

# OPEN LETTER

Translation. Original version in Portuguese.

**TO THE BRAZILIAN INSTITUTIONS RESPONSIBLE FOR IMPLEMENTING MEASURES TO REPAIR THE DAMAGE CAUSED BY COLLECTIVE RIGHTS VIOLATIONS RESULTING FROM THE COLLAPSE OF THE DAM BELONGING TO THE MULTINATIONAL COMPANY VALE S.A. IN BRUMADINHO, MINAS GERAIS**

We, the representatives of the undersigned organisations, by means of this Open Letter express to you Excellencies our concerns regarding the shortcomings of the collective reparation process being implemented as a result of the collapse of the B-I, B-II and B-IVA dams at the Córrego do Feijão mine in the municipality of Brumadinho/MG, and especially the negative consequences resulting therefrom.

According to information received from Brazilian partners and organisations, the compensation process has been problematic since its inception, and has been characterized by the control of the mining company over the measures taken along with the restriction of public participation in hearings, decisions and agreements which were established. We were also informed of the lack of accountability of state agents and also the disregard for the already existing and autonomous forms of organisation of the residents of the affected locations and the vital role of the defenders of human rights and nature who live in the affected area and who, for years, have been warning the general public about the damage and risks of mining operations in Brumadinho and the surrounding region.

In recent months, the problems referred to have also characterized the process of preparation, definition of the content and implementation of the settlement agreement signed on February 4th, 2021, before the Court of Justice of Minas Gerais (TJMG), between, on the one hand, the mining company Vale S.A. and, on the other, the State of Minas Gerais, represented by Governor Romeu Zema and three judicial institutions: the Public Prosecutor's Office of Minas Gerais (MPMG), the Public Defender's Office of the State of Minas Gerais and the Federal Public Prosecutor's Office. In short, the agreement aims to put an end to legal proceedings related to the collective damage resulting from the collapse of the dams in the municipality of Brumadinho/MG.

Before stating our concerns in more detail, we would like to express our solidarity with all the people and communities affected by this crime/tragedy, which claimed 273 lives and caused incalculable social, economic and environmental impacts in the Paraopeba river basin, in the State of Minas Gerais and in Brazil. In accordance with them, we cannot see integral reparation in fact in this judicial settlement, which did not involve, in an effective way, public hearing and popular participation. Using the concept of integral reparation established by the jurisprudence of the Inter-American Court of Human Rights as a basis,

we can see that the process of collective reparation that has been implemented does not take into account measures that we consider essential. In view of this, we hereby present some issues which, in our opinion, should be considered in the implementation of the aforementioned agreement or in other measures, despite the violations already committed in the elaboration of its terms, in order for the rights of the affected communities to be minimally guaranteed.

As opposed to what has been reported by the mainstream media, especially after the approval in the Minas Gerais Legislative Assembly (ALMG) of Draft Bill no. 2.508/2021, known as “Draft Bill of Zema's Settlement Plan with Vale”, and Proposal for Constitutional Amendment (PEC) no. 68/21 which allocates 1.5 billion reais from the settlement agreement between Vale and the Government of Minas Gerais to the 853 municipalities of the state, it is our understanding that those who benefit most from this settlement agreement are not the people of Minas Gerais, and even less those who live in the municipalities of the Paraopeba River basin affected by the collapse of the dams of Córrego do Feijão, but Vale S.A. itself and the entire mining sector. It should be remembered that the first press release issued by the mining company after signing the agreement was intended for its own shareholders and that the company's shares rose by 4.3% on February 4th of this year, in an intense movement of shares by the investors in response to the supposed “final resolution” of an enormous conflict and the minimisation of risks by Vale in signing the settlement agreement.

In other words, not only did the mining company save a significant amount, since during the legal proceedings a value in compensation to the State of some R\$ 54 billion (approximately US\$ 10 billion) had been considered as being fair according to the studies of João Pinheiro Foundation, and the global ceiling of the agreement, however, was R\$ 37.68 billion (US\$ 6.8 billion)<sup>1</sup>, the company also initiated, with incredible success, a process of “resolution” of legal conflicts in Minas Gerais, which were considered as risks by the company's investors in the midst of a period of sharp growth in the price of the main mineral commodities in the foreign market.

What has occurred, according to our partner organisations, is a reparation process which to a great extent can be considered “window dressing”, largely governed by the main perpetrator of the serious violations which allocates a considerable part of the resources to extraneous measures and which is additionally violating people’s rights, as it overburdens the people affected and promotes further damage to certain local groups that suffer the negative consequences of certain construction works.

