

# Universal Periodic Review

## June 2012 - Brazil

### The International Coalition of those Affected by Vale - Human rights impacts of Vale's activities in Northern Brazil – JOINT UPR SUBMISSION – BRAZIL

November 28 2011



**Justiça Global** (“Global Justice”) is a Brazilian not-for-profit organization that was founded in 1999 to promote and protect human rights, to expose the most serious human rights violations in Brazil, and to develop strategies to challenge the attitudes and policies that allow them to persist. *Justiça Global* aims to strengthen civil society and democracy, to enhance access to justice, and to promote much-needed reforms and public policies by addressing the institutional weaknesses and related factors that contribute to patterns of the human rights violations in Brazil.

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**Centro de Assessoria Popular Mariana Criola** (“Mariana Criola Center”) was founded in 2007 as an affirmation of the need to defend the human rights of vulnerable populations in the state of Rio de Janeiro, such as traditional populations and popular movements struggling for housing, land and work. The members of the Mariana Criola Center intend to contribute to social emancipation, from theoretical knowledge, pedagogical practice, militant advocacy and popular legal advisory. Therefore, the center seeks to respect the autonomy and organization of movements, and all of its strategies are discussed and defined collectively. Mariana Criola develops activities in three main areas: 1) access to land, protection of quilombola territory and protection of the environment; 2) the right to housing and basic urban services and 3) criminalization of poverty and social movements.

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**Dignitatis – Assessoria Técnica Popular** ( Technical Advice People's) was founded in 2003 and its mission is to build, promotion, realization and reflection of human rights, democracy and peace, as processes of affirmation of the autonomy of nations, peoples, social movements and their organizations in pursuit of social justice, development of ethnic and socio-cultural development and an egalitarian society.

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**GT Racismo Ambiental** (Working Group on Environmental Racism) was created in 2005 within the framework of Brazilian Environmental Justice Network (RBJA), with the aim of collecting complaints, promote joint, strategies, campaigns and other actions against environmental injustices that fall predominantly on ethnic groups vulnerable . Acting as a forum for dissemination of information on situations of conflict and political processes of resistance, the Combat GT is composed of entities and individuals directly linked to the struggle against environmental racism in its various manifestations.

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The Articulação Internacional dos Atingidos pela Vale (The International Coalition of those Affected by Vale) is a network of social, environmental and labor movements and organizations based in Brazil, Canada, Chile, Argentina, Ecuador, Colombia, Peru, Mozambique, New Caledonia and Indonesia, all of which are affected by the aggressive and predatory activities of the mining company Vale S.A. The coalition was founded in April 2010, is associated with the Latin America Mining Conflicts Watch – OCMAL and is progressively strengthening its solidarity through a series of continental and international annual meetings.

At the end of 2007, a collection of movements, associations and citizens began to question the most efficient and just way to hold Vale accountable and force it to provide just compensation for the harms it caused to the environment and the people living in areas crossed by its railway. After much dialogue, study and brainstorming of ideas, the international campaign Justiça nos Trilhos (“Justice on the Rails”) was formed, comprised of the following entities: Missionários Combonianos, Fórum Carajás, Fórum ‘Reage São Luís’, Sindicato dos Ferroviários de Maranhão, Tocantins e Pará, GEDMMA (Grupo de Estudo Modernidade e Meio Ambiente - UFMA) and MST.

Justiça Global (“Global Justice”) is a Brazilian non-governmental human rights organization founded in 1999 and based in Rio de Janeiro. The organization works to protect and promote human rights, as well as to strengthen civil society and democracy by: denouncing human rights violations, advocating for public policy formation processes based on fundamental rights, stimulating the strengthening of democratic institutions and demanding the guarantee of rights for marginalized populations and victims of human rights violations.

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Justice on the Rails was founded in 2007 and is comprised of seven entities and institutions. It is a coalition of organizations, social movements, land workers, unions and university nuclei, all of which act in the defense of the rights of communities that live in areas crossed by the Ferro Carajás Railway. More specifically, Justice on Rails monitors the region of Açailândia and the issues relating to the impact of the mining and steel production chain. It furthermore articulates on a state, national and international level the support of partnerships in the promotion of the cause of affected communities. Justice on Rails also organized, in April 2010, the International Caravan of those Affected by Vale, which passed through Açailândia.

**[Cover Page]**

## **Submission for the 2012 UPR of Brazil, with respect to the human rights impacts of Vale's activities in Northern Brazil**

### **INTRODUCTION**

1. Many communities of people in Northern Brazil have suffered, and continue to suffer, from the systematic violation of their fundamental and human rights as a result of recent steel industry operations, coordinated and controlled by the private mining company Vale S.A. This report intends to document and analyze such violations and subsequently provide recommendations for ways in which the State of Brazil can work to improve conditions for residents living in areas affected by Vale's operations, and to prevent these and other human rights abuses from occurring in the future. The information presented in this report primarily comes from on-site visits to communities and in-person interviews with community members, community-wide surveys and health impact studies by research teams of Justiça Global, Justiça nos Trilhos and the International Coalition of those Affected by Vale.

