



São Paulo, April 13, 2017.

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Global Compact Office  
New York, NY, USA

With copy to:

**Mr. André Oliveira**

President of the Brazilian Committee of the Global Compact  
São Paulo, SP, Brazil

**Ref.: Allegation of egregious abuse of the UN Global Compact principles by Samarco, Vale and BHP Billiton in the aftermath of the collapse of the tailing dam of Fundão in Minas Gerais, Brazil**

Dear Madam,

Conectas Human Rights and Movimento dos Atingidos por Barragens are non-profit, non-governmental organization and social movement, respectively, committed to the promotion and protection of human rights. Through this letter, **we request your appreciation of this allegation of egregious abuse of the UN Global Compact principles by Samarco, Vale and BHP Billiton in the aftermath the collapse of a tailing dam in Mariana, state of Minas Gerais, in Brazil.**

Described as the worst socio-environmental disaster in Brazil's history, the collapse of the dam, which occurred on November 5, 2015, claimed 19 lives, displaced thousands more and sent 32 million cubic meters of toxic mud flowing 700 kilometers downriver to the coast.

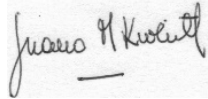
More than one year after the disaster, the measures currently being developed by the three involved companies are simply insufficient to deal with the massive extent of the environmental and human costs of this collapse, as noted by a group of United Nations' human rights experts.<sup>1</sup> They also reveal the failure of the corporate social responsibility policies and practices of the companies in responding to the harms caused to the environment and to the human rights of the affected communities.

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<sup>1</sup> "UN experts launch urgent call for action on anniversary of devastating Brazil dam collapse" – See more at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20829&LangID=E#sthash.ytzuAQiu.dpuf>>.

Pursuant to the Integrity Measures of the Global Compact, **we request that you initiate a procedure to determine the extent to which the presence of Samarco, Vale and BHP Billiton in the platform is detrimental to its reputation and integrity** and if the companies fail to demonstrate that their policies and practices are in accordance with the expected standards of respect for human rights enshrined in the Global Compact Principles, that they are suspended and/or permanently removed from the platform.

Sincerely,



**Juana Kweitel**  
Executive Director  
Conectas Human Rights



**Tchenna Maso**  
Coordinator of the Human Rights Collective  
Movimento dos Atingidos por Barragens

# **Egregious Violations of the Global Compact Principles by Samarco, Vale And BHP Billiton as a Result of the Collapse of the Tailing Dam of Fundão, in Mariana (Minas Gerais, Brazil)**

## **Table of Contents**

I. Samarco's tailing dam burst: Brazil's worst social and environmental tragedy .....	3
II. Violations of the UN Global Compact Principles .....	6
II.1. Principle 1: Human Rights .....	7
II.1.1. Violations to the right to water and correlated rights .....	7
II.1.2. Violations to the right to health .....	9
II.1.3. Labor rights and economic rights .....	11
II.1.4. Right to adequate housing .....	12
II.1.5. Failure to conduct an adequate human rights due diligence .....	13
II.1.6. Violation to the right to an effective remedy .....	15
II.2. Principle 2: Complicity with human rights abuses .....	20
II.3 Principles 7 and 8: Environment .....	20
III. Inconsistencies between the Communication on Progress (COP) and actual policies and practices .....	21
IV. Requests .....	23

## **I. SAMARCO'S TAILING DAM BURST: BRAZIL'S WORST SOCIAL AND ENVIRONMENTAL TRAGEDY**

1. On November 5<sup>th</sup>, 2015 the tailing dam of Fundão, owned and operated by the company Samarco Mineração S.A. (a joint venture between Vale and BHP Billiton) in Mariana (in the state of Minas Gerais, Brazil) suffered a catastrophic failure and released 32 billion tons of mud and waste down the hill<sup>2</sup>.

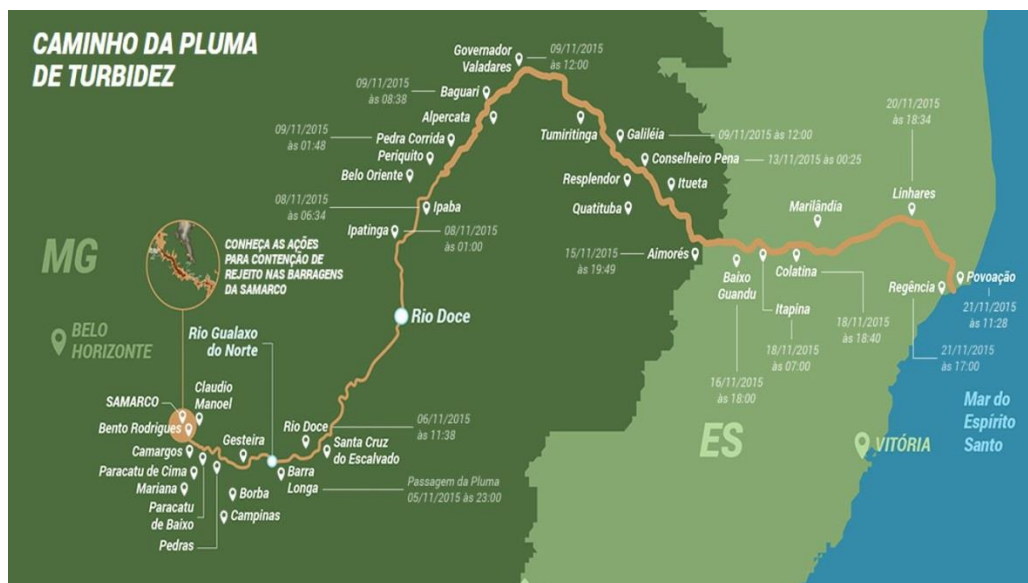
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<sup>2</sup> "Mariana: A Gênese Da Tragédia". 2016. *Nexo Jornal*. <https://www.nexojournal.com.br/especial/2016/11/04/Mariana-a-g%C3%AAnese-da-trag%C3%A9dia>.

2. After sweeping the community of Bento Rodrigues and claiming 19 lives<sup>3</sup> and causing a forced abortion in a woman from the community<sup>4</sup>, in the municipality of Mariana, the wave of tailings flowed into the Gualaxo river and subsequently reached the Doce River, a major water source that runs along important mid-size cities in Brazil. The mud continued downstream the river through the states Minas Gerais and Espírito Santo and, after travelling 400 miles, the mud wave reached the Atlantic Ocean 17 days later. Hundreds of districts and municipalities were affected<sup>5</sup>, such as Bento Rodrigues, Barra Longa, Paracatu de Baixo, Paracatu de Cima, Campinas, Borba, Governador Valadares, Linhares, Colatina and Regência.

3. The map offers a view of the affected region and the path followed by the tailings from Mariana until the Atlantic Ocean:

**Figure 1 – Trajectory of the tailings mud, from Mariana to the mouth river (Atlantic Ocean)**



Source: Governança pelo Doce.

4. The full scale of the impacts and consequences of the disaster are yet to be fully calculated; however, many of the irreversible environmental and social damages and human rights violations resulting from the event have been well documented. In the villages close to the site of the collapse (Bento Rodrigues, Paracatu de Baixo, Gesteira, Barra Longa and others) the more immediate and visible consequences were the losses of 19 lives and the destruction of persons' houses and belongings,

<sup>3</sup> "18º Corpo Da Tragédia De Minas É Encontrado Dentro De Caminhão-Pipa - 09/03/2016 - Cotidiano - Folha De S.Paulo". 2016. [www1.Folha.Uol.Com.Br. http://www1.folha.uol.com.br/cotidiano/2016/03/1748041-18-corpora-da-tragedia-de-minas-e-encontrado-dentro-de-caminhao-pipa.shtml](http://www1.folha.uol.com.br/cotidiano/2016/03/1748041-18-corpora-da-tragedia-de-minas-e-encontrado-dentro-de-caminhao-pipa.shtml).

<sup>4</sup> "A mãe que sofreu aborto na lama e luta para incluir o feto entre vítimas de Mariana". BBC Brasil. <http://www.bbc.com/portuguese/brasil-37829548>.

<sup>5</sup> "O Que Já Se Sabe Sobre O Impacto Da Lama De Mariana?". 2016. *BBC Brasil*. [http://www.bbc.com/portuguese/noticias/2015/12/151201\\_dados\\_mariana\\_cc](http://www.bbc.com/portuguese/noticias/2015/12/151201_dados_mariana_cc).

including animal life and gardens. For many of the inhabitants of these villages, the dam failure resulted in the forced displacement from their homes. In Mariana and Barra Longa, 644 people were left homeless and 716 were displaced after the event<sup>6</sup>. In the immediate aftermath of the tragic disaster, the homeless persons were temporarily allocated in hotels, and it was only because of the solidarity of people from Mariana (and from all the country) that the families received basic goods and first-aid items, such as clothing, mattresses and hygiene products.

