



**CENTRO DE
DIREITOS HUMANOS
E EMPRESAS**
human rights and business centre

REPORT

HOMA PARTICIPATES IN THE MEETING WITH THE UN WORKING GROUP IN MARIANA, MINAS GERAIS

THE MEETING WAS HELD IN DEC 12, 2015

THE COMMISSION'S WORK PROPOSAL FOR THE UN

The Working Group of the United Nations (UN) on Human Rights and Transnational Corporations and Other Business Enterprises had, on a visit to Mariana, the goal of hearing the testimony of people affected by the collapse of Samarco Mining Company's *Fundão* Dam. The tailings from Vale Mining Company (Vale) joint venture with the Anglo-Australian BHP Billiton (BHP Billiton) mine were released in the environment on November 5th, 2015, leading to Brazil's greatest environmental disaster, making this a mandatory topic on the field of Human Rights and Business.

The UN Human Rights Council created the Working Group (WG) in June 2011. It is incorporated in a larger body, named "Special Procedures", whose main characteristic is the independence in relation to any government or organization. It is composed of a set of volunteer specialists, whose goal is to inform and advise within the theme of Human Rights. The WG is the branch of activity specialized in violations involving companies and uses as a benchmark the Guiding Principles on Human Rights and Business, document approved by consensus by the Council, but which is extremely criticized for its lack of binding power and weak normative content concerning the effective accountability of companies for Human Rights violations.

The trip to Mariana is part of a visit of 10 days in Brazil (07/12 - 16/12), and also the first time that the WG visited Latin America and the Caribbean region. Its self-declared approach was to provide support to the government's, transnational companies' and the so called *stakeholders*¹ efforts in prevention and increase in protection against violations of Human Rights by companies. The WG's visit to Brazil had already been scheduled even before the environmental disaster, aiming to investigate "large development projects in planning stage and also in progress, for instance, the 2016 Olympic Games in Rio de Janeiro".² Due to the tragedy that occurred, a visit to Mariana was added to the WG's itinerary, which already had Brasilia, Sao Paulo, Rio de Janeiro, Belo Horizonte, Altamira and Belem. It is important to acknowledge the efforts of the Brazilian civil society so that, among other demands related to the situation of Human Rights violations by companies in the country, it was included the visit to Mariana in the Working Group's schedule, through a letter³ signed by various organizations, including Homa.

¹ The term represents the other parties interested in the business activity, such as the consumer, the workers and the company itself. They are the third parties that are or will be influenced by the benefits and risks that the particular activity generates. Form a counterpoint to the term "stockholder", which only refers to the company shareholders.

² According to a news item published in: <https://nacoesunidas.org/brasil-grupo-de-especialistas-da-onu-avalia-impacto-de-atividades-empresariais-sobre-direitos-humanos/>

³ Available at: <http://www.projetodheuffj.com.br/2015/11/30/organizacoes-da-sociedade-civil-brasileira-incluindo-o-homa-assinam-carta-destinada-ao-grupo-de-trabalho-da-onu-sobre->

Pavel Sulyandziga (2015), member of the delegation and specialist in human rights, stated:

Brazil is the seventh largest economy of the world and therefore has a prominent role in the regional and global scopes. We are very interested in knowing the measures adopted in the country in order to prevent and resolve human rights violations related to business activities.

The Russian expert and the Chilean Dante Pesce have visited Brazil under the government's invitation and, according to a press statement released by the Organization, the experience has left as general impression that the Guiding Principles exert little influence in the Brazilian business world, including reports that the government has done little to guide the business societies regarding what actions should be carried out in order to respect the document. Public and Semi-Public Companies were particularly criticized for having an aggravated responsibility in relation to society. Although in 2015 the Brazilian public companies have subscribed to the OECD Guidelines for Multinationals^{4,5} and the CNI (National Confederation

of Industry) has become a signatory to the Declaration of Bahrain, any effective influence of such pacts remains unclear.⁶

Among the business societies who are aware of the Guiding Principles, there is a perspective of self-protection against the risks of violations of Human Rights, and also a focus on specific projects. A holistic attitude of protection of people at risk of having their human rights infringed is not noticed. This way, great are the chances that the theme becomes marginalized and viewed under a trade-off perspective.

