About the corporation

Samarco Mineração S.A., a Brazilian company. It is currently a joint-venture between two transnational corporations

1) Vale of Brazil
2) BHP, an English-Australian transnational

Each holds 50% of the stocks of Samarco Mineração S.A.

Samarco was considered by BHP to be a Non-Operated Joint Venture.

Sectors in which the company operates: Samarco Mineração S.A. is a Brazilian mining company, with offices in Belo Horizonte, Minas Gerais state, Brazil. Its mining activities are in the districts of Mariana and Ouro Preto in the same state, with associated transport and processing activities in Espírito Santo state. It was founded in 1977.

Vale S.A. is a Brazilian multinational corporation engaged in metals and mining and one of the largest logistics operators in Brazil. Vale is the largest producer of iron ore and nickel in the world. Vale also produces manganese, ferroalloys, copper, bauxite, potash, kaolin, and cobalt. The company also currently operates nine hydroelectricity plants in Brazil, mainly to supply its mining operations.

In 2017, BHP was the world’s largest mining company, based on market capitalization and as Australia’s third-largest company by revenue. BHP has five operational units: coal, copper, iron ore, petroleum and potash.

Country of origin of the company’s capital (shareholders, owners etc): BHP Billiton was formed in 2001 through the merger of the Australian Broken Hill Proprietary Company Limited (BHP) and the Anglo-Dutch Billiton plc forming a dual-listed company, in Australia and the United Kingdom. The Australia-registered Limited Company is listed on the Australian Securities Exchange. The English-registered plc is listed on the London Stock Exchange and is part of the FTSE 100 Index.

Vale is listed on the São Paulo, New York City, Paris and Madrid stock exchanges.

Country or countries in which the transnational has its operations:

Samarco Mineração S.A. itself only has operation in Brazil.

The main operations of Vale are in Brazil, but it has operations in 30 countries.

BHP operates a wide variety of mining, processing and oil and gas production operations in over 25 countries.

Place of operation in which the events related to the case occurred:

The catastrophic failure of the Fundão tailings’ dam (a holding structure for waste material from the processing of iron ore of the Samarco Mining Company) in the state of Minas Gerais, Brazil occurred on the 5th November 2015. A length of 500 kms of the Rio Doce was severely affected in the states of Minas Gerais and Espírito Santo.

The catastrophic collapse of the Fundão Dam in Brazil, and the subsequent environmental damage to the Rio Doce and surrounding areas

The catastrophic failure of the Fundão tailings dam in Minas Gerais (Brazil) on 5th November 2015 spilled 45 million cubic metres of mining waste into 637 km of the Rio Doce and its tributaries. This is the largest area of a river basin ever affected by a tailings dam collapse and the largest ever spill from a tailings dam. A large scale spill from a tailings dam leads to an active transformation of the whole fluvial system, as movement of large quantities of waste at a high velocity transforms the landscape, changes the morphology of the river basin and remobilises other toxic elements. The effects of the tidal wave of mining waste...
were devastating in the areas just downstream of the dam, causing 20 deaths and destroying settlements and covering riverside agricultural land. There were also significant impacts all along the 600 km of river to the mouth of the Rio Doce, and in the maritime region around the mouth of the river. It created serious environmental issues throughout the river system. There were immediate and extreme effects with the arrival of the mud and immediately afterwards, but also chronic long-term and on-going effects that could put at risk the ecosystem.

Mining waste in the river has had an effect on the water, which in turn has had an effect on water-supply, agriculture, fishing and tourism, and thus on household livelihoods, social life and health along the river and on the nearby Atlantic Ocean coast. The process of containing and removing sediment has created further issues. Many people who depended on the river for their livelihood, (in fishing, farming or tourism) consider that the river is dead.

