



National Contact Point  
for OECD Guidelines for  
Multinational Enterprises

MINISTÉRIO DA  
ECONOMIA



### **FINAL STATEMENT – Specific Instance no. 03/2020**

**Complainant:** Vila Solaris Hospedagens e Eventos, represented by Rogério Mário Ziviani Gomes

**Respondent:** Vale S.A.

#### **NCP Brazil**

Ministry of Economy

Executive Secretariat of the Chamber of Foreign Trade (SE-CAMEX)

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**5 May 2021**

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## 1. EXECUTIVE SUMMARY

1. Filed on 17 February 2020, this complaint was admitted on the basis of article 4 of Resolution/NCP no. 01/2016, in effect at the time of filing. On 31 March of the same year, the rapporteur recommended the forwarding of this and two other complaints involving similar grounds and which were based on the same underlying event – the failure of Dam B1, of the Córrego do Feijão Mine, located in Brumadinho, Minas Gerais, which occurred on 25 January 2019. The Report was approved by the IWG-NCP at its ordinary meeting on 13 April 2020, and the following day the representatives of the Respondent and the Complainants were informed of the acceptance and the content of the complaints.

2. Seven days later (21 April 2020), the Complainants, through their attorneys, requested a stay of this case, in view of an imminent agreement between the parties in another forum. They also requested the suspension of the publication of the Report already approved by the IWG-NCP, which was accepted by the Co-ordination. In the meantime, on 29 May 2020, already aware of the suspension of the procedure, the Respondent submitted its counterclaims.

3. Finally, on 27 November 2020, after successive extensions of the suspension of the procedure due to ongoing negotiations, the Complainants stated that an agreement had been reached with Vale – the content of which was not made available to this NCP – and requested the closure of this Complaint. The request was accepted as the withdrawal of the Specific Instance, as provided for by item 11.1 of the Procedures Manual.

## 2. BRIEF SUMMARY OF THE COMPLAINTS

4. The Complainant Rogério Ziviani was partner-director of "Vila Solaris Hospedagens e Eventos", a development located in the São Sebastião das Águas Claras district (known as "Macacos") which was closed on 16 February 2019 as it was inside the Self-Rescue Zone (SRZ), an area at risk of being affected in the event the dam should fail. The events described state that, on 27 July 2019, the parties signed a "Lease Agreement with Negotiation Commitment for Compensation" whereby it was agreed that Vale would use the site "until an extrajudicial agreement is reached to compensate for the damages faced by the LESSORS/CONTRACTORS resulting from the EVACUATION" (paragraph 1, item 1.1, of the Agreement) or until six months after the signing of the agreement.

5. According to the Complainants, the Respondent ceased depositing the agreed rent in January 2020 and did not propose any compensation for damages which, according to the Agreement, should cover "losses and damages, moral damages and lost profits" due to the suspension of activities of Vila Solaris. Moreover, according to the Complainants, "the São Sebastião das Águas Claras business community did not participate in the mining company's decision-making process" and "there was no publicity to enable the lay population to easily understand the risk of failure of the B3 and B4 tailings dams". In the end, it was claimed that the resolution and mediation method created by the Respondent was unfair and arbitrary.

6. In summary, the complaints and their correspondence with the Guidelines are as follows:

COMPLAINTS	GUIDELINES
Lack of support or engagement and promotion of social dialogue with the population potentially affected by the failure of the dam.	GENERAL POLICIES: B, 2; and 14

Lack of disclosure of risks and potential impact of the activities on the environment and the health and safety of the public.	ENVIRONMENT: 2, a) and b)
Lack of incentives for the economic stimulation of the region and co-operation with the local community.	GENERAL POLICIES: 3, 4
Non-observance of the obligation to meet the "relevant international agreements, principles, objectives and standards".	ENVIRONMENT: heading
Lack of disclosure about conduct, risk management and compliance with legislation.	DISCLOSURE: 3, a) – d)
Non-cooperative extrajudicial dispute resolution model.	HUMAN RIGHTS: 6
Absence of monitoring mechanisms and clear objectives relating to environmental performance.	ENVIRONMENT: 1, b) and c)
Disregard for the precautionary principle.	ENVIRONMENT: 4

7. For its part, Vale S.A. argued, in short, that "although it recognises the importance of the work conducted by the NCP [...] it is already addressing the issues related to the alleged violations of rights" and the NCP would not be an adequate means for the discussion and appreciation of the claims made by the Complainants. Furthermore, according to the Respondent, issues related to individual damages are already being addressed by Vale under the Extrajudicial Compensation Programme and issues related to collective and social damages are already being discussed by the company under the public civil actions filed against it.

### **3. CONCLUSION**

8. In view of the Complainants' willingness not to pursue the present Complaint, NCP Brazil did not offer its good offices to the parties. However, the substantive issues, which go beyond individual issues that are usually the subject of agreements such as the one entered into by the parties above, remain in the scope of work and will be the subject of specific reports and detailed analysis by this NCP as part of two other complaints (Specific Instances nos. 01 and 02/2020).

Document signed electronically  
Gabriel Maldonado  
Rapporteur

## **ANNEX I – Chronological Summary of Specific Instance no. 01/2020**

<b>Description</b>	<b>Date</b>
Receipt of Complaint no. 03/2020	14 February 2020
Admissibility Analysis of Specific Instance no. 03/2020	21 February 2020
Initial Assessment Report	31 March 2020
Communication to the Respondent and request for counterclaims	14 April 2020
Request for suspension by the Complainants	21 April 2020
Receipt of counterclaims from the Respondent	29 May 2020
Request for closure by the Complainants	27 November 2020
Consultation of the Respondent regarding additional statement	11 January 2021
Dispatch of the Draft Final Statement to the Parties	18 January 2021
Submission of a revised version of the Final Statement, after comments from the Respondent	12 April 2021
Approval of the Final Statement by the IWG-NCP	26 April 2021
Preparation of the version of the Final Statement for publication	5 May 2021