights for the full enjoyment of fundamental rights in the country (CERNIC, 2011: 28). On the contrary, the observance of both the GPs and CSR might help corporations and other business enterprises operate within a HR framework (RATNER, 2001; HERIK and CERNIC, 2010). Thus, business practices could not only respect HR, but also embrace the work of the HRDs as opportunity rather than a threat in building up a democratic society in Brazil.

There are relevant cases of positive responses to HR and environmental issues coming from business practices. These cases can be considered as indirect responses to violence against HRDs coming from business practices in Brazil. This is because these cases show business practices complying with the GPs and committing themselves to CSR, even if they have done so as a direct response to pressures exerted by OCS and HRDs themselves. The cases show that compliance with the GPs and commitment to CSR by corporations administered under a moral management approach might contribute to establishing HR-based business practices and strengthening democracy. These are prerequisites that help achieve effective citizenship in Brazil. In this sense, the cases of *Norte Energia S. A.*, Hydro Alunorte and *Aracruz Celulose S.A./Fibria* briefly described below need to be taken as examples of successful engagement with HRDs in the Business and HR context in Brazil.

Case 1: Norte Energia S. A.⁷⁵

72 In Brazil Business (corporations and other business enterprises) is (are) not part of the *organized civil society*, which is usually composed by social and popular movements, the Catholic Church, the Order of Brazilian Lawyers (OAB Federal), the Brazilian Press Association (ABI), among others. Both the *organized civil society* and Business (non-state) are considered here as opposed to the Brazilian State (state).

73 Article 5, *caput*, paragraphs 1 to 4, of 1988 Constitution.

74 UN <<http://www.unglobalcompact.org/abouttheGC/thetenprinciples/index.html>> accessed 13 February 2016.

75 It is composed of state and private companies from the electric sector, pension and investment funds, and self-producers' companies. Norte Energia S. A. <<http://norteenergiasa.com.br/site/>> accessed 13 February 2016. The description of the case is brief and oversimplified. For more details, go to MAB <<http://www.mabnacional.org.br>> accessed 13 February 2016.

It is an energy company that is constructing the Hydroelectric Station Belo Monte in Xingu River, Pará, Brazil. This infrastructure megaproject has built the Belo Monte Dam, which has already affected many people by forcing them move out from their residences.⁷⁶ The construction of the Belo Monte Dam has, thus, violated the housing rights of mainly lower social class in the region. As the hydroelectric project advances, more people are expected to be displaced and have their housing rights violated. They are under the threat of becoming homeless. The estimate is that more than 30.000 people will be affected by the Hydroelectric Station Belo Monte around the urban area of Altamira city, Pará.⁷⁷ As it could be expected, this originated a resistance movement called *Movimento dos Atingidos por Barragens* (hereafter MAB). This movement has challenged that business enterprise and grown into a strong political movement for the housing and other HR of people affected by dams in Brazil. MAB's challenges and pressures eventually made Norte Energia S. A. develop social programs to provide housing to affected communities in Altamira city.⁷⁸

Case 2: Hydro Alunorte⁷⁹

It is a transnational mine-metallurgy company that operates in the Amazon region, precisely in Barcarena city, Pará, Brazil. It is the biggest refinery of *alumina* in the world.⁸⁰ The extraction of *alumina* and *bauxite* by Hydro Alunorte has caused environmental problems to the region (MATHIS AND MATHIS, 2012). This led at one occasion to the suspension of its operational licence by the State of Pará.⁸¹ There have also been problems as to the health and safety of its site workers (MATHIS AND MATHIS, 2012). As a result, some resistance came from local community leaders and environmentalists (HRDs). Although Hydro Alunorte engaged with state authorities and community leaders as well as elaborated social programs, the fact is that the 'resolution of community's social problems is punctual and sporadic and the follow-up of CSR actions do not represent, in most times, substantial wins for the whole community once the results are restricting to determined specific groups who are selected to participate in projects' (MATHIS AND MATHIS, 2012: 137).

