

# Disaster management in mining: an analysis of mediation as a technology of social control

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## **Abstract**

Recent disasters involving mining companies in Brazil have drawn attention not only because of the scale of the social and environmental damage caused, but also due to the management practices implemented by the state. In November 2015 the world's largest iron ore tailings spill occurred when the Samarco dam, located in the municipality of Mariana, Minas Gerais, failed catastrophically. A trail of destruction and death extended downstream for 700km until the mud reached the Atlantic ocean. Accompanying the reconciliation meetings and hearings at the Mariana Justice Forum with local communities, corporations and State officials, I identify some of the traps set by the negotiation space that, rather than offering an ideal condition of autonomy and symmetrical capacity for choice, operates as a mechanism for containing criticism and indirectly manipulating behaviour. Pursuing this line of analysis, the article discusses the political rationality and forms of control contained in extrajudicial conflict resolution strategies.

**Keywords:** Management; Conflict; Mining; Disaster; Mediation.

# A gestão do desastre na mineração: uma análise da mediação como tecnologia de controle social

## Resumo

Desastres recentes envolvendo mineradoras no Brasil chamaram atenção não somente pela dimensão dos danos sociais e ambientais, mas também pelas práticas de gestão experimentadas pelo Estado. Em novembro de 2015 ocorreu o maior derramamento de rejeito de minério de ferro no mundo, a partir do rompimento da barragem da Samarco, localizada no município de Mariana, Minas Gerais. Um rastro de destruição e morte se estendeu por 700km até a lama atingir o oceano Atlântico. Ao acompanhar as reuniões e audiências de conciliação no Fórum de Justiça de Mariana, entre comunidades locais, corporações e funcionários do Estado, aponto para algumas armadilhas do espaço de negociação que, ao invés da condição hagiográfica de autonomia e capacidade simétrica de escolha, opera como mecanismo de contenção de críticas e manipulação indireta de condutas. Neste sentido, o artigo analisa a racionalidade política e as formas de controle contidas nas estratégias extrajudiciais de resolução dos conflitos.

**Palavras-Chave:** Gestão; Conflito; Mineração; Desastre; Mediação.

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## Introduction

On 5 November 2015 the Fundão dam – a iron ore tailings containment structure owned by Samarco Mineração S.A. and controlled by a joint venture between Vale S.A. and BHP Billiton Brasil Ltda, the world's two largest mining corporations – failed catastrophically. The collapse of the structure, located in the municipality of Mariana in Minas Gerais state, Brazil, turned into a disaster of kilometric proportions when around 40 million cubic meters of waste spilled into the Doce river basin. Rural villages downstream such as Bento Rodrigues (located on the shores of the Santarém river where the dam was built), Paracatu de Baixo and Gesteira (on the shores of the Gualaxo do Norte river) were completely devastated. Nineteen people were killed in the immediate aftermath:<sup>1</sup> four residents of Bento Rodrigues; an elderly woman visiting family in the subdistrict; a Samarco worker; and 13 workers subcontracted by the mining company. When the mud reached the Doce river, flowing down the Carmo river first, it caused substantial harm to the water quality and compromised the public water supply to dozens of riverside towns all the way to the river's mouth on the Espírito Santo coast. Along the 700 km stretch of watercourses affected by this disaster, the flood also brought the risk of poisoning by exposure to the heavy metals released through the churning of the river channels. As IBAMA's technical report stated:

Even if the studies and reports indicate that the presence of metals is not directly linked to the tailings mud from the Fundão dam, it needs to be considered that the volume of waste released when the dam burst probably churned up and suspended sediment from the bottom of the affected watercourses, which history of use and reports in the literature indicate already contained heavy metals. The churning may have made these substances bioavailable in the water column or in the mud along the route of the flood, leaving the Samarco company responsible for the occurrence and for consequent recuperation of the area. (IBAMA 2015: 31)<sup>2</sup>

The impacts of the Samarco disaster have been manifold. For this article, though, my analysis will be limited exclusively to the measures adopted to remedy the damage caused in the municipality of Mariana.<sup>3</sup> I reflect on the use of social technologies in conflict resolution and their political effects. It is not my intention to explore the merits and the effectiveness of these technologies in other areas of law, such as reconciliation hearings to 'resolve' legal disputes in special courts involving consumer and family rights.<sup>4</sup> My aim is to problematize the use of these technologies for cases relating to human rights violations, especially in the environmental area, including those involving disasters.