### **Government policies relating to the Brazilian Amazon**

2. The Brazilian Amazon has long been the subject of Brazilian economic and fiscal governmental policies aimed at stimulating migration flows and encouraging the integration of the region's resources into the national market. Due to the external debt crisis of the 1970s, the Brazilian government implemented a strategy intended to transform the region into a platform for exportation of primary and intermediate products, including those resulting to mining activities. As recently as 2007, the Brazilian government implemented the Program of Acceleration of Growth – PAC, in order to provide greater incentives, investment infrastructure and private investment facilities to the country.<sup>i</sup> PAC was based on a model favoring large corporations and the export of goods such as soy, meat and minerals.

### **Overview of Vale S.A. and the Brazilian Mining Sector**

3. In 2010, the Brazilian mining sector earned a total of US\$ 157 billion in profits, generated foreign currency of US\$ 51 billion and accounted for 25% of all Brazilian exports.<sup>ii</sup> Vale S.A.<sup>iii</sup> ("Vale") is the principal player and benefactor in the Brazilian mining and minerals sector – operating in 38 different countries, constituting the world's second-largest mining company and producing 15% of the world's total iron extracts.<sup>iv</sup> In 2009, Vale earned a net profit of US\$ 5.3 billion, US\$ 2.75 billion of which it distributed to its shareholders. Between 2006 and 2011, the company distributed more than US\$ 10 billion to its shareholders, and it expects to employ the same incentive structure at least until 2018.<sup>v</sup>

### **The Grande Carajás Program**

4. Vale's Grande Carajás Program was implemented in 1980 for the purpose of exporting 35 million tons of iron ore from the Carajás region. Since Vale's privatization in 1997 and as a result of an increased demand from China, the company now produces 100 million tons of iron ore per year. It is projected that, by 2015, Vale will produce 230 million tons per year – due to new mines the company intends to open in Carajás and its plan for duplication of the Carajás Railway.<sup>vi</sup>

### **International Agreements**

5. Since 2007, Vale has been a member of the UN Global Compact, whose 10 principles refer to human rights, labor rights, environmental protection and fighting against corruption. Nonetheless, case studies and research reveals that the company's adherence to the Global Compact has merely been a formality, as it has failed to alter its degrading environmental practices and human rights violations since becoming a member.

## **BNDES**

6. The National Bank for Economic and Social Development – BNDES comprises part of the Ministry of Development, Industry and Foreign Commerce and aims to help enterprises increase development in Brazil, particularly with respect to increased export activities. BNDES provides long-term financing and competitive costs for the development of projects involving the investment in and sale of machines and equipment manufactured in Brazil. BNDES currently possesses 5.5% of Vale's share capital<sup>vii</sup> and provided the company with R\$ 8 billion between 2007 and 2008.<sup>viii</sup> As a reflection of BNDES' lack of investment surrounding corporate social responsibility, a significant group of organizations and social movements formed in 2007 and have been working to promote the democratization of BNDES and move the bank's decisions toward the effective promotion of social development.

## **Relaxation of legal and regulatory framework for businesses operating in Brazil**

7. The government policies affecting the Brazilian Amazon (described above) were accompanied by a relaxation of the country's legal and regulatory framework for businesses operating in Brazil. In general, there exist two types of relaxation in the country's legal and regulatory framework: (i) official relaxation, whereby laws and norms are altered and loosened institutionally; and (ii) tacit or unofficial relaxation, whereby companies sense that licensing and supervisory agencies are under pressure to not penalize them for their illegal activities, and such companies therefore choose to operate at the margin of the laws or regulations. The latter is the most common form of legal and regulatory relaxation in Brazil, especially with respect to the activities of export companies.
8. The relaxation described above encompasses Brazilian environmental laws and regulations, particularly insofar as such laws and regulations affect mining activities. The current Minister of Mines and Energy, Edson Lobão, admitted the Brazilian mining sector is regulated by fragile environmental norms – even when compared to other sectors such as those of oil and electric energy.
9. The relaxation in the environmental law and regulatory context has also been accompanied by a reduction of legal protections for rural lands and a mining regulatory framework with low royalty rates. As to the latter point, Lobão described that Brazil charges the lowest taxes in the world in terms of royalties on mining activities: less than three percent; whereas, most countries charge between six and ten percent.<sup>ix</sup> Although there are three bills pending before the Brazilian national congress to change the mining regulations and address the question of royalties, this matter remains particularly controversial within the mining industry.<sup>x</sup>

## **SPECIFIC IMPACTS AND HARMS TO COMMUNITIES ALREADY INCURRED**

*“The incessant pollution, the continuous deterioration of water resources, along with the extremely precarious system of urban sanitation have impacted the living conditions of the residents as well as their lands, affected their livelihoods and increased the insecurity and poverty of the affected communities, in violation of their right to an adequate standard of living.”<sup>xi</sup>*