5. The Fundão dam failure is considered the worst of its kind in the last one hundred years of history of mining and has scored a tripe world record<sup>7</sup>: the amount of waste that was released (more than 30 billion cubic meters), the overall estimated losses (at least US\$ 5.2 billion) and the distance reached by the mud (more than 600 km).<sup>8</sup> Just in comparison, the second biggest dam failure ever recorded, in the Philippines in 1992, released no more than 3.2 billion cubic meters of waste, and losses had never risen above the mark of US\$ 1 bi.

6. The Fundão dam's collapse has caused multiples human rights violations to the affected communities and populations that live near the Doce River and those that were located close to the site of the event. Among the most egregious violations are the lack of an emergency early warning system, the inadequate assistance to victims in the first moments after the dam burst; the violation of the right to information; violation of the rights to water, health, adequate housing, life and physical integrity, the right to continuous improvement of their livelihoods, as well as violations of other social and cultural rights. Other negative consequences, especially the long-term impacts on the environment, will only emerge and be fully understood in the coming months and perhaps years.

7. This unprecedented case of corporate irresponsibility cannot be attributed to an act of God or to an alleged chain of unforeseeable events. It is the result of deliberate choices by the part of Samarco and its two parent companies, Vale and BHP Billiton, to increase the production of their mines to the detriment of the necessary corresponding investment in health, safety and disaster prevention measures. As further demonstrated in the following sections, this was a preventable disaster that could have been avoided if the three companies had not ignored the alerts and the mounting evidence that were known to them years before the collapse, as has been made clear by the ongoing criminal investigation to determine the responsibilities for the event.<sup>9</sup>

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<sup>6</sup> Brazilian Deputies Chamber. Final Report of the External Committee on the Dam Burst in the Region of Mariana – MG. July, 2016.

<sup>7</sup> "Tragédia Da Samarco Teve Triplo Recorde Mundial, Diz Consultoria - 12/12/2015 - Cotidiano - Folha De S.Paulo". 2016. <http://www1.folha.uol.com.br/cotidiano/2015/12/1718130-tragedia-da-samarco-teve-triplo-recorde-mundial-diz-consultoria.shtml>.

<sup>8</sup> Bowker Associates. Samarco Dam Failure Largest by Far in Recorded History. Available in: <<https://lindsaynewlandbowker.wordpress.com/2015/12/12/samarco-dam-failure-largest-by-far-in-recorded-history/>>.

<sup>9</sup> See: Criminal Charges filed by the Federal Prosecution Service against 22 persons for the social and environmental disaster of the dam collapse in Mariana, Brazil. Available in: <<http://www.mpf.mp.br/mg/sala-de-imprensa/docs/denuncia-samarco>>. See, also: "Engenheiro que Projetou Barragem diz que Alertou Samarco Sobre Risco - 16/01/2016 - Cotidiano - Folha De S.Paulo". 2016. <http://www1.folha.uol.com.br/cotidiano/2016/01/1730239-engenheiro-que-projetou-barragem-diz-que-alertou->

8. This epic disaster of enormous proportions cast a shadow on the widely spread corporate social responsibility standards. The three companies – Samarco, Vale and BHP Billiton – are all members of, or adherents to, widely disseminated Corporate and Social Responsibility (CSR) initiatives, including the Global Compact. In the mining industry, Samarco was even regarded as a benchmark example<sup>10</sup>.

9. Regrettably, these companies' self-proclaimed alignment with CSR standards has not driven their operations towards a socially and environmentally sustainable and responsible conduct. The failure of the Fundão dam demonstrates that, in order to secure short-term results in an adverse economic scenario, the three companies have assumed the risk of causing irreversible and large-scale human rights abuses and environmental damages. Samarco dramatically increased its production capacity during the “boom” period of the commodities' cycle, and this fast-paced rhythm of production was logically followed by an increase in the volume of waste produced in the refinement of the iron ore. As a self-fulfilling prophecy, once the prices of minerals started to fall, the company accelerated the production to compensate for the risk of lower revenues, and this has come at the expense of the safety of the dam structure, according to a study developed by Brazilian scholars.<sup>11</sup>

10. The current allegation of egregious abuse intends to call on the Global Compact to safeguard its own integrity, reputation and credibility through the adoption of the appropriate measures to sanction Samarco, Vale and BHP Billiton for their unsustainable and irresponsible actions and omissions that resulted in the failure of the dam in Mariana.

11. In the section and sub-sections that follow, it is demonstrated how Samarco, Vale and BHP Billiton violated the Global Compact's aims and principles, particularly Principles 1, 2, 7 and 8, which set obligations with regard to human rights respect and the protection of the environment. The last section delineates the expected actions as part of the processing of this allegation.

## **II. VIOLATIONS OF THE UN GLOBAL COMPACT PRINCIPLES**

12. All three companies involved in the tragedy – Samarco, Vale and BHP Billiton – are signatories of the Global Compact and qualify for the advanced reporting category; therefore, they commit to abide by the 10 Principles along with its broader objectives. According to the UN Global Compact Principles, corporate sustainability means “*operating in ways that, at minimum, meet fundamental responsibilities in the areas of human rights, labor, environment and anti-corruption*”.

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samarco-sobre-risco.shtml.. The federal police has indicted Samarco, Vale and eight of their employees for environmental crime as part of the investigation proceedings related to the event.

<sup>10</sup> Almeida, Álvaro. 2016. "O Caso Samarco e o Desmoronamento da Responsabilidade Social Corporativa. Istoedinheiro.Com.Br. <http://www.istoedinheiro.com.br/blogs-e-colunas/post/20151109/caso-samarco-desmoronamento-responsabilidade-social-corporativa/7737>.

<sup>11</sup> ZONTA, Marcio; TROCATE, Charles. Antes fosse mais leve a carga. Marabá, PA: Editorial iGuana, 2016, pp. 17-22.

13. The actions and omissions of the three companies that resulted in the Doce River disaster are incompatible with such definition and with the ten principles. More specifically, the three business enterprises violated the principles related to human rights and the environment.

## **II.1. Principle 1: Human Rights**

14. The first Global Compact principle requires businesses to respect and promote internationally proclaimed human rights. It states: “*Businesses should support and respect the protection of internationally proclaimed human rights*”. As further enshrined in GC documents, this statement has a series of consequences. For example, it means that companies should use due diligence processes to identify and prevent human right abuses from taking place within their activities and relations, which will vary according to the size of business, the risk of human rights impacts and the context of the operations. The principle also encompasses the obligation that a business entity complies with all applicable laws and internationally recognized human rights wherever it operates and imposes the need to provide remediation when human rights abuses are identified.

15. Beyond the violation to the fundamental right to life of the 19 people killed because of the dam collapse, a range of human internationally recognized human rights have been violated, as shown in the subsections below.

### **II.1.1. Violations to the right to water and correlated rights**

16. The human right to water is a recognized right under international human rights law. It entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements<sup>12</sup>.

17. Although there is no specific mention to the right to water in the International Covenant on Economic, Social and Cultural Rights (ICESCR), it is recognized as a human right contained in its article 11 paragraph 1, as well as in a wide range of international documents, including treaties, declarations and other standards.<sup>13</sup> As provided in General Comment n. 15 of the UN Committee on Economic,

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<sup>12</sup> See paras. 2 to 6 of the Committee’s General Comment No. 15 (2002) on the right to water (arts. 11 and 12 of the ICESCR).

<sup>13</sup> See article 14, paragraph 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; article 24, paragraph 2 (c), Convention on the Rights of the Child; articles 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; articles 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; articles 54 and 55 of Additional Protocol I thereto of 1977; articles 5 and 14 of Additional Protocol II of 1977; preamble, Mar Del Plata Action Plan of the United Nations Water Conference; see paragraph 18.47 of Agenda 21, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8), vol. I: Resolutions adopted by the Conference, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water

Social and Cultural Rights (CESCR)<sup>14</sup>, water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life with human dignity and is a prerequisite for the realization of other human rights, such as health and food security. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

18. The human right to water of the people that live along the Doce River basin was violated as a result of Samarco, Vale and BHP Billiton's failure to (i) act quickly to contain the mud from advancing downstream the Doce River until the Atlantic ocean, (ii) work with public authorities to secure, in a timely fashion, alternative sources of water supply to the cities that had to interrupt the collection of water from the Doce River, (iii) design and implement a consistent plan of bottled water distribution in an orderly and non-discriminatory manner; (iv) exert influence over public authorities to ensure the right to information associated with the right to water.

