

Affected people by Mariana and Brumadinho tailings dam failure and civil society organizations
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Associação dos familiares de vítimas e atingidos pelo rompimento da barragem de Córrego do Feijão em Brumadinho, MG

Association of relatives of victims and those affected by Córrego do Feijão dam failure in Brumadinho city at Minas Gerais state.

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Comissão dos Atingidos pela Barragem de Fundão em Mariana, MG

The Commission for People Affected by the Fundão dam, in Mariana city, Minas Gerais state, was created to unite the forces, doubts and demands of the affected populations and to continue a fair and integral reparation process.

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Submitting Organisation:

Cáritas Brasileira Regional Minas Gerais

A member of Caritas Internationalis confederation, the helping hand of the Catholic Church, working to build a world based on justice and fraternal love.

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Movimento pelas Serras e Águas de Minas

MovSAM is a socio-environmental movement that works against destruction and threats to water (surface and underground) and to the mountains of Minas Gerais.

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RENSER | Região Episcopal
Nossa Senhora do Rosário

Região Episcopal Nossa Senhora do Rosário

The Nossa Senhora do Rosário Episcopal Region (Renser) was created in 2019 and comprises all parishes in cities and districts in the Vale do Paraopeba region, affected by the breach of the Córrego do Feijão Mine dam, in Brumadinho.

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Conectas Direitos Humanos

Conectas exists to preserve, implement, extend human rights, and combat inequalities to build a fair, free and democratic society from a Global South perspective.

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Introduction

1. Fundao Dam in Mariana (MG - Brazil), of ownership of Samarco Mineração S/A - a joint-venture by Vale S.A. and BHP, failed on November 05, 2015. Around 62 million cubic meters of mine tailings were disposed, leaving 19 deaths and polluting the entire extension of Rio Doce watershed throughout the states of Minas Gerais and Espírito Santo in Brazil. Thus, environmental conditions in the area have been deeply affected due to what is considered the biggest environmental disaster in the country, not to mention the impact in the lives of affected individuals.
2. In face of the legal violations seen in the case and the lack of compensation for the victims, during the 3rd Cycle of the Universal Periodic Review, in 2018, the Recommendation No. 54 to Brazil stated about punishment to responsible and access to justice for the victims.ⁱ
3. Despite specific recommendation regarding Mariana/Samarco dam and the topic of mining, the Brazilian government **did not take the necessary measures to repair the damage caused**, especially when it comes to non-repetition. The Government's omission and collusion **lead to the failure of Dam B-I and burring of Dams B-IV and B-IV-A at Córrego do Feijão mine site, in Brumadinho (MG)**, which were under Vale S/A responsibility on January 25, 2019. Approximately 12 million m³ of iron ore tailings buried Ferro-Carvão stream and reached Paraopeba River, affecting 26 cities. 272 deaths were accounted for, of which 131 were Vale employees and 139 were outsourced contractors or local communities' residents. The company offices and restaurant were within less 1.0 km downstream the dam, thus the tailings flow hit these facilities in only one minute, which made evacuation impossible.ⁱⁱ
4. Based on legal actions related to the aforementioned cases and on in-situ data, this report aims to provide update on the matter of impunity and lack of access to justice in the scenario of the two biggest crimes ever committed by the mining industry around the world.
5. **The Brazilian government omission in investigating and punishing the parties responsible for the Mariana and Brumadinho tailings dam failure**
6. Not only aforementioned recommendation to Brazil recalls the State obligation to punish the responsible parties but also United Nations General Assembly Resolution No. 60/147 states that full and effective reparation ensured to victims includes restitution, compensation, rehabilitation, satisfaction, and non-repetition guarantees. Furthermore, item 22, "f" states that satisfaction includes judicial and administrative sanction against persons liable for the violations.
7. We will see that 6 years after Mariana dam failed and 3 years after Brumadinho dam failed, the Brazilian State did not find any persons liable.

