



VIOLATIONS OF HUMAN RIGHTS BY COMPANIES

THE CASE OF AÇU PORT



HUMAN RIGHTS
AND BUSINESS
CENTRE

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ABOUT HOMA: HUMAN RIGHTS AND BUSINESS CENTRE, FEDERAL UNIVERSITY OF JUIZ DE FORA

Created in February 2012 and running with support from the Ford Foundation since its establishment, Homa is an academic centre that aims to develop research in the area of Human Rights and Business, always seeking to contribute to the protection and defense of human rights, which is why these always come before "business" on the Centre's name.

Currently, Homa is divided into three core research lines:

Global Agenda on Human Rights and Business: Analyzes the application and implementation of the Guiding Principles on Business and Human Rights and the Process of development of an International Binding Instrument on Human Rights and Business;

Public Funding and Large Enterprises: Analyzes public funding for large companies and enterprises that violate Human Rights and the responsibility of the funding entities for such violations;

Mechanisms of confrontation against Human Rights Violations by Companies: Investigates specific cases of human rights violations by companies in Brazil; Researches collaborative tools of judicial resistance for victims of human rights violations by companies in Brazil.

BRIEF HISTORICAL AND GEOGRAPHICAL CONTEXT: AÇU PORT

Latin America is under a process of expansion of the mining and metallurgical sector, particularly Brazil, which placed second among the largest exporters of iron ore in the world in 2013. The economic dependence of the region in relation to this activity is alarming and subject to the vulnerabilities of high and low cycles in commodity prices, which generate structural crisis in the sector.¹

The 2003-2013 period represented a megacycle of commodities, under which the global imports of ores increased 630% (US\$ 38 billion to US\$ 277 billion). Over these years, the economic reliance of Brazil in export, mainly, of iron ore has deepened. Large-scale projects with government support in an attempt of boosting the economy were also carried out.²

The project of the Açú Mine-Port is part of this logic, its original idea dating back from 1999, as an ambition of the government of the State of Rio de Janeiro, represented by former governor Anthony Garotinho. His government was succeeded by his wife Rosinha Garotinho, who continued the project, which has always been defended as of **public interest**. Through private meetings, there was the association of project with Eliezer Batista, who passed it along to his son, Eike Batista. From then, a complex system of business relations begins to unfold, making the accountability of those involved, in addition to the understanding of the case more difficult, but regardless, a problem that must be faced.³

AÇU PORT: WHAT IS IT

The Açú Port is the largest logistical-industrial port complex of Latin America, located in the municipality of São João da Barra, north of the state of Rio de Janeiro. It was idealized by the state's government with the goal of promoting economic development in the region, and received tax incentives at federal, state and municipal level, BNDES loans⁴ and investments from private initiative in the order of billions of dollars. The mining company MMX, linked to the businessman Eike Batista, became the main responsible for the fulfillment of the project in its beginning, but this represents an iconic case of complexity in corporate sharehold-

¹ International Trade Center, 2015.

² PoEMAS. Antes fosse mais leve a carga: uma avaliação dos aspectos econômicos, institucionais e sociais do desastre da Vale/BHP/Samarco em Mariana (MG). Mimeo. 2015. p. 18.

³ For a detailed analysis of the Corporate relationships of the Açú Port Case, refer to the article "Corporate structure complexity and large enterprises: the case of the Açú Port". Available at: <<http://www.projetodheufjf.com.br/2015/03/07/estruturas-societarias-complexas-e-grandes-empresendimentos-o-caso-do-porto-do-acu/>>.

⁴ As a bridge loan in the order of 1.8 billion reais. Data available at: <http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Sala_de_Imprensa/Noticias/2014/Todas/20140219_portoacu.html>. Access on 06.03.2015, at 18h50.

ing relations, which included participations of LLX Minas-Rio Logistics Trade Exporter S.A, OGX, Anglo-American, Prumo Logistics and other enterprises.

The port was conceived with the function of enabling raw material flow coming from the largest ore pipeline in the world, so as to integrate the Minas-Rio Project, a route of 600 km, which starts at Conceição do Mato Dentro (MG) and ends in Rio de Janeiro. In this sense, the project affects the water supply, housing and the development of traditional activities of local populations in the mining towns where it passes through, making it an object of several popular manifestations in the state of Minas Gerais.

As described in the Article **Corporate structure complexity and large enterprises: the case of Açu Port**⁵: The enterprise occupies in an area of 90 square kilometers, divided into two terminals: terminal one (T1), for *offshore support* and terminal two (T2), for *onshore*. T1 has a three-kilometer long access bridge, tugboat pier, iron ore pier, canal for access and maneuvering basin. It is primarily intended to shipment of iron ore and oil. On the other hand, T2 is located around the navigation canal, with six and a half kilometers width and seven and half meters depth, and has the objective of handling loads in general, as mineral coal and pig iron⁶.

Furthermore, on the outskirts of the port area, there is a large area for installation of companies and development of their activities, among which steelmakers, metallurgical and automakers can be highlighted.

In turn, the Minas-Rio System is composed by the integrated development of an iron mine, the construction of an ore beneficiation plant and 525 kilometers of ore pipeline, which passes by 32 different municipalities, in the states of Minas Gerais and Rio de Janeiro, linking the city of Conceição do Mato Dentro (MG), where the iron ore mines are located, until the Logistics and Industrial Complex of Açu Port (CIPA), in Northern Rio de Janeiro.