## **Vale’s Operations in Northern Brazil**

10. Vale’s operations, and the Brazilian government’s failure to monitor and address them, have been the cause of innumerable human rights violations in northern Brazil, affecting individuals’ right to: an adequate standard of living, health and a healthy environment, redress, due process and effective remedy, among others. For instance, the emission of pollutants from steel mills and coal furnaces – into the air, water and soil – causes grave health ailments to nearby populations, including respiratory, eye and skin problems. And, the close proximity of waste products and pig iron production to communities causes accidents, including serious and fatal burns to residents. Two communities which have been particularly affected by Vale’s operations are Piquiá de Baixo and Califórnia Settlement, both situated in the Municipality of Açailândia, in the northern Brazilian state of Maranhão.
11. Vale effectively has monopoly control in the municipality of Açailândia, mainly as a result of: (i) its ownership of a railway that crosses through the municipality; (ii) its iron ore and steel operations near Piquiá de Baixo; and (iii) its Coal Production Unit – UPR2 near the Califórnia Settlement. UPR2, which Vale installed in 2005, operated 66 ovens for coal production during the past six years, and is situated roughly 1.5 Km from the Califórnia Settlement. The coal produced by UPR2 is shipped to the state of Pará for exclusive use by the Vale-owned steel company, Ferro Gusa Carajás. Furthermore, Vale has a direct relationship with five steel plants in Açailândia, all of which receive iron ore via the Carajás Railway (also operated by Vale), transform the iron ore into pig iron, then ship the pig iron to São Luis (MA) along the Carajás Railway, for export. The Carajás Railway covers a distance of 892 Km and cuts through 25 municipalities: 21 in the state of Maranhão and 4 in the state of Pará.

## **Gravely Affected Communities: Piquiá de Baixo and Califórnia Settlement**

12. The Piquiá de Baixo community is situated near the BR 222 highway and is comprised of more than 300 families. The Residents’ Association of Piquiá de Baixo estimates that 1,500 people live within the confines of the community.<sup>xii</sup> Since the arrival of the iron and steel industry in 1987, residents have been negatively affected by the five steel mills that operate along the highway.
13. As introduced briefly above, Vale extracts raw mineral in Carajás, and this material arrives via the Vale-operated Carajás Railway before being transformed into pig iron, by ovens in the nearby steel mills. The steel mill closest to Piquiá de Baixo is called Gusa Nordeste. Gusa Nordeste has a severe environmental impact on the neighborhood in terms of not only atmospheric and noise pollution, but also waste and debris run-off in neighborhood open spaces.
14. The Califórnia Settlement began in 1992, when landless families occupied a plantation at the edge of the BR-010 highway. In 1997, INCRA<sup>xiii</sup> awarded land titles to the families. The settlement now has 1,300 inhabitants, divided among 268 families.<sup>xiv</sup>

15. In 2005, Vale obtained an environmental license to install eleven coal production units, distributed among five cities along the border of Maranhão and Pará. One such production unit, UPR2, was installed in an area adjacent to the Califórnia Settlement.
16. There, Vale also installed 66 coal furnaces, occupying a total of 1,185 square meters<sup>xv</sup>, in order to fuel the operations of Vale's steel company Ferro Gusa Carajás, in Marabá, in the State of Pará. Vale also began cultivating eucalyptus plantations<sup>xvi</sup> next to the settlement in 2005, in order to better supply its coal production.
17. As soon as large-scale coal production began, Califórnia Settlement residents began to complain of health issues, such as vision and blood pressure problems, lethargy, gastritis, coughing and respiratory problems generally. In 2006, Califórnia Settlement residents denounced the activities of Ferro Gusa Carajás to Municipal Board of Health of Açailândia, in addition to filing a suit with the Public Prosecutor's Office.
18. In February 2008, residents denounced Ferro Gusa Carajás at the Regional Environmental Conference, and in March of the same year – following years of exposure to risks from pollution – they united with group Via Campesina to protest against UPR2.<sup>xvii</sup>
19. In April 2008, Dr. Walderci Ferreira Filho, who worked in the Califórnia Settlement's health clinic, wrote a declaration attesting to the accentuated number of cases of respiratory illness in certain seasons as a result of the installation of coal plants next to the settlement. In August 2008, the State Secretary of Environment – SEMA acknowledged errors in the licensing process and requested a report for air monitoring; Vale delivered an incomplete report, failing to include information regarding the emission of sulfur dioxide and ignoring data confirming emissions for Total Suspended Particles greater than the amounts allowed by CONAMA.
20. In October 2008, the settlement's population submitted a letter to the authorities requesting closure of the coal plant, due to the fact that Vale was failing to meet SEMA's demands.
21. In August 2008, at a meeting with members of Justiça nos Trilhos, Vale admitted to continuing to operate its coal plant with merely one burner, in spite of having 36 ovens in use. The company agreed to install all of the remaining burners, but later announced having sold property to the paper and cellulose production company Suzano Holding S.A. (see below), and stated that it would not indemnify the Califórnia Settlement residents for the rights it violated in the previous 4 years.
22. Califórnia Settlement residents are relieved to see the scheduled end of coal burning next to their community; however, they have yet to observe Vale or the government take responsibility for the harms already incurred, from pollution to water, air and soil, both from the smoke and from the fertilizer used for the eucalyptus plantations.

## **Right to Health**

23. Issues relating to health in Piquiá de Baixo have been of constant discussion in community meetings since 2004. Residents have primarily complained of excessive pollution, a precarious urban sanitation system and difficulty in accessing health services. Such complaints indicate problems having to do with a lack of basic community sanitation and public healthcare infrastructure, including: pollution, inadequate hospital care, scarcity of medical professionals,

lack of space for trash disposal, non-fulfillment of work by health workers, inadequate nutrition and lack of qualification for health workers.