A. Samarco Case - Mariana dam failure criminal case developments.

8. In the case of Fundao Dam failure, the civil Police of Minas Gerais, the Federal Police, and the Federal Prosecution's Office (MPF) all started investigations at the same time. For this reason, MPF argued conflict of jurisdiction defending the Federal Court would have jurisdiction over the matter. In May 2016, the Brazilian Superior Court of Justice (STJ)ⁱⁱⁱ ruled in favor of the Federal Court of Judiciary Section of Ponte Nova/MG jurisdiction. Thus, in October 2016, the MPF indicted 26 individuals and companies, charging them with different environmental crimes under Law No. 9,605/98, besides crimes under the Criminal Code. The counts of murder (Art. 121) and assault (Art. 129).^{iv} The indictment was received in November 2016, thus commencing the criminal lawsuit.^v
9. For the homicide charges, the accusation is based in proving the crime materiality as done per the expert's report and its legal causation between the deaths and the mud spilled due to the dam failure. Furthermore, the following aggravation causes can be justified: "victim's hampered defense" - considering the **lack of a feasible emergence response plan**, which was a legal obligation imposed to Samarco -, "vile reasons" - even though the failure risk was known, it was accepted in the face of economic gains -, and "usage of a means that might lead to public hazard" - besides the 19 fatal victims, it is impossible to quantify how many others had their lives threatened.
10. The justification of authorship of the homicides is the creation of a forbidden risk and its continuous increase, which led to the dam failure, thus, the deaths. The creation of risk can be shown by the construction of the dams near preexisting human communities - despite the Environmental Impact Study saying otherwise. It is shown the criminal and deliberate increase of the risk once the mining company knew about the possibility of the damaging fact taking place as proved by Samarco Board of Administration Minutes of the Meeting where the discussions were based upon cost analysis rather than safety matters.
11. Nevertheless, **despite the arguments in the indictment, the Brazilian Federal Court** of the 1st District, in ruling the habeas corpus^{vi} in 2019, **understood that all homicide and assault charges were comprised within the crime of inundation.** The **criminal lawsuit was stayed** for 5 defendants via habeas corpus^{vii} from the same court. Furthermore, the first instance court retracted its past decision and **dismissed the indictment**, in its entirety, for 8 defendants and partially for another, on the main ground that criminal omission requires that guarantors have the personal obligation of preventing the criminal event, which the court would not have noticed as to those denounced, **so there would be no legal cause for prosecution.**^{viii}

B. Vale Case - Brumadinho dam failure criminal case developments.

12. After a year of investigations carried out by the Criminal Task Force dedicated to investigating the facts related to the B-I Dam failure, in Brumadinho, the Public Prosecutor's Office of the State of Minas Gerais (MPMG) filed the information on January 21, 2020, requiring the prosecution of 16 natural persons and 02 legal entities. Among the accused individuals are Fabio Schvartsman, former CEO of Vale S.A., Chris-Peter Meier, a German citizen - from the

headquarters of the certifier TÜV SÜD in Munich - as well as **engineers and geologists who knew the emergency situation of the dam but stopped taking the measures that they should, taking the risk of the failure and its consequences.**

13. The 16 individuals have been charged with the crimes of double-qualified first-degree homicide on 270 counts. All 18 individuals and legal entities were charged with crimes against fauna, crimes against flora and pollution crime, under the Brazilian Environmental Crimes Law.
14. According to MPMG, investigations proved that Vale S.A. held several instruments that guaranteed it a deep and extensive knowledge of its dams security situation. The MPMG also pointed out a **promiscuous relationship of pressure, rewards, and conflict of interest between Vale S.A. and TÜV SÜD.** The German company, while acting as an external auditor, in issuing Stability Statements (DCEs) on the mining company tailings dams, maintained internal consulting contracts with Vale S.A., technically advising it on decision-making, subject to direct interference by Vale S.A. technicians and directors. As a whole, **the accused individuals systematically concealed from the government, society, shareholders, and investors the safety levels of several of Vale S.A. tailings dams.**
15. The indictment by MPMG was accepted in February 2020 by the court of the 2nd Civil, Criminal, and Criminal Executions Court of Brumadinho (State Court). Therefore, the criminal proceedings were officially brought. In the same decision, the magistrate confirmed the shelving of investigations regarding 14 other individuals, whose actions had been investigated during the police investigation.
16. In the following months, **the criminal case faced different challenges.** The large volume of documents was pointed out as justification for deadline extensions by the lawyers of some of the accused to submit their preliminary defense. On the other hand, the restrictions on access to the court building imposed by the COVID-19 pandemic also influenced the progress of the proceedings, which is being handled physically (non-electronic). To date, some of the accused - including TÜV SÜD's subsidiary in Brazil - have not even been summoned.
17. In October 2021, a decision by the Brazilian Superior Court of Justice (STJ), taken in *appeals of habeas corpus* filed by two of the accused, **resulted in the stay of criminal prosecution.** That's because, the Sixth Panel of that Court, in two cases reported by Appellate Judge Olindo Menezes, determined that the State Court did not have jurisdiction to prosecute and judge the facts because some of the crimes were a matter of competence of the Federal Court. On this ground, the Court determined that all crimes described in the criminal proceedings, including homicides, should be tried by the Federal Court and imposed, as an effect, the annulment of the approval of the indictment by the State Court and all decision-making acts thereafter.
18. Dissatisfied with this decision, the MPMG filed an appeal reaffirming that the competent court should be that of the 2nd Civil, Criminal, and Criminal Executions Court of the District of Brumadinho (State Justice), since the crimes of forgery of the dam stability statements are

comprised within the crimes of homicide and environmental (main crimes). On the same subject, the MPMG said it is not legitimate or reasonable that presenting false documents before a federal agency was sufficient basis to pull in the trial of 270 homicides and a massive volume of state environmental damage to Federal Court, removing the analysis by the State Court and the trial of crimes by Brumadinho citizens represented by the State Jury Court, which is the natural court for the case.