<sup>1</sup> According to data published by Cáritas (2022), since the start of the mediation process, more than one hundred people, residents of the affected communities in Mariana, have died without receiving the reparation due to them.

<sup>2</sup> Four years after the dam collapse, studies indicated chemical substances in samples of the water, soil, fish and even cow's milk. These substances included lead, arsenic, nickel, chrome, mercury, magnesium, cadmium, copper and zinc in concentrations far higher than the limits of tolerability set by the Ministry of Health (Ambios, 2019; LEA-Auepas, 2019; Institutos Lactec, 2019, 2018).

<sup>3</sup> Eight settlements in the Mariana region were affected by the Samarco tailings flood: Bento Rodrigues, Camargos, Ponte do Gama, Paracatu de Baixo, Paracatu de Cima, Bicas, Pedras and Campinas.

<sup>4</sup> Some studies also point to criticisms of the mediation processes in the special courts, principally due to their emphasis on speed over efficiency (Simião & Oliveira, 2016; Baptista & Amorim, 2014; Oliveira, 2010).

The data presented here forms part of my doctoral thesis, which was based on field research mainly conducted between 2015 and 2017, including my accompanying of diverse reconciliation meetings and hearings at the Mariana Justice Forum (Zucarelli, 2018).<sup>5</sup> As a method, I examined the dynamics of situations of social interaction (Van Velsen, 2010; Mitchell 2008) and their repercussions via two main paths: 1) readings of technical, legal and academic documents produced on the case, and 2) participant observation in the negotiation and mediation meetings between representatives of the local communities, the mining companies (Samarco, Vale and BHP Billiton) and state legal professionals (the Minas Gerais Public Prosecutor's Office and the Mariana District Court).

In situ observation of the negotiations in these mediation and decision-making forums was fundamental to understanding some of the questions that guided my research, such as: Who are the 'relevant' and 'qualified' agents in the 'dialogue'? What happens to the different social subjects when their demands collide with the expectations and the participatory model that these demands presume? How is the so-called 'pedagogy of dialogue' realized, in practice, in the lived experience of these subjects in the meetings and what are their implications? How are these demands treated, managed and possibly transfigured? What are the positionings, discourses, actions and manifestations desirable in this conflict resolution structure?

Attempting to synthesize the responses to these questions, I have organized this article into four parts. The present introduction is followed by a brief contextualization of Alternative Dispute Resolution instruments. Next, I problematize the government technologies mobilized by the state-corporate alliance. I conclude with a critical reflection on the political rationality that steers the disciplined participation of victims in the asymmetric extrajudicial resolution spaces.

## The disaster and Alternative Dispute Resolutions

For the social sciences, disasters are associated with tragic social events occasioned by the combination of a specific social situation and a physical occurrence that unleashes an abrupt disruption to the normality of social life (Valencio 2014; Valencio et al., 2009; Oliver-Smith & Hoffman, 2002). However, the institutional initiatives designed to respond to disasters can actually contribute to the perpetuation or worsening of the disruptions experienced by victims. This observation takes concrete form in the case analysed here and will be detailed over the course of the article.

During the analysis of this process, it was possible to observe institutional agents collaborating in the construction of a series of measures capable of managing the damage caused. Twelve days after the dam's collapse, the first systematic process of extrajudicial negotiations was implemented involving the Minas Gerais Public Prosecutor's Office (MPMG), Samarco and the recently formed Commission for People Affected by the Fundão Dam (CABF).<sup>6</sup> Already in the first meetings, representatives of the corporations and the state legal institutions highlighted the need to adopt pre-established models of 'participation,' as shown in the excerpt below, taken from the Minutes of the Meeting of 19 November 2015, two weeks after the dam's collapse:

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5 My thanks to Gesta/UFGM, especially Raquel Oliveira, for the comments and to Andréa Zhouri for her supervision and unrestricted support towards the development of the research as part of diverse projects funded by CNPq and FAPEMIG. My thesis was also supported by a CAPES doctoral grant. The article was subsequently updated and refined as part of my postdoctoral work, financed by FAPERJ, on the Postgraduate Program in Social Anthropology of the Museu Nacional/UFRJ.