19. According to the Brazilian federal environmental agency, the IBAMA, Samarco has only performed half of the necessary measures to stop the leakage of the mud. The agency considered that 40% of the measures to contain the advancement of the mud were poor or unsatisfactory<sup>15</sup>.

20. With respect to the measures to prevent the mud from reaching the ocean, initially the gates of the hydroelectric plants situated along the Doce river were shut down to contain the mud wave, but at the risk of new dam bursts, the mud was allowed to continue its way downstream the river. The risk then shifted to the potential havoc that the mud could wreak on the turbines and engines of the hydroelectric plants. To avoid this, power generation has been interrupted since the disaster, adding pressure onto the entire electrical system of the country. Close to the river mouth in Linhares, Samarco placed 9 km of buoys to contain the mud and protect the vegetation, but it proved insufficient to prevent the mud from reaching the Atlantic Ocean and causing damage to the environment<sup>16</sup>.

21. As the mud from the dam travelled along the Doce River, several cities and districts served by the river had to urgently stop the water collection. Many cities cut the water supply and the population

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and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paragraphs 5 and 19, recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

<sup>14</sup> See para. 1 of the Committee's General Comment No. 15 (2002) on the right to water (arts. 11 and 12 of the ICESCR).

<sup>15</sup> The full report of IBAMA is available in: [http://www.ibama.gov.br/phocadownload/noticias\\_ambientais/relatorio\\_fase\\_helios\\_operacao\\_augias.pdf](http://www.ibama.gov.br/phocadownload/noticias_ambientais/relatorio_fase_helios_operacao_augias.pdf).

<sup>16</sup> "Boias De Contenção Não Impedem Que Lama Atinja Vegetação Na Foz Do Rio Doce". 2016. Agência Brasil. <http://agenciabrasil.ebc.com.br/geral/noticia/2015-11/boias-de-contecao-nao-impedem-que-lama-atinga-vegetacao-na-foz-do-rio-doce>.



was left, during weeks, with the only option of resorting to bottled water. In cities like Governador Valadares, more than three hundred thousand people were left without treated water for 15 days, until authorities could secure alternative sources. The consequences were disastrous. Chaos ensued in Governador Valadares, Colatina and other cities that had to interrupt water distribution. The price of the bottled water skyrocketed, leaving those who could neither afford to buy mineral water nor could stand in queues (either because of illness, disability or other physical condition) in a seriously precarious situation. Lootings and violence ensued. Samarco was forced via judicial orders to provide drinking water through water trucks.

22. Until the complete interruption of the supply of bottled water, which was authorized by the judiciary in January 2016, Samarco would announce each day in their website both the schedule and the distribution points where the water trucks would be positioned. In the majority of the distribution points, people had to face long queues, in many cases of more than 3 hours, under high temperatures and peak-hour sunlight, to get just a few gallons, which were insufficient to meet a household's necessities. No proper plan was designed to ensure that the water was distributed to vulnerable groups such as the elderly and people with disabilities or reduced locomotion. These groups and the communities of peripheral neighborhoods had to rely on a web of volunteers to receive water.

23. According to the Committee on Economic, Social and Cultural Rights (General Comment N. 15), all victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. By failing to maintain a continuous supply of water to the households affected by the dam failure and by distributing bottled water in a disorganized, discriminatory and insufficient manner, Samarco failed to adequately remedy the violation to the right to water experienced by the populations affected by the dam burst, especially in the aspects of affordability and physical accessibility, which are core elements of this right. By consequence of violating the right to water, the company has also violated the right to health and food security.

### **II.1.2. Violations to the right to health**

24. In the immediate aftermath of the disaster (and, as further demonstrated, until the present moment), there was no reliable information about the drinkability and safety of the water for domestic and industrial use. After the period of complete halt in the distribution of piped water, some cities resumed the water collection from the river, treating it with the use of chemical and organic substances that accelerate the decantation of mud and dirty particles. Nevertheless, several cases of adverse health symptoms from those who drank or domestically used this treated water have been reported.<sup>17</sup> Food producers, such as dairy industries, are importing water from other states as they claim that the treated

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<sup>17</sup>ORGANON, Núcleo de Estudo, Pesquisa e Extensão em Mobilizações Sociais. Impactos socioambientais no Espírito Santo da ruptura da barragem de rejeitos da Samarco - Relatório preliminar. Novembro / Dezembro, Mimeo.pp. 20-49, 2015.

water is altering the properties of their products. One year past the disaster, there is still no reliable information on the quality of the water, leading the population to a state of absolute mistrust. This situation is an open violation of the right to water, affecting more particularly its aspects of safety and acceptability.

25. In direct violation of the right to information connected to the right to water, until the present moment there is no conclusive report on the quality of the water and its toxicity. Although governmental bodies and Samarco reiterate that the water is safe and can be normally consumed, reports from independent entities<sup>18</sup> have identified the presence of heavy metals in the water above the permitted levels as well as other problems that can compromise the health of those who drink it or use it for daily purposes. The presence of heavy metals above the level permitted by legislation has been identified in samples of both treated and river waters. In other words, people are exposed to heavy metals both when they use the water for the purposes of carrying out traditional activities (such as farming, fishing etc.) and in their domestic use (for bathing, cleaning etc.). On August 9<sup>th</sup> 2016, the Public Prosecutors of Minas Gerais disclosed the results of an independent report commissioned by the body which revealed that the concentration of aluminum found in the treated water (or tap water) is of 0,64ml/L, while the maximum permitted by legislation is 0,20ml/L<sup>19</sup>.

26. According to affected communities' reports<sup>20</sup>, respiratory disorders became usual since the tragedy. The excess mud accumulated alongside the riverbank became dust under the sun's effect. This dust is now causing respiratory diseases in the affected communities, with special impact on children and elderly people. Mariana's Health Coordinator, Vera Lúcia Fernandes, detailed that patients have reported more than just respiratory failure but also skin irritations and lesions.<sup>21</sup> Reports also point to a substantial increase in the cases of dengue and even yellow fever in the area affected by the presence of the tailings mud, with groups calling for an independent investigation on the possible relationship between the disaster and the surge in the yellow fever cases in the region.<sup>22</sup>

27. The National Federation of Physicians (FENAM) suspects that contact with the water of the Doce River may cause, in the long term, the appearance of diseases such as cancer and fetal malformation. According to the president of FENAM, Otto Baptista, a group of people who have contact

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<sup>18</sup> See reports from Giaia ([http://giaia.eco.br/wp-content/uploads/2015/12/Resultados-11\\_12-Agua-GIAIA.pdf](http://giaia.eco.br/wp-content/uploads/2015/12/Resultados-11_12-Agua-GIAIA.pdf)) Group Policy, economy, mining, environment and society – PoEMAS (<http://www.ufjf.br/poemas/files/2014/07/PoEMAS-2015-Antes-fosse-mais-leve-a-carga-vers%C3%A3o-final.pdf>) and SOS Mata Atlântica (<https://www.sosma.org.br/projeto/rede-das-aguas/observando-os-rios/analise-da-agua-rio-doce/>)

<sup>19</sup> "Água Tratada Em Cidade De MG Pode Causar Doenças Degenerativas, Diz MP". 2016. Vales De Minas Gerais. <http://g1.globo.com/mg/vales-mg/noticia/2016/08/agua-tratada-em-cidade-de-mg-pode-causar-doencas-degenerativas-diz-mp.html>.

<sup>20</sup> MAB. 2016. "Carta Dos Atingidos Pela Samarco Pelo Direito À Saúde". *Tragédia Anunciada*. <http://tragedianunciada.mabnacional.org.br/2016/10/27/carta-dos-atingidos-pela-samarco-pelo-direito-a-saude/>.

<sup>21</sup> "Em Minas Gerais, Lama Da Barragem Da Samarco Causa Doenças". 2016. *Metro Jornal*. <http://www.metrojornal.com.br/nacional/foco/em-minas-gerais-lama-da-barragem-da-samarco-causa-doencas-276011>.