- 19. Currently, as the decision to approve the indictment by the State Court no longer takes effect, there is no natural or legal person formally answering for the crimes committed.** The possible resumption of criminal proceedings depends on the trial, by the Supreme Court - the Brazilian Constitutional Court - of an extraordinary appeal brought by the MPMG, which tries to bring back to the State Court the jurisdiction to prosecute and judge the crimes described in the indictment.

- 20.** In both cases, therefore, the Brazilian government ability to effectively punish those responsible for the damage caused by the dam ruptures of the mining companies Samarco and Vale is at issue. The absence of accountability, in addition to compromising the right to full reparation, becomes another violation of the rights of victims and family members and, ultimately, of society itself.

Injustice and lack of reparation

- 21.** In addition to the duty to punish the persons liable, the recommendation to Brazil was also to guarantee the right of access to justice and reparations for the damage caused. However, this item of the recommendation **has also not been implemented.**
- 22.** Just for the sake of didactics, we will invert the cases (from the most recent to the oldest), aiming to better illustrate how the State insists on repeating a model of ineffective reparation, which **violates the principle of centrality of victims.**

A The lack of reparation of the damage caused in the case of Brumadinho/Vale

- 23.** The 3rd anniversary of Vale dam failure in Brumadinho was on January 25, 2022. Over the past few years, thousands of meetings have been held with affected communities throughout the Paraopeba basin. The territories were taken over by different players who always say they are linked to Vale or the State of Minas Gerais, including universities, technical advisories, consultancies, outsourced companies, among others.
- 24.** The affected individuals and communities, with the support of Independent Technical Advisories, had been developing a map of the damage caused by the dam failure, known as the "**Full Reparation Damage Matrix**". In addition, there was also a technical committee composed of researchers from the Federal University of Minas Gerais (UFMG) carrying out research and analysis to guide, as experts, the judgment of the 2nd Court of the Public

Treasury of the District of Belo Horizonte to identify and assess the impacts resulting from said failure.

25. It happens that, in the midst of this process, on February 4, 2021, an agreement was signed between the company, the MPMG, the MPF, the Public Defender's Office of Minas Gerais and the State of Minas Gerais, under mediation of the Court of Justice of Minas Gerais, *regarding the collective damages latu sensu* and homogeneous individuals. **The agreement was negotiated under seal and concluded before these surveys by the technical experts of the competent court were completed, that is, without knowledge of the full extent of the damages caused by Vale crime and suppressing several studies that had been carried out. Thus, it cannot translate the demands of the affected communities and ensure an effectively participatory reparation process.**
26. The affected communities have been reporting, over these three years in search of reparation, that, often, what is observed is the **creation of structures that distort participation, being used to legitimize decision-making processes built in an authoritarian manner, behind closed doors and without any transparency.**
27. In relation to the agreement signed, the planned reparation project is divided into injunctions (Vale) and compensations (Vale), and the overall value was divided into four programs: (I) Socioeconomic Reparation; (II) Social and Environmental Reparation; (III) Mobility Program; and (IV) The Public Service Strengthening Program.
28. Given this structure, it is important to note that, of the global value of the agreement - 37.6 billion reais - the affected communities can only focus on the value of 3 billion reais. This means that although they fully know the damage that directly impacts their lives, **they cannot contribute to the definition of how most of the resources should be spent from the agreement**, which, in theory, solves the problems related to collective and diffuse damage of the dam failure.
29. In addition, the agreement strongly favors the mining company's image, since it seeks to convey socio-environmental and socioeconomic responsibility and commitment to reparation. Its shares immediately skyrocketed after closing the agreement, which corroborates to this point of view. The mining company has expenses and commitments to works that, from a financial point of view, will certainly be easily equated, in return for important gains, such as the relatively rapid closing of an agreement to compensate for a crime of which it is a repeat offender. In this sense, Vale ends up profiting and the measures and works envisaged do not hurt its economic interests.
30. However, **the communities report that the company stopped meeting demands that before the agreement were heard and that it delegates all responsibility since then to the State, which, in turn, remains distant from the reality of the affected territories.** Finally, the agreement legitimized by the institutions of justice themselves, hides the deaths caused, which should be a reason for investigation and swift punishment.

