

URGENT APPEAL

UPDATE AFTER THE TWO AND A HALF-YEAR ANNIVERSARY OF THE DOCE RIVER DAM DISASTER

April 10, 2018

To the UN Special Procedures:

Ms. Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mr. Michel Forst

Special Rapporteur on the situation of human rights defenders

Mr. Leo Heller

Special Rapporteur on the human right to safe drinking water and sanitation

Mr. John Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Mr. Dante Pesce

Chairperson of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises

Ms. Victoria Lucia Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

Mr. Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Contact Persons:

Juana Kweitel, Executive Director
Conectas Human Rights
juana.kweitel@conectas.org

Caio Borges, Coordinator
Conectas Human Rights
caio.borges@conectas.org

Raphaela Lopes, Attorney
Justiça Global
raphaela@global.org.br

Summary

This document aims to update the UN Special Procedures on the human rights violations caused by the collapse of the Fundão tailing dam. Over two years after the disaster, there is still no complete assessment of the socio-environmental and socio-economic damages suffered by the affected communities. The Brazilian judiciary canceled the judicial decision ratifying the settlement agreement signed in the case in March 2016. Still, the Brazilian State and the three involved companies (Samarco, Vale and BHP Billiton) keep applying it as it was still enforceable. It creates serious barriers to the access to remedy and justice. Some communities and individuals are still struggling to be recognized as affected by the disaster and did not receive any type of remedy. Corporate and government actors have been systematically violating the affected communities' rights to an effective remedy, to housing, to health, to water, to access information, to develop ways and projects of life, as well as indigenous and human rights defenders rights.

Recently, the companies, Brazilian government authorities, and the Public Prosecutors Office signed a preliminary agreement to adjust the remedy programs that the settlement agreement created. The preliminary agreement provides for the creation of technical assistance committees to advise the affected people throughout the remedy process, as well as for the conduction of an assessment of the socio-environmental and socio-economic damages in the affected region. Its effective implementation - especially the creation of the technical assistance committees - is critical to protect the rights of the affected communities and to avoid further irreparable harm. Therefore, the organizations request the Special Procedures to take urgent actions in order to prevent further gross human rights violations from occurring.

The organizations declare that they have reliable knowledge of the facts and/or represent directly and indirectly affected communities of the Doce River basin.

I. INTRODUCTION

The collapse of the Fundão tailing dam, owned by Samarco (a joint venture between Vale and BHP Billiton), occurred on 05th November 2015. It is considered the worst socio-environmental disaster in Brazil's history and it claimed 19 lives, thousands displaced and polluted with heavy metals one of the main Brazilian rivers, the Doce river. The tailing dam failure unleashed over 35 million cubic meters of iron ore rejects, sweeping the districts of Bento Rodrigues, Paracatu de Baixo, and Gesteira, and causing severe damage to the livelihoods of millions of people living in villages and cities throughout the Doce river basin. Once it entered the Doce river, the mud traveled more than 500 km through two states (Minas Gerais and Espírito Santo) until it finally reached the Atlantic Ocean, two weeks after the collapse, contaminating the marine life with heavy metals. Wherever it passed, the mud left a trace of destruction and contaminated the soil, the riverbanks and vital sources of water supply.

The disaster has reached the Brazilian judiciary in the form of thousands of individual and collective lawsuits. The Federal Union, joined by 13 other public law entities, including the state governments of Minas Gerais and Espírito Santo and environmental agencies from

both federal and state levels, filed one of the legal claims against Vale, Samarco, and BHP Billiton. The Brazilian authorities sued the three companies for 20 billion reais in damages (approximately US\$ 5.8 bn). The parties in this lawsuit signed a settlement agreement on 2nd March 2016, which the Brazilian judiciary ratified on 5th May 2016. The agreement was intended to be an umbrella agreement under which the parties would develop socio-environmental and socio-economic programs to remedy the damage caused. It created a governance structure composed of two legal entities: the Renova Foundation and the Interfederative Committee. According to the provisions of the agreement, the Renova Foundation is responsible for developing and implementing the remedy programs. The Interfederative Committee is an independent body composed mainly of representatives of the federal and state governments with authority to monitor the activities of the Foundation.

At this point, there was no assessment of the damages that the collapse caused. Still, the settlement agreement limited the amount of money that companies would spend in repairing such damages to 20 billion reais (approximately US\$ 5.8 bn) without justifying the value. The Brazilian public authorities and the three involved companies negotiated and signed the settlement agreement without holding any consultation with the affected communities, civil society organizations, and social movements. Although the agreement contains some provisions related to the transparency and involvement of the communities in its implementation, these provisions lack any parameter for their proper enforcement. For example, the agreement has not disciplined the process of appointment of the representatives of the affected communities who compose the Renova Foundation and the Interfederative Committee. Also, these representatives have no decision-making power within the hierarchy of the two entities. The Brazilian judiciary later canceled the judicial decision that ratified the settlement agreement, but the companies and the Brazilian government keep applying it as it was still in force and the Renova Foundation and the Interfederative Committee are operating according to its provisions.¹

In response, the Federal Public Prosecutors Office – who was not a party to the settlement agreement – filed another lawsuit against the three companies and the Brazilian authorities who signed the settlement agreement seeking its annulment and 155 billion reais (approximately US\$ 45.5 bn) in damages. Federal Public Prosecutors, companies and Brazilian authorities started to negotiate a second agreement to adjust the remedy programs that the first settlement agreement created. The parties have not reached a final agreement yet, but on 18th January 2017, a preliminary agreement was signed establishing that the companies would hire experts to conduct a complete assessment of the damages caused by the disaster and to advise the Federal Public Prosecutors in relation to the ongoing remedy programs.