<sup>22</sup> MAB (2016). Nota do MAB sobre a Febre Amarela. Available in: <http://tragedianunciada.mabnacional.org.br/2017/01/19/nota-do-mab-sobre-a-febre-amarela/>.

with water - even treated - will be monitored for doctors to evaluate possible effects on the human body.<sup>23</sup>

28. Many individuals are suffering from psychological and post-traumatic stress after the event, as a result of the abrupt changes to their lives. Most of the Bento Rodrigues, Barra Longa and Gesteira former dwellers lived in houses where they raised cattle and harvested produced part of the food for their own subsistence. These people are now lodged in houses in the city, away from their former neighbors and relatives, facing prejudice, contempt and all sorts of threats and intimidation from other inhabitants, who blame them for the decrease in the city's revenues, as if they were the perpetrators, and not the victims, of the fatidic disaster.<sup>24</sup> The companies have failed to ensure rehabilitation for the victims through medical and psychological care as well as legal and social services.<sup>25</sup>

### **II.1.3. Labor rights and economic rights**

29. In addition to the right to health and water, other economic, social and cultural rights (ESCR) of workers and groups living in the margins of the river were violated.

30. The mud darkened the water of the Doce River and reduced its oxygen level, causing the death of more than 11 tons of fish stock. On February 19<sup>th</sup> a federal court order<sup>26</sup> banned the fishing in the Doce River for an indefinite period of time, as a measure to safeguard public health and safety. Fishing is a means of subsistence for many communities along the river.

31. The arrival of the mud deeply affected the communities whose subsistence depends on agriculture and small-scale farming. The contaminated water required small farmers to cease the irrigation of their lands, and as a result plantations started to dry out.<sup>27</sup>

32. The economic stability of traditional communities and groups has been severely affected as the local population refuses to consume food produced with water from the Doce River. The indeterminacy about the length of time that will take for the river to be restored to the pre-disaster conditions is already provoking irreparable changes to those populations' livelihoods and to their culture. In the state of

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<sup>23</sup> "Médicos Suspeitam que Água do Rio Doce Pode Causar Câncer". 2016. <http://g1.globo.com/espirito-santo/desastre-ambiental-no-rio-doce/noticia/2015/12/medicos-suspeitam-que-agua-do-rio-doce-pode-causar-cancer.html>.

<sup>24</sup> "Desabrigados pela lama enfrentam preconceito e desconfiança em Mariana". 2016. Estadão. <http://brasil.estadao.com.br/noticias/geral,desabrigados-pela-lama-enfrentam-preconceito-e-desconfianca-em-mariana,10000085277>.

<sup>25</sup> UN General Assembly. 2005. "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". <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

<sup>26</sup> "Justiça Federal Proíbe Pesca Na Foz Do Rio Doce Após Lama - Brasil - Estadão". 2016. Estadão. <http://brasil.estadao.com.br/noticias/geral,justica-federal-proibe-pesca-na-foz-do-rio-doce,10000017333>.

<sup>27</sup> Losekann, Cristiana. 2016. "Impactos Socioambientais Da Ruptura Da Barragem De Rejeitos Da Samarco No Espírito Santo Relatório Preliminar". Researchgate. [https://www.researchgate.net/publication/291695427\\_Impactos\\_socioambientais\\_da\\_ruptura\\_da\\_barragem\\_de\\_rejeitos\\_da\\_samarco\\_no\\_Espirito\\_Santo\\_Relatorio\\_preliminar](https://www.researchgate.net/publication/291695427_Impactos_socioambientais_da_ruptura_da_barragem_de_rejeitos_da_samarco_no_Espirito_Santo_Relatorio_preliminar).

Espírito Santo, the presence of the mud in the river and the sea has deeply affected ecotourism, an important source of income to the local economy.

33. The indigenous population of the Krenak ethnicity, who live about 300 km downstream from the disaster site, were particularly affected, as the Doce River, now contaminated with heavy metals, was their only source of drinking water and an essential element of their cultural heritage. The disaster has caused irreparable damages to the identity, religious and spiritual activities and the social and economic rights of the Krenak tribe. Thus, the disaster threatens their very survival.

34. Because of an embargo that was imposed on Samarco's mining activities since the disaster, the city of Mariana's public accounts have suffered, as reports indicate that up to 80% of the city's income derived from Samarco revenues in the pre-disaster period<sup>28</sup>. The reduced income has had a disastrous effect on the continuity of essential public policies and has disaggregated the local social safety net. Unemployment in the region has increased as a consequence of the disaster.<sup>29</sup>

35. With respect to the violations of labor rights, it is remarkable that 12 of the 19 lives that were lost because of the disaster were of outsourced workers. In the years before the fatidic event, Samarco intensified the outsourcing of its activities, a corporate policy that was closely related to the strategy of cost reduction and profit maximization. In line with the broader pattern of labor exploitation in the mining industry, the outsourcing pursued by Samarco caused a deterioration of the labor conditions offered to the workers, with violations ranging from non-recognition of an employment relation to the lax oversight of the compliance of the contracted parties of the labor legislation.<sup>30</sup>

#### **II.1.4. Right to adequate housing**

36. More than a year on, the resettlement of the communities who were forcedly displaced from their homes by the disaster is far from complete, disrespecting international human rights standards on resettlement processes caused by man-induced and natural disasters. The reconstruction of the village of Bento Rodrigues is not expected to be finished before 2019, meaning that for at least 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.

37. The displaced families have seen their welfare and livelihoods deteriorate because of the increase in the costs of living. Families have reported that their utilities bills, such as energy, are much

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<sup>28</sup> País, Ediciones. 2015. "Mariana, A Dependência Da Mina Que Paga Pouco À Região Que Devastou". EL PAÍS. [http://brasil.elpais.com/brasil/2015/11/13/politica/1447439535\\_624567.html](http://brasil.elpais.com/brasil/2015/11/13/politica/1447439535_624567.html).

<sup>29</sup> Brazilian Chamber of Deputies, *supra note*, 2.

<sup>30</sup> MANSUR, Maíra S. *et al.* "Antes fosse mais leve a carga: Introdução aos argumentos e recomendações referentes ao desastre da Samarco/Vale/BHP Billiton". In: MILANEZ, Bruno *et al.* "Antes fosse mais leve a carga: Introdução aos argumentos e recomendações referentes ao desastre da Samarco/Vale/BHP Billiton" (Vol. 2). Marabá: iGuana, 2016.

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. Only after a mediation conducted by the Public Prosecutors was that the companies agreed to compensate the victims for the increased costs.<sup>31</sup> The families have no assurance that the rents will be borne by the companies until they are resettled in the new houses, and many have reported the fear of reprisals in case they demand better living conditions.

#### **II.1.5. Failure to conduct an adequate human rights due diligence**

38. The mining industry is currently facing an unprecedented period of dwindling prices of minerals, average iron ore's price has dropped from US\$ 167.75 per dry metric ton unit (dmtu) in 2011 to \$55,83/dmtu in 2015.<sup>32</sup> Even the largest companies are selling assets, downsizing, laying-off employees, suspending payments of dividends to shareholders and taking several other measures to revert the losses caused by the falling prices and to ensure a minimum profitability.

39. Unlike the rest of the industry, the profitability of Samarco seems not to have been affected by the dwindling metal prices. In 2014 Samarco reported total revenues of US\$ 2,6 bi and net profits of US\$ 1 bi<sup>33</sup>. This occurred despite the price of the iron ore reached a historic low-level of US\$ 44.10, dropping 76% from its peak 4 years before.

40. The positive results can be in part attributed to an increase in the pace of production in the company's mines. Just as a comparison, in 2009 Samarco produced 16 million tons of iron ore, while in 2014 production reached 25 million tons per year, a growth of 56%.<sup>34</sup>

41. The increase in the extraction of the mineral was naturally followed by a growth in the volume of iron ore waste. Between 2009 and 2014, the waste that was disposed in the dam went from 13.9 million tons to 21.9 million tons (annual rates), a 60% growth.

42. Even though Samarco argues that sustained net returns were attributable to enhanced operational efficiency and innovation, that investments in health and safety were not affected by the volatility in the mineral prices, that the situation of the dams are monitored 24 hours a day, and that independent experts had certified that they met all the necessary conditions to support an increased production of waste, the mere fact that until now the company has not provided convincing explanation about the reasons of the dam failure raises serious concerns about a failure by the part of the company to adopt the necessary measures to ensure that the dam was capable of holding the increased amount of iron ore waste.

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<sup>31</sup> "Samarco vai arcar com alta nas contas de energia de famílias atingidas por tragédia de Mariana". 2016. EM. [http://www.em.com.br/app/noticia/gerais/2016/09/14/interna\\_gerais,804042/samarco-vai-arcar-com-alta-nas-contas-de-energia-de-familias-atingidas.shtml](http://www.em.com.br/app/noticia/gerais/2016/09/14/interna_gerais,804042/samarco-vai-arcar-com-alta-nas-contas-de-energia-de-familias-atingidas.shtml).