The aforementioned article presents the study of the project shareholding relationship from August 2013 to September 2014: The effective participation of three companies: Prumo Logistics Inc., responsible for the development of logistics infrastructure, especially in the ports industry; LLX Rio-Minas ("Ferroport"), tasked to develop and operate the port facilities and support logistics services, in addition to managing the port terminal 1 in the Açu Complex; and Anglo American, responsible for the Minas-Rio system, acting, therefore, in the whole area of mining connected to the port". This kind of effort for carving and understanding the

⁵ Available at: <[Http://www.projetodheufjf.com.br/2015/03/07/estruturas-societarias-complexas-e-grandes-empreendimentos-o-caso-do-porto-do-acu/](http://www.projetodheufjf.com.br/2015/03/07/estruturas-societarias-complexas-e-grandes-empreendimentos-o-caso-do-porto-do-acu/)>.

⁶ "Pig iron is basically an alloy of iron, a result of the reduction of iron ore, and absorption of carbon in a blast furnace". It is essential for the production of steel. Available at: <[Http://apublica.org/2012/11/amazonia-publica-ferro-gusa-valor/](http://apublica.org/2012/11/amazonia-publica-ferro-gusa-valor/)>

corporate shareholding relationship of the case is of vital importance, since it poses a challenge to the accountability of those involved.

The enterprise has received several claims, which gave rise to judicial processes and a criminal complaint. The allegation of passive illegitimacy, arising from the demand for accountability to the wrong shareholder in the previously explained business arrangement, was one of the arguments submitted by the defendant part.⁷

ENVIRONMENTAL VIOLATIONS

In relation to the violations of environmental law arising from the Açú Mine-Port project, two documents are particularly relevant. The Brazilian Association of Geographers (AGB) published a **Report of socio-environmental impacts of Açú port industrial complex**.⁸ Other relevant document is **The Minas-Rio project and its socio-environmental impacts: views from the perspective of those affected**. The latter is the product of a joint effort of various organizations and universities, produced within the context of the Exchange Meeting of Communities contrary to the Minas-Rio project, which includes the Açú port⁹. Full access to both documents is available.

A part of the text in the **Minas-Rio Dossier**, specifically related to the Açú Port is reproduced next: Project Minas-Rio deeply affects two regions of high environmental vulnerability and vast sociocultural tradition connected to the peasant life. The works in both states are located in areas of extreme ecological interest for the conservation of biodiversity, according to the Ministry of the environment (2006) and the studies which supported the Ecological Economic Zoning of the states of Rio de Janeiro and Minas Gerais (ZEE-MG, 2008; ZEE-RJ, 2010); regardless, the sites were licensed on the opposite direction of national and international guidelines for use and maintenance of environmental heritage.

⁷ Data obtained by Homa referring to Açú Port case, until September 2014, process numbers: 0002048-39.2009.4.02.5103; 0000149-98.2012.4.02.5103; 83.2013 0000096.4.02.5103; 0000133-13.2013.4.02.5103; 0007876-27.2009.8.19.0053; 47.2010 0034946.8.19.0000; 0003348-76.2011.8.19.0053; 0000418-51.2012.8.19.0053; 19.0053 0002889-06.2013.8.;009425-19.2014.8.19.0014; 0007038-84.2009.8.19.0053; 0003102-17.2010.8.19.0053; 0003346-09.2011.8.19.0053; 0000077-25.2012.8.19.0053; 0000148-56.2014.8.19.0053; 0035202-79.2009.8.19.0014; 0037045-87.2010.8.19.0000; 0001256-28.2011.8.19.0053; 0001664-82.2012.8.19.0053; 0001716-87.2009.8.19.0084; 0003088-33.2010.8.19.0053; 0001769-93.2011.8.19.0053; 0001665-67.2012.8.19.0053; 0007781-94.2009.8.19.0053; 0004835-18.2010.8.19.0053; 0003347-91.2011.8.19.0053; 0003347-91.2011.8.19.0053; 0000076-40.2012.8.19.0053; 0007805-25.2009.8.19.0053; 0004835-18.2010.8.19.0053; 0003348-76.2011.8.19.0053; 0001693-35.2012.8.19.0053; 0008642-80.2009.8.19.0053; 0003503-16.2010.8.19.0053; 0004158-51.2011.8.19.0053; 0008648-87.2009.8.19.0053; 0003580-25.2010.8.19.0053; 0004570-79.2011.8.19.0053; 0004369-24.2010.8.19.0053; 0016344-71.2011.8.19.0000; 0004128-16.2011.8.19.0053; 0003404-12.2011.8.19.0053 and 0257613-83.2013.3.00.0000 (criminal complaint).

⁸ Available at: <<http://docplayer.com.br/561109-Relatorio-dos-impactos-socioambientais-do-complexo-industrial-portuario-do-acu-i.html>>.

⁹ Available at: <[Http://issuu.com/ibase/docs/liv_ibase_minerio_final4](http://issuu.com/ibase/docs/liv_ibase_minerio_final4)>.

The project was carried out by state governments in partnership with the private initiative, and reveals one more case of fragmentation of guiding principles and fundamentals of the environmental impact assessment stage (EIA), of the environmental licensing process. In addition, the project also violates the participation of local populations in the decisions and negotiations regarding this enterprise

The impacted landscape is of extreme exuberance and varies from rupestrian fields¹⁰ combined to the cerrado - clean fields - and capons of Atlantic Forest, interspersed with ferriferous outcrops carved by rivers of the Santo Antônio and Peixe river basin in the state of Minas Gerais. At the other end, in Rio de Janeiro, coast plains of fluvial marine influence create a large mosaic of sandy cords, sandbanks, swamps and coastal lagoons, influenced by all the dynamics of the Paraíba do Sul River Delta. These areas are recognized for its botanic singularity, presence of endemic species and others under threat of extinction, low rates of degradation due to the low historical usage of the region and extensive scenic beauty. In the Minas Gerais part, works are over the largest watershed¹¹ between the basins of São Francisco River, Doce River and Jequitinhonha River, with high importance in the process of recharge of the water network configured in this region and maintenance of biological biodiversity micro-corridors, which favors genetic pool rearrangement in their permanent preservation areas and forest fragments of forest that still exist.