Prior to that, on November 25th, UN made harsh criticism to the Brazilian government, Vale and the Anglo-Australian mining company BHP for what they considered an "unacceptable" response to the tragedy of Mariana, adopting a "defensive position" before the "catastrophic collapse" of the tailings dam which, at the beginning of November, devastated the district of Bento Rodrigues, in Minas Gerais, and still causes serious damage to the Doce River basin: "Companies and the government should be doing everything they can to prevent more problems, which includes exposure to heavy metals and toxic substances. This is not the time for defensive positions", said the specialists in the announcement. At the time, President Dilma Rousseff denied negligence in the case. Samarco, in its turn, has been stating that its operations were regu-

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⁴ Available at:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16891&LangID=E>

⁵ Available at:
<http://www.pcn.fazenda.gov.br/assuntos/ocde/arquivos/2011-diretrizes-da-ocde-para-empresas-multinacionais-pt-br.pdf/view>

⁶ Available at:
http://www.employerssummit.com/Bahrain_Declaration_EN.pdf

lar, licensed and monitored within the best dam monitoring standards.⁷

In a statement released on Wednesday (December 9th, 2015), that brings the speeches of the special rapporteur for Human Rights and the Environment issues, John Knox, and the rapporteur for Human Rights and Toxic Substances, Baskut Tuncak, UN criticized the delay in three weeks of the disclosure of information on the risks generated by billion liters of metal sludge poured in Doce River after the dam's collapse on the 5th.

UN also mentions the contradiction in the information about the disaster, in particular the insistence of Samarco that the tailings did not contain toxic substances. And it describes in detail the ecological disaster caused by the leakage, including the arrival of the tailings to the sea. Tuncak (2015) affirms that:

Brazilian authorities need to discuss whether the legislation for mining activity is consistent with the international standards of human rights, including the right to information. The Government has the obligation to generate, update and disseminate information about the environmental impact and the presence of harmful substances, in their turn, companies have the responsibility to respect human rights.

Both specialists classified the tragedy as another example of companies' negligence in protecting human rights and outline a distressful post-disaster framework for the affected communities:

We will never have an effective remedy for the victims, whose relatives or livelihood may be under this wave of toxic waste, or for the environment, which suffered unrepairable damage. Companies working with activities involving the use of risky material must have the prevention of accidents at the center of their business model (KNOX; TUNCAK, 2015).

According to Knox's calculations, the environmental damage caused by the disaster equals 20,000 olympic swimming pools of toxic waste contaminating the soil, the rivers and the water system in an area of over 850 square kilometers. He also flags that Doce River "is now considered dead by scientists" and reminded that "the toxic sludge is slowly going its way down the river toward the Abrolhos Marine National Park, where it threatens the protected forest and the habitat".

This disaster serves as another tragic example of the failure of companies in conducting due diligence to prevent violations of human rights, there will never be an effective remedy to the victims or to the environment, who suffered unrepairable damage (TUNCAK, 2015).

⁷ According to a news item published in: http://www.bbc.com/portuguese/noticias/2015/11/151125_onu_brasil_mariana_fd

On the 16th of this month a pre-report of what was discussed in Mariana was presented in Brasilia. The findings of the visit to the country and the recommendations of the experts will be included in an official report to be presented to the Human Rights Council in June 2016, in Geneva, Switzerland.

The president of the Movement of People Affected by Dams (MAB), Sônia Maranhão, believes that this visit is a "guarantee that an international body will follow the case and that there will be no violation of human rights". This week, Samarco failed to sign a Conduct Adjustment Agreement (TAC) which provided emergency support and compensation to victims. In response to this, the Prosecutor's Office of Minas Gerais (MPMG) filed a public civil action against the mining company and its controlling shareholders, Vale and BHP Billiton.⁸

BRAZIL'S LARGEST ENVIRONMENTAL TRAGEDY

It is important to contextualize the present case within a framework of Human Rights violations by mining companies. The period 2003-2013 represented a megacycle of *commodities*, in which the worldwide imports of ores have increased 630% (US\$

277 billion). Latin America and, in particular, Brazil, has experienced a process of expansion of the mining-metallurgical sector. This process culminates with the achievement of the country, in 2013, of the second place among the largest exporters of ore in the world.

Therefore, more and more problems related to this type of activity occur. The economic dependence of the region in relation to this source of wealth is alarming, given that the sector is very vulnerable to high and low cycles in commodity prices, which makes the crises in the sector structural. This fact is especially relevant because a connection between low cycles in commodity prices and dam ruptures can be noticed. These are a constant risk in mining activity. According to the final report from the group of PoEMAS:⁹

(...) data indicates that there is a structural relation between events of tailings dam ruptures and the economic cycles of mining. There is evidence of an increased risk of dam ruptures in the new post-boom cycle of ores prices. This relation could be due to the speedup of environmental licensing procedures and the pressure on the licensing bodies in the high price phase, as well as the intensification of production and pressure for reducing costs in the period of price reduction. Some of these elements can be identified in the Samarco/Vale/BHP's technologi-

⁸ According to a news item published in: <http://www.otempo.com.br/cidades/representantes-da-onu-v%C3%A3o-a-mariana-para-ouvir-v%C3%ADtimas-1.1189725>

⁹ Available at: <https://pedlowski.files.wordpress.com/2015/12/poemas-2015-antes-fosse-mais-leve-a-carga-versc3a3o-final.pdf>

cal disaster and its structural character suggests that other companies may be causing similar risky situations.