<sup>32</sup> WORLD BANK. "Commodities Annual Prices". 2016. Available in: *Pubdocs.Worldbank.Org*. <<http://pubdocs.worldbank.org/en/469361480717943868/CMO-Historical-Data-Annual.xlsx>>.

<sup>33</sup> SAMARCO. "Management Report And Financial Statements". 2016. <http://www.samarco.com/wp-content/uploads/2015/11/Management-Report-and-Financial-Statements-20141.pdf>.

<sup>34</sup> "Em Campo". 2016. *Revistagreenpeace.Org*. <http://revistagreenpeace.org/edicao/4/mariana/>.

43. A disaster of this proportion reveals that Samarco failed to perform human rights due diligence process as mandated by UN Global Compact Principle 1. The flawed risk-management approach of Samarco became visible as soon as reports emerged that the company had not alerted the communities in a timely and appropriate manner about the collapse of the dam and the trajectory of the mud wave that would destroy or severely damage several districts. There were no adequate procedures in place to warn and instruct about safety/escape actions once the dam burst, neither for the workers nor for the surrounding communities.<sup>35</sup> Residents from the Barra Longa district, which was hit by the mud wave hours later, testified before the Working Group on Business and Human Rights, in its visit to Mariana, that Samarco employees had assured that they would not be affected. Unfortunately, only a few hours later the mud arrived in the community devastating homes and leaving no time for people to save their personal belongings.

44. The emergency plan submitted to the authorities clearly underestimated the area of influence of the project for the purposes of preventive and mitigation measures. It was estimated that the tailings would only reach the vicinal community of Bento Rodrigues, when in fact seventeen bodies were found in a 100 km radius. The possibility of the mud reaching the Doce River was absolutely absent from the plan, even less its capacity to reach the Atlantic Ocean 400 miles down.<sup>36</sup>

45. According to the investigations of the Minas Gerais Public Prosecutors' Office, Samarco knew about the risk of collapse and did not take all the required measures to prevent the disaster. The investigations show that Samarco had been warned of the risk of the rupture in at least two different occasions, in 2013 and 2014. In 2013, a report by a consultancy company<sup>37</sup> alerted Samarco to the operational risk of the dam due to a pile of rejects in the subjacent area of the dam, owned by Vale, that was interfering in Fundão, increasing the pressure on one of the dam's dyke. Still in 2013 the Public Prosecutors' Office of 2013 opposed to reforms in the dam structure as requested by Samarco to the authorities.<sup>38</sup> One of the reforms, which had an unfavorable opinion by the Public Prosecutors, aimed at raising by 20m the main wall of the dam. A document attached by the Public Prosecutors, produced by Prístino Institute<sup>39</sup>, stated very clearly that a heightened wall would increase the risk off collapse, and based on that information the Public Prosecutors were of the opinion that there were reasons enough to justify the denial of authorization for further modifications in their structure and renewal of its license.

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<sup>35</sup> According to UNGP, examples of how companies may support and respect human rights through their daily activities are: (i) [in the workplace] by providing safe and healthy working conditions; (ii) [in the community] by preventing the forcible displacement of individuals, groups and communities; (iii) by working to protect the livelihood of local communities.

<sup>36</sup> "Plano De Emergência Da Samarco Previa Lama Só Em Bento Rodrigues". 2015. Desastre Ambiental Em Mariana. <http://g1.globo.com/minas-gerais/desastre-ambiental-em-mariana/noticia/2015/12/plano-de-emergencia-da-samarco-previa-lama-so-em-bento-rodrigues.html>.

<sup>37</sup> According to Brazilian regulations, mining companies are required to submit a report every year on the conditions of the tailing dams and the management of waste resulting from the extraction process.

<sup>38</sup> "Laudo De 2013 Alertou Sobre Riscos De Ruptura De Barragem Em Mariana (MG) - Notícias - Cotidiano". 2016. Noticias.Uol.Com.Br. <http://noticias.uol.com.br/cotidiano/ultimas-noticias/2015/11/06/laudo-de-2013-fez-alerta-sobre-riscos-de-ruptura-de-barragem-em-mariana-mg.htm>.

<sup>39</sup> <https://www.earthworksaction.org/files/pubs-others/9.1-laudo-tecnico.pdf>

46. On September 2014, Samarco was again warned about the existence of cleavages in Fundão's tank that might represent the beginning of a breakage.<sup>40</sup> The reports<sup>41</sup> contained an alert about the potential risk posed by the levels of water in the mixture contained in the dam. A higher percentage of liquid in the mud can increase the risk of collapse if not properly monitored and drained, and so far Samarco has not presented irrefutable evidence that it followed the recommendations of the auditors to avoid that the composition of the mud would exert extra pressure on the dam wall.

47. Reports have emerged that the company was releasing more waste in the dam than the maximum calculated capacity, therefore overloading it.<sup>42</sup> There is also data showing that some measurements made during the monitoring of the dam accused such overload and the risk of bursting<sup>43</sup>. According to the Federal Police, the involved companies reduced their expenditure in the safety of the dam structure. The criminal probe pointed that among the factors that contributed to the disaster were the use of low quality materials, the recycling of equipment and the disregard for the emergency plan due to its high costs. The investigation has also found that Samarco elevated the dam wall in 16.4 m in a year, while technical regulations provide that it should be limited to 10 m/year. Samarco's own operational manual established that the maximum elevation should be of 6 m/year<sup>44</sup>.

#### **II.1.6. Violation to the right to an effective remedy**

48. Numerous international human rights law instruments protect the right to an effective remedy. The Universal Declaration of Human Rights, article 8, states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"<sup>45</sup>. The UN Basic Principles and Guidelines on the Right to a Remedy recognize that business entities should provide reparations to people affected by corporate human rights abuses<sup>46</sup>.

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<sup>40</sup> "Aparelho Teria Indicado Risco De Rompimento De Barragem Em Mariana - Brasil - Estadão". 2016. Estadão. <http://brasil.estadao.com.br/noticias/geral,aparelho-teria-indicado-risco-de-rompimento-de-barragem-em-mariana,10000013558>.

<sup>41</sup> "Documento Inédito: Samarco Sabia Desde 2013 que Barragem Corria Risco". 2016. Fantástico. <http://g1.globo.com/fantastico/noticia/2016/01/documento-inedito-samarco-sabia-desde-2013-que-barragem-corria-risco.html>.

<sup>42</sup> Due to the iron ore price fall, the company increased its production's volume in 2013/2014, which was around 15%. The production's increase in 2015 is estimated at 30% in speed and / or range, which produced a larger amount of volume of tailings that have been launched in the dam, without complying with the technical time for decantation and water absorption, as well as the dam load capacity. This increase can be seen by checking the 22.5% increase in total energy consumption by 2013 SAMARCO for 2014 and 2015 believed to have followed the same pace. MAB Report 23/11/15, p. 4.

<sup>43</sup> "Procuradoria Abre Investigação Contra Novo Presidente da Samarco - 13/07/2016 - Cotidiano - Folha De S.Paulo". 2016. [www1.folha.uol.com.br](http://www1.folha.uol.com.br/cotidiano/2016/07/1791361-procuradoria-abre-investigacao-contra-novo-presidente-da-samarco.shtml). <http://www1.folha.uol.com.br/cotidiano/2016/07/1791361-procuradoria-abre-investigacao-contra-novo-presidente-da-samarco.shtml>.

<sup>44</sup> Brazilian Chamber of Deputies, *supra*, p. 226.

<sup>45</sup> Similar commitments are found in virtually all of the major international human rights instruments, including, for example, the International Covenant on Civil and Political Rights, Art. 2; the International Convention on the Elimination of All Forms of Racial Discrimination, Art. 6; the Convention on the Rights of the Child, Art. 39; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 14(1).