B The lack of damage reparation caused in the case of Mariana/Samarco

- 31. By 2022, seven years will have passed without the thousands of families affected and the environment having been repaired by the Fundão dam failure. In the cities of Mariana and Barra Longa, the communities of Bento Rodrigues, Paracatu de Baixo, and Gesteira continue without having their homes completed (in many cases, they were not even started!). Throughout the Rio Doce basin, thousands of small producers, family farmers, ribeirinhos, and fishermen are unable to regain their productive capacity and ways of life. Environmental contamination by toxic waste and the lack of independent environmental information remains a current topic, as well as the lack of independent diagnosis of damage.**
- 32. The entire reparation process in this case has been carried out by the Renova Foundation - created and controlled by the companies Samarco, Vale and BHP from the authorization obtained in a Consent Decree (TTAC), signed in March 2016 with the State of Minas Gerais, the State of Espírito Santo and the Federal Government without any participation of the main stakeholders: the victims.**
- 33. Over the years, Renova has been acting much more as an instrument to limit the liability of companies than as an agent of effective human, social and environmental reparation, due to its governance problems, misuse of purpose and inefficiency.** Renova and companies, together, repeatedly do not comply with approved agreements and administrative and judicial decisions.
- 34. Faced with the situation of complete social collapse in the Rio Doce basin and lack of reparation, the communities became aware, through the newspapers, of what was called "renegotiation".** The information in this regard is precarious, disorganized and incomplete, since, once again, there is no effective and real participation of the affected individuals in the negotiation of what is proposed to be a new agreement. As it is known, the agreement aims to replicate the model signed in the case of Brumadinho - already clarified in the previous section.
- 35. Only on June 22, 2021, the National Observatory on Environmental, Economic and Social Issues of High Complexity and Great Impact and Repercussion^{ix} published a document entitled "Letter of Premises".^x According to this document, in March 2021 Federal Judge Mário de Paula Franco Júnior allegedly requested that interinstitutional efforts were made and alongside the legal Directors of the companies to "have started, in a structured environment, the negotiations for "RENEGOTIATION".**
- 36. It is vaguely determined that there will be negotiations aiming to concluding an "Integral agreement with definition and speed through the final definition of the scope, current object (considering measures already performed and expenses already incurred), specific objectives and milestones of delivery of repair programs, with work schedule and financial planning". It is also noted that it was up to the violating companies themselves to present the "minimum**

premises^{xi} that will guide the negotiations, and **there is no specification on the participation form of the affected individuals in each part of the process.** There is also no detail of the way in which the preliminary schedule is developed, scheduled to discuss the agendas for 17 weeks, nor the choice and prioritization of themes, which were not established in dialogue with the affected individuals.

37. It should be emphasized that, until February 2022, three public hearings were held online with the alleged purpose of listening to the victims and their needs; **however, internet access by affected communities is precarious; the speech registration system is limited and there is no commenting tool enabled during hearings.** Moreover, there is no systematization of meetings that allow the monitoring of the content discussed, for example, through an exclusive website. The Observatory's^{xii} agenda is limited to informing the date and organizing body of the activity, and no minutes, participants or deliberation methodology are published.
38. Indeed, the reparation progress in the Samarco case falls far short^{xiii} of what is necessary in terms of access to justice and fair compensation. However, the conclusion of a new agreement, the scope of which seems to concern the amendment, exclusion or addition of reparatory measures and, therefore, the recognition of the rights of those affected who are still in dispute, **without the appropriate informed and actual participation, does not guarantee an advance in terms of reparation, in addition to putting at risk the achievements already achieved by the persons affected.**
39. Taking into account the context of the municipality of Mariana (MG), so far, several specific agreements have been signed in the context of judicial proceedings^{xiv} that deal with issues central to reparation, such as: registration of affected people; eligibility for reparation and mitigation actions; mitigation actions, such as emergency financial assistance, cost of temporary housing and delivery of silage to animals; right to housing and implementation of resettlements; methodology of extrajudicial negotiation phase of indemnifications; among others. **These agreements have been systematically broken by the Renova Foundation and the companies.** The Renova Foundation denies recognition of rights to people who have declared losses and damages in the registration process without proving that the damages did not occur or that they did not result from the Fundão dam failure; only alleges ineligibility for community compensation actions, as well as for emergency measures, indemnification and resettlement of family centers.
40. In addition, **there is no efficient punitive system of coercion of the Renova Foundation and the companies in the event of breach of an agreed obligation, that is, the reparation does not occur, and the responsible companies remain unpunished.**^{xv} Why believe in a new agreement, again negotiated in secrecy and without participation of the people affected?