Like the settlement agreement, the preliminary agreement was sealed without meaningful participation of the affected communities and created a contested governance structure through which Integratio, a company with a long-lasting commercial relationship with

¹ Vale, for example, in a press released launched on July 1st, 2016, claimed that although the agreement had not been confirmed by the Brazilian Superior Court of Justice, it was still in force and the parties would keep on applying it. See: <<http://www.vale.com/brasil/PT/investors/information-market/press-releases/Paginas/vale-esclarece-sobre-a-suspensao-da-homologacao-do-acordo-da-samarco.aspx>>

Samarco, would be in charge of conducting the socio-economic impacts assessment. After repeated requests for public consultation and participation, the Federal Public Prosecutors Office started to negotiate a protocol to the preliminary agreement with public authorities and with the three involved companies. On 16th November 2017, the protocol to the preliminary agreement was signed excluding Integratio from the socio-economic damage assessment and substituting it for the Getúlio Vargas Foundation (FGV)² and the Brazil Human Rights Fund. It also provides for the creation of (i) technical assistance committees composed by legal, scientific, and economic experts to assist and advise the affected communities throughout the remedy process; and (ii) an observatory composed by civil society organizations and representatives of the affected communities to analyze the results of the assessment of the socio-economic damages. Since January, the Brazilian Human Rights Fund is engaged in field work to gain a more realistic understanding of the work that needs to be done to secure the technical assistance for the affected communities. It is expected that the Fund will present, in the coming days, a full-fledged budgetary and work proposal to Renova Foundation. Further negotiations will be required to determine the scope of the work to be carried out, which may lead to even further delays in the implementation of the measures listed above.

If well implemented, the protocol may empower the affected communities to meaningfully participate and influence the way that companies are providing remedies. Additionally, the Public Prosecutors Office and the three involved companies are currently negotiating a final settlement-agreement with the alleged purpose of changing the governance of the Interfederative Committee and the Renova Foundation in order to increase the participation of the affected communities. The Federal Public Defense Office, the State Public Defense Office of Espírito Santo and the State Public Defense Office of Minas Gerais were also invited to participate in these negotiations. Therefore, this is a critical moment of the remedy process of the Doce river dam disaster. A continuous monitoring of the United Nations Special Procedures may be decisive to prevent the aggravation of the multiple human rights violations that the communities affected by Samarco's dam collapse are suffering, as detailed below.

II. ACCESS TO REMEDY AND JUSTICE

a. Recognition of the condition of affected by the dam collapse

Over two years after the collapse of the Fundão tailing dam, many communities and individuals are still struggling to be recognized as affected by the disaster, which is the very first step of the remedy process. Under the provisions of the settlement agreement, the Renova Foundation has the authority to determine (i) who is affected; (ii) what are the damages that are entitled to remedy; (iii) what type of remedy will be provided to each damage; and (iv) what are the accepted means of evidence to prove that a certain person was affected and the type of

² After it was made public that Vale occupied an alternate position at FGV's Board of Trustees, the Federal Public Prosecutors Office suspended the negotiation of the contract between FGV and the Renova Foundation to investigate the existence of a conflict of interests. FGV has not been hired yet, and there is no guarantee that the institution will conduct the assessment.

damage this person suffered. The work carried out by the Foundation did not seek to make an integrated survey with the information of municipal social assistance, health network and other repositories of public information. Therefore, the registration process occurred without the active participation of governmental agencies and civil society. As mentioned above, the affected communities have no decision-making power within the Foundation. The Board of Governors is the head of the Renova Foundation and most of its members are appointed by the three involved companies.

As a result, not only the affected communities bear the burden of proving the damages they suffered but also the means of evidence that the Foundation accepts are incompatible with the reality of those who were informal workers or who lost all their belongings. Fisherfolks have reported that the Renova Foundation first required the purchase receipt of their boats, fishing net, and other accessories in order to recognize them as affected by the disaster. After a couple of months, the process became even more rigorous and the Foundation started to recognize as affected only the fishermen and women who hold an updated professional identity card, which many of them do not have.

The obligation to produce evidence about the material losses is particularly burdensome and unfair to those whose homes were destroyed since they barely had time to save themselves from the mud. Still, the Foundation requires them to prove the existence of their personal belongings by presenting either their purchase receipts or photographs of their homes. The owners of businesses operating in the districts destroyed by the disaster were asked to present the cashbooks or other records proving their earnings – even though all these records were located in the premises flooded by the mining residues and, thus, were also destroyed.

In view of the rigorous criteria that the Renova Foundation adopted, it started to impose tabulated amounts, established in the so-called “indemnity policies”, which can be defined as compensation systems for specific classes of affected people that standardized the amounts to be paid to certain segments throughout the disaster region. There is no room for the application of instruments of self-composition in these cases, and it is more correct to say they are “adhesion contracts”.

The process of recognition as affected is long and bureaucratic. People seeking to be recognized as affected are required to respond to a questionnaire of almost 600 pages with hundreds of questions.³ It uses a technical and complex language, which makes it difficult for the affected individuals to fully understand what is asked. Also, some of the questions relate to intimate aspects of the lives of the affected people and have nothing to do with the remedy process, such as questions asking the TV channels that the affected person or family used to watch before the disaster. People suffer from revictimization, stigmatization, and criminalization. On the pretense of avoiding fraud, the Renova Foundation requires the affected people to repeatedly present documents and evidence of the damages they suffered, sometimes even after recognizing them as affected. Some people are required to respond to different questionnaires several times without really understanding what is the purpose of it. Some

³ Available in Portuguese at: <http://www.fundacaorenova.org/wp-content/uploads/2017/07/2-formulario-de-cadastro-integrado_250717.pdf>. Last accessed: 14 December 2017.

fisherfolk are being required to go before police officers to give a deposition in order to prove to be affected. In some cases, they are even suffering criminal charges of ideological falsehood.