In the Rio de Janeiro stretch, the Complex of Açú Port affects priority areas for the conservation of sandbanks, according to the Ministry of Environment Affairs and the Tropical Database, including the lagoon complex Grussaí/Iquipari, considered the maximum expression of this ecosystem throughout the Rio de Janeiro and Brazil, with approximately 20%¹² of the entire floristic collection found in this type of environment, besides counting with more than 5 thousand species of fauna and flora.¹³

The incompatibility of the Minas-Rio project with local arrangements and landscape attributes of Minas Gerais state, adds to the abusive licensing process of the Northern Rio de Janeiro coast stretch for implementation of the Açú Port, in São João da Barra. According to a report of the AGB (2011) the enterprise appears completely ill-matched to the characteristics and environmental conditions of a site of extreme environmental uniqueness. It is, therefore, a unique, socially and environmentally differentiated region.

¹⁰ "The rupestrian field is a type of predominantly herbaceous and shrubby vegetation, with the possible presence of underdeveloped small trees up to two meters in height. It encompasses a complex of vegetation that groups landscapes in microregions with typical species, occupying stretches of rocky outcrops." available at:

<https://www.agencia.cnptia.embrapa.br/Agencia16/AG01/arvore/AG01_39_911200585233.html>

¹¹ Land stretch situated between adjoining water courses.

¹² Available at:

<http://licenciamento.ibama.gov.br/Petroleo/Campo%20de%20Frade/EIA/Texto/EIA%2011.5.2%20Meio%20Biotico/EIA%2011.5.2.2%20-%20Ecosistemas%20Costeiros.pdf>

¹³ Available at: <http://g1.globo.com/rj/norte-fluminense/noticia/2013/06/sao-joao-da-barra-rj-tem-maiores-indices-de-desmatamento-em-restinga.html>

The area planned for the implementation of the Industrial District of São João da Barra (DISJB) and of the whole Açú Port Complex is located in the region of the Paraíba do Sul River Delta, formed by fluvial marine coastal plains and coastal dunes domains, sandy cords and sandbanks, totaling 156,995 hectares (ZEE-RJ, 2008). This area is composed of a complex mosaic of lagoons, ponds, small streams, coastal marshes, dune fixation shrub vegetation, sedimentary geological formations, grasslands and graminoid reaches associated with beaches, plus a mosaic of rural communities, fisherfolk, farmers, squatters and small traders (AGB, 2011).

The ecosystems of Açú stand out by the presence of ecological communities marked by the singularity of its fauna and flora and classified as of extreme biological interest for biodiversity conservation (RIMA, 2010). The diagnosis presented in the EIA/RIMA of the industrial units confirm this complex terrain structure with examples of endangered species and others of restricted biogeographical distribution (AGB, 2011).

According to the Ministry of the Environment, the Northern Rio de Janeiro is a priority area for marine chelonia¹⁴ conservation, not only for representing the southernmost limit for marine turtle nesting in the Brazilian coast but also for sheltering at least 4 endangered species classified as 'at risk'. The stretch that goes from Grussaí to Lagoa Feia, classified as MC-805, by the Ministry of the Environment (MMA, 2004), is of extremely high priority for conservation.

This mosaic stands out in a continuing seaside landscape stretching from the south-central portion of the city of São Francisco do Itabapoana, crossing all the coast of São João da Barra, interspersed with mangrove strips and wetlands in the coastal portion of the municipality of Campos dos Goytacazes. Then, following the length of the coastline that accompanies the municipalities of Quissamã and Carapebus and finally reaching the northernmost coast portion of the city of Macae.

The extent of this ecologically differentiated coastal environment is configured as the longest continuous area of sandbanks in the country, with about 300 square kilometers, establishing unique aspects of great relevance for environmental conservation in the region. The sandbanks of this region have not yet been fully studied neither were their species cataloged, except those of Jurubatiba Sandbank National Park, between Macae and Quissamã and represent a recent testimony of geocological evolution of the Brazilian coast. According to the environmental studies of the ZEE of the state of Rio de Janeiro, this region is the last natural space of connection of coastal ecosystems in the state - including sandbanks, man-

¹⁴ Belonging to the order Chelonia and also known as testudines, chelonia are reptiles that have a carapace. Example: tortoise.

groves and coastal dunes - responsible for the maintenance of geological and biological stability of northern Rio de Janeiro coast. The São João da Barra sandbank, especially the Grussaí /Iquipari lagoon complex is one of the last existing outside of protected areas.

In the specific case of São João da Barra, according to surveys of the CPRM (Brazilian Geological Service) and the Municipal Master Plan, the sandbanks domain and seaside cords occupy almost 75% of the city, including the entire area of São João da Barra Industrial District (DISJB) and the industrial and port zone of Açú. As there is no conservation unit at São João da Barra, permanence and extent of these areas in the city for all these years are directly linked to the historical pattern of use and occupation of land. This occupation, unlike the Açú Port Complex, was driven by slightly impacting activities, such as those related to peasant agriculture and small-scale fishing.

