



The Samarco dam disaster:

BHP's failure to take sufficient action (Brazil)

The companies: BHP was, at the time of the catastrophic failure of the Fundão iron ore tailings dam, an Anglo-Australian mining company with a dual-listing on both the London Stock Exchange and the Australian Stock Exchange.¹ It has since delisted itself from the London Stock Exchange.² Samarco is a non-operated joint venture owned by BHP Billiton Brasil Ltda and Brazilian mining company, Vale, operating an open pit mine for iron ore in the Brazilian state of Minas Gerais.³

Affected rights holders: Indigenous and non-indigenous communities living along the River Doce, the main waterway through which waste emanating from the ruptured tailings dam flowed, have been severely impacted by the disaster. It is reported that as many as 1.4 million people inhabiting the area along the River Doce are seeking action to remediate ecosystems and restore livelihoods.⁴ Communities can no longer rely on the river for fishing, bathing and generating a source of income. For Krenak Indigenous communities, the River Doce was sacred and the pollution of the river was seen as its death, causing a loss of identity within the community.⁵

“ We know that we are dealing with one of the biggest companies in the world. We know the power [they] have. But I wanted to ask them to have a little more humanity, because we didn't ask to be in this situation.

Monica Santos

Details:

The Fundão Dam was a holding structure for waste material from Samarco's processing of iron ore.⁶ On 15 November 2015 the dam collapsed, releasing 45 million cubic metres of mining waste into the River Doce, killing 19 people, which community members allege included a woman who was heavily pregnant, burying villages, leaving thousands homeless and killing fish and wildlife.⁷

A broad range of human rights affecting hundreds of thousands of people in surrounding communities were impacted by the disaster, including the human rights to life, health, water, food, adequate housing, work and education. The rights to land, territory and resources, as well as the cultural rights of the Krenak peoples were also particularly impacted. Their environment was adversely and potentially irreversibly affected by pollution, the killing of fish and plant species and disruption of entire ecosystems.

More than 700,000 victims, including representatives of Krenak Indigenous communities are taking their case to the UK courts in the largest group claim in English legal history.⁸ The claimants allege that BHP was aware of the safety concerns associated with the tailings dam and failed to act on numerous warnings from independent safety experts, increasing its outputs despite concerns.⁹

Samarco signed an agreement worth £216mn with the Brazilian Government to fund mitigation and remedial measures for the environmental disaster and later reached a heavily criticised settlement worth almost £5bn to restore the environment and indemnify affected communities.¹⁰

On 25 June 2018, Vale and BHP Billiton announced that they signed a deal with the Brazilian authorities that settles a £4.3bn lawsuit related to the dam collapse, setting a two-year timeline to reach settlement in a separate lawsuit. On 2 October 2018, Brazilian prosecutors reached a final compensation deal for an undisclosed amount with Samarco, Vale and BHP including compensation payments for relatives of those killed by the dam collapse and those who lost their property. In October 2020, Brazilian state and federal prosecutors requested the court to reopen the civil action lawsuit against Samarco, Vale and BHP for damages caused by the dam collapse, alleging that the companies were failing to meet their obligations under the previous settlement agreement in a timely fashion.¹¹

The High Court denied jurisdiction for English courts to hear the case on the basis that it was an “abuse of the process of the court” to allow parallel cases to proceed in Brazil and England.¹² However, the Court of Appeal allowed the case to proceed on the basis that the compensation being paid in Brazil did not seem adequate.¹³

While Samarco faced sanctions, compensation negotiations involving Vale and BHP were, at the time of this report, still ongoing and the communities continue to wait to receive meaningful reparations.¹⁴ BHP commented in July 2022 that it considered the legal action being taken against it in the UK unnecessary “as it duplicates matters already covered by the existing and ongoing work... under the supervision of the Brazilian courts and legal proceedings in Brazil”.¹⁵

How could a UK Business, Human Rights and Environment Act have made a difference?

In our assessment, had a UK Business, Human Rights and Environment Act been in place, BHP would have been under an obligation to take all reasonable steps to make sure Samarco complied with all applicable laws and international standards concerning dam safety, paid heed to expert advice, disclosed and acted swiftly on any findings of risk, and worked with the authorities, workers and local communities to avert a disaster.

Had a claim been brought before UK courts in reliance on such a law, the High Court would likely not have made its initial decision preventing access to justice for the victims. This would have saved the claimants considerable time and resources, and they could have seen their claim move more quickly to an examination of its merits.

Once the harm was established, the burden of proof would have fallen on BHP to prove that it had taken all reasonable steps to prevent the dam collapse. Had a UK court found, under this law, that BHP had contributed to, or failed to take all reasonable due diligence steps to prevent the dam collapse, it would likely have held it liable and ordered it to pay compensation to the claimants and to take other remedial action, such as providing funds for environmental rehabilitation.

Endnotes

- 1 The Guardian (6 November 2018), "[BHP Billiton facing £5bn lawsuit from Brazilian victims of dam disaster](#)"; The Guardian (8 July 2022), "[Victims of Brazil's worst environmental disaster to get day in UK courts](#)".
- 2 The Guardian (17 August 2021), "[FTSE 100 to lose mining heavyweight as BHP calls time on dual listing in London](#)".
- 3 BHP (2022), "[Annual Report](#)", p. 65; London Mining Network (17 October 2017), "[The River is Dead: LMN launches report into Brazil's Samarco disaster](#)".
- 4 London Mining Network (17 October 2017), p. 2.
- 5 Al Jazeera, (3 July 2017), "[Life for Brazil's Krenak after Fundao dam collapse](#)".
- 6 London Mining Network (17 October 2017), pp. 5-6.
- 7 The Guardian (8 July 2022); London Mining Network (17 October 2017), p. 2; Reuters (19 July 2021), "[Final settlement for Brazil's Samarco dam disaster could reach \\$19 bln, governor says](#)".
- 8 Financial Times (15 March 2023), "[BHP damages case grows to 700,000 claimants seeking up to £36bn](#)". The Guardian (8 July 2022).
- 9 The Guardian (6 November 2018).
- 10 Business & Human Rights Resource Centre, "[BHP & Vale lawsuit \(re dam collapse in Brazil, filed in Brazil\)](#)." Accessed 15 March 2023.
- 11 Business & Human Rights Resource Centre. Accessed 15 March 2023.
- 12 [2021] EWHC, "[Município De Mariana & Ors v BHP Group PLC & Anor.](#)"
- 13 [2022] EWCA, "[Município De Mariana & Ors v BHP Group PLC & Anor.](#)"
- 14 Reuters (5 October 2021), "[Brazil prosecutors seek \\$475 million from miners Vale, Samarco, BHP for dam disaster](#)"; Reuters (27 January 2023), "[Brazil's government eyes compensation deal for 2015 Vale-BHP dam burst](#)".
- 15 The Guardian (8 July 2022).