(...) There are analyzes that have detected, in the recent past, an increase in the number of waste dams collapses considered severe and very severe. This tendency could be associated to the fact that the innovations in ore dressing have advanced much more quickly than those designed for waste treatment. Thus, it has become possible to mine with ever-lower content of ore, generating an increasing amount of tailings per tonne of dressed ore and demanding progressively bigger dams. This scenario shows, therefore, that dam failures will continue to happen, but with larger scale impacts. Many of these elements appear in a specific way in the disaster in question and in the forms of operation of the directly involved companies (PoE-MAS, 2015, p.8)

In this way, the concern of the Working Group with the occurrence of new collapses in dams is justified. It is important to understand that although it is possible to find out what problems have really triggered the tragedy, as the above-mentioned report precisely does, it is not an isolated fact. Since 2001 five accidents of similar proportions were registered in Minas Gerais - in the locations of Macacos, Cataguases, Miraí, Muriaé and Itabirito. The last dam failure in the region occurred in the year of 2014, in which three workers died and one was injured after the col-

lapse of a dam from Herculano Mining Co., in Ouro Preto.

Another recurrent problem to be faced is the difficulty in the accountability of the business societies, whose complex business arrangement becomes an obstacle for the appropriate compensation and rebuke. Samarco is a clear example of this situation. It is a joint venture between Vale and BHP Billiton, which would imply that the responsibility could fall onto both. However, a more in-depth analysis reveals that there is a "non operated joint venture", which makes Vale effectively responsible.

The next step, then, is the study of this business society's shareholding composition. The biggest shareholder is Valepar S.A, with a 33.7% share, possessing even a 53.9% participation on Vale's Board of Directors. Another fact demanding further analysis is the property of 12 golden share papers by the Brazilian Federal Government. There is also the need of studying the shareholding composition of Valepar S.A itself, whose biggest shareholder is Litel, a holding company, which generates a new layer of complexity.¹⁰

The development of instruments of corporate accountability and the instruction of the agents that deal with these issues is of

¹⁰ For a more detailed analysis, refer to the Final Report of the group of poems: Before any lighter load: an assessment of the economic, institutional, and social aspects of the disaster of Vale/BHP/Samarco in Mariana (MG).

vital importance so that cases like Samarco's obtain more legally satisfactory outcomes. Also, hardly discussed issues such as environmental racism demand wider studies. The analyzed case clearly demonstrates that specific groups of the society are specially and more frequently affected by this type of violation. Quoting the report: "A disproportionate load of risks and socio-environmental impacts falls on the most vulnerable ethnic groups".

Minas Gerais and neighboring regions deal with the unfolding of the biggest environmental tragedy of the country's history: deaths, homeless people and a still immeasurable degradation caused to nature. As evidenced by UN's WG, the country and the international community must learn to the maximum with this experience.

REPORT FROM THE MEETING

As mentioned earlier, the visit of the UN Commission to Mariana/MG was facilitated by the joint mobilisation of organizations (among them HOMA), and social movements of the Brazilian civil society, which culminated in the insertion of the city in the roadmap of UN's trip. In the letter that was collectively constructed and signed by the group of organizations, social movements and Brazilian networks, intended for the UN Working Group, the focus in the perspective of the oppressed is defended:

(...) We expect that they take the necessary care during their visit and in its report of: giving prominence to the perspective of the victims and the affected populations; not serving the interests of economic agents that are systematically responsible for the violations; and giving visibility to the political and institutional mechanisms that favor the continuation of the violations and the impunity of its responsables (Abia, 2015, p. 2).

The meeting in Mariana was organised by the city's Prosecutor's Office and counted with the presence of those affected by the dam collapse, with representatives of eight communities: Camargo, Bento Rodrigues, Paracatu de Baixo, Ponte do Gama, Pedras, Campinas, Paracatu de Cima, Barra Longa; of public bodies: the Prosecutor's Office, Homa - Human Rights and Business Project/Federal University of Juiz de Fora, Federal University of Ouro Preto, Rede Cidades/ Federal University of Minas Gerais, Human Rights National Council; social movements and civil society organizations: the Movement of People Affected by Dams (MAB), Conectas Human Rights, the Federation of Agencies for Social and Educational Assistance (FASE), Brazilian Institute of Social and Economic Analyzes (IBASE), Global Justice, *Justiça nos Trilhos* and Architechts without Borders.