Certainly, and from the perspective of environmental conflict there is no doubt at questioning the very idea of 'sustainability' that supposedly characterized the development of Minas-Rio Project, particularly the locational aspect. The act of relaxing the criteria of conservation on behalf of the ore and the Port ignores the legitimacy of the environmental zonings framework made in both states, and excludes the intrinsic value of these environments for social groups / classes directly involved. In addition, the design of the project is contrary to the historical management of these areas, characterized by peasant occupation, who had their way of life violated in the context of unequal distribution of impacts.

This has been proven by independent research that points towards a scenario of irreversible impacts with serious consequences for the population, according to records of both states. In Minas Gerais, according to Diversus (2011), cases ranging from decreased water flow of water courses; disappearance of springs; unfeasibility of water for recreation, bathing, leisure and clothes washing; commitment of water supply for human consumption; Increased turbidity; change in air quality leading to health problems; increase in noise emissions and detonations of explosives; impacts on productive backyards and food security of affected families; marginalization and invisibility communities.

In Rio de Janeiro, a study by the National Institute for Space Research (Inpe) in its Atlas of remnants of Atlantic forest showed that between 2011 and 2012, São João da Barra was the Brazilian city that most deforested sandbank areas throughout the domain of the Atlantic Forest in the country, which is directly connected to the construction of the Açú Port. In 2012, another study by the Environmental Sciences Laboratory of the North Rio de Janeiro State University has described serious and accelerated salinization¹⁵¹⁶ in the Goitacá plains,

¹⁵ Process of excessive accumulation of mineral salts.

¹⁶ Available at: [Http://robertomoraes.com.br/2013/03/aterro-hidraulico-no-acu-html](http://robertomoraes.com.br/2013/03/aterro-hidraulico-no-acu-html)

located in the region of Porto do Açu, due to the OSX Inc. shipyard construction, opening of the access canal and hydraulic fill formation on the bottom of the marsh with salinated materials¹⁷. This study demonstrates a salinization of groundwater and surface water for human consumption and for irrigation – From the Quitingute canal to the Lagoon of Iquipari - in the order of 5 to 7 times greater than that of the Paraíba do Sul river. In addition, in the community of Água Preta salinity found in grazing water is similar to sea water, around 820 times greater than the fresh water.

As regards the environmental licensing of the project in both stretches

(...) the scenario of fragmentation of environmental impacts analysis - a process in which the licensing bends to the separation of each stretch - has blurred the scale of the whole enterprise, denying its full integration with all the works that make up the mine-ore pipeline-industrial port system. The licensing process, of what was supposed to be a single, integrated design, was divided into three isolated processes: mining complex, under licensing in the Environment and Water Resources System of the State of Minas Gerais - SISEMA; the pipeline, under licensing at the Brazilian Institute of Environment and Renewable Natural Resources - IBAMA; and the Açu Port, under licensing in the State of Rio de Janeiro Environmental Institute - INEA (CIDADE E ALTERIDADE, 2013, p.12).

The case expressed a symptom of structural institutional insecurity and confirms the instability of the limits between the competence levels assigned to the environmental bodies, for insisting on the undue separation of the venture, taken in their various offices as isolated parts, which basically puts away the analyzes of synergy and a more systemic approach of the studies. After all, the process showed arbitrary criteria for the level of competence related to location aspect, as the Açu Port, which is located in the territorial sea and continental shelf - Federal goods - has not been licensed in the federal level, as it should occur, but by SISEMA Rio de Janeiro (AGB, 2011).

The fragmented licensing - common strategy of large enterprises - "Usually not only entails the undersizing of the overall impacts of the project, as well as reinforces the scenario of inexorability of its implementation, because the sequencing between the courses of different processes ultimately makes the construction of each of their parcels or stages necessary (CIDADE E ALTERIDADE, 2013, p.12). The Federal Prosecutors' Office, in a previous compilation referring to various other environmental licensing processes, has noticed the non fulfillment of the analyzes of cumulative and synergistic impacts, justified by the fragmentary and isolated process that the licensing is undergoing in face of the complexity of the ventures and their different synergic effects on the local population and environment (AGB, 2011)

¹⁷ Available at: [Http://www1.folha.uol.com.br/mercado/1202918-estudo-diz-que-porto-de-eike-salgou-regiao-no-rio.shtml](http://www1.folha.uol.com.br/mercado/1202918-estudo-diz-que-porto-de-eike-salgou-regiao-no-rio.shtml)

In compliance with the provisions of no. 001/86 CONAMA Resolution, all EIA should assess the cumulative and synergistic properties of the impacts, subject that has been discussed by several authors linked to environmental issues. (...) An assessment of environmental effects should consider cumulative and synergistic impacts, since the combination of various interventions may aggravate or even generate social problems that otherwise would not occur. The combination of development projects that change one after another or at the same time, local ways of life, can intensify suffering and losses and toss away efforts of adaptation, family and collective recovery, generating or intensifying various conflicts (MPF, 2004, p. 27-28).

In the same direction, AGB (2011) flags that the replacement of the totality analysis and scope of the project in the Rio de Janeiro section, has configured arbitrariness in the definition of the object of licensing, due to a poor assessment from the State's agencies:

Basically, what characterizes this weakness in the Açu Port Complex implementation process was the fragmentation of the 'object' of environmental licensing. The definition of 'enterprise' was arbitrary, made in a divided manner; as if the Port was something isolated from the set of projects that make up this system. Thus, the very design of the prognosis and the set of mitigation and compensation measures do not contemplate the whole enterprise, but only a 'fraction of the licensed object' "(AGB, 2011, p. 24).