Case 3: Aracruz Celulose S.A – Fibria.⁸²

76 MAB <<http://www.mabnacional.org.br>> accessed 13 February 2016.

77 *ibid.*

78 Although about 7.790 families have already been listed to benefit from the housing program provided by Norte Energia S. A., there are still thousands of families affected by the Belo Monte Dam who have not been listed yet. MAB <<http://www.mabnacional.org.br/noticia/atingidos-por-belo-monte-precisam-ser-reconhecidos>> accessed 13 February 2016.

79 Since 2010 it has been controlled by Norstk Hydro S. A. Hydra Alunorte <<http://www.hydro.com/pt/A-Hydro-no-Brasil/Operacoes-no-Brasil/Alunorte-Alumina-do-Norte-do-Brasil-SA/>> accessed 13 February 2016. The description of the case here is brief and oversimplified. For more details, see Mathis and Mathis (2012).

80 Hydra Alunorte <<http://www.hydro.com/pt/A-Hydro-no-Brasil/Operacoes-no-Brasil/Alunorte-Alumina-do-Norte-do-Brasil-SA/>> accessed 13 February 2016.

81 Diário do Pará <<http://diariodopara.diarioonline.com.br/N-175835-SEMA+SUSPENDE+LICENCA+DA+ALUNORTE.html>> accessed 13 February 2016.

82 In 2009 Aracruz Celulose S. A. merged with Votorantim Celulose e Papel (VCP) and was renamed Fibria. Fibria <<http://www.fibria.com.br/pt/>> accessed 13 February 2016. The analysis here is brief and oversimplified. For an extensive analysis see Nascimento (2004).

It was a firm that manufactured pulp and paper in four Brazilian states. In 2009 *Aracruz Celulose S.A.* merged with *Votorantim Celulose e Papel (VCP)* and became *Fibria*. Before the merge, it 'faced a series of challenges ranging from opposition to sitting of the company in native territory to negative reputation exacerbated by the perceived view of eucalyptus plantations and social and environmental threats' in Espírito Santo State (NASCIMENTO, 2004: 34; CAMARGO et al, 2002). These challenges came from pressures exerted by HR NGOs as well as traditional communities (HRDs). The challenges and pressures eventually made Aracruz Cellulose S.A. develop social and philanthropic projects in affected traditional communities.

These are cases of business practices that responded to pressures from OCS and, as a result, engaged with community leaders (HRDs) to better conduct their operations without violating HR in Brazil. These cases might be considered *good business practices* for they have sought to operate (seek profit) in compliance with the GPs and in the pursuit of CSR.⁸³ They have sought to fulfil the 'entire spectrum of obligations business has to society, including the most fundamental – economic', under what Archie B. Carroll calls a *moral management* approach and, thus, they have paid attention to the four-part perspective represented by her *Pyramid of Corporate Social Responsibility* (CARROLL, 1991: 40; CARROLL, 1999). Regarding the *philanthropic responsibilities*, they invested resources in projects that aimed to improve the quality of life of members of traditional communities as, for instance, in the case of Aracruz Celulose S.A. Concerning the *ethical responsibilities*, they have attempted to avoid harm to the environment as, for instance, in the case of Hydro Alunorte. As regards the *legal component*, they have sought to comply with the domestic legal system, which formally reflects a strong HR framework (as Brazil has already internalized international HR instruments) as, for instance, in the case of Norte Energia S. A. and Aracruz Celulose S.A – Fibria. Finally, pertaining to the *economic responsibilities*, although their main goal certainly remains to be "profit", they have nevertheless sought to make profit while paying attention to the *ethical* dimension, irrespective of having done so as a response to the pressures from OCS and State as, for instance, in the three cases analysed above.