Those who are not recognized as affected by the disaster do not receive any type of remedy. During the first semester of 2016, Federal and state Public Defenders started to file individual lawsuits on behalf of those who had their request for recognition denied. However, due to the large number of unrecognized affected individuals, this strategy has proved to be unfeasible.⁴ Public Defenders started to act collectively to seek the recognition of entire communities. Communities located outside the territorial boundaries imposed by the settlement agreement constantly reach out to the Public Defense Office seeking recognition as affected. Currently, shrimp fisherfolks from the Municipality of Vitoria and fisherfolks from the Municipality of Sooretama are demanding their recognition and due compensation.

The community of São Mateus, a municipality located in the north of the mouth of the Doce river, in the state of Espírito Santo, is another example. In São Mateus, most of the people worked fishing and collecting oysters and crabs and, despite having lost their livelihood, were not recognized as affected. Upon the request of the Public Defense Office and of the Movement of People Affected by Dams, the Interfederative Committee, in March 2017, declared the entire area in the north of the Doce river mouth to be affected by the dam disaster. Until December 2017, over six months after the determination of the Interfederative Committee and two years after the disaster, no one from the community of São Mateus had received any type of remedy, not even the emergency assistance. On 14 December 2017, the Interfederative Committee fined the Renova Foundation and determined that it should start paying the emergency assistance to the community within 20 days. Only in late December 2017 the emergency assistance cards began to be distributed to these affected communities. At the beginning of January 2017, there were only 13 people registered. After the work carried out by the Public Defense Offices, MAB and the affected people, in January 2018 around 250 emergency assistance cards had been distributed to the victims and other hundreds were registered and awaiting analysis.

The process of recognition of the affected communities reveals two serious issues related to the remedy process. First, it shows that over two years after the disaster a large number of people have not received any type of remedy or assistance whatsoever. The Brazilian State and the involved companies have been systematically failing to comply with their international responsibility to provide a prompt and timely remedy.⁵ Emblematic example is the lack of implementation of the “Social Protection Program” (listed in the original agreement as one of the socio-economic programs) in the territories, which should have been implemented, in partnership with public authorities, to serve those affected in situations of vulnerability or social risk, due to violation of their fundamental rights. The program should

⁴ Although there is no final assessment of the impacts of the collapse, it is estimated that over 3 million people were affected by the disaster. However, according to the Renova Foundation, until October 2017, only 26,000 people were recognized as affected (RENOVA FOUNDATION, Relatório Mensal de Atividades, Outubro/2017. Available in Portuguese at: <http://www.fundacaorenova.org/wp-content/uploads/2017/11/relatorio-mensal-de-atividades_outubro.pdf>. Last accessed: 14th December 2017).

⁵ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex), article I.2 (b)(c), VII, VIII.14 and IX.15.

have started 30 days after the signing of the settlement agreement, but, until now, there is no record of its implementation. Also, it shows that the settlement agreement created a weak institutional framework that provides the Samarco, Vale, and BHP Billiton, represented by the Renova Foundation, with the authority to define how remedy will be provided and allows them to often disregard the Interfederative Committee's decisions. It reinforces and crystallizes a pattern of low capacity of the Brazilian State to enforce its own regulation and to compel businesses to provide an effective remedy. The Interfederative Committee does not review the registration work.

b. Problems with remedy mechanisms available to the affected communities

Even those who are recognized as affected by the disaster are not receiving an effective remedy. Once individuals and communities are recognized as affected, they have to choose between adhering to the Mediated Compensation Program or seeking judicial remedies. Within the mediation program, the affected people are offered values far below what is due, the criteria used to establish such values is not clear, and there is no room for negotiation. The compensation for deprivation of safe drinking water, for example, is only offered to the residents of two municipalities (Governador Valadares/MG and Colatina/ES) and its value is around 1,000 reais (approximately U\$300).⁶ This compensation is not enough to cover the expenses of buying bottled water for the entire period in which the river water will not be suitable for human consumption.⁷ Also, men and women receive different compensations for the same damages. While the Renova Foundation offers 62,000 reais to fishermen (approximately U\$18,800), it offers only 32,000 reais to fisherwomen (approximately U\$ 9,700) - a difference of almost 50%.⁸ These figures can vary according to the community, without clear precision of the criteria that explain the variation. There were reports of discriminatory treatment in the community of São Mateus, where several women said that their registration form, instead of recording their stated profession of fisherwoman or shell-fisherwoman, recorded "washerwoman".

Additionally, individuals are required to waive any right to a future claim. Although the Renova Foundation has a limited list of damages that it recognizes as entitled to remedy, it requires the affected people to sign individual agreements containing clauses discharging the three companies from all the damages that may arise from the disaster. It includes damages that were not included in the list recognized by Renova or damages that are not measurable or fully demonstrable at this point by the affected people. **The Interfederative Committee decided**

⁶ RENOVA FOUNDATION. Inscrições no Programa de Indenização Mediada para Dano Água encerram com 98% de adesão, 09 de novembro de 2017. Available in Portuguese at: <<http://www.fundacaorenova.org/noticia/programa-de-indenizacao-mediada-para-dano-agua-encerra-com-98-de-adesao/>>. Last accessed: 07 February 2018.

