

**Interview with EDMUNDO ANTONIO DIAS NETTO JUNIOR, who is a federal public prosecutor in Belo Horizonte and a member of the Rio Doce and Brumadinho task forces of the Federal Prosecutor's Office**

**By Caritas- Minas Gerais – Brazil, Conectas Direitos Humanos and**

**Business & Human Rights Resource Centre**

**13 October 2020**

1. In order to inform the foreign audience , could you please explain the role of the Federal Prosecutor's Office in the Fundão Dam burst?

The Federal Prosecutor's Office (Ministério Público Federal, MPF), under the Brazilian law, is the body responsible for seeing to the defense and maintenance of the legal order, of the democratic regime, social and individual interests and prosecution of criminal offence. It must, therefore at all times, act as a promoter and protector of human rights and all it stands for, including the role of an Ombudsman – even while prosecuting.

In line with these very broad functions, the MPF, in respect to the disaster of the Fundão dam burst, in Rio Doce basin; through a group of public prosecutors who are part of the Rio Doce Task Force, has acted in two strands, which are:

- Firstly, to promote civil liability for **Samarco** and their parent companies, **BHP Billiton** and **Vale**. This occurs in the context of a public civil action filed by the Federal Prosecutor's Office on 2<sup>nd</sup> of May, 2016 against these three mining companies, as well as against the federal entities; Federal Union, State of Minas Gerais and bodies of the respective indirect administrations. The requests made in this public civil action are wide and varied, as the damages caused by **Samarco**, **BHP Billiton** and **Vale** in the Rio Doce basin are extremely extensive, deep and multidimensional.
- And, to also promote criminal liability for those involved, with a criminal action filed in October 2016, where 21 people were accused of homicides with eventual intent. Out of 26 people accused of various crimes, 22 are citizens and 4 are legal practioners, that is, **Samarco**, **BHP Billiton Brazil**, **Vale**; which are all mining companies as mentioned above, as well as **VogBR**, a company that issued report certifying perfect condition of the dam. However, the Federal Court granted habeas corpus; a practice used to stop or prevent

any illegal restriction or set people imprisoned illegally free or prevent it from happening, orders to block criminal action against some of the accused.

2. After 5 years, what is the situation of the affected communities?

The grim truth is that the disaster has been continuous, as the damages are recurrent on the affected population. These harms are on daily basis, both by the actions of the companies and by the activities of the Renova Foundation, a private law entity created by **Samarco, BHP Billiton** and **Vale** in an agreement (called **TTAC**) signed, in March 2016, with the federal bodies, i.e., the Union, the State of Minas Gerais, the State of Espírito Santo and other bodies indirectly affiliated to its administrations.

In the public civil action filed by the Federal Prosecutor's Office, two months after the companies and federal entities signed the **TTAC**, the **MPF** questioned, among other points, the non-inclusion of the affected population in this agreement between the defendants and the federal entities as they are directly affected. After all, it was their rights that **TTAC** was fighting for. This act has made us believe that the Renova Foundation was created as a shield to protect the image of these mining companies without the affected party's interest at heart. Unfortunately, as a result of this after such a long time, there is no doubt that the Renova Foundation has acted much more as an instrument to limit the liability of companies than as an agent of effective human, social and environmental reparation.

A pathetic example of this form of inhumane action effect by Renova Foundation is on the health area that is automatically connected to the defendant companies. In an absolutely dysfunctional way, the Renova Foundation has been acting as a barrier between the affected population and easy access to tests and studies on risk assessment to human health (**ARSH**).

The Federal Prosecutor's Office needed to act intensively in order to make it possible to give feedback on the results of **ARSH** assessments, which were carried out by an independent company in the municipalities of Mariana and Barra Longa, in Minas Gerais, for the people residing there. Several problems arose after this, even from the state government, to delay the findings to the population. We have requested the publication of the said report in petitions addressed to the Federal Court of the 12th Federal Court of Belo Horizonte. However, despite this, the right to adequate information of the population of the municipality of Linhares, in the State of Espírito Santo, has not yet been promoted thereby leaving them completely without information on the conclusions of the **ARSH** studies carried out in the estuarine region.

To provide an insight on this, **Samarco, BHP Billiton** and **Vale** petitioned the 12th Federal Court in Belo Horizonte, asking the Federal Prosecutor's Office or other bodies that might have access to the content of such studies, to keep them confidential, which is completely ludicrous considering the institutional independence of these bodies and also the fact that it impedes the access of the affected population, thereby violating their right to adequate information.

In addition to all of these, we have also seen the Renova Foundation terminating agreements with any independent entities that carry out studies in the area. This clearly shows that the Renova Foundation has been directed to, as a matter of fact, restrict the civil liability of defendant companies. Regardless of this unfortunate reality, **Samarco, BHP Billiton and Vale** have however contributed significant resources to the Renova Foundation that have been used in the area of advertising. But what Renova Foundation out to do is to promote full reparation and to never propagandize measures that - in addition to being their obligation and their existential reason -, in reality, appear unreal and seem more like a work of fiction.