In Rio de Janeiro, the opinion of the Technical Support Environmental Specialist Group of the State Prosecutor's Office - Environmental GATE - points towards arbitrariness and absence of criteria for the licensing of works on the areas of sandbanks. The fact to grant a permanent license to a project of this magnitude on permanent preservation areas (APP) is questioned, according to CONAMA Resolution No. 303/2002¹⁸ and the Federal Law 4.771 / 1965 which establishes the Forest Code. Ultimately, sensitive areas that only permit uses and interventions of low impact (AGB, 2011).

Art. 3 Permanent Preservation Areas are the ones located:

(...)

IX - in sandbanks:

- (a) at least three hundred meters in range, measured from the line of maximum tide;
- (b) in any location or extension, when covered with vegetation with dune or mangrove fixing role;

X - in mangrove, in its entire extension;

XI - in dunes;

¹⁸ CONAMA Resolution No. 303 of 20 March 2002 provides for parameters, definitions and limits of Permanent Preservation Areas..

XII - at altitude over one thousand and eight hundred meters, or, in States which do not have such heights, under criteria of the responsible environmental agency

XIII - in places of refuge or reproduction of migratory birds;

XIV - in places of refuge or reproduction of fauna under threat of extinction, listed on the catalog drawn up by the federal, state or municipal agencies;

XV - on the beaches, in places of nesting and reproduction of wildlife. (CONAMA 303, 2002, p. 88-89).

Another issue pointed out by environmental GATE is

(...) that the rest of industrial effluents, whose treatment will be of high efficiency according to the analyzed studies, was not a mandatory guideline in the management of water resources, but only a limited measure. Moreover, a proposal of combined water uses, from various sources, both groundwater, as superficial, was not mentioned. Such measures could consider water management in more balanced assumptions. Also, analysis on the impact of the water catchment on the river delta environment, which already suffers with flow reduction and silting, were not mentioned. In this case, the reduction of flow of the Paraíba do Sul river has already been directly linked to the recent events of coastal erosion that have impacted the beaches of Atafona, in São João da Barra, and promoted an advance of the salt wedge and tide over the continent (AGB, 2011, p.34).

Still in Rio de Janeiro, 'mapping of sites of reproduction of the species (breeding sites) and animal feeding sites were not identified in the RIMA, only their "characterization". It is also mentioned that in the case of chelonia (turtles) and cetaceans, animals extremely sensitive to changes in coastal environments, the impacts shall be administered only by "monitoring" of species and environmental education programs. The lack of quantitative data on vegetation, much less the actual area of sandbank to be cleared for the port complex implementation (idem, p.31) also draws attention, especially in the documents available to the public. The weakness in the recognition of these areas and the permissive attitude adopted by INEA clearly confirms the overvaluation of the economic aspects of the project, guided only by the favorable moment of the productive chain of oil and the potential of OGX to be the largest private company in the sector. The environmental, biological and botanical aspects and even the law-provided mechanisms were placed only as a "characterization" and not as a criterion of choice and setting the viability of the works.

From the construction of the port in 2007 and the publication of state and local ordinances that expropriated the land of the 5th district of São João da Barra, the licensing of the entire complex was being conducted under a "fast food" logic in continuous action, since in 2010

the Açú port was already licensed; the Pelletization Plant¹⁹ - under construction; the Pipeline had already its Preliminary License (LP) and Installation License (LI); the Coal Power Plant (UTE) with LP and LI, awaiting the start of the works; Logistic Yard with LP and LI; the Oil Treatment Unit (UTP) with LI issued by INEA; the Gas Power Plant (Gas UTE) and the and the Steel Plant I with filed EIA (RIMA, 2010, p.112; AGB, 2011).

Another major impact of the project refers to the population influx in the region due to the arrival of large number of workers and professionals, causing strong pressure on public services (water, sewage), transportation, employment, violence and housing. The scenario flagged by EIA OSX foresees an influx of about 1.3 million people by 2025, "including more than 700,000 in São João da Barra and about 600 000 in Campos, which would total a population of about 1.8 million people in 15 years, only in these two municipalities²⁰."

The use of water resources by the project also flows in the same direction, with strong pressure on watercourses in the area which may cause future conflicts, as the Açú Complex is the largest user of water throughout the Paraíba do Sul River basin.

The decisions that legitimated the viability of the enterprise also forgot to present a more accurate evaluation of the impact of the industrial district on the water resources of the region. In addition to changing the groundwater flow, with the possibility of salinization of coastal waters, impact on wetlands, with drainage and opening of macro drains to exhaust the moisture of the District area, section of lacustrine environments, such as the Veiga Lagoon, embankment on wetlands and plains, like the UCN, generation of millions of liters of industrial and domestic effluents discharged through submarine pipelines in fishing areas. All these threats draw attention to the abusive and unsustainable use of water resources to meet the "productive viability" of the complex. On the São João da Barra Industrial District RIMA the estimate of 10 m³ / s as "expected flow" needed to supply the planned industrial units is mentioned in very general way. The water would be taken from the Paraíba do Sul River, about 20 km from its mouth, through a pumping station and distributed by a set of pipelines parallel to RJ-240 highway to the DISJB preservation system. According to this expectation, the Açú complex would become the largest user of water throughout the basin.

To get an idea of the magnitude of this project, according to the Water Resources Plan, in 2005 the industrial demand of all municipalities in the state of Rio de Janeiro in the basin was 11.14m³/s, the equivalent consumption of 1,206 industrial plants. On the other hand, only the DISJB would consume the equivalent to 1,082 industrial units (small, medium and large), in other words, a percentage close to 89% of the basin's total industrial demand at the Rio de Janeiro section.