24. During an on-site visit by the International Federation of Human Rights – FIDH to Piquiá de Baixo in September 2010, researchers witnessed pollution in plain-view, including soot-covered trees, gray houses and an excessive amount of noise. Residents relayed that the wind raises a “balloon dust” that accumulates at the edge of their houses. In reality, this soot results from pig iron production, which creates two distinct solid residues that are toxic to plants, animals and people. One of the two kinds of solid residues causes physical lesions, which can be deadly<sup>xviii</sup>.
25. An Environmental Investigative Report, requested by a judge at the Açailândia Court in 2007 concluded that, in Piquiá de Baixo:
  - a. [There were] soot emissions, water containing metallic residues and residues that are undoubtedly prejudicial to human health. The conditions in which residents live, their habits and traditions have made the situation even more critical. Livestock, such as chicken and pork eat insects and debris containing traces of these metals that can be carried through the ground water when such runs through the company’s grounds before reaching people’s backyards. . . there are many residences in this region that are hit by gaseous outflows. The cooling water from high ovens leaves from the grounds heated and filled with dissolved materials that one finds in processed ores, which can certainly contaminate the backyards of houses and the individuals that reside therein, children above all. Furthermore, after passing through backyards, the water reaches the Piquiá stream, carrying metals with it and causing an elevated water temperature.
26. The 2010 on-site visit also revealed that most of the community’s members (56.5%) assessed their health to be “bad or very bad,” as compared with the 3.8% of the country’s overall population.<sup>xix</sup> And, in twenty percent of all the residences that FIDH visited, at least one individual had suffered an accident relating to the steel mill. It is also important to mention that surveys conducted during the on-site visit revealed that the average amount of money spent on medicine in the community was R\$100.30, or 18% of the average household income.
27. An on-site evaluation of the Califórnia Settlement in 2010 revealed a lower health standard than that found in the rest of the country.<sup>xx</sup> Furthermore, 20.6% of settlement’s population reported being ill within 15 days of the visit. Their symptoms related mostly to respiratory tract infections and throat pain. Finally, the average amount spent on medication per household was of R\$ 93.69, or 22.5% of the total average household income.

### **Right to Adequate Housing**

28. Residents of Piquiá de Baixo report that, from the time of Vale’s installation of operations for its iron ore chain in Açailândia, they have suffered daily aggressions to their right to dignified housing. Due to the fact that Piquiá de Baixo is situated squarely in the steel industrial district, its residents have borne the brunt of the harms caused by the industry’s activities. In particular, harms caused to the community’s lands have interfered with and severely limited families’ ability to raise livestock for consumption and small-scale sales.

29. In 2010, meetings took place involving the Public Prosecutor's Office in Açailândia, steel industry companies, Vale, the Municipal Government, the Maranhão State Government and community leaders, in order to discuss the community's relocation. Nonetheless, in spite of many promises and commitments made by the stakeholders, the land has yet to be acquired, and there have still been no measures taken for the community's relocation.
30. California Settlement residents relay that, from the time of Vale's installation of companies for the iron ore chain in Açailândia, they have suffered daily aggressions to their right to dignified housing. In particular, the arrival of Ferro Gusa Carajás severely impacted housing conditions within the settlement, causing: (i) excessive heat and smoke from coal production, which invaded houses and resulted in health problems, such as throat pain and inflammation, skin problems, tiredness, intense coughing<sup>xxi</sup>. Families further report suffering as a result of damage to plantations and the subsequent difficulties of raising livestock for personal consumption or small sales.

### **Right to Life, Security and Physical integrity**

31. In September 2010, the President of SIFEMA stated that there no longer existed runoff near the community. Nevertheless, on-site visits by Global Justice in July 2010 and FIDH in September 2010 revealed quite the contrary: piles of refuse remained extremely close to community members' houses –practically surrounding their backyards and without any form of isolation or containment – in addition to along trails used by the residents to move around their community.

### **Right to Information**

32. FIDH's research team verified the impossibility of obtaining information about Vale's environmental license, monitoring reports and environmental impact studies. Due to its resistance to sharing this information with affected communities, Vale has prevented community members of both Piquiá de Baixo and the Califórnia Settlement from: (i) protecting themselves from harms resulting from pig iron and coal production; (ii) reacting effectively with regard to the environmental conditions applied by the State Secretary of Environment; and (iii) mobilizing against the harms brought upon their communities.

### **Lack of Access to Justice**

33. Up until September 2010, the Public Defender's Office had not yet been installed in Açailândia even though the Brazilian Constitution requires the provision of "legal assistance that is complete and free to those who prove they have insufficient resources to provide for their own."<sup>xxii</sup> This delay has caused great obstacles for residents who intend to vindicate their rights and acquire reparations for damages already incurred. The Public Prosecutor's Office also delayed in becoming involved and, when it finally did, sent erroneous responses to requests by community members. These occurrences may be explained by a low number of professionals in the Public Prosecutor's Office or its irregular presence in Açailândia. Regardless of the reason, up until May 2011, the Public Prosecutors Office had still taken no action to begin an investigation (either civil or criminal) into the situation and presented serious weaknesses in the negotiations it undertook with Vale. Finally, the State Court of Maranhão has also delayed processing civil indemnification suits. For example, the 21 families from Piquiá de Baixo who filed indemnification suits in 2005 are still awaiting judgment on their case.