<sup>46</sup> U.N. General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation* (UN Remedy Principles), G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), ¶ 15 (obligation to provide remedies

49. The Guiding Principles on Business and Human Rights (UNGPs), in Principle 25, recognize that States must ensure that those affected by human rights abuses have access to effective remedies. The UNGPs also recognize that corporations have the responsibility to provide redress for human rights violations caused by their business operations<sup>47</sup>. The Principles provide that victims of human rights violations connected with corporate activity should have access to adequate, effective, prompt, and appropriate remedies. Remediation for the harms caused by the disaster should aim to restore *status quo ante* the lives of the affected people. If a violation happens, remediation should take place. Remediation should address all the violations, such as death or injuries, destruction of their homes, displacement, environmental contamination, unjustified interference with their livelihoods, or inadequate or dangerous conditions at work. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.<sup>48</sup>

50. Contrary to the international standards on the right to an effective remedy, Samarco, Vale and BHP Billiton negotiated and signed an extrajudicial settlement agreement with the Federal Union and other governmental bodies at the federal and state levels preceded by no consultation with affected groups. The settlement agreement violates the human right of the affected communities, groups and populations to an effective remedy by denying them the right to meaningful participation in measures that affect their lives. The agreement also violates their right to access to information concerning environmental issues (Rio Declaration, article 10) and Convention 169 of the ILO, ratified by Brazil, which provides that indigenous peoples have the right to be consulted before any administrative and legislative measures that can affect the enjoyment of their rights. The Vancouver Declaration on Human Settlements, approved at the United Nations Conference on Human Settlements, determines in its Section II 13 that “All persons have the right and the duty to participate, individually and collectively in the elaboration and implementation of policies and programmes of their human settlements”. As the agreement involves the resettlement of former dwellers of Bento Rodrigues and other villages, this principle has been violated.

51. The settlement agreement creates a two-tier governance structure composed by a private foundation and an “interfederative” committee. In both governance bodies, there is little or no room for effective participation of the affected communities’ in the decision-making process of the design and execution of the programs envisioned in the agreement. The interfederative committee is an independent body composed mainly by representatives of the federal and state governments. It has seven members, of which three will be representatives of the affected communities (2 from Minas Gerais and 1 from Espírito Santo). However, the agreement has not disciplined the process of appointment of these three members.

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applies to “legal persons” and other entities),  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

<sup>47</sup> See Guiding Principles 11, 13, 15, 22.

<sup>48</sup> Commentaries to Principle 25 of the UNGPs.



52. On May 5<sup>th</sup>, the federal justice approved the agreement<sup>49</sup>. The settlement provides that Samarco will pay 4.4 billion reais through 2018 and a minimum of 20 billion reais (approximately US\$ 5.6 billion) in the next 15 years to cover and repair damages. The company has committed to develop and execute 17 socio-environmental and 22 socio-economic programs. Additionally, the agreement determines that Samarco will pay 500 million reais in compensatory measures destined to improve the sanitation infrastructure of the cities located along the Doce river.

53. The foundation is the entity responsible for managing the resources allocated for the reparation of damages and implementing the environmental, social and economic programs. The governance bodies of the foundation are the Curators' Council, the Executive Board, the Consultative Council and the Fiscal Council. The Curators Council's main attribution is to approve the plans, projects and programs necessary to the implementation of the agreement, after recommendations by the Executive Board and in consultation with the Consultative Council. The Curators Council is composed by seven members, of which six will be appointed by the three companies (each company has two seats) and one by the interfederative committee. The Consultative Council has seventeen seats, of which five were allocated to the affected communities. The main difference between the powers of the Curators and the Consultative councils is that the latter can only issue "non-binding recommendations" (Article 218).

54. The fundamental right of the individuals and affected communities to effective administrative and judicial remedies has been violated by the ratification of the settlement agreement (ICCPR<sup>50</sup>, Article 3, a, b; UDHR<sup>51</sup>, Article 8; UN GPs<sup>52</sup>, Principles 22, 25, 26; Rio Declaration, Principle 10). In its preamble, the agreement creates a "pre-emptive" effect over any other lawsuit related to the disaster, in the sense that any legal claim with same object or any "connection" to the agreement filed by any "legitimate agent" is, by virtue of this provision, automatically terminated. This provision violates the Brazilian Constitution in the sense that it aims to strip bodies such as the public prosecutors and the public from their constitutional powers to pursue public interest litigation on behalf of affected communities and the collective interest, and prevent individual victims to pursue a compensation, in clear violation of the fundamental constitutional right to a judicial remedy. The affected communities have not consented to forgo their right to an effective judicial remedy, as they have not been consulted in any phase of negotiation and ratification of the agreement. This right is, in fact, inalienable as it is enshrined in a constitutional provision. Article 5, XXV of the Brazilian Constitution provides that "no law should exclude any threat or infringement of a right from consideration of the Judicial Power"<sup>53</sup>. The agreement coerces the victims to accept the compensation and reparation proposals made under the

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<sup>49</sup> The full text of the minutes of the conciliatory court hearing is available in: <<http://s.conjur.com.br/dl/ata-audiencia-homologacao-acordo.pdf>>. Last access: July 21 2016.

<sup>50</sup> International Covenant on Civil and Political Rights.

<sup>51</sup> Universal Declaration of Human Rights.

<sup>52</sup> United Nations Guiding Principles on Business and Human Rights.

<sup>53</sup> Brazilian Constitution of 1988. Available in (English): <[http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte\\_en\\_us/anexo/constituicao\\_ingles\\_3ed2010.pdf](http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf)>. Last access: May 11<sup>th</sup> 2016.

agreement by stating that any person who “opts-out” from the negotiation proceedings is automatically excluded from the socio-economic remediation programs scheduled therein (Article 36).

55. The settlement agreement eludes the duty of the Brazilian State to protect the human rights of the citizens within its territory against violations committed by business enterprises. In its preamble, the agreement states that its purpose is to end all the judicial proceedings relating to the disaster and explicitly eschews the responsibility of the three companies for the adverse consequences of the dam collapse<sup>54</sup>. Hence, many Brazilian prosecutors speak of a ‘procedural disaster’<sup>55</sup>.

56. On July 1<sup>st</sup>, the Superior Court of Justice (STJ) issued an injunction suspending the ratification of the agreement. The court considered that the lack of consultation with affected peoples in the definition of the terms of the agreement deemed it illegal and illegitimate. The court understood that the extension of the damages caused by the disaster would merit a broader debate about the negotiated settlement of the dispute. The court concluded that the public authorities and the companies should have conducted public hearings with the participation of citizens, civil society, the scientific community and any other entities representing local interests, such as the municipal authorities’<sup>56</sup>.

57. On 18 August 2016, a federal court annulled the agreement completely. Despite this decision, the foundation established by the agreement (“Fundação Renova”) is operating normally. Individual negotiations are taking place with affected people. The Bar Association of Minas Gerais has publicly criticized the terms of these individual settlements for their abusive clauses of compensation. Samarco has been sealing deals with individuals affected by the disaster on extremely low values, taking advantage of the lack of legal assistance and people’s immediate need for financial relief.<sup>57</sup>

58. By claiming that the settlement agreement is inadequate to provide full remediation for the victims of the disaster and to deter future violations, on May, 2016 the Federal Public Prosecutors filed a public civil lawsuit (in Portuguese: “Ação Civil Pública”) with a US\$ 44 billion civil claim against the three companies and the Brazilian state.<sup>58</sup>

59. Within the auspices of such public civil lawsuit, on 16 March 2017 the federal courts ratifies a Preliminary Adjustment Agreement (PAG) signed between the Federal Public Prosecutors and the three involved companies responsible, sealing the procedures for a socio-environmental assessment of the

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<sup>54</sup> “WHEREAS that the conclusion of this plea agreement stems from mere liberality of the PROMISEE, recognizing that the adoption of emergency measures is essential and does not imply any assumption of responsibility for the accident, whose causes remain uncertain and subject of independent investigations” (Page 3).

<sup>55</sup> "Tragédia Ambiental de Mariana Pode Virar Tragédia Processual, Diz Promotor". 2016. Agência Brasil. <http://agenciabrasil.etc.com.br/geral/noticia/2016-11/tragedia-ambiental-de-mariana-pode- virar-tragedia-processual-diz-promotor>.

<sup>56</sup> STJ. Reclamação N° 31.935 - MG (2016/0167729-7). Rel. Min. Diva Malerbi, 30 de junho de 2016.

<sup>57</sup> “OAB questiona indenizações pagas pela Samarco”. 27 October 2016. Available in: <<http://valadaresnatv.com.br/oab-questiona-indenizacoes-pagas-pela-samarco/>>.