The continuity of the violation of the guarantee of non-repetition: tearing up the Law ‘Sea of Mud Never Again’ and the proliferation of the conjuncture of the terror of dams

41. As highlighted, **Brazil has failed not only in the duty to punish persons liable for the greatest crimes in the history of mining but also in the duty to repair, including implementing non-repetition measures.** One of the main initiatives that had been pointed out by the Brazilian State as an important guarantee in this sense was the approval of the so-called Law "Sea of Mud Never Again".
42. State Law 23,291/2019 comes from a popular initiative Bill (3,695/16) filed on July 5, 2016, in the post-failure context of the Fundão dam, in the Legislative Assembly of Minas Gerais (ALMG), an initiative of the Minas Gerais Association along with several civil society organizations that achieved in record time the support of about 56,000 people as signatories, in a campaign called "Sea of Mud Never Again", and so the law is so called.
43. At the time, this bill was attached to that of the Extraordinary Commission of Dams in that Legislative House (3676/2016), filed the day before, whose text was much less rigid. For three years the Bill was processed in ALMG and only after the failure occurred on January 25, 2019, with much pressure from organized civil society, the media and the Public Prosecutor's Office of Minas Gerais, deputies decided to vote on the law "Sea of Mud Never Again", which was sanctioned by the governor on February 25, 2019.
44. Three years after the law passed, important provisions concerning: environmental security, dams decharacterization, periodic records (reservoir levels, stored volume, chemical and physical characteristics of the fluid, soil, and watertable contamination levels in the reservoir's area of influence) had not yet been regulated by the State Secretariat for Sustainable Environment (SEMAD), criteria and parameters for the application of penalties in case of disaster resulting from non-compliance with the law and guidelines for the calculation and distribution of the values to which they refer.^{xvi}
45. **Since 2015, the National Mining Agency (ANM), SEMAD and the State Environment Foundation (FEAM), regardless of the government of the time, have repeatedly postponed an effective solution for structures that use the upstream raise method, which merely meets the interests of mining while extending the time of threat and fear of the population beyond the deadline for new crime-tragedies to happen.**
46. **In addition, since the Law Sea of Mud Never Again was sanctioned, there have been three permits granted to tailings dams that violated articles of the aforementioned legislation.** On November 29, 2019, operating license was granted for the raise of Anglo American's tailings dam in Conceição do Mato Dentro despite the fact that there are communities in the Self-Saving Zone and express prohibition under Law 23291/2019 of granting permits in this situation. The same happened on February 8, 2020, with Anglo Gold Ashanti tailings dam in Sabará, and in this case the Superintendence of Priority Projects (Suppri) omitted in its technical opinion in favor of the license that there is a community in the Self-Saving Zone. Both permits granted were the subject of civil liability lawsuits filed by the Public Prosecutor's Office of the State of Minas Gerais, still without resolution.

47. On January 28, 2021, a preliminary permit was granted to a tailings dam of the Companhia Brasileira de Metalurgia e Mineração/CBMM in Araxá, the first in this permitting stage after Law 23291/2019, not complying (in addition to other devices) with item I of Art. 7 that requires the "study on geological, structural, and seismic risk" for analysis in licensing. The Superintendence of Priority Projects (Suppri) informed in its technical opinion favorable to the license that the study was presented by the entrepreneur but "based on the Opinion of the Attorney General of the State No. 15911, of August 24, 2017, such plans must make up the permitting processes, but it is not the responsibility of environmental permits to enter into the merit analysis of its content, since this competence is already defined for the supervisory body of waste dams or mining tailings, the ANM". However, Law 23,291/2019 itself sets forth in Art. 4 that "the permits and environmental supervision of dams in the State are the responsibility of bodies and entities of the State System of Environment and Water Resources - Sisema - [...]"
48. In the three cases above, on the non-presentation by the entrepreneur of the environmental security proposal, Suppri justified the same lack in regulation to be applied and, thus, would be *presented to the subsequent permit* granted, despite Law 23,291/2019 expressly prohibiting that the requirements are inserted as a condition for later permits.
49. Such facts are undisputed proof that the Brazilian State has not been adopting effective non-repetition measures. On the contrary, it again disregards the risk of mining tailings dams and does not comply with Law 23,291/2019 that established the State Dam Safety Policy.
50. Another evidence of this fact is the violation of the provision of Law 23,291/2019 that allows the granting of environmental permit for operation or expansion of tailings dams or industrial mining waste that use the upstream raise method and makes the entrepreneur to promote the decharacterization of inactive dams in the form of the regulation of the competent environmental agency. Regarding those in operation, it required the entrepreneur to promote the migration to alternative technology of accumulation or disposal of tailings and waste and the decharacterization of the dam, within 3 years from the date of publication of the law, that is, February 25, 2022.
51. Since the end of 2021, it was already reported that the mining companies responsible for most of these structures would not comply with the law and at the beginning of February the Federation of Industries of the State of Minas Gerais (Fiemg) filed a Direct Action of Unconstitutionality to suspend the effects of Article 27 of state Law 23.291/19, which imposes the penalty of immediate suspension of all environmental licenses of the enterprise where a dam is using the method of upstream that has not been decharacterized until 25 February. It also filed a civil liability action to prevail what is provided for in Federal Law No. 14,066, of 09/30/2020, which allows the National Mining Agency (ANM) to analyze and extend the deadline for elimination of dams until after February 25 under technical justifications.
52. On February 24 at 5:14 p.m., on the website of the Public Prosecutor's Office of the State of Minas Gerais, a story was published stating that MPMG, Government of Minas Gerais