## Right to Protection for Human Rights Defenders

34. Vale, as well as also public bodies of security and justice, media channels and other private actors, have been responsible for persecuting, intimidating and criminalizing human rights defenders, causing a total miscarriage of justice.
35. For example, Vale filed a legal suit against the Landless Movement<sup>xxiii</sup> leader Joao Pedro Stédile for having mentioned the company's name in interviews; and, as a result, Stédile was fined R\$ 5M.<sup>xxiv</sup> There have also been numerous publicity campaigns directed against relevant social movements.<sup>xxv</sup> Such was the case of the most important newspaper in Pará ("O Liberal") which, in August 2008, published series of reports, editorials and opinion columns associating members of Justiça nos Trilhos and other support organizations with actions considered by the newspaper to be illegal and for the sole purpose of causing Vale financial harm.<sup>xxvi</sup> Another example of human rights defenders under attack occurred in April 2010, when Vale filed a suit in the State Court of Açailândia against the network of Justiça nos Trilhos – listing the organizations and individuals that it determined to have carried out actions in order to cause the company financial harm.<sup>xxvii</sup> The judge presiding over the case immediately acceded to Vale's demands and issued a preliminary injunction under the penalty of R\$5K daily for transgressions. It is important to note that, although the preliminary injunction was revoked in January 2011 because Vale did not pay its legal fees, the organizations and individuals originally accused were never officially informed of this decision.

## FUTURE HARMS PREDICTED TO OCCUR FROM VALE'S OPERATIONS

36. There is much harm likely to be incurred due to Vale's plan to duplicate the Carajás Railway: 892 Km between Parauapebas (PA) and São Luis (MA). With an R\$8 billion investment, Vale intends to double 605 Km of the railway, in order to increase its load capacity from 100 million tons to 230 million tons by 2014.<sup>xxviii</sup> It is important to note that there have so far been no social or environmental impact studies that have evaluated – in an integrated form – the effects of the increase in Vale's production capacity.
37. Families living along the Carajás Railway that live under threat of forced eviction were visited by Vale employees in 2010 and were urged to sign "agreements," wherein Vale: paid the "beneficiary" families for loss of some part of their houses; required confidentiality; and discouraged such families from talking to professionals or neighbors about the agreements. Residents affected by the new railway construction projects also complain of problems associated with railroad crossing, the grounding of streams, animal deaths and negative impacts on agricultural production, health and education.<sup>xxix</sup>

## IBAMA's fragmented and illegal concession of environmental licenses

38. Vale has obtained fragmented licenses for three separate stretches of the duplicated railway (altogether 60 Km).<sup>xxx</sup> It is important to underscore that this licensing process is occurring illegally, as Vale claims to avoid the need for an Environmental Impact Assessment ("EIA"). Vale bases its avoidance of the EIA on CONAMA Resolution No. 349/2004, which exempts small-scale railway projects from carrying out an EIA. However, this resolution could never exempt Vale, as it governs railway projects that have a **low** potential environmental impact. Even according to the very terms of Resolution No. 349/2004, the railway duplication could not be considered an enterprise of low potential environmental impact. And, for this reason, the

necessary EIA and related public discussions ought to have been carried out before IBAMA gave Vale licenses for project construction.

### **Affected Territories, People and Communities**

39. The duplicated railway will cut through at least 21 municipalities<sup>xxxix</sup>: (i) directly interfering with the indigenous territory of Mãe Maria (Pará) of the Gavião People; (ii) causing collateral effects that will be felt throughout the indigenous territories of Caru (Guajajara and Awá-Guajá People), Alto Turiaçu (isolated and nomad Urubu Ka'apor, Timbira and Awá-Guajá People), Pindaré and Santa Inês (Guajajara People and a few Guaranis families); and (iii) interfering with quilombola communities, some of which will be severed by the railway's trajectory.

### **Quilombola Communities**

40. It is important to note that the federal government agency responsible for looking after traditional quilombola communities in Brazil, the Palmares Cultural Foundation, declared that Vale's construction projects were necessarily prohibited from continuing in a stretch of land that crossed quilombola communities, including Monge Belo and Santa Rosa dos Pretos.<sup>xxxix</sup> The affected quilombola communities had not been previously consulted with regards to the railway duplication, as necessitated by the International Labor Organization Convention; thus, the projects could not legitimately continue.<sup>xxxix</sup> Nevertheless, instead of waiting for the Palmares Cultural Foundation to issue its opinion, as required for licensing, IBAMA succumbed to Vale's pressure first.<sup>xxxix</sup> Only after IBAMA approved the license did the Palmares Cultural Foundation issue its opinion, condemning the construction project, exactly because of the lack of prior studies.<sup>xxxix</sup>
41. Access to food sources/supplies is the greatest concern of the quilombola communities affected by the railway duplication, "as the construction projects have been affecting the fields, which are the basis for sustenance for these communities."<sup>xxxix</sup> One public suit has already been filed as a result of the harms incurred to the Permanent Reservation Areas that were impacted without authorization by IBAMA.<sup>xxxix</sup>

## **RECOMMENDATIONS**

42. The recommendations set forth below are intended for the administrative and legal institutions of the Union, the State of Maranhão and the Municipality of Açailândia.