<sup>58</sup> "BHP And Vale Face \$44Bn Civil Claim In Brazil Over Dam Disaster - FT.Com". 2016. Financial Times. <http://www.ft.com/cms/s/0/f771c230-1182-11e6-bb40-c30e3bfcf63b.html#axzz4HPUqw9VD>. The full content of the public civil lawsuit (only in Portuguese) is available in: <<http://www.mpf.mp.br/mg/sala-de-imprensa/docs/acp-samarco>>.

adverse effects of the disaster. However, no agreement was reached concerning whom would perform the socio-economic assessment of situation of the River Doce basin communities after the collapse of the dam. Civil society organization and social movements objected to the appointment of a consultancy company selected by the parties of the agreement on the basis of its intimate relationship with the companies and lack of independence, impartiality and technical expertise to develop a comprehensive study of the socio-economic situation of the affected area. After a formal complaint by civil society, the Public Prosecutors established a working group to consult with communities and organizations representing them with the objective of elaborating a protocol to the referred PAG. The protocol would set criteria for the appointment of the entity responsible for the diagnostic of the socio-economic impacts – especially the obligation that the consultancy demonstrates a thorough experience in remediation of human rights abuses – and provide for meaningful consultation with affected communities.

60. Samarco, Vale and BHP challenged this initiative and the legitimacy of the protocol and the work of the working group, as well as the efforts to establish a transparent and transparent and participatory decision-making process for the assessment of the impacts of the disaster. According to a letter endorsed by more than 400 affected individuals, experts, academics, social movements and CSOs in Brazil and abroad, the three companies' attitude are "geared towards curtailing the participation of the affected communities in the decision-making processes that concern their own lives" and to "setting unilaterally the terms and conditions of reparatory measures and the means by which impacts will be measured", ultimately undermining the right of the victims to an "full and fair remediation".<sup>59</sup>

61. Brazilian environmental agency, IBAMA, has concluded<sup>60</sup> that efforts by the companies concerned have been insufficient to stop the continuing leakage of mud from the Fundão tailing dam site in the State of Minas Gerais. The odds are that more waste will reach the downstream region once the rainy season begins.

62. In general, a report by the agency concluded that most of the recommendations made earlier were not fully complied by the companies. The high number of sites that still require action without soil conservation intervention (71%), drainage (62%) and containment (53%) is a concern. Such interventions are essential for the containment of the sediments and to prevent future recharge of the bodies to the rivers.<sup>61</sup>

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<sup>59</sup> See: "BHP BILLITON, VALE AND SAMARCO act to prevent just reparation of damages caused by the Rio Doce criminal disaster, Brazil". Available in: < <http://conflitosambientaismg.lcc.ufmg.br/noticias/bhp-billiton-vale-e-samarco-agem-para-impedir-a-reparacao-justa-dos-danos-causados-pelo-desastre-criminoso-do-rio-doce-brasil/>>.

<sup>60</sup> IBAMA. "Relatório Fase Argos Da Operação Águas". 2016. [http://www.ibama.gov.br/phocadownload/noticias\\_ambientais/relatorio\\_fase\\_argos\\_operacao\\_augias.pdf](http://www.ibama.gov.br/phocadownload/noticias_ambientais/relatorio_fase_argos_operacao_augias.pdf).

<sup>61</sup> IBAMA. "Relatório Fase Argos Da Operação Águas". 2016. [http://www.ibama.gov.br/phocadownload/noticias\\_ambientais/relatorio\\_fase\\_argos\\_operacao\\_augias.pdf](http://www.ibama.gov.br/phocadownload/noticias_ambientais/relatorio_fase_argos_operacao_augias.pdf), p. 47.

## **II.2. Principle 2: Complicity with human rights abuses**

63. Principle 2 of the UN Global Compact requires companies to make sure that they do not engage in activities where they might be complicit in human rights abuses. In order to avoid being complicity with human rights abuses, the UN Global Compact states that companies should conduct an effective human rights policy and an appropriate human rights due diligence.

64. As noted by the Special Representative of the Secretary General on Business and Human Rights, the concept of complicity is not confined to a legal dimension; it has also a social character. If a company is perceived to benefit from the human rights abuses committed by other entities – public or private – it can be considered, in the eyes of the communities and the relevant stakeholders, to be complicit with human rights abuses<sup>62</sup>.

65. In the present case, Vale and BHP Billiton, as the two shareholders and controlling companies of Samarco, accrued financial and other material benefits from Samarco operations in the pre-disaster period. In light of all the evidence presented in this allegation that Samarco profited from the extraction of resources without the correspondent investment on the safety of the dam structure and diligence to safeguard human rights from its collapse, it is logical to conclude that Vale and BHP Billiton tacitly endorsed Samarco's flawed approach to risk management, one that grossly overlooked the potential human rights impacts of its activities.

66. The two controlling companies lacked an adequate human rights due diligence and failed to exercise proper oversight over Samarco operations, thus violating Principle 2 of the Global Compact.

## **II.3 Principles 7 and 8: Environment**

67. Principles 7 and 8 of the UN Global compact relate to the protection of the environment. Principle 7 requires businesses to take a precautionary approach regarding environmental challenges, meaning that companies must take effective preventive measures to avoid all threats of serious or irreversible damage in terms of environmental degradation. Along with that, principle 8 determines that "*businesses should undertake initiatives to promote greater environmental responsibility*". In accordance with these principles, the Rio Declaration stresses that business has the responsibility to ensure that activities within their own operations do not cause harm to the environment. To do so, companies must have assessment or audit tools (such as environmental impact assessment, environmental risk assessment, technology assessment, life cycle assessment).

68. The environmental impact assessment documents elaborated by Samarco were insufficient to adequately measure and prevent harms to the environment. The presence of the mud along the Doce River caused the death of enormous amounts of fish stock and other animal species. Furthermore, the

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<sup>62</sup> Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, John Ruggie. Clarifying the Concepts of "Sphere of influence" and "Complicity". 15 May 2008, p. 9, paragraph 30.

riverbank's soil and the vegetation have been negatively affected, and until the clean-up of the mud the river will suffer from the degradation of its surrounding vegetation. It is estimated that more than 3.7 thousand acres of riparian vegetation was destroyed.<sup>63</sup>

69. The entirety of the environmental damages is yet to be fully measured, but there is already strong evidence the mud wave has seriously affected the fauna and flora of the more than 600 miles of the Doce River. According to a study by the Federal University of Rio Grande, included in the Final Report of the External Committee on the Dam Disaster in Mariana of the Deputies' Chamber, the water of the preserved areas of the Atlantic Ocean was contaminated with heavy metals, including arsenic, plumb, cadmium and copper. One of the affected areas is the archipelago of Abrolhos, one of the richest sites of marine biodiversity in the world.

### **III. INCONSISTENCIES BETWEEN THE COMMUNICATION ON PROGRESS (COP) AND ACTUAL POLICIES AND PRACTICES**

70. As members of the Global Compact, Samarco, Vale and BHP Billiton commit to annually submit a Communication on Progress (COP). The three companies qualify for the "GC Advanced" status, which means that they fill an additional questionnaire covering the company's implementation of advanced criteria and best practices. Additionally, each of the three companies submitted, in the year of 2015, their annual sustainability reports as the main document where they describe their efforts to comply with the GC Principles.

71. Mariana's dam disaster has revealed the inconsistencies between Samarco, Vale and BHP Billiton's self-assessment to the Global Compact and their actual corporate policies and practices. The same holds true for the statements and declarations made in their annual sustainability reports or the commitments enshrined in their internal policies.

72. Table 1 displays the self-assessment of Samarco, Vale and BHP Billiton to selected criteria of the advanced reporting questionnaire. When confronted with the facts exposed in this Allegation, it becomes clear that much information provided by the companies is inaccurate. Accounts of the immediate moments after the dam burst indicate that Samarco staff were confused and paralyzed, with no clear line of command or distribution of roles and responsibilities.<sup>64</sup> This directly contradicts Samarco's positive criteria assessment "Allocation of responsibilities and accountability for addressing human rights impacts". Even if such an allocation formally existed before the disaster, it failed drastically in its immediate aftermath.

73. The analysis of the three companies' policies and annual sustainability reports provide further insight on the distance between corporate speech and practice. Where Samarco initially sought to

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<sup>63</sup> Brazilian Chamber of Deputies, note 2, *supra*.

<sup>64</sup> Dieguez, Consuelo. A Onda. <http://piaui.folha.uol.com.br/materia/a-onda-de-mariana/>.

attribute the causes of the disaster to seismic movements and to qualify it as an unforeseeable event, BHP Billiton's Charter declares that the company believes that "all accidents and occupational illnesses and injuries are preventable".