The aforementioned cases help one understand what it means for corporations and other business enterprises to be responsible for the protection of HRDs in Brazil. As it can be inferred, it means businesses could (1) perform in a manner consistent with HR (ethical component); (2) operate in compliance with federal, state and local laws, which must reflect a HR framework (legal component); (3) be profitable, but do not compromise HR values (ethical and economic components); and (4) engage with the community where they operate (CARROLL, 1991; CARROLL, 1999). It also means they engage with local community leaders (HRDs) in order to discuss the best (HR-based) social projects for the communities concerned. Then, they could contribute resources to the agreed-upon social projects (philanthropic component) (CARROLL, 1991; CARROLL, 1999). Overall, business practices could find a balance in their stakeholder management plan in order to guarantee that 'primary stakeholders achieve their objectives while other stakeholders are also satisfied' (CARROLL, 1991: 43; NETO and FRÓES, 2001; DALTON and CROFT, 2003; MATHIS and MATHIS, 2012). This could be achieved by a "moral management" approach according to which business practices would not only promote and respect HR, but also protect and, more importantly, engage with HR and their work for democracy,

83 These practices have not always been considered as *good business practices*. Their change resulted from the pressures exerted by OCS, which forced them into reviewing their attitudes and, as a result, seeking compliance with the GPs and commitment to CSR. See Carroll (1991), Carroll (1999); Alessio (2008).

HR and social justice (CARROLL, 1991: 45; NETO and FRÓES, 2001; DALTON and CROFT, 2003). Brazil has the legal duty to protect HRDs, whereas Business has the (economic, legal, ethical and philanthropic) social responsibility to respect HR and, by extension, to protect HRDs (CARROLL, 1991: 45; NETO and FRÓES, 2001; DALTON and CROFT, 2003). While dialoguing with HRDs and embracing their work, corporations and other business enterprises could be classified as *good business practices* and as such they could contribute to the construction of a more democratic society in Brazil. They could take their share in the responsibility they have to protect HR and HRDs in Brazil.

4.3 BRAZILIAN STATE'S RESPONSES TO VIOLENCE AGAINST HUMAN RIGHTS DEFENDERS

States' responses to violence against HRDs usually occur after – or as a result of – civil society's pressures due to the fact generally the 'state efficiency is in service of particular interests, in detriment of advancing the collective baseline of rights' in Brazil (BUCCI, 2006: 6; DAGNINO, 2007; DAGNINO, 2001; TAVARES, 1999). As explained earlier, civil society's exertion of pressures on and conduction of social control over the State can influence the elaboration and implementation of HR public policies and, as a result, bring about real change as to tackling the causes of violence against HRDs domestically. Thus, the Brazilian State's responses to violence against HRDs need to be also understood as occurring within a strategic process of changing the 'cultural politics' towards the construction of a new citizenship in Brazil.⁸⁴ Further, they vary depending on several aspects such as context, agents involved, and legal implications, among others. Still, they can come from the *Legislative*,⁸⁵ *Judiciary*,⁸⁶ or *Executive*.⁸⁷ Responses from the *Brazilian legislature* usually come in the form of primary legislation.⁸⁸ Responses from the *Brazilian judiciary* usually come in the forms of court rulings or single judge decisions.⁸⁹ Responses from the *Brazilian executive* usually come in the form of public policies (LINDBLOM, 1993; BUCCI, 2006; MENDES et al, 2008; SABATIER, 2007; HOWLETT, 2009; BIRKLAND, 2011). It can also come in the form of secondary legislation according to articles 76 to 91 of 1988 Constitution (MENDES et al, 2008). An example of secondary legislation by Brazil's Federal Government is Presidential Decree 6.044/2007, which instituted the *Brazilian Program for the Protection of Human Rights Defenders* (PPDDH).

By and large, it should be borne in mind that the responses to state and non-state violence against HRDs by the OCS, Business and the Brazilian State result directly from the pressures exerted by domestic civil society organizations (and HRDs themselves) in

84 Article 5, *caput*, paragraphs 1 to 4, of 1988 Constitution.

85 Articles 44 to 75 of the 1988 Constitution.

86 Articles 92 to 126 of the 1988 Constitution.

87 Articles 76 to 91 of the 1988 Constitution.

88 As, for instance, Lei n.º 8.069/1990 (*Children and Adolescents Act*), Lei n.º 10.741/2003 (*Elderly Act*), Lei n.º 12.288/2010 (*Racial Equality Act*) as well as a federal law for victims and witnesses under threat such as the Lei n.º 9.807/1999 (*Brazilian Program for the Assistance to Victims and Witnesses Threatened*) that have been passed on by the Brazilian Congress. Presidência da República <http://www.planalto.gov.br/ccivil_03/leis/l8069.htm> accessed 13 February 2016.