⁷ Right after the disaster, the then Minister of the Environment, Izabella Teixeira stated that it could take up to 30 years to completely restore the Doce river basin. See: O GLOBO. 'Recuperação da bacia do Rio Doce pode levar até 30 anos', diz ministra (in English: 'Doce river basin recovery may take up to 30 years', says minister). 20th November 2015. Available in Portuguese at: <<https://oglobo.globo.com/brasil/recuperacao-da-bacia-do-rio-doce-pode-levar-ate-30-anos-diz-ministra-18099989#ixzz51pRzaIIY>>.

⁸ The allegation was repeatedly raised in interviews conducted by the authors of this Urgent Appeal with affected communities.

that the Renova Foundation could only require the affected communities to discharge the companies from the damages covered by the individual agreements. Also, the Public Defense Office and the Public Prosecutors Office filed collective lawsuits seeking the annulment of the full discharge clauses. Nonetheless, the Renova Foundation keep requiring the affected people to waive their legal right to sue for all damages arising from the disaster. Full discharge clauses violates the principles of mediation, legal certainty and the right to a fair compensation for damages caused by the disaster, besides being manifestly disproportionate.

In addition, access to the mediation program has burdened the most vulnerable affected people. The Renova Foundation and the Brazilian State are both legally obliged to provide free legal assistance to those who are unable to afford a lawyer. However, since the Renova Foundation and the Brazilian state have failed to provide affected communities with legal assistance, people in a situation of extreme vulnerability reported to have paid 30% of their compensation in attorney fees. A compensation of R\$ 11,200.00 (approximately \$3,400 dollars) will decrease to R\$ 7,840.00 (approximately 2,400 dollars), due to attorneys' fees. The disorderly design and implementation of the mediation program, and the denial of the right to free legal assistance, has made the communities even more vulnerable to predatory approaches by private lawyers and law firms, who offer their services with abusive provisions, such as fines for latter revocation and high fees, even though the indemnity program has tabulated amounts and categories and there is almost no negotiating margin.

With regards to judicial remedies, the Renova Foundation, Samarco and the Court of Justice of the State of Minas Gerais (TJMG) signed a technical cooperation agreement to settle claims for damages based on deprivation of water. According to the Brazilian Civil Procedure Code, every civil claim must pass through a mediation hearing aiming at settling the case before going to trial. Under the technical cooperation agreement, Renova and Samarco must bear the costs of the mediators and the facilities in which the settlements will take place. The agreement also prescribes that the service stations should be located in the same offices that Renova's Mediated Compensation Program takes place. Renova and Samarco are in charge of executing and funding every step of the settlement process.

According to representatives of the affected people, in practice, what happens is that in-court settlements end up being an extension of Renova's mediation program, including the compensation that the affected people are offered.⁹ Therefore, on the one hand, a judicial decision on the merits is the only chance that the affected people have to receive a compensation that is adequate to cover all the harm they suffered. On the other hand, since the Court is indirectly receiving funds from the companies (who afford all the costs of in-court settlements), the judicial independence is at serious risk in that case - not to mention the long period of time that the affected people will have to wait until reaching a final judicial decision.

⁹ MOVEMENT OF PEOPLE AFFECTED BY DAMS. Programa de Indenização Mediada: armadilha para os atingidos da Samarco (in English: Mediated Compensation Program: a trap to the people affected by Samarco. 19 July 2017. Available in Portuguese at: <<http://www.mabnacional.org.br/noticia/programa-indeniza-mediada-armadilha-para-os-atingidos-pela-samarco>>. Last accessed: 09 February 2018.

The remedy mechanisms that are available to the affected communities violate their human rights by denying them an effective access to administrative and judicial remedies.¹⁰ The settlement agreement created a non-judicial judicial grievance mechanism that imposes grave barriers to the access to justice. The judicial remedy mechanism, in turn, does not offer a fair proceeding that respects the due process of law before an independent and impartial court. This remedy framework is incompatible with the human rights obligations set forth in the UN Guiding Principles on Business and Human Rights,¹¹ in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹² and in the international human rights treaties to which Brazil is a party.¹³

c. Forms of remedy and non-monetary damages

In addition to ineffective remedy mechanisms, the absence of meaningful participation seriously undermines the remedies that the three involved companies provide to the affected communities. The Renova Foundation is in charge of determining the damages that are entitled to remedy, the type of remedy - if any - that it will provide, and the amount of money that it will pay as monetary compensation. Under the remedy programs that the settlement agreement created, the Renova Foundation offers the affected communities only monetary compensation, failing to effectively address the concerns of the victims and return their lives to the *status quo ante*.

For example, those who lost their livelihoods receive a monthly payment to cover basic living expenses as emergency assistance. It amounts to a minimum wage increased in 20% per dependent of a family group plus the value of a food basket. The Foundation pays the emergency assistance through a pay card and the recipient has to find an ATM machine to access the money, which is difficult for communities living in remote areas.¹⁴ Also, due to the impacts on their way of living, some communities have been experiencing a significant increase in the rates of alcoholism, domestic violence, depression, and other mental health issues. In order to address these issues, representatives of the affected communities reported that they would rather receive other forms of remedies, such as restitution, rehabilitation, and other means of compensation that are compatible with their previous way of living. Fishing communities, for example, expect the companies to adopt measures to clean the river and

¹⁰ International Covenant on Civil and Political Rights (General Assembly resolution 2200A), article 2.3 (b).