(through FEAM), MPF and ANM signed a Commitment Agreement "so that the companies responsible for upstream dams in the State comply with the mischaracterization of 41 mining dams that did not meet the deadline defined by State Law 23.291".^{xvii}

- 53. The signing on February 24, 2022, the eve of the expiration of the three-year term, surprised organized civil society, including the movements, organizations and leaders that participated intensely in 2016 when mobilizing and collecting signatures in the project of popular initiative Mar de Lama Nunca Mais.** The public was appalled by the process that culminated in this fact, despite federal Law 12.334/2010 (National Dam Safety Policy-PNSB), amended in some provisions by federal law 14.066/2020, establish as one of the foundations of the PNSB "transparency of information, participation and social control".
- 54.** Mainly because at the head of the initiative was the Public Prosecutor's Office, an institution to which the Brazilian Constitution granted the task of defending the legal order, the democratic regime and unavailable social and individual interests (Art. 127). In this article on the website of the Public Prosecutor's Office of the State of Minas Gerais are manifestations that reflect the deviation of purpose in the competence of the institution that should defend the legal order and, instead, led to the non-compliance with the Law Sea of Mud Never Again. Among them, the statement of the Attorney General of Justice, Jarbas Soares Júnior, that "the solution found does not prevent the development of the State, the economic activities of companies, because for us it does not interest to close companies or shutting them down. We are interested in seeking the alternatives within the law" and that of the coordinator of the Operational Support Center of the Prosecutors of Justice for The Defense of the Environment, Historical Heritage and Culture and Housing and Urbanism of MPMG, prosecutor Carlos Eduardo Ferreira Pinto, that "it is necessary to emphasize that the Public Prosecutor has proposed an alternative of adaptation to the law".
- 55.** One of the companies that signed an agreement with MPMG was Vale, which has 23 tailings dams raised upstream in Minas Gerais, and which was responsible for the failure in Brumadinho on January 25, 2019 and co-responsible for the incident in Mariana on November 5, 2015. However, if the Law Sea of Mud Never Again set a deadline and this was not met, it would be up to the institutions defending the legal order to act in due and exemplary accountability of those involved, including the State that has not made the swift regulation of some provisions, as well as to ensure the "immediate suspension of environmental permits, regardless of other civil sanctions, administrative and criminal proceedings", as set out in Article 27. By proposing and signing a commitment term before the statute of limitation, the Public Prosecutor's Office of the State of Minas Gerais benefited the mining companies responsible for tailings dams raised upstream in Minas Gerais that were already aware since 2015 of the risk and, even so, did not prioritize leaving these structures safe.
- 56.** Unbelievably, what has been witnessed in Minas Gerais since November 5, 2015, when the Fundão Tailings Dam, Samarco/Vale/BHP, in Mariana, broke down, and even after the disruption on January 25, 2019, of Dam I, vale, in the Córrego do Feijão mine in Brumadinho, is that despite these structures that use the upstream raise method are "ticking bombs"; **not**

only companies but also public agencies, whether state or federal, which have responsibility in their management, supervision, licensing or guarantee of compliance with legislation and rights, have been dealing with the issue in the opposite direction of the severity and urgency that the same demand. And the ones holding the burden are the environment and the population that has been experiencing suffering and violation of rights since 2015 and since 2019 also "dam terrorism" with different meanings, which should be the subject of investigations.

Conclusion

57. Brazilian government did not take the necessary measures to repair the damage caused, especially when it comes to non-repetition. The absence of accountability, in addition to compromising the right to full reparation, becomes another violation of the rights of victims and family members and, ultimately, of society itself.