¹⁹ Process applied to aplicado to agglutinate the particles of ore, which facilitates the subsequent metalworking operations.

²⁰ Available at <http://www.robertomoraes.com.br/2011/01/estimativa-de-populacao-e-incremento.html>

AGEVAP also states that "for 2005, the estimated demand to meet all municipalities belonging to the Paraíba do Sul River basin²¹ was around 17.7m³/s, being 7.3m³/s for the Rio de Janeiro fraction, 6.3m³/s for São Paulo and 4.1m³/s for the Minas Gerais portion" (AGEVAP, 2007). This means that, for an estimated flow of 10m³/s, the water consumption of all projects planned in the Açú complex is equivalent to the consumption of a population of 2.816 million inhabitants, or 85 times the population of São João da Barra. Taking into account only the municipal centers of the Rio de Janeiro section of the basin (52 centers), the water demand of the complex is up to 36% higher than the consumption of the entire urban population of these cities, i.e., equivalent to 2,053,000 inhabitants (AGB, 2011, p. 33-34).

Considering this scenario in the supply capacity of the coastal and estuarine environments, there are also, paradoxically, the impacts of environmental compensation set in Açú Complex licensing. That is, what should be compensating by way of minimizing the impact of the enterprise on people's lives, on economy and on development expectations, turned out to be more impact, such as the case of the creation of environmental conservation units. Besides affecting several communities, conservation units received different treatment in different environmental studies (EIA/RIMA) for the same project, related to the location aspect, which highlights the weaknesses of an environmental assessment process based on fragmentation.

The proposal presented by formulators provides for the creation of three environmental conservation units, two of them sustainable use units - Environmental Protection Area of Grussaí and the Private Natural Heritage Reserve (RPPN) of Fazenda Caruara - and a full protection unit, the Açú State Park. Together, these three units count for more than 17,000 hectares devoted to environmental compensation and should impact, in total, about 33 rural communities and small urban centers, especially small farmers.

The creation of these units will bring new rules for land use in the region, more restrictive criteria for access to natural resources, increase in surveillance and environmental monitoring, restraint of traditional practices, such as fishing and family farming, among others. There was no dialogue with families and affected rural communities, especially regarding the new land use criteria and conditions to stay in the place. At DISJB's RIMA there is no reference to public consultation to populations, mentioning only the responsibility of INEA to recognize those units.

In the case of Grussaí's Environmental Protection Area (APA), there are at least 8 communities directly affected, two of them being the rural settlements Ilha Grande and Che Guevara, with 58 and 74 families respectively. According to the mapping and location proposition of the APA, part of the land of the two settlements will become governed by the standards and criteria of the conservation unit, further restricting family agricultural activities. None of the settlements were invited to participate in the construction proposal of these units. Regarding the Açú State Park, with 5,915 hectares, again the rural settlements of Ilha Grande and Che Guevara should undergo severe restrictions on land use for being in the surrounding area. Certainly, the families will have their activities restricted by the criteria of the Management Plan and by the rules of the buffer zone of the unit.

²¹ The whole Paraíba do Sul basin, in São Paulo, Minas Gerais and Rio de Janeiro stretches, contains 177 municipalities.

With strong land use restriction for several communities, compensatory measures seem to affect much more their conditions and ways of life than to enhance and optimize their practices and knowledge. There is even the populations' shift expectation in the communities of Mato Escuro, Água Preta and Quixaba with the implementation of the conservation units, which constitutes a setback if we consider the importance of the physical environment in the relationship of these groups with natural resources. It can also be seen that at DISJB's RIMA there is no proposal of resettlement of these families. What is observed in this sense is a profound disregard to these populations, which for years kept their practices associated with coastal ecosystems without causing significant environmental impacts. No wonder that, even without any conservation unit, São João da Barra still retained 75% of their land in sandbank field (AGB, 2011, p. 36-37).

Despite all this situation of unsustainability of the enterprise the pact of interests took such proportions that not even the assessment of the MPF intimidated the state government in Rio de Janeiro, which continued to issue the necessary licenses for the viability of the construction works. In January 2009, Governor Sérgio Cabral signed a decree - without proper public consultation – declaring

“public interest areas” the buildings and improvements located on the strips of land necessary for the construction and passage of Minas-Rio Pipeline. The first public hearing to discuss the project in São João da Barra was carried out only in August 2009, when the project was already about to be licensed, presented as a given, without enabling the population to position itself on the proposal. The benefits were highlighted while the risks were minimized. Even the mayor of the municipality SJB defended the project at the hearing, extrapolating her responsibilities and demonstrating the patrimonialist character of the Brazilian state, in which private interests are defended by State agents who use influence paddling to benefit certain families and political groups (AGB, 2011, p. 32).

It is characterized, thus, in both passages, by the fragility of the evaluation impacts as a whole; social invisibility of affected groups; licensing by built stretch; omission of the relation between the steps and the proposed construction of each enterprise separately with the set of construction it joins with, allowing the completion of its independence; inability of the right to deny, in accordance with ILO Convention 169 to which Brazil is signatory; improper separation between the environment and their social, spatial and historical dimensions, incalculable losses for the coastal and marine biodiversity; in addition to the unsuitable and privileged sustaining in the economic aspect, based on the cost/benefit ratio of the enterprise at the expense of social and environmental dimensions.

In an addendum to the information outlined in the Minas-Rio Dossier, the data provided by the **Report of the Social and Environmental Impacts of Açú Port Complex** should be highlighted.