Lately, private processes that monetize reparations have started to emerge. Of course, this phase is crucial to the affected population, but it can hardly be seen as a successful reparation. Looking at health as an example, it has been seen that some human health risk assessment studies have been interrupted, and the individual indemnity chapter cannot be confused with the integrity of reparations. This restrictive view of reparation is a striking example that the defendant companies do not intend to effectively solve the problem of a long overdue reparation. **Samarco, BHP Billiton and Vale** do not really want to find a solution. But they still want to be able to say that they have found one. . **Samarco, BHP Billiton, Vale** and the private foundation they instituted, Renova, have continually disrespected human rights.

3. Still in the first months and years after the dam break, there was an attempt to try to find some consensual solutions with **Samarco, Vale and BHP Billiton**. Could you give a general overview about the mechanism that was created?

To give an overview of this mechanism, the first thing they agreed on was a term of transaction and conduct adjustment. The companies signed this agreement with the Union and the State governments of Minas Gerais and Espírito Santo in March 2016, this is the TTAC agreement. The Federal Prosecutor's Office, in May 2016, questioned the TTAC agreement in court. In the public civil action filed by the Federal Prosecutor's Office, the companies, the union and the states are defendant. This shows a serious logical inconsistency in the **TTAC** agreement signed between the defendants, that is, companies and the federal entities. Thus, the defendants sat at the table and made an agreement between themselves.

Later on, other agreements were made, one of the them in January 2017, made by the Federal Prosecutor's Officer. This agreement from January 2017 addresses the principle that polluters should cover the main cost while defendants companies pay for the studies on the diagnosis of social environmental and socio economic damages carried out by independent institutions. The agreement guarantees that the indigenous peoples who were affected, as the Krenak people (that suffered spiritually, as they consider the Doce River, which they call Watu, a sacred entity) and theTupiniquim and Guarani peoples would be repaired according to their own decisions, considering free, prior and informed consent, according to the International Labour Organization

Convention 169. These same rights were also guaranteed for the other Rio Doce basin traditional people and communities that were affected by the disaster.

In November 2017, this agreement from January 2017, was changed with another agreement made with the defendant companies the Federal Prosecutor's Office, in conjunction with the State Prosecutor's Office of Minas Gerais. This new agreement recognized the right of the affected communities, in all Rio Doce basin, which include the right to have independent technical advice of their choice and thrust, in order to support them during the reparation process. This measure is extremely necessary, be it to guarantee their participation, as well as to reduce asymmetries, during the negotiation process, between the affected population and the biggest mining companies in the world.

Unfortunately, it was victory for Pirro, because among the 18 technical advisors that were chosen, based on this agreement, regarding the Rio Doce basin, only 2 of them were contracted by the defendant companies. However, they were different from the one that had been done with the Prosecutor's Offices which gave independency to the technical advisor. This was done with a methodological coordination conducted by another expert, which is independent of the defendant companies. There were three more specific agreements that resulted in the hiring of independent technical advisors selected by affected communities; which are operating in the municipalities like Mariana, Barra Longa and Rio Doce / Santa Cruz do Escalvado, municipalities located in the State of Minas.

Later, in June 2018, a much larger group of entities signed a new agreement that addressed the governance of the reparation process. The Public Defenders of the Union and of the States of Minas Gerais and Espírito Santo acted side by side in the negotiations, as well as the Federal and the State Prosecutor Offices of the States of Minas Gerais and Espírito Santo. There was a very strong inter-institutional performance there, which was later replicated in the process of solving another disaster involving the Vale company; the disaster that occurred in Córrego do Feijão mine in Brumadinho. This last agreement, which became known as TAC Governança, provided spaces for participation of affected communities at the Inter-Federative Committee, an organ that had been created previously, at the **TTAC** agreement to conduct the reparation process, as well as for the Renova Foundation's curator and advisory councils.

However, these indications depended on the operation of independent technical advisors throughout the Rio Doce basin, the vast majority of which have not been contracted to date by the mining companies; **Samarco, BHP Billiton and Vale**. Independent technical advisors - although the affected population has already chosen all of them - would also enable the renegotiation of **TTAC**, the agreement that was questioned by the **MPF** in the public civil action filed in May 2016. But this renegotiation, which would involve the review and the alteration of the socioeconomic and socio-environmental programs that the defendant companies and federal entities have entrusted to the Renova Foundation, should occur on a

participatory basis. This act would make the independent technical advisory services once again essential, by enabling the participation of the population of the extensive affected region, in two states of the Brazilian Federation.

**TAC** Governance, therefore, had an instrumental character, which is to enable the participatory renegotiation of all reparation programs; however it was hindered by the defendant companies in the face of not contracting independent technical advisors. This terrible scenario has already been taken to the justice system.