¹¹ United Nations Guiding Principles on Business and Human Rights (Human Rights Council resolution 17/4), principles 25 and 26.

¹² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex), article VIII.12.

¹³ International Covenant on Civil and Political Rights (General Assembly resolution 2200A), article 2.3 (b) and 14.1.

¹⁴ It is worth noting that the Renova Foundation initially refused to pay the emergency assistance, and only started paying after a judicial decision forced it to do so.

restore the environment. In the meantime, some communities would rather receive the necessary structure to breed fish in captivity instead of receiving a monthly monetary payment.

Another issue relates to the recognition and reparation of non-monetary damages. The Renova Foundation recognizes a very limited list of intangible losses as entitled to remedies. It excludes, for example, the violation of cultural rights. Therefore, although indigenous, fishing and other traditional communities depended on the Doce river not only for their livelihood but also for their cultural, religious, and leisure activities, they do not receive any type of remedy for these losses. Even if they did, it would be a monetary compensation, which does not fully repair the harm. Restoring the environment is the only measure that the affected communities consider adequate to remedy these violations.

According to the international standards on the right to an effective remedy, the companies should not only provide the affected communities with full and effective reparation proportional to the gravity of the harms they suffered¹⁵ but also to prioritize measures that restore these communities to their original situation.¹⁶ Most importantly, they should guarantee that the affected communities are heard and meaningfully participate in the design and determination of the types of remedies that they will receive, including measures to clean the river and restore the environment. By carrying out the remedy programs that the settlement agreement created, the Brazilian State and the three involved companies have been failing to comply with such standards. As it stands today, the Renova Foundation defines the types of remedy that it will provide, which are inadequate to redress the harms that the affected communities are suffering.

III. RIGHT TO HOUSING AND RESETTLEMENT PROCESS

Over two years after the disaster, the resettlement of the communities who were forcibly displaced from their homes is far from complete, disrespecting international human rights standards on resettlement processes caused by man-induced and natural disasters. Due to the significant impacts in their way of living, affected people living far away from the dam were forcibly displaced. Some fisherfolk, for example, are moving to other locations where they are able to fish and live in accordance with their culture and tradition. Nonetheless, the Renova Foundation does not recognize these affected people as forcibly displaced and refuses to pay them a compensation or to develop a resettlement program to meet their needs.

The resettlement process of those who are recognized as forcibly displaced also violates the international standards to the right to housing. The mud destroyed or severely damaged several districts. The Renova Foundation will rebuild some of these districts in other locations, and the people who once lived there are now living in temporary lodgings in other cities. Other

¹⁵ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex), article IX.15.

¹⁶ Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (General Assembly document A/67/457/Add.2), paragraph 44.

districts are considered by the Renova Foundation to be suitable for human life, even though they are located below the dam, in areas at risk. In such cases, the affected people remain living in the affected areas and have close contact with the toxic mud. Still, the Renova Foundation intends to fix these areas, rather than to resettle the affected communities who once lived there – failing to provide the affected communities with guarantees of non-repetition and with the power to decide where they want to be resettled.

The Foundation estimated that it would conclude the construction of the new districts of Bento Rodrigues, Paracatu de Baixo, and Gesteira in March 2019.¹⁷ In other words, for almost four years the families displaced from their homes will be living in temporary lodging, deprived of their right to be restituted to the *status quo ante* in a reasonable period. The Renova Foundation also refuses to adapt the temporary lodging to meet the needs of the affected communities over time, which has been causing different social conflicts.

In addition, until February 2018, the Renova Foundation had not even started the construction of the new districts, claiming that state bureaucracy is delaying the process. This is contested by victims and the end of the resettlement process seems to be moving ever further away.¹⁸ The affected people are not fully satisfied with new locations or the planning of the new districts as well. Concerns amongst community members arise from the Renova Foundation's intention to rebuild the districts as an urban area, whereas most of the affected people lived in rural areas and developed small-scale farming and other rural activities. Therefore, even **when the Renova Foundation concludes the resettlement, it will not meet the needs of the affected people, who will be deprived of their usual means of gaining their living.**

In the meantime, the affected people are living in apartments and houses that the Renova Foundation rented in the urban area of Mariana, away from their former neighbors and relatives, facing prejudice, contempt and all sorts of threats and intimidation from other inhabitants. Mariana's economy shrank tremendously after the disaster and the interruption of Samarco's activities. Those who lived in the city and felt these negative economic impacts attribute to the affected communities the responsibility for these problems - as if they were the perpetrators, and not the victims, of the disaster. Since the displaced families are living in the urban area now, they have also seen their welfare and livelihoods deteriorate because of the increase in the costs of living. Families have reported that their utility bills, such as energy, are much higher (at least 70%) in the city than the average of the costs they were used to pay when they lived in the affected villages.

Finally, some of the displaced communities already receive technical assistance, provided by Caritas Brazil. After a long and meaningful process of consultation and

¹⁷ FOLHA. Indenização a atingidos por lama trava 2 anos depois da tragédia de Mariana (in English: Reparation to the people affected by mud stops two years after the Mariana tragedy). 24 November 2017. Available at: <<http://www1.folha.uol.com.br/cotidiano/2017/10/1929598-indenizacao-a-atingidos-por-lama-trava-2-anos-depois-da-tragedia-de-mariana.shtml>>. Last accessed: 15 February 2018.