According to Mônica Nívia da Silva (2015), Belo Horizonte City Prosecutor and Coordinator of the Centre for Operational Sup-

port of the Prosecutor's Offices in Defense of Human Rights and Community Support:

The goal of the meeting is to promote the gathering of families that have been affected by the socioenvironmental disaster and the UN commission, (...) all our effort is in the sense that more attention is given to these reports. Eleven affected people have brought their history and clarified a little of their universe to the people who are outside and came to understand this disaster in the life of each one, these people represent thousands of others who could not travel here.

Initially UN rapporteurs delimited the role of their organization regarding the issues to be discussed in this moment, since the fulfillment of investigation, research or search referring to the case is not required from this international body, their competence is limited to the understanding of the Human Rights violation process in order to report it. The output from this activity will be presented to the Human Rights Council, which may include recommendations to the Federal Government of Brazil, covering what the government can do to improve its action array as a whole. Although the UN does not control the decisions of the Brazilian government nor the companies' ones, the work conducted by the organization has the property of issuing recommendations and leveraging awareness on this matter.

In this perspective, the Working Group had as central issues to be scrutinized at the meeting: the steps taken by the government; the company's actions in face of the event; what is being done to contain the damage from the dam collapse; what is being done to assist the victims better.

Ulrik Husten, from the UN High Commissioner for Human Rights, said that the central concern is whether human rights are being guaranteed by the company and by the government. As the commission's schedule was tight, there was no spare time to visit to the affected spots, and for this reason they were thankful that victims have come to the meet them.

During the meeting, the affected residents showed through pictures, videos and testimonies, the scale of the disaster caused by Samarco's dam failure. In their reports the expression of outrage and sorrow of those who have lost their homes, livelihood, their own history being buried by the mud: "We were violently expelled from our home. What will happen to the landsman? It has no price! Our history cannot be paid off!", stated one of those affected.

In the absence of communication from the responsible company, many residents reported that they were warned about the dam collapse in the brink of being struck by the tailings, and had only a few minutes to leave their homes. In the middle of chaos, local solidarity stood out: young people

carried the elderly and residents helped one another.

In the presence of the statements of those affected, UN Working Group stressed the positive impression on the local organization. It is worth emphasizing that those affected by the tragedy reported that the MAB helped in the organization process of the victims. In the words of one of the locals: "We will be listened to, only when organized. We are fighting not only for 'Barra Longa', but for the entire Doce river basin. People are always the best part of the whole process."

Some data can be raised to clarify the real dimension of the tragedy: 16 confirmed deaths, 216 houses registered as affected, 72 of those structurally damaged and 10 totally destroyed, 4 destroyed bridges, 78 displaced families, 44 of those in rented houses. Currently the affected people are allocated in hotels in Mariana, living with a "*cesta básica*"¹¹ and the value of a minimum wage per family supplemented with 20% of this wage per family member. In the residents' testimonies the insufficiency of these actions on the part of Samarco was explicit, since their families completely lost their livelihood, resulting in the reduction of their living standards.

In addition to the inadequate material conditions of survival, social, psychological, and health damage, among others, show up as

aggravations of immeasurable order: depression, panic disorder, alcoholism, other diseases such as worsening of respiratory diseases, conjunctivitis, itches, allergies, burns due to contact with the tailings. There was also loss of socialization spaces: soccer fields, community center, church, large and small farms. An unrepairable loss of quality of life and family sustainability.

The reported situation demonstrates the limited activity of the Brazilian Federal government in face of the situation, there is not even a drafted environmental recovery plan. The WG observed the absence of an alert system as well as provisions to deal with this case. In this perspective, UN's rapporteur has made extremely relevant questions which remain unanswered: What prevention measures have failed? Can this happen again? What are the risks for other communities?

In this sense MAB defends the urgency in consolidating a legislation related to people affected by dams, in order to elucidate the concept of "affected individuals", what are their rights, as well as the establishment of a federal public body politically and legally responsible for this kind of demand.

The current report from the UN's meeting with the affected people of Mariana is a means of clarifying how the violation of Human Rights by enterprises culminates in "development and progress in a private level". HOMA's intention with this report is

¹¹ Parcel containing staple food such as Rice, pasta, cooking oil among others.

to highlight the respect to the victims of the tragedy and to stimulate the search for more information about it and to learn to prevent future violations of Human Rights. We understand that comprehension and dissemination of cases like this one is of vital importance to the discussion on Human Rights and business and advocate for the process of reconstruction of the affected people's lives, guided by their own interests and leadership, which constitute an historic example of joined forces and empowerment of communities.

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