With the installation and operation of the Industrial District of São João da Barra, various environmental impacts are foreseen, such as atmospheric impacts (air pollution, dust and gas emissions) and marine impacts (removal of material from the seabed for the execution of a landfill, discharge of effluents through the submarine pipeline²²).

There will also be the implementation of coal-based Thermal Power Plant (UTE I) and, due to emissions of particulate matter and greenhouse gases (mainly carbon dioxide, sulfur oxide and nitrogen oxide), the very Impact Report on the Environment (RIMA) indicates the possibility of significant impacts.

As for the installation of the Natural Gas Thermal Power Plant of Açú Port (TPP II), which will occupy 112 hectares of the Fazenda Saco D'antas, it was observed that the removal of the sandbank woods by a tractor, with no care to reduce environmental impacts. In the UTE operation it will be used water from the Paraíba do Sul River and the treatment and disposal will be the responsibility of the LLX Coletada. However, there is no data on volume of water to be used or the size of the impact.

There will also be circulation of large vessels, as in where the Oil Treatment Unit (UTP) will be installed and where important fishing boats are found, such as: Banco de São Tomé, Buraco dos Morros, Buraco de Fora and Malacacheta, which are places of great biological productivity²³. Another existing concern is related to the air quality in the operating phase of UTP, since there is a possibility of degradation due to fugitive emissions, fuel combustion and hydrocarbons storage²⁴.

We also emphasize the need for excavation to install pipes in the maritime section, responsible for the removal and disposal of material, causing, thus, the turbidity of water and elimination of marine fauna, due to the reduced incidence of light because of the dispersion of solid particles, producing changes in the life cycles of plankton organisms and a decrease in photosynthetic activity²⁵. The impact is also true for fishermen, for species that they seek to be affected, in a way that still impacts their survival. Another point to note is the possibility of collisions between ships, in which a rupture of the hulls could mean the leak of crude oil and therefore pollution with damage to the quality of water and the entire ecosystem.

With the Shipbuilding Unit (UCN) major social and environmental impacts are foreseen in the environmental sphere. For its implementation, it will be needed to change the terrain, performing "mega excavations in the continent and ocean and destruction of coastal environments of dunes and sandy cords, risk of an increase in coastal erosion and changes in sedi-

²²Relatório dos Impactos Socioambientais do Complexo Portuário do Açú, 2011, p. 12.

²³Relatório dos Impactos Socioambientais do Complexo Portuário do Açú, 2011, p. 16.

²⁴Relatório dos Impactos Socioambientais do Complexo Portuário do Açú, 2011, p. 16.

²⁵Relatório dos Impactos Socioambientais do Complexo Portuário do Açú, 2011, p. 16-17.

mentation on the beach, suppression of sandbank vegetation, changes in underground flow with impacts on surface water and lacustrine environments, changes in water quality, changes in air quality (by the emission of toxic gases and heavy metals linked to the operation of the boilers) and species extinction risk²⁶. "

VIOLATIONS TO THE RIGHT TO HOUSING

Furthermore, with respect to the violations to the right to housing in the Açu region, we can quote as an important source the report produced by NUDEDH²⁷. From this report it is possible to infer how the violation occurred and its various consequences described below.

The first point to be highlighted is the profile of those who have their right to housing violated, through the realization of expropriations, mostly, irregularly. Most expropriated people are from vulnerable social classes, with low level of education and dependent on their land for livelihoods, through livestock husbandry and also agriculture for their own consumption. Thus, given the strong connection and reliance of residents on the land where they live, they often have resistance to expropriations, looking for some way to keep their land, their only source of income and livelihood.

It is also important to show how expropriations occurred, highlighting the large number of irregularities in the process. According to reports from local residents, collected by NUDEDH, agents from Codin and from LLX invaded the properties, put signs without authorization and threatened residents in order to force them to accept the expropriations. In addition, it was found that those agents did not provide clear and sufficient information about the way the expropriation would happen, not even concerning the compensation amount the residents/owners would receive. In this sense, it should be noted the total disregard with the rights of residents, which makes irregular the whole process of expropriations, since it was not guaranteed, for example, the right to information about the circumstances in which they found themselves.

Still regarding expropriations, the Public Defender reports that a notification was sent local Police Station aiming to ascertain the existence of recorded incidents of violence in the expropriation process, but received no response. Another recurring point in complaints made by affected people refers to the fact that Codin entered the properties measuring the land without any authorization of the locals. Another relevant reference in addressing the events

²⁶ Relatório dos Impactos Socioambientais do Complexo Portuário do Açu, 2011, p. 20.

²⁷ Human Rights Defense Center of the Rio de Janeiro State Public Defender's Office.

in Açú region and the violation of the right to housing refers to the compensation given for the land.

As previously mentioned, the residents/owners were not properly informed, neither regarding the compensation they would receive. Thus, in the midst of ignorance and insecurity, many have come to associate that when there were on the ground a Codin sign there would be no payment; on the other hand, if the sign were LLX's, payment would be assured. From that understanding, it can be inferred the fact that the residents made a difference between kinds of legal business: private, conducted with LLX, which would cause an immediate payment by the company and, although the amount was lower than the one paid out subsequently by the State, there would be no guarantee that they would be compensated for the loss of their land; and the expropriation actions carried out by the State, which are characterized by a longer process and whose interval between the land loss and the receiving of compensation can harm the owner.

Therefore, it is pointed out in the Defensor's report one of the main reasons for the fear of the locals towards the actions conducted by Codin:

Expropriation involves the loss of their land early in the process, and they often cannot gain access to the deposited amount due to problems in the property registry, as, for example, the purchase deed not being taken notary registration, divergence in measurements in the deeds, etc, frustrating situations for those who see themselves evicted from their property without any resources to acquire another, which explains the feeling of powerlessness, helplessness and distrust of the presence of any member of the State (NUDEDH, 2013, ANEXO I, p. 6).