¹⁸ G1. Atingidos por desastre reclamam de demora na reconstrução de distritos (in English: People affected by disaster complain about the delay in the construction of districts). 04 November 2017. Available at: <<https://g1.globo.com/minas-gerais/desastre-ambiental-em-mariana/noticia/atingidos-por-desastre-reclamam-de-demora-na-reconstrucao-de-distritos.ghtml>>. Last accessed: 15 February 2018.

participation, Caritas submitted to the Renova Foundation a document with 81 recommendations regarding the resettlement process. Renova accepted only about 40 recommendations, some of them with modifications, and rejected the others – including the one that set the standard of “adequate housing” as prescribed by UN-Habitat. As a result, some of the affected communities will be resettled in areas at risk of another flooding.

Access to land and adequate housing is an important factor in fulfilling the right to an adequate standard of living.¹⁹ The Brazilian state and the companies have the responsibility to ensure that the displaced households’ livelihoods and standards of living are improved or, at the very least, restored to pre-displacement levels.²⁰ The resettlement process must be fast and, until completed, the involved actors must guarantee that the affected communities will not suffer other violations of their rights. Therefore, Renova Foundation carries out the resettlement process in disregard of the international standards for the right to housing.

IV. RIGHT TO HEALTH AND ACCESS TO SAFE DRINKING WATER

The rights to health and to safe drinking water have been seriously and continuously violated since the collapse of the Fundão tailing dam. Some municipalities are particularly at risk because the Doce river is their main source of water supply, like Governador Valadares (in Minas Gerais) and Colatina (in Espírito Santo). The Renova Foundation determined that the compensation for deprivation of safe drinking water would be around 1,000 reais (approximately U\$300). Thus, in such places, only a minority can afford to keep buying bottled water to drink and cook. Those who cannot - which include public hospitals and schools -, are forced to use piped water for personal and domestic uses. According to the affected communities living in these areas, the water has a white coloration and smells and tastes like chlorine. These communities have also been experiencing increased rates of gastrointestinal diseases, respiratory disorders, rashes, and other skin allergies, probably related to the ingestion and contact with heavy metals.²¹

The Renova Foundation claims that the Doce river water has been tested and it meets the standards set out by the Brazilian National Water Agency. However, the analysis - funded by the Renova Foundation and carried out by the companies in charge of the water supply in each district - contradicts independent studies in the matter. According to the research conducted by the SOS Mata Atlântica Foundation, the water is contaminated with heavy metals and it is improper not only for human consumption but also for other uses, such as fishing, irrigation and food preparation.²² In direct violation of the right to information connected to the

¹⁹ International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A), article 12.1.

²⁰ Basic Principles and Guidelines on Development-Based Evictions and Displacement (General Assembly resolution 60/251, Annex I), paragraph 13.

²¹ The allegations of health problem were repeatedly raised in interviews conducted by the authors of this Urgent Appeal with affected communities.

²² SOS MATA ATLÂNTICA. Observando os Rios 2017 - O retrato da qualidade da água na bacia do rio Doce após dois anos do rompimento da barragem de Fundão (in English: Observing the Rivers 2017 - The picture of the quality of the Doce river basin water two years after the collapse of the Fundão dam). November 2017.

right to water, over two years after the disaster, there is still no conclusive report on the quality of the water and its toxicity. The absence of official reliable information makes the affected communities feel insecure about the quality of the water and poses a serious risk to human health and the environment.

The companies' desire to convey the image of normality and absolute control of the situation soon after the rupture of the dam caused a severe disbelief regarding its action and generalized distrust in the reports elaborated by public authorities, a situation that was not overcome by the creation of the Renova Foundation. Criticism persists, mainly because of the difficulty in accessing the information on the reports. As an example, in a public hearing held by the Public Defense Office in the district of Mascarenhas, Baixo Guandu/ES, on September 28, 2016, there was widespread outrage when Samarco's representative stated that the water quality was normal. Therefore, the disbelief regarding the technical studies is the responsibility of all companies and public authorities.

According to international human rights law, the access to an adequate supply of safe drinking water is within the essential minimum levels of the right to health.²³ It includes the right of each person to (i) water that is free from substances that constitute a threat to humans' health; (ii) of an acceptable color, odor, and taste; (iii) in a sufficient and continuous amount for personal and domestic uses; (iv) that is also physically accessible and affordable.²⁴ The Brazilian state has been systematically failing to meet its international obligation to respect, protect, and fulfill the right to water, which includes the obligation to protect from water contamination by private companies and to adopt measures to actively provide the affected communities with safe drinking water.²⁵ The conduct of the corporate and government actors involved in the case poses a serious threat to their health in violation of their human rights.

V. LOSS OF LIVELIHOOD

Alongside the margins of the Doce river, there are many communities whose main - or only - source of income depended directly or indirectly on the river. Some of these communities lost their livelihood, but have not been recognized as affected yet, facing serious risks of food and economic insecurity. The communities located close to the river mouth, who suffered from the impacts of the disaster on tourism and commerce, for example, were not recognized yet.

Many fishermen and women are also struggling to be recognized and some of them are even facing criminal charges for supposedly misrepresenting themselves as fisherfolk in order to receive a financial compensation from the companies. Other fishing communities were recognized and are currently receiving the emergency assistance. However, these communities

Available in Portuguese at: <<https://www.sosma.org.br/106705/qualidade-da-agua-na-bacia-rio-doce-piora-dois-anos-apos-tragedia-em-mariana/>>. Last accessed: 20th December 2017.

²³ Committee on Economic, Social and Cultural Rights. General Comment n. 14 on the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), paragraph 12(a).

²⁴ Committee on Economic, Social and Cultural Rights. General Comment n. 15 on the right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), paragraph 12.