74. In their 2015 Annual Sustainability Report, Vale declared that "Vale's dams are operated by adopting advanced engineering techniques that follow strict controls, as well as systematic monitoring and annual external audits to ensure safety". As found by the ongoing criminal investigation that ended in the indictment of some Samarco officials, the safety of the dam was in jeopardy years before the tragic event, and reports have emerged that Vale disposed more than double of residues in Fundão dam than firstly declared<sup>65</sup>. Though Vale recognizes, in the same document, that its "ability to interfere with policies, procedures and practices varies based on the degree of our influence with our stakeholders", instead of publicly exerting its strong influence on its own subsidiary to prompt a coordinated, adequate and time-effective reaction to the disaster, Vale reprehensibly concentrated its first public declarations on the impossibility of the imputation of legal liability on the company for the event, based on their position as "mere" shareholders of Samarco without any powers over the management of the latter.<sup>66</sup> Though Vale still argues that it has no legal liability for the event, it has nevertheless signed the settlement agreement with Brazil public authorities, thus assuming the obligation to pay for the reparatory measures on a subsidiary basis, i.e., if Samarco defaults on its obligations.

75. As for BHP Billiton, it is particularly intriguing to note that it lacks a process to deal with environmental accidents, as showed in the table below. Additionally, by entering into a settlement agreement without prior consultation with the affected communities, BHP Billiton showed disregard for its own commitment to "engaging regularly, openly and honestly with people affected by our operations and by taking their views and concerns into account in our decision-making", as stated in the company's Charter.

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<sup>65</sup> *Vale lançou em Fundão mais que o dobro de rejeitos declarados, diz P.* Disponível em: <<http://g1.globo.com/minas-gerais/desastre-ambiental-em-mariana/noticia/2016/05/vale-lancou-em-fundao-mais-que-o-dobro-de-rejeitos-declarados-diz-pf.html>>. Acesso em: 18 ago. 2016.

<sup>66</sup> *Vale nega responsabilidade legal por rompimento de barragem em MG - 01/12/2015 - Cotidiano - Folha de S.Paulo.* Disponível em: <<http://m.folha.uol.com.br/cotidiano/2015/12/1713642-vale-nega-responsabilidade-legal-por-rompimento-de-barragem-em-mg.shtml?mobile>> *Vale nega negligência e quer ajuda de governo para recuperar rio Doce - Notícias - R7 Minas Gerais.* Disponível em: <<http://noticias.r7.com/minas-gerais/vale-nega-negligencia-e-quer-ajuda-de-governo-para-recuperar-rio-doce-27112015>>.

**Table I – Self-assessment of Samarco, Vale and BHP Billiton (selected criteria)**

Topic	Criteria	Samarco	Vale	BHP Billiton
HR	4. On-going due diligence process that includes an assessment of actual and potential human rights impacts (BRE 2 + BRE 3 + ARE 2 + ARE 3)	Yes	Yes	Yes
	4. Allocation of responsibilities and accountability for addressing human rights impacts	Yes	Yes	Yes
	4. Internal decision-making, budget and oversight for effective responses to human rights impacts	Yes	Yes	Yes
	4. Processes to provide for or cooperate in the remediation of adverse human rights impacts that the company has caused or contributed to (BRE 3+ BRE 4 + ARE3 + ARE 4)	Yes	Yes	Yes
	5. Monitoring draws from internal and external feedback, including affected stakeholders	Yes	Yes	Yes
	5. Process to deal with incidents the company has caused or contributed to for internal and external stakeholders (BRE 4 + ARE 4)	Yes	Yes	Yes
	5. Grievance mechanisms that are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue (BRE4 + ARE4)	Yes	Yes	Yes
Labour	7. Risk and impact assessments in the area of labour	Yes	Yes	Yes
	7. Allocation of responsibilities and accountability within the organization	Yes	Yes	Yes
	7. Grievance mechanisms, communication channels and other procedures (e.g., whistleblower mechanisms) available for workers to report concerns, make suggestions or seek advice, designed and operated in line with the representative organization of workers	Yes	Yes	Yes
Environment	10. Environmental risk and impact assessments	Yes	Yes	Yes
	10. Allocation of responsibilities and accountability within the organisation	Yes	Yes	No
	10. Grievance mechanisms, communication channels and other procedures (e.g. whistleblower mechanisms) for reporting concerns or seeking advice regarding environmental impacts	Yes	Yes	Yes
	11. Process to deal with incidents	Yes	Yes	No
UN Goal and Issues	15. Align core business strategy with one or more relevant UN goals/issues	Yes	Yes	Yes
	15. Adopt and modify operating procedures to maximize contribution to UN goals/issues	Yes	Yes	Yes
Governance	21. Publicly recognize responsibility for the company's impacts on internal and external stakeholders	Yes	Yes	Yes
	21. Consult stakeholders in dealing with implementation dilemmas and challenges and invite them to take active part in reviewing performance	Yes	No	Yes
	21. Establish channels to engage with employees and other stakeholders to hear their ideas and address their concerns	Yes	Yes	Yes

#### IV. REQUESTS

76. The tragedy of Doce River represents an egregious violation of the UN Global Compact aims and principles, especially Principles 1, 2, 7 and 8 by the part of Samarco and its controllers, Vale and BHP Billiton.

77. Despite the recognition that the companies, especially Samarco, have undertaken several reparatory measures and actions to restore the livelihoods of the affected communities, these have been mostly palliative and, by and large, they have failed to abide by the highest international human rights standards on the right to an effective remedy. On the top of the lack of an emergency plan to mitigate

the impacts of the dam collapse in the immediate aftermath of the disaster, the companies have showed complete disregard for the voices of the victims and affected communities by entering into a settlement agreement with the Brazilian Executive unprecedented by a meaningful consultative process.

78. Failure to prevent further environmental harm is evidenced by the absence of appropriate measures to stop the continuous leakage of the mud as well as its spreading throughout the ocean and lands adjacent to the Doce River.

79. In sum, the actions and omissions of the three companies provoked irreparable suffering and damages to the lives of the affected individuals, communities and to the fauna, flora and ecosystems of the Doce River basin.

80. According to the UN Global Compact integrity measures, it reserves the right of removing a company from the list when its permanence is considered to be detrimental to its reputation and integrity.

**This allegation is to request that the Global Compact initiate a procedure to determine the extent to which the presence of Samarco, Vale and BHP Billiton in the platform is detrimental to its reputation and integrity.**

81. This disaster has more than ever called into question the efficacy of the UN Global Compact and its commitment to disengage companies that are only willing to use the initiative's reputation for commercial purposes.

82. Pursuant to the procedures of the integrity measures<sup>67</sup> of the Global Compact, it is hereby requested that the following actions be carried out upon formal receipt of this allegation:

i) A communication is issued to the three companies with a request that concrete evidence is provided regarding actions already adopted or planned aimed at fully remediating the human rights and environmental harms caused by the Fundão dam failure;

ii) If the companies fail to respond to the communications within the timeframe provided in the integrity measures, or if their responses are deemed to be inappropriate or insufficient to meet the expected standards of corporate social responsibility and respect for human rights of the UN Global Compact Principles, that the three companies are suspended from the UN Global Compact until their policies and procedures have been modified to come in line with them;

iii) If the three companies fail to adjust their conducts and provide credible, meaningful and concrete evidence that the acts and omissions identified in their current policies and operational procedures have been corrected, that they are removed permanently from the list of participants of the Global Compact.

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<sup>67</sup> Integrity measures – allegations of systematic or egregious abuses  
(...) safeguarding the reputation, integrity and good efforts of the Global Compact and its participants, requires transparent means to handle credible allegations of systematic or egregious abuse of the Global Compact's overall aims and principles

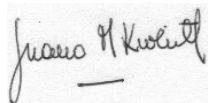
[Process description] is, as a result of the process outlined above and based on the review of the nature of the matter submitted and the responses by the participating company, the continued listing of the participating company on the Global Compact website is considered to be detrimental, the Global Compact Office reserves the right to remove that company from the list of participants and to so indicate on the Global Compact website.




83. It is hereby requested that the authors of this Allegation are continuously informed about the measures taken by the Global Compact Office with respect to the allegations and requests set forth herein, and that they are afforded the opportunity to submit additional information during the processing of this allegation, as well as the opportunity to comment on the responses formulated by the three companies.

84. In light of the seriousness of the facts narrated in this allegation and the unprecedented scale of the environmental impacts and human rights violations caused by this disaster, the authors request that the Global Compact conducts *in loco* diligences and that it consults with affected communities, civil society organizations, the Federal and State-level Public Prosecutors and independent research centers in the process of treating this allegation, and that no decision is issued before such individuals and entities are meaningfully consulted.

Sincerely,



**Juana Kweitel**  
Executive Director  
Conectas Human Rights



**Tchenna Maso**  
Coordinator of the Human Rights Collective  
Movimento dos Atingidos por Barragens