Recovery of the Rio Doce will be a large-scale and long-term undertaking, the dimensions of which are only now being realised more than two years after the event. A structured scientific study of the impacts is only just beginning. There are still areas where deposited waste has still not been stabilised and removal of mining waste from some areas is constrained by the difficulty in finding sites to deposit it. There is still a large mass of waste material in the river channel that will release contaminants to the environment. This implies that the character of the river has been changed and native species of fish may have difficulty in returning. A wide variety of people have had their livelihoods affected and re-establishing livelihoods will be challenging. What is being planned for recovery of the environment, or finding alternative livelihoods for those affected, is not very clear, at least to those who have been affected.

Background of the case

The mines of Samarco Mineração produce iron ore for the world market. The high demand for minerals in the early years of the first decade of the 21st century led to multinational mining companies investing in new mines and buying existing mines operated by smaller companies throughout the world. The subsequent decline in demand and prices has led to mining companies attempting to cut costs to make these assets viable. In 2017, the EU was the second highest importer of iron ore in the world, importing 11.3% of the global total. Brazil was the second largest exporter of iron in the world, accounting for 20.2% of all exports. EU demand for iron ore is increasing.

The EU is Brazil’s principal trading partner, with 20% of Brazil’s total trade. Brazil is the EU’s eleventh trading partner, accounting in 2016 for 1.7% of total EU trade. The main commodity exported from Brazil to the EU is iron and its concentrates.

The investment by BHP in Samarco was direct investment and, as far as is known, mechanisms and instruments of international institutions did not play a role. The high prices obtained by iron ore on the world market at the start of the 21st century were the incentive for BHP’s investment in Samarco.

National and local government favoured the company by making changes to legislation

In general, several mechanisms are used to make legislation more flexible. There is a strong discussion in Brazil to change the environmental frameworks above all. The national government is an accomplice of the companies, accepts their proposals and does not oversee the implementation of legal norms; it also carries out closed negotiations with the companies without listening to civil society. Cases related to the collapse of the Fundão Dam have moved very slowly through the judicial system and it is believed that this related to the reluctance of the institutions of the Brazilian state to jeopardise the operations of Samarco, as Brazil is highly dependent for state revenue on income from mining.

It is worth remembering that Vale is a very large Brazilian company that has close links with important institutions and political parties in Brazil. It has financed politicians and their campaigns of various political parties. In general, the companies have an alliance with the oligarchies in the country, and are part of a similar political project. Many directors come from the elites.
Action at the UN level

In November 2016, one year after the collapse of the Fundão Dam, a group of UN Human Rights Independent Experts and Special Rapporteurs issued a statement that the disaster had had important human rights impacts and that the measures being developed at that time were insufficient to deal with the scale of environmental and human damage.

The human rights not being addressed included impacts on indigenous and traditional communities, health problems in riverside settlements, the risk of further contamination of waterways, the slow pace of resettlement and legal redress for all displaced persons.

Judicial processes

Three judicial processes were initiated by the Brazilian state are in progress, as well as a recently initiated judicial process against BHP in Australia.

The first judicial process is a criminal case against 21 executives of the companies. This case has moved forward slowly, due to challenges by some of the defendants related to how evidence was collected and due to the overall slowness of the Brazilian judicial system. The second judicial process is a civil case against the companies by the Federal level Ministério Público. This has also moved forward slowly but is being used as leverage to force the companies to reach and honour an agreement to recuperate the river basin and compensate those affected. The third judicial process is a more recent civil case by the state level Ministério Público of the state of Espírito Santo, to force the companies to provide alternative water supplies in that state to people and companies whose water supply has been negatively affected by the pollution of the Rio Doce.5

At the international level, the Australian law firm Phi Finney McDonald announced in May 2018 that it planned to sue BHP, arguing that the company had misled investors about the 2015 collapse of a dam at the Samarco iron ore mine. The class action, the law firm said, will be based on the belief the mining giant deceived shareholders over safety measures at the operation, by breaching “its continuous disclosure obligations and engaging in misleading or deceptive conduct”.6 The claim is that, from at least 21 October 2013, BHP failed to ensure that appropriate safety measures were in place at the Fundão dam and that BHP was aware of the risk of a dam collapse, as well as of the serious human, environmental and financial consequences that would result.