²⁵ *Id.*, paragraphs 20 to 28.

have no perspective of returning to work, since the work as fisherfolk is not easily substituted. It is more than just a profession, it also involves a particular way of living and social dynamics. Still, in disrespect to these communities' traditions, the Renova Foundation proposed that fishermen and women could be offered training courses to become bakers or construction workers. Once unable to fish, fisherfolks are unable to teach their children their traditional activities, which triggers an interruption in the way of life of various traditional communities. Idleness affects children and other residents, who end up left with no leisure option.

The international human right to work includes the right of each person to freely choose or accept the work to gain its living.²⁶ The affected communities also hold the right to an adequate standard of living,²⁷ which includes the right to adequate food, clothing, and housing. Adequate income levels are critical in ensuring that those and other basic human rights are met, including the right to health and education. Since the collapse of the Fundão dam, many affected people have been prevented from earning their income in a way that is compatible with their way of living and the Brazilian State and the three involved companies have been failing to take the adequate steps to safeguard their related rights.

VI. INDIGENOUS AND TRADITIONAL PEOPLES' RIGHTS

The violation of the rights of indigenous and other traditional communities deserves special attention because of their particular vulnerability and different relationship with their lands and natural resources. There are affected communities living alongside the Doce river whose legal status as traditional communities was not yet recognized. This delay deprives them of the special protection of their right to land and to the development of a project of life and seriously impairs their traditional way of living.

Additionally, there are multiple indigenous peoples living alongside the Doce river, like the Krenak (living in Resplendor, municipality in the state of Minas Gerais), the Tupiniquim, and the Guarani (both living in Aracruz, municipality in the state of Espírito Santo). These communities used to live off fishing and farming in the margins of the river, which was also their source of water supply. Since the disaster, they have completely changed their dietary patterns and now are forced to buy bottled water and food in neighboring communities. Such changes had a significant impact on the health of the indigenous communities, that are experiencing increased rates of dengue fever, skin allergies, respiratory diseases, among other pathologies.²⁸

²⁶ International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A), article 6.

²⁷ International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A), article 11.

²⁸ Human Rights Clinic of the Federal University of Minas Gerais. *Direito das Populações Afetadas pelo Rompimento da Barragem de Fundão: povo Krenak* ("The Rights of the People Affected by the Collapse of the Fundão Tailing Dam: the Krenak people"). March 2017. Available at: <<http://www.greenpeace.org/brasil/pt/Blog/rio-doce-impactos-da-lama-no-corpo-e-na-alma-/blog/59204/>>. Last accessed: 22 January 2018.

For the Krenak people, the Doce river represented more than their livelihood and subsistence. It was also a sacred symbol and the place where their religious and cultural activities took place. The indigenous communities that live in Aracruz, in turn, have the solidarity as a particular trait, which means that they feel the impacts that other indigenous communities suffer. Therefore, in the Doce river disaster, they were affected twice: first, because of the impacts they are suffering themselves; second, in solidarity with other affected indigenous communities. However, the Renova Foundation does not recognize these damages as entitled to remedy.

The Renova Foundation also attempts to attribute the delay in assisting the indigenous people to the need for specific studies, according to the agreement. The delay eventually encourages individuals to seek the mediation program, even though it is not compatible with the traditional and cultural peculiarities of the indigenous and traditional peoples, such as the quilombolas. This lack of definition has led to a mass judicialization of individual lawsuits in the municipality of Aracruz/ES. The lack of transparency in assisting indigenous people destabilizes communities and creates friction amongst their leaders.

The affected communities' right to participation in the remedy process deserves a different approach when it comes to indigenous and traditional communities, as per ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. Such participation must respect the communities' culture and social arrangements. A meaningful participation is a key element to the protection of indigenous rights and has been constantly disregarded by the corporate and government actors involved in the case. Recently, some of the indigenous communities affected by the dam disaster concluded the development of their own protocols for consultation. The adoption and effective implementation of these protocols by the Renova Foundation, as well as the recognition of other groups as traditional communities, is critical to ensure the protection of their rights.

VII. ACCESS TO INFORMATION

Since the disaster, the Renova Foundation and the Brazilian State have been seriously impairing the affected communities' right to access information. First, the means of accessing information that are available to the affected communities are inadequate and incompatible with their resources and their way of living. One who wants to have access to information on its remedy process has two options: a telephone line and an e-mail address, which creates barriers to the access to information because many affected communities have limited telephone and internet access. Also, in order to be fully understandable, the most important information should be available in printed format, so the affected people could keep it for consultation at any time. For these reasons, the Public Defense Office released a technical note recommending the Renova Foundation to make in-person service available to the affected individuals who want to receive further information on their rights, which have not occurred yet.

Additionally, the content of the information that the Renova Foundation provides is usually insufficient and not reliable. For example, the Foundation does not justify its decisions

of recognition - or denial of recognition - of the condition of affected by the disaster. Therefore, a person seeking to be recognized as affected does not have access to the Foundation's reasoning in granting or denying his or her request. In some cases, the Public Defense Office requests further information on the reason why someone was not recognized as affected, but the Foundation's responses are inconclusive. When the Renova Foundation recognizes an individual or community as affected, it does not inform in which remedy program it will include that individual or community.²⁹

Only in January 2018, the Public Defense Office obtained direct access to the files and registration forms of the affected people, which will allow the beginning of a deeper assessment regarding the determinations made by Renova Foundation on the individual situation of those affected people. Nevertheless, the affected people have no direct access to their own documents. There have also been some reports that Renova Foundation demanded the affected people who received proposals within the mediation program to sign a "Confidentiality Term" preventing them from disclosing the content of the proposals or even the documents prepared in their favor. It has also come to the attention of Public Defenders that the internal rules of the mediation program impose a fine to the affected people who disclose information not yet fully verified. In addition, communities strongly criticize the lack of information about the quality of water, fish and soil, as well as measures of public responsibility regarding health and food security.