Therefore, being aware of the leading role of the institutions represented by Your Excellencies in the implementation and monitoring of the measures provided for in this agreement, we would like to point out some elements that, if applied, would mean, at least and

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<sup>1</sup> The actual amount that will be disbursed by Vale from the signing of the agreement is R\$26 billion (US\$4.8 billion), i.e. the mining company saved about R\$19 billion (US\$3.5 billion).

in spite of all the failings already described, moving in the direction of reparation and not of new violations, as has been the case until now. These are the following:

1. Guaranteeing that **the people affected are the central focus throughout the entire reparation process**; as expressly provided for by Clause 5.1.1. of the settlement agreement, with the guarantee of holding consultations and public hearings throughout the agreement implementation process, with effective hearing of the people involved, since they did not have the right to participate in the negotiations;
2. **Guaranteeing the right to Independent Technical Advisory Services (ATIs)** and its central role in the reparations process;
3. **The non-allocation of funds raised from the reparation process to works or actions that will cause new impacts on the affected communities**, as is the case with the Metropolitan Rodoanel project which represents a misuse of the compensation for collective damages besides facilitating the distribution of production by the company that perpetrated the crime and others in the sector;
4. **Guaranteeing that the impacts of the dam collapse at Vale in Brumadinho are investigated by the ATIs and by independent scientific experts and not by private companies hired by the mining company itself**, as has been done in many programmes of the settlement agreement, and, to this end, funds shall be allocated for ATIs to commission or conduct independent scientific studies which serve as a counterpoint to the studies of the companies hired by the perpetrator of the crime;
5. **Guaranteed access to information, transparency and social control in all stages of implementation of the agreement and execution of reparation measures**; and from now on any secret or confidential procedure on the part of the State of Minas Gerais or other institutions involved must be forbidden, as occurred previously in the negotiation of the agreement;
6. Guaranteeing **the right to memory and the truth**, with due clarification to the general public, by the company, about what were the causes of the dam collapsing and who were the responsible people, a fact that was completely ignored by the agreement concluded;
7. The due **punishment of those responsible for the event, whether material or intellectual, regardless of their function, for all crimes committed**, both employees of the multinational companies Vale S.A., TÜV SUD and FUGRO, as well as State agents in all entities with responsibility for controlling dam safety and preventing such events, that is, resources shall be invested to take all necessary measures ensuring swift progress of the criminal proceedings already underway in the District of Brumadinho, as well as other proceedings underway within the Federal Justice System;

8. The **non-use of the settlement agreement for purposes of propaganda**, neither by Vale S.A., nor by the State (State Government, Municipalities, Legislative, etc.).
9. **Formal and public apologies by Vale S/A and by the State** (in its capacity as the supervising and licensing body) to all the families and communities affected by the crime, a fact which was also ignored by the agreement;
10. Implementation of the so-called “measures of satisfaction” i.e. **measures of correcting the injustices occurred**, with a view to **preserving the historical memory** of what happened for the present and future generations and dignifying the victims, through recurring actions of homage and dissemination of the truth about the facts. No such initiatives may be undertaken by Vale S.A. or the other companies and agents responsible for the violations. In this same regard, all actions to be developed in the implementation of the settlement agreement must be registered with the names of the 273 fatal victims.
11. Guaranteeing **that this type of crime-tragedy will not happen ever again**, whether on the part of Vale or any other mining company operating in Minas Gerais. In this sense, it is important that the State tightens legislation and policies for environmental, labour and other inspections of mining companies.
12. In view of the intentions of Vale S.A. and its subsidiary MBR to continue mineral extraction and to expand mining activities at the Jangada mine, in the same Paraopeba II complex where the dam broke, we consider it appropriate to definitively **revoke the mining concessions and environmental licenses already granted**, along with a requirement that Vale S.A. and its subsidiary MBR present and execute, within a reasonable period of time, a mine closure plan for the entire mining complex concerned, including all investments necessary for environmental recovery and an economic transition that fosters other activities to generate employment and income in order to free the population of the region from mining dependency and protect it from further damage and violations in the future. The expansion of mineral extraction in the Jangada mine will increase the problems of water supply for human consumption in the region and will send a strong signal to the entire mining sector that crime can be good business.
13. **Respect for the actions of human rights and nature defenders working in the region**, recognising their important role in the search for truth, justice and integral reparation, in such a way that they can carry out their activities without being subjected to retaliation, campaigns of discredit, persecution, surveillance, arbitrary detention or damage to their physical and mental integrity.
14. **May the search not stop until the last victim is found.**

In conclusion, we hope that the many failures occurring in the process of drawing up this settlement agreement, signed between Vale and the state of Minas Gerais, serve as a lesson for the ongoing process of re-negotiation being undertaken between Samarco Mineração (read: Vale and BHP Billiton) and the states of Minas Gerais and Espírito Santo, as a result of the rupture of the Fundão dam in Mariana (MG), be conducted with the participation and active hearing of those who lost the most in this whole process: the many indigenous, quilombola, urban, small farmer communities, etc. who live along the Rio Doce basin.

October 20th 2021

Yours faithfully,

Aktionsgemeinschaft Solidarische Welt e. V.  
Bischöfliches Hilfswerk MISEREOR e. V.  
Both Ends  
Christliche Initiative Romero (CIR)  
Coopération Internationale pour le Développement et la Solidarité (CIDSE)  
Cooperazione per lo Sviluppo dei Paesi Emergenti (COSPE)  
DKA Austria – Hilfswerk der Katholischen Jungschar  
Earthworks  
European Center for Constitutional and Human Rights (ECCHR)  
KoBra – Kooperation Brasilien e. V.  
Lateinamerika-Hilfswerk Adveniat  
London Mining Network  
Society for Threatened Peoples