Annex 1. UPR of Brazil – Thematic recommendation

Recommendation	Position	Full list of themes	Assessment/ comments on level of implementation	Suggested recommendations
<p>136.54 To further continue the efforts to punish those responsible for the breaking of the retaining walls in Jacarei and Mariana; and to ensure that the victims of this event are guaranteed their right to access to justice, and their right to fair compensation, remediation and reparations for the damage caused. We recommend that Brazil share these acquired experiences through its constructive and substantive participation in the Intergovernmental Working Group established through resolution 26/9 of the Human Rights Council (Ecuador); Source of position: A/HRC/36/11/Add.1</p>	<p>Supported</p>	<p>B51 Right to an effective remedy</p> <p>B6 Business & Human Rights</p> <p>B71 Human rights and the environment</p> <p>S16 SDG 16 - peace, justice and strong institutions</p> <p>Affected persons: - general</p>	<p>Not implemented</p> <p>About punish those responsible, in both cases, there was an investigation and criminal action, but there was no punishment for those persons liable for the violations due to procedural confusion.</p> <p>Source: see paragraphs 3; 11; 19; 40; 56</p> <p>Access to justice remains violated. Affected people still wait for their right to compensation, remediation and reparations for the damage caused.</p> <p>Source: see paragraphs 30; 31; 39</p> <p>There is no participation and transparency in the agreements.</p>	<p>Recommendations to access to justice:</p> <p>Respect the centrality of the victims principle.</p> <p>Fundamental rights, such as the human rights to life, health, clean water, adequate food and housing, a healthy environment are non-negotiable and should not be the subject of definitive agreements without the consent of the rightholders.</p> <p>Provide effective mechanisms to remedy human rights abuses resulting from corporate infringements of environmental law and regulations.</p> <p>Ensure the courts act diligently and expeditiously in the conduction and conclusion of legal proceedings for environmental damage, damage to health and other harms derived from environmental degradation.</p> <p>Ensure that the reversal of the burden of proof is applied to recognize the damage suffered by the people affected and that independent expertise is constituted.</p> <p>Ensure that adequate reparation measures are provided to all those affected, based on consultation and following an inclusive and participatory process, and that adequate environmental rehabilitation is carried out. Ensure prompt investigations, prosecutions and punishment of environmental crimes and of criminal acts perpetrated against residents or community leaders who denounce or raise concerns about the environmental or health effects of mining, manufacturing and other business activities.</p>

			<p>Source: see paragraphs 25; 26; 28; 34; 36; 37; 52; 53</p>	<p>Recommendations to non-repetition:</p> <p>Respect the ‘regression prohibition’ principle, and the ‘more protective law enforcement’ principle.</p> <p>Comply with its obligations under international and regional human rights instruments (such as United Nations General Assembly Resolution No. 60/147 and UN Guiding Principles on Business and Human Rights) by respecting, and ensuring respect for the human rights to life, health, clean water, adequate food and housing, a healthy environment, information, participation and effective remedy of individuals and communities exposed to the harmful effects of environmental degradation.</p> <p>Fully implement the UN Guiding Principles on Business and Human Rights, particularly Pillars 1 and 3 concerning Brazil’s duty to protect human rights in the context of business activities and to ensure effective remedy for corporate-related human rights abuses.</p> <p>Ratify the Escazú Agreement.</p> <p>Create the Committee to follow and monitor the National Guidelines on Business and Human Rights established by Decree No. 9.571/2018.</p> <p>Approve a national business and human rights framework, such as Bill No. 572/2022</p> <p>Approve and implement Bill No. 550/2019 and 36 other bills that are pending in the National Congress to strengthen safety of tailings dams. This measures should include a creation of a mandatory compensation fund for high risk and impact projects.</p> <p>Increase the resources and technical capacity of socio-environmental bodies such as IBAMA, ICMBio, CONAMA, ANM, state-level SEMAs and other federal</p>
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				<p>and state environmental protection bodies to regulate, and also guarantee the independence of these bodies, far from economic influence. Make them strong enough to monitor and control the activities of mining, manufacturing and all other business activities that carry risks to the environment.</p> <p>Strengthen the dam inspection regime to improve governmental oversight and prevent further collapses.</p> <p>Adopt immediate measures to address the imminent risk of collapse of dams, and the collapse of tailing's pile as identified by the ANM. Certifications and self-declaration on dam safety by the minning companies should be questioned.</p> <p>Subordinating the granting of environmental licenses for a mining project to an impact study of the cumulative effects due to the prohibition of splitting the environmental license.</p> <p>Prohibition of licensing of mining ventures in which there are communities in self-saving areas.</p> <p>Suspension of mining licenses for projects that have not complied with the determination to decommission upstream dams method.</p> <p>Withdraw the mining concessions given by the Brazilian State to the companies involved in the tragedies of Mariana and Brumadinho.</p> <p>Abandon the deregulation movement that is manifested trough draft bills such as PL 3729/04 (Environment Licensing), PL 191/2020 and PL 1610/1996 (Mining in indigenous lands).</p>
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End notes

ⁱ Recommendation 136.54, Theme B51 Right to an effective remedy: 'To further continue the efforts to punish those responsible for the breaking of the retaining walls in Jacarei and Mariana; and to ensure that the victims of this event are guaranteed their right to access to justice, and their right to fair compensation, remediation and reparations for the damage caused. We recommend that Brazil share these acquired experiences through its constructive and substantive participation in the Intergovernmental Working Group established through resolution 26/9 of the Human Rights Council.'