### **Recommendations with respect to Access to Justice and the Right to Due Process and Effective Remedy**

43. Conduct immediate, impartial and independent investigations and corresponding legal actions (criminal or civil) to determine actors responsible for violations committed
44. Guarantee complete legal assistance for victims of human rights violations
45. Ensure that the 21 legal suits for damages that were filed in 2005 before the Second District Court of Açailândia are processed as quickly as possible and with a satisfactory judgment for the residents of Piquiá de Baixo
46. Guarantee recognition by the Public Prosecutor's Office, the Public Defender's Office and the State Court of Maranhão of the priority and urgency of the situations of Piquiá de Baixo and the

California Settlement– necessitating that such institutions act in a delicate and permanent manner in the investigations and legal suits

47. Ensure that measures to be taken will avoid non-compliance with legal parameters established by national and international law
48. Implement measures for full reparation, as soon as the following are determined: damages and the parties responsible for such, applied on an individual and collective basis, not excluding (for reparation): (i) restitution; (ii) rehabilitation; (iii) indemnification/compensation; and (iv) satisfaction and guarantees of non-repetition
49. Decontaminate and recuperate the land area of Piquiá de Baixo
50. Provide reparation measures for Piquiá de Baixo and the Califórnia Settlement, according to national and international standards with respect to the right to effective remedy and including the collective and integral resettlement of all families of Piquiá de Baixo
51. Apply legal and administrative consequences to Vale for its non-compliance with the environmental license conditions in which the company ought to have installed and left working 16 gas burners, as recommended by the technical report from the Environmental Analyst of the Secretary of Environment and Natural Resources of the State of Maranhão<sup>xxxviii</sup>

### **Recommendations with respect to the Right to Health and to a Healthy Environment**

52. Facilitate the immediate evaluation by competent, reputable and impartial professionals or institutions, without cost to victims, the degree of fulfillment of the environmental license conditions in effect
53. Suspend approval of all new licenses for steel mill enterprises in Açailândia installed in Piquiá de Baixo, until the conflict in question is satisfactorily resolved
54. Require of coal plants and steel mills, as well as their suppliers and pig iron transport companies: (i) immediate installation of monitoring equipment for the emission of pollutants and for the measurement of air quality; and (ii) monthly reports submitted to public monitoring bodies, as well as to the communities of Piquiá de Baixo and California
55. Immediately implement the recommendations of Judge Albino Ulisses Brigatto, including: (i) installation of an anti-particle filter, gas incinerators, nets for water draining and treatment and closed sheds; and (ii) removal of any residues from the factories in concrete containers, in vehicles
56. Draft and publish the Plan for Management of Solid Residues, containing information about the generation, characteristics, storage, transport and destination of its solid industrial residues
57. Require for the concession of authorizations and environmental licenses for the new enterprise of Gusa Nordeste (located close to Piquiá de Baixo) a condition precedent of: the effective relocation of residents of Piquiá de Baxio and execution of effective measures for compliance with legislation surrounding pollution emissions and their potential harms
58. Suspend the concession of new permits for coal plants of Ferro Gusa Carajás in Açailândia, until adequate assessment processes established
59. Reinforce the monitoring system for environmental impact of mining-metals sector, with (i) closer coordination among public agencies and measures; and (ii) the immediate installation of equipment to monitor air quality and prevent contaminant emissions by mining-metal companies and coal plants (and their respective ore suppliers and transport companies)
60. Require urgent execution by public monitoring bodies, such as IBAMA, the Chico Mendes Institute for Conservation of Biodiversity (ICMBio) and their correspondents in Maranhão of new control mechanisms for coal used by steel companies in Açailândia
61. Calculate the environmental impact of clearing the forests and using the coal deriving from native forests, with the appropriate sanctions for the responsible parties

62. Require that the municipal Secretaries of Health of municipalities include respiratory illnesses among those requiring public notice
63. Carry out immediately technical studies by professionals or competent institutions – which are reputable and impartial – without cost to victims, to determine the current air, water and soil quality, the possibility of future contamination and the corresponding diseases provoked by industrial effluents from steel plant activities and the coal plant located next to the communities of Piquiá de Baixo and California
64. Carry out technical studies to determine possible air, water and soil pollution and future effects on health by chemical fertilizers, poisons used for eucalyptus monoculture
65. Considering the incompatibility of the enterprises with the human settlements, carry out the full and immediate relocation of the families of Piquiá de Baixo, to areas chosen with residents' participation and respecting national and international norms and with sustainable opportunities for livelihood