According to international human rights law, every person has the right to access information held by public bodies or other entities carrying out public functions.³⁰ In particular, states must provide the victims of human rights violations with access to relevant information concerning violations that they have suffered, reparation mechanisms, as well as all legal, medical, psychological services that may be available to them.³¹ **The Brazilian State and the three involved companies, represented by the Renova Foundation, have been violating their international obligations by failing to provide the affected communities with adequate means of accessing information and with concrete information on their rights and the remedies that they are entitled to.**

VIII. HUMAN RIGHTS DEFENDERS

The rights of human rights defenders working on the Doce river case are also under threat. Since the disaster, different groups of affected people started to organize protests in order to compel the government and the companies to pay them the emergency assistance. One of the main forms of protest was to occupy the railway that runs alongside the Doce river, operated by Vale. In these occasions, police force was used to violently repress and arrest the

²⁹ The Foundation carries out over 40 remedy programs, including the emergency assistance program, the resettlement program, and the mediation program.

³⁰ Human Rights Committee. General Comment n. 34 on the freedoms of opinion and expression (article 19 of the International Covenant on Civil and Political Rights), paragraph 18.

³¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex), article X.24.

protesters. Dozens of activists and members of social movements are accused of damaging public property and have civil and criminal lawsuits filed against them. Also, defenders have reported that agents of the Renova Foundation frequently threaten the affected people of losing the right to receive the emergency assistance in case they decide to join any social movement, such as the Movement of People Affected by Dams (MAB). In extreme cases, Renova's agents went to the homes of community leaders and implied that they should fear reprisals.

International human rights law protects the right to exercise the fundamental freedoms of expression, association, and peaceful assembly,³² as well as the right “to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”³³ In the context of corporate-related human rights abuses, states shall ensure that the legitimate and peaceful activities of human rights defenders are not obstructed,³⁴ which includes not only the protection against attacks from state actors but also from third-parties.³⁵ Still, Brazil is one of the deadliest countries for human rights defenders in the world, especially for defenders working on issues related to the land and the environment.³⁶ Therefore, the Brazilian State has been disregarding its international obligations to prevent attacks against the human rights defenders working on the Doce river case, who are constantly harassed, criminalized, and threatened by the involved companies, represented by the Renova Foundation.

IX. CONCLUSION AND REQUESTS

The organizations request the UN Special Procedures addressed in this Urgent Appeal to urge the Brazilian State and the three involved companies to:

1. Establish an efficient and fair registration process of the affected people aimed at promptly recognizing as entitled to remedy every person that was affected by the dam collapse, including the possibility of review by an external body;
2. Effectively implement the protocol to the preliminary agreement, which provides for the creation of technical assistance committees with experts trusted by the affected communities to assist them throughout the remedy process;
3. Establish a participative and effective consultation process with the affected communities aimed at adjusting the existing remedy mechanisms, which must

³² International Covenant on Civil and Political Rights (General Assembly resolution 2200A), article 19 and 22.

³³ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly Resolution 53/144), article 1.

³⁴ United Nations Guiding Principles on Business and Human Rights (Human Rights Council resolution 17/4), principle 26.

³⁵ Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (Report of the Special Rapporteur on the situation of human rights defenders), paragraph 34.

³⁶ 66 defenders were killed in the country in 2016, and 58 between January and August 2017 (Brazilian Committee of Human Rights Defenders, *Comitê denuncia aumento vertiginoso da violência contra defensoras e defensores no Brasil*, 11 September 2017, <<http://comiteddh.org.br/ultimas-noticias/comite-denuncia-aumento-vertiginoso-da-violencia-contra-defensoras-edefensores-de-direitos-humanos-no-brasil/>>). Last accessed: 22 January 2018.

incorporate the views and concerns of all the interested parties, especially of vulnerable groups, in accordance with the foundational principles of international human rights law, which include transparency, accountability, participation and effective remediation;

4. Declare to be voided any provisions that create barriers to access to justice or discharge the companies from damages that they have not yet provided remedy for, either in individual agreements or in cooperation instruments with local courts;
5. Establish a participative and effective consultation process with the affected communities aimed at developing a resettlement plan capable of restoring the livelihood and standards of living of every person who may be forcibly displaced, not only those who lost their homes;
6. Fund and disclose the results of water quality testing and analysis to be carried out by independent experts;
7. Provide the affected communities with safe drinking water during the entire period of time in which the river water not suitable for human consumption, as well as restore the affected people's trust in the quality of the water;
8. Protect and promote the rights of indigenous and other traditional communities, with special attention to issues related to the rights to health, to land, to the development of ways and projects of life, and cultural rights;
9. Create effective and adequate means for the affected communities to have access to information on the violations they have been suffering and on the remedies that are available to them;
10. Create an environment in which human rights defenders can work free of harassment, stigmatization, and criminalization.

Signatures

The present urgent appeal is submitted by the following organizations:

Clínica de Direitos Humanos da Universidade Federal de Minas Gerais (UFMG)

Conectas Direitos Humanos

Grupo de Estudos e Pesquisas Socioambientais (GEPSA) / Universidade Federal de Ouro Preto (UFOP)

Justiça Global

Movimento dos Atingidos por Barragens (MAB)

Federal Public Defense Office (DPU)

Public Defense Office of the State of Espírito Santo (DPE/ES)