ⁱⁱ Available at: <https://www.ufjf.br/poemas/files/2019/04/Milanez-Felippe-2021-Minas-esgotada.pdf>. Access on: mar/2022. P. 52-53.

ⁱⁱⁱ Case records No. ⁱⁱⁱ0064550-88.2016.3.00.0000.

^{iv} Among the companies indicted are mining companies Samarco Mineração S.A., its parent companies Vale S.A. and BHP Billiton LTDA., and the company VOGBR Recursos Hídricos e Geotecnia LTDA., which issue a report ensuring the failed dam stability. 21 executives of the defendant companies were also indicted (former directors and managers at Samarco, as well as the parent companies' Board members and their representatives at Samarco Governance), besides the technical person liable for the stability statement.

^v Case records No. 0002725-15.2016.4.01.3822.

^{vi} Case records No. 1033377-47.2018.4.01.0000.

^{vii} Case records s No, 1016801-42.2019.4.01.0000; 1029985-02.2018.4.01.0000; 1015557-78.2019.4.01.0000; 0070468-62.2016.4.01.0000; and 1015599-30.2019.4.01.0000.

^{viii} Five members of Vale and BHP Board of Directors benefited from the stay of the lawsuit via habeas corpus, one of them was also a Vale representative in Samarco Governance. The dismissal of the indictment, in turn, benefited eight other mining executives, five from Vale - two Members of the Board of Directors, two representatives in Samarco Governance and another who held both functions - and three of BHP - all representatives in Samarco Governance, one of them was also a member of the Board of Directors.

^{ix} Created on January 31, 2019 through Joint Ordinance No. 1 of the National Council of Justice and the National Council of Public Prosecutions. Available at: <https://atos.cnj.jus.br/atos/detalhar/2810>. Access on: mar/2022.

^x Observatório Nacional sobre Questões Ambientais, Econômicas e Sociais de Alta Complexidade e Grande Impacto e Repercussão. Conselho Nacional de Justiça e Conselho Nacional do Ministério Público – Portaria Conjunta CNJ/CNMP Nº 1/2019. Letter of Premises. Available at: https://www.cnj.jus.br/wp-content/uploads/2021/07/Carta_1120695_Carta_de_Premissas_OFICIAL_CNJ_CNMP_1.pdf. Access on: mar/2022.

^{xi} "6. After several rounds of meetings, the companies presented the minimum assumptions to initiate the renegotiation."

^{xii} Available at: <https://observatorionacional.cnj.jus.br/observatorionacional/agenda/>. Access on: mar/2022.

^{xiii} CABF; CARITAS. **Violation of rights in reparation to the affected communities of Mariana / MG. Mariana/MG:** September, 2021. Available at: <http://mg.caritas.org.br/storage/arquivo-de-biblioteca/September2021/cPKYdV2NEL9YZFF9JAG3.pdf>. Access on: mar/2022.

^{xiv} Civil Liability Suits No. 0400.15.004335-6, 0400.18.003956-4 and No. 5001730-53.2021.8.13.0400 and Actions of Compliance with Judgment No. 0400.17.004149-7, 5001070-93.2020.8.13.0400, 5002815-45.2019.8.13.0400 and 5003441-93.2021.8.13.0400.

^{xv} For example, the Consent Decree (TTAC), signed on October 2, 2018 in Public Civil Action No. 0400.15.004335-6, which deals with the out-of-court negotiation of individual indemnities, lists the possibility of applying a fine in case of non-compliance with the deadlines for submitting a proposal for indemnity by the Renova Foundation. Although such deadlines are consistently disrespected without further justification, this fine has never been applied, increasing the insecurity and emotional distress of those affected, who do not know if or when they will have a return from the Renova Foundation on the dossier or on the reanalysis of the proposal received.

^{xvi} The deadline for the completion of the established for the Working Groups created by decree has been postponed by several resolutions of Semad, together with other state agencies, and only the ordinances dealing with the registration and classification of dams were issued in May 2021 and establishing rules for the accreditation of auditors for the provision of technical audit services for dam safety.

^{xvii} News report available at: <https://www.mpmg.mp.br/portal/menu/comunicacao/noticias/mpmg-e-governo-de-minas-firmam-termo-de-compromisso-com-mineradoras-para-garantir-descaracterizacao-de-barragens.shtml>.