89 As, for instance, the ruling on the IDC 2/DF *Incidente de Deslocamento de Competência* 2009/0121262-6. Brazil's *Superior Tribunal de Justiça* ruled in favour of the federalization of the Manoel Mattos case on the grounds of article 109, § 5º of 1988 Constitution. The Justiça Global <<http://global.org.br/programas/um-ano-da-federalizacao-do-caso-manoel-mattos/>> accessed 13 February 2016.

partnership with TAN and UN and OAS HR mechanisms. This means that transnational political engagements have an impact on the politics of HR in Brazil.

5 CONCLUSION

The adoption of a *UN Business and Human Rights Treaty*, its internalization into Brazil's legal system and the consequent empowerment of the Brazilian OCS could strongly contribute to the protection of HRDs in Brazil. In this context, political and legal conditions would emerge for the Brazilian State and (transnational and national) corporations and other business enterprises to protect HRDs more efficiently.

First, legally speaking, with a strong international (binding) and domestic (primary legislation) legal framework regulating the activities of corporations and other business enterprises under a HR perspective, there could be strong legal grounds to demand the protection of HRDs by State and Business formally. For instance, this legal framework could force the Brazilian State to better structure and equip the PPDDH to respond effectively when HRDs need prompt protection against state and non-state violence. Similarly, the legal framework could force corporations and other business enterprises adjust their activities to international HR standards. Further, this legal framework could make it possible for corporations and other business enterprises to sponsor the PPDDH directly or, alternatively, donate money to a national fund for the protection of HRDs. This national fund could be administered by the *National Human Rights Council (CNDH)*,⁹⁰ which is composed on an equal basis of representatives of state bodies and civil society organizations.

Second, politically speaking, the Brazilian State would enforce the laws as to business practices, whereas OCS would monitor and, if necessary, challenge business practices that violate HR in Brazil. Corporations and other business practices could engage with state agencies, HR NGOs and community leaders (HRDs) in order to reach agreements on the best practices to be adopted regarding business and HR issues. Although these negotiated practices would have to be based on (international and internalized) HR law, they would nevertheless allow for business to be profitable.

All in all, a *UN Business and Human Rights Treaty*, its internalization into Brazil's legal system and the consequent empowerment of the Brazilian OCS could potentially help bring about policy changes for the protection of HRDs in Brazil. In fact, a *UN Business and Human Rights Treaty* would set up international standards for protecting HR and HRDs who challenge business practices. These standards would eventually be internalized into Brazil's legal system, irrespective of being a result of the country's ambitions to play a more relevant role in world politics or a consequence of pressures by OCS. In either way, once a *UN Business and Human Rights Treaty* has been internalized, the Brazilian State would have to enforce laws that demand business practices to adjust their activities according to those international standards. To do that, the Brazilian State would have to (1) redesign existing policies and (2) elaborate new ones as to protecting HR and HRDs who challenge business practices. As for the former, the State would have to re-evaluate the current national policy for the protection of HRDs that is regulated by Presidential Decree 6.044/2007. This decree lacks specific guidelines for the protection of HRDs who challenge business practices in Brazil.

90 Lei n° 12.986, of 2 June 2014, has recently transformed the *Council for the Defence of the Rights of the Human Person (CDDPH)* into the *National Human Rights Council (CNDH)*.

Regarding the latter, the Brazilian State would have to elaborate specific actions, programs and policies to enforce laws and regulations for the adjustment of corporations and other business enterprises to those international standards. These state initiatives could consider the situation of HRDs who challenge business practices in Brazil. They could be discussed at highest administrative levels, implemented across governmental agencies (bodies) and welcome, in all phases, the participation of civil society.

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