### **Recommendations with respect to the Right to Information**

66. Require that public hearings be held on an annual basis, coordinated by the Public Prosecutor's Offices of the State of Maranhão, surrounding the impacts of companies in Açailândia and including monitoring data and public analysis
67. Require monitoring, by the Public Prosecutor's Office and the Public Defenders' Office of the State of Maranhão, of compliance of steel companies in Açailândia with Ordinance 111 of the Secretary of Environment of the State of Maranhão, with bi-annual reports and with public disclosure at public hearings in the municipality of Açailândia
68. Require SEMA's adoption of measures, taken on by it, in order to facilitate the access to information contained in the environmental licensing procedures, such as the: (i) creation of a database; (ii) digitalization of respective documents; (iii) total inclusion of such documents in the National Portal of Environmental Licensing to reinforce transparency and accessibility of licenses; and (iv) maintenance of copies of the EIA and its conditions, as well as the environmental fiscal reports of SEMA, in the municipality of Açailândia, in addition to making such reports available for residents
69. Reform legislation on financial disclosure, such that requirements for the disclosure of risks that are not considered "material" be more stringent, including the disclosure of risks and impacts to human rights and the environment, resulting from impacts of its operational activities
70. Implement measures for shareholders to register formal complaints with the responsible authorities that may freely express their social and environmental concerns
71. Ensure that populations in Açailândia are duly informed of impacts of mining-metal companies operating in Açailândia
72. Ensure access to information in environmental permits and through yearly public meetings organized by Public Ministry of State of Maranhão

### **Recommendations with respect to general avoidance of impacts on human rights and the environment of steel industry operations**

73. Create an integrated study group, with the state and federal legislative branches, social organizations and private companies, geared toward the creation of a new social or development fund for the entire impacted area that includes the municipalities of the Carajás corridor, which will reinstate the institutional fund that existed during the time of "Companhia Vale do Rio Doce" and will be jointly managed by public powers and civil society

74. Require immediate cooperation by the Municipality of Açailândia of the State of Maranhão and the federal government with environmental organizations and other control mechanisms, so that: members of such organizations have actual means to analyze, in a critical and impartial manner, the requests for authorizations or licenses, impose conditions and promote the fulfillment of the law, via on-site visits, the drafting of reports and the filing of complaints
75. Demand that the federal authorities take advantage of the opportunity to reform the legal mark for mining, particularly by means of a consultative participatory process and taking into account the concerns of civil society expressed in this report

### **Recommendations with respect to the duplication of the Carajás Railway**

76. Mandate that IBAMA immediately suspend and review the environmental licensing procedure<sup>xxxix</sup> for the railway duplication construction project, which granted licenses in a fragmented and therefore illegal way, until: (i) Vale carries out the necessary environmental impact studies ; approval is received by the Palmares Foundation, FUNAI, IPHAN, Chico Mendes Institute for Biodiversity Conservation, INCRA and OEMAs and OMMAs involved, that they are being consulted – gathering of all documentation received from these organizations during the environmental licensing procedure; and (ii) a full copy of the licensing procedure is made available by representatives of organizations that have been obstructed from obtaining them
77. Initiate an administrative proceeding or civil public investigation or Civil Public Action in order to access the facts cited above
78. Require that the concession of licenses be in consonance with the law, from this point forward
79. Demand that the construction project process be organized so as to minimize harm to the environment, conservation units, nature preserves, water resources, historical sites, indigenous people, quilombolas, settlements of agrarian reform and communities that live in the areas surrounding (or that are cut by) the Carajás Railway

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<sup>i</sup> Brazil, Ministry of Finance, Programa de Aceleração do Crescimento, <http://www.fazenda.gov.br/portugues/releases/2007/r220107-PAC-integra.pdf>.

<sup>ii</sup> Ministry of Mining and Energy. National Mining Plan 2030, [http://www.secom.gov.br/sobre-a-secom/nucleo-de-comunicacao-publica/copy\\_of\\_em-questao-1/edicoes-anteriores/fevereiro-2011/boletim-1220-09.02/plano-de-mineracao-preve-investimentos-de-us-350-bilhoes/impresao\\_view](http://www.secom.gov.br/sobre-a-secom/nucleo-de-comunicacao-publica/copy_of_em-questao-1/edicoes-anteriores/fevereiro-2011/boletim-1220-09.02/plano-de-mineracao-preve-investimentos-de-us-350-bilhoes/impresao_view).

<sup>iii</sup> The company was privatized in 1997 and renamed Vale S.A. from Company Vale do Rio Doce – CVRD in 2007.

<sup>iv</sup> SINFERBASE – National Union of the Iron and Basic Metal Extraction Industry, Report 2010, [www.sinferbase.com.br](http://www.sinferbase.com.br).

<sup>v</sup> Vale, “Código de Conduta dos Fornecedores – Supplier’s Code of Conduct,” article 1, available at: <http://www.vale.com/en-us/fornecedores/Documents/codigo-de-conduta-do-fornecedor.pdf>.

<sup>vi</sup> Goitia, Vladimir. *Vale invests to make up for distance* <”Vale investe para compensar distâncias>. Valor Econômico, São Paulo, 28 March 2011. Available at: <http://www.valoronline.com.br/impresao/vale/1902/403581/vale-investe-para-compensar-distancias>.

<sup>vii</sup> Vale, [www.vale.com](http://www.vale.com).

<sup>viii</sup> Balthazar, Ricardo. Folha de São Paulo, edition of 8 August 2010; consultative spreadsheet available at [www.justicanostrilhos.org](http://www.justicanostrilhos.org).