RIGHT TO LIVELIHOODS MAINTENANCE

The violation of Human Rights due to the activities for operation of the Açú Port Industrial Complex has as its highlight, besides the violation of the right to housing, as discussed above, the curtailment of the livelihoods of people affected by such an enterprise. The understanding of the actual situation of the place goes through tangible data such as numbers and statistics. Expropriation of the residents/owners for amounts that are based on a formal assessment of the price of hectare of land does not represent the "fair price" for the properties, since they represent for this population not only their housing but also the local production and livelihood practices with activities such as fishing and farming²⁸.

²⁸ Point raised on the Report produced by NUDEDH the Public Defender's Office of the State of Rio de Janeiro, Letter No. 1055 / NUDEDH / 2013. 1055 April 30, 2013.

The fair and prior compensation for the expropriation procedure provided in art. 5, XXIV, of the Brazilian Federal Constitution goes, therefore, beyond the property value in the Açú Port Case. However, the payment of an amount which includes the right to subsistence is not verified, turning up to be, thus, a violation of this right, which is enshrined in the Universal Declaration of Human Rights, art. 25, paragraph 1:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The hearings of the affected families²⁹ revealed that the reason why the expropriations can be done is through the use of threats, which consist in reinforcing that if they do not leave voluntarily, force will be used. These approaches that use a symbolic violence (BOURDIEU, 2009) and sometimes even *de facto* violence are an abuse of the local residents' naivety. There are reports in NUDEDH stating that CODIN and LLX agents invade the properties to do measurements, put signs and fences without permission from the owners and residents, sometimes even threatening these people.

What can be seen is that the formal reality of the expropriation process does not match the social quality and satisfaction of the cases, as it is defended by the Public Defender's Office of Rio de Janeiro. There is also an intertwining in State figures – public power that governs people's lives - and LLX company - legal entity of private law - responsible for the enterprise, in a fashion that both seem like one single institution towards the region.

Therefore, the owners/residents are neither properly informed about their rights nor about their situation towards the State. Information about the damage compensation, when it comes, arrives in a distorted way, much worse than it should be, by considering only the market value of the property, which is not enough for them to purchase a new property to continue their crops and other activities that are the livelihood of that population.

Thus, this whole process that runs through the violation of the right to housing and subsistence, from the perspective of those affected, and going to the violation of the right to access to justice by a population that sometimes does not even know their rights and have their homes invaded by companies agents for activities that initiate a forced expropriation, which, in turn, will result in the expulsion of these people from the environment where they live and make their living, putting them in another context in which they will not even get the same

²⁹ NUDEDH Report , ANNEX II, Public Defender's Office of Rio de Janeiro, Letter No. 1055 / NUDEDH / 2013. 1055 April 30, 2013.

conditions they had before, pushing them into poverty and taking from them far beyond the monetary value, the right to human dignity.

OTHER VIOLATIONS

I. REGARDING THE ACCESS TO JUSTICE:

An important point regarding the right of access to justice is reported by the Public Defender's Office of the state of Rio de Janeiro, which reports that it did not act as an attorney in the examined files, because there already were lawyers representing those affected by violations. However, through the analysis of the testimonies, it is clear that the affected people never acknowledged the existence of the Public Defender, not even had information about any body whose goal was the protection of citizens' rights in vulnerable conditions. Moreover, the situation of some residents is worsened because they have not even had contact with the Prosecutor's Office, leaving only Codin as a reference for dealing with issues related to the expropriations.

II. REGARDING FOOD SAFETY:

Also, it is worth mentioning the violation of food safety of the residents, since, by offering (either Codin or LLX) money relative only to an amount sufficient for the purchasing of another property, the form of livelihood of the families is not taken into account. I.e., the families of those places who survive only on fishing, agriculture and livestock, would require a sum to invest in their "new land" and re-establish their production in order to ensure their livelihoods and adequate access to food. However, as can be observed in many cases, the families end up spending quickly, for food, the money received for compensation, having no way to establish a new form of subsistence. From then on, they become dependent on assistance programs, burdening the very State that left them in that situation.

III. REGARDING THE EMOTIONAL LINK WITH THE ENVIRONMENT:

Another important point to be addressed is the link between each resident, their family and the land where they live. Many have been living in these places for many years, having more than one generation of the family on that land, and its affective value is never considered by the state, as pointed out by the NUDEDH:

As the interviewed people well state, 'It is not all about money.' The crude market evaluation considering only the land value despises the moral, affective and identity bond of the people towards the place where they spent all their lives. This, clearly, is not being taken into account in the expropriations carried out (NUDEDH, 2013, ANEXO I, p. 8-9).

The need to assess the origin of other complaints in relation to the complex, such as, for example, the working system that gave rise to action filings in labor courts, also deserves highlighting and should be better investigated in order to be added to other Human Rights violations that occur on enterprises such as the Açú Port Complex. The list presented here is intended to be illustrative and not exhaustive, being a more detailed investigation of vital importance.

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AGB. See ASSOCIAÇÃO DOS GEÓGRAFOS BRASILEIROS. **Relatório dos impactos socioambientais do complexo industrial-portuário do Açú**. Rio de Janeiro, September, 2011. Available at: <http://docplayer.com.br/561109-Relatorio-dos-impactos-socioambientais-do-complexo-industrial-portuario-do-acu-i.html>. Acesso on Jan. 11th, 2015.

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