One of the issues that may be important in legal claims, if the cases are eventually heard, is the responsibility of international corporations in cases, such as this one, where they participate in Non-Operated Joint Ventures (NOJV).
All of the Brazilian judicial procedures are active, but are moving forward slowly. The Australian court action is very recent.

**Reparation and compensation process**

The mining companies have set up a Foundation, called RENOVA, which is responsible for environmental recuperation actions along the Rio Doce and providing compensation to people affected. This was in response to the judicial civil case taken out against the companies by the Brazilian authorities. RENOVA has carried out a significant amount of civil engineering work in the upper parts of the Rio Doce basin, where large quantities of mining waste have been deposited, particularly from the reservoir of the Candonga Dam, and this has reduced the amount of sediment flowing downstream. However this work is incomplete and it is believed that as much sediment is flowing into the reservoir of the Candonga Dam as is being removed. There are as yet no published plans for dealing with the fine sediment deposited in the lower reaches of the river. Some people are receiving a small financial compensation for their loss of livelihood but there is, as yet, no clarity about what their future livelihoods can be and whether the recuperation of the river will ever be sufficient to permit restoration of previous livelihoods such as fishing and river-side agriculture.

**Affected peoples and resistance**

One of the biggest barriers for access to justice for affected communities is a lack of access to information, which leads to a series of other obstacles. For example affected communities say that actions to help them have been delayed and that there is still no clarity about their future; they do not want to continue to receive a small, and unreliable, subsidy and would prefer clear plans for how to rebuild their lives. Assistance to them is in the hands of RENOVA, which they perceive to be a subsidiary of the companies who caused the environmental damage and their loss of livelihoods, and there is not enough pressure on RENOVA from the State to act quickly. Actions that should have been taken in 2017 (technical assistance to affected communities, provision of housing to people whose houses were swept away, independent studies) have not been taken a year later.

There are many different communities along the 600 kms from the Rio Doce, from the Fundão Dam to the ocean, affected in different ways by the collapse of the Fundão Dam and the spill of 45 million cubic metres of mining waste into the river system. They have different needs. The common demands along the river, however, are:

- Clear and transparent plans for the removal of mud and sediment along the Rio Doce from the Fundão Dam to the Atlantic Ocean and in nearby contaminated marine areas
- Funding of independent technical assistance to assist affected people plan their livelihoods (this was promised in 2017 but has not yet begun)
- Funding of accelerated independent studies about the effects of the contamination of the river on the quality of water, fauna, flora, human health
- Clear plans for access to uncontaminated water
- Clear plans for rehabilitation of fishing
- Direct participation of affected communities in negotiations for compensation

**The campaign strategies being pursued are the following:**

- Organization of communities;
- Construction of popular reparation, rehabilitation plans;
- Publicising what is happening nationally and internationally;
- Convergence with other social actors and allies.
Organisations supporting communities affected by the disaster are helping the affected communities to organise and press their demands. The Movimento dos Atingidos pelos Barragens (Movement of People Affected by Dams) has a long experience of organising communities affected by the construction of Hydro Electric Dams, and this experience shows that affected communities in Brazil only obtain recognition and adequate compensation if they are organised and constantly campaign for their rights to compensation and rehousing. However, the issue of justice is still very abstract. It is placed more in the language of reparations. There are two proposals to begin legal actions to address this, one in the IACHR and the other in the UK.

ENDNOTES

1 http://www.worldstopexports.com/iron-ore-imports-by-country/

2 http://www.worldstopexports.com/iron-ore-exports-country/


5 (The Ministério Público is a specific Brazilian judicial institution that acts to ensure access to justice for defined marginalised groups or in the general public interest. Brazilian federal prosecutors had claimed both BHP and its partner in the venture, Brazil’s Vale (NYSE:VALE), failed to take actions that could have prevented the disaster. But the companies have repeatedly said they were not responsible for the dam’s collapse, adding that they complied with Brazilian law and that safety was and has always been a key concern.)

6 (Reported in the Sydney Morning Herald and in “Mining” for 16th May 2018.)