<sup>ix</sup> Agência Câmara. Lobão Affirms that the New Mining Code will Contain Speculation <”Lobão Afirma que Novo Código de Mineração Vai Conter Especulação”>. 17 March 2010. Available at: <http://www.jusbrasil.com.br/noticias/2120903/lobao-diz-que-novo-codigo-de-mineracao-vai-conter-a-especulacao>.

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<sup>x</sup> Estado de São Paulo, *Government wants to clean-up mining industry royalties, according to sources* <“Governo quer varredura nos royalties da mineração, dizem fontes”> 10 October 2011. Available at: <http://oglobo.globo.com/pais/mat/2011/03/10/governo-quer-varredura-nos-royalties-da-mineracao-dizem-fontes-923985545.asp>.

<sup>xi</sup> FIDH, *Brazil: How much are human rights worth in the Brazilian mining and steel industry?* Executive Summary, May 2011, No. 563a.

<sup>xii</sup> Oral information provided to FIDH, 2010.

<sup>xiii</sup> National Institute of Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária).

<sup>xiv</sup> Art. 127 of the 1988 Federal Constitution of Brazil.

<sup>xv</sup> Oral information provided to FIDH, 2010.

<sup>xvi</sup> Initially, coal producers burned the pre-Amazonian native forest in order to obtain their coal. Today, there is a gradual substitution of native forest wood for genetically modified eucalyptus, which is planted in large areas of mono-cultivation.

<sup>xvii</sup> 150 women from Via Campesina protested against the coal plant of Vale in Açailândia – temporarily closing BR-010, after which the authorities began to pressure Vale to fulfill the items foreseen by the environmental license (such as the installation of smoke burners and the effective execution of air monitoring reports).

<sup>xviii</sup> For example, a seven-year-old boy died in 1999 after stumbling on a pile of the substance and suffering for twenty days from the resulting burns.

<sup>xix</sup> PNAD statistics of 2008.

<sup>xx</sup> Country-wide, 77.3% of individuals claim to have “good or very good” health; whereas, in the Califórnia Settlement, only 52.1% of individuals claimed to have “good or very good” health. Country-wide, only 4.6% of individuals claim to have “bad or very bad” health; whereas, in the Califórnia Settlement, 11.1% claimed to have “bad or very bad” health.

<sup>xxi</sup> Note that all of these symptoms were relayed by Dr. Walderci Ferreira Filho in his declaration of 2008.

<sup>xxii</sup> Art. 5 of the 1988 Federal Constitution of Brazil.

<sup>xxiii</sup> Movimento Sem Terra – MST.

<sup>xxiv</sup> Guideline 15 – Rights guarantee for victims of crimes and the protection of threatened persons. Strategic Objective IV – Guarantee the protection of human rights defenders and their activities. Third National Program for Human Rights, 2010. Available at: [//portal.mj.gov.br/sedh/pndh3/pndh3.pdf](http://portal.mj.gov.br/sedh/pndh3/pndh3.pdf).

<sup>xxv</sup> See, e.g., Television interview by journalist Miriam Leitão: CEO of Vale, Roger Agnelli, referred to individuals of MST as “criminals that do not respect the Law, that do not respect democracy.” Interview of 17 September 2008, transmitted by Globo News. Available at: <http://video.globo.com/Videos/Player/Noticias/0,,GIM881457-7823-ENTREVISTA+COM+ROGER+AGNELLI,00.html>.

<sup>xxvi</sup> See, e.g., A survey carried out by Vale, which was submitted to the private institute “Ibope,” regarding the opinion of Brazilian society on the behavior of social movements in this field in Brazil and its subsequent disclosure by the newspaper “O Globo” in June 2008.

<sup>xxvii</sup> “Public notice to the newspaper O Liberal” <“Nota pública ao jornal O Liberal”>, signed by CNBB – Pastoral and Organisms (Cáritas, CJP, CREA, Pastoral da Criança, PASCOM, CPT, CPP); CRB (Religious Conference of Brazil); Dorothy Committee; Colombian Missionaries; UNIPOP; ABONG; FASE; InterReligioso. Available at: <http://www.justicanostrilhos.org/nota/39>.

<sup>xxviii</sup> Carta Capital, *Dispute between NGOs and the government impedes railway duplication*. 31 May 2011.

<“Disputa entre ONGs e governo emperra duplicação de ferrovia.”> Available at: <http://www.cartacapital.com.br/politica/disputa-entre-ongs-e-governo-emperra-duplicacao-de-ferrovia-no-norte-do-pais>.

<sup>xxix</sup> Blog by Danilo Chammas. 21 October 2011. Available at: <http://daanchammas.blogspot.com>.

<sup>xxx</sup> Carta Capital, *supra* note xxxiv.

<sup>xxxi</sup> *Ibid.*

<sup>xxxii</sup> *Ibid.*

<sup>xxxiii</sup> *Ibid.*

<sup>xxxiv</sup> *Ibid.*, citing Danilo Chammas.

<sup>xxxv</sup> *Ibid.*

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<sup>xxxvi</sup> Ibid.

<sup>xxxvii</sup> Ibid.

<sup>xxxviii</sup> Mr. Antonio César Carneiro Sousa.

<sup>xxxix</sup> No. 02001.007241/2004-37.