6 In Portuguese: *Comissão dos Atingidos pela Barragem de Fundão*. Still in mourning, the *atingidos* had to form representative commissions to join the negotiation process. The CABF underwent three reformulations over the first year of its existence, the members of the first having been appointed by the municipal mayor. At two other moments, elections were held that led to some changes and consolidated the composition of the commission, which includes representatives from all the affected communities in the Mariana municipality with just a few replacements of members over the following years (Zucarelli, 2018).

[The representative of Samarco] said that the representation must be legitimate for the community, that there are many discussions within the group and that the company needs to resolve the emergency issues. He said that the Commission has to reflect internally and reach agreements. He agreed that the meeting had to be larger but there also has to be a limit. “If with 50 people it’s difficult to make progress, imagine with 600 people talking.” (MPMG 2015a: 6)

Expressing the same viewpoint, the sociologist from the MPMG offered to help organize the participation of the newly-formed Commission of People Affected by the Fundão Dam: “the PPO can converse about the models of representation, communication and rights training. The PPO proposes to help the Commission along these lines” (MPMG 2015a: 7).

Nonetheless, the difficulties raised by the company in reaching solutions during the first month of meetings prompted the MPMG’s decision to submit the first Public Civil Lawsuit (*Ação Civil Pública: ACP*) on 10 December 2015.<sup>7</sup> Following the launch of this legal action, the Mariana District Court set up judicial reconciliation hearings between the parties. The aim was to decide on claims that could not otherwise be resolved in the dealings between the agents.

The Mariana District Court’s decision reflects a new tendency in the Brazilian judiciary to encourage mediation as an alternative to conflict resolution, even in the context of a disaster. However, it needs to be asked: from where does this disposition towards reconciliation originate? What are the implications of victims accepting or resisting this model? The aim of this article is not to survey the history of a so-called *harmony ideology* based on reconciliation (Nader, 1996; Viégas, Giffoni & Garzon, 2014). Even so, it is necessary to reflect, albeit only superficially for now, on the set of ideas and instruments mobilized in this arrangement, which can be conceived as a specific technology of governance (Foucault, 2007).

For the anthropologist Laura Nader, who studied the use of *harmony ideology* as a pacification policy, the Alternative Dispute Resolution (ADR) first emerged during the 1960s, in the United States, created in the context of demands for rights by various social movements. Litigants were encouraged to adopt the new modalities of dispute resolution through extrajudicial expedients such as mediation and arbitration. For the author, ADR “was called ‘informal justice,’ a justice that promoted compromise rather than win or lose, that replaced confrontation with harmony and consensus, war with peace, win-win solutions” (Nader, 1996: 3-4).

Long before the construction of this aversion to war, confrontation and litigation, in contrast to the valorisation of pacific, conciliatory and harmonious procedures in so-called modern societies, indigenous peoples were submitted to pacification processes during Brazil’s colonization. The analyses developed by João Pacheco de Oliveira (2016) and Antonio Carlos de Souza Lima (1995) explored the rationality underlying the pacification project, understood as ‘civilizing,’ oriented towards the inclusion of Amerindian peoples in ‘society.’

In the colonial period, ‘pacification’ designated a deep transformation experienced by an indigenous group, in which its pagan, immoral and anarchic components were replaced by a supposedly new and more elevated condition, suitable to participation in the colonizing society. (Oliveira, 2016: 335).

While pacification was conceived as a bellicose activity at the beginning of colonization, it was later transformed “into a pedagogical and protective phase” in which “missionaries would be exclusively responsible for their control, teaching and catechization” (Oliveira, 2016: 346). The path towards pacification would no longer be found in warfare and extermination of the enemy; rather it would lie in behavioural changes and

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<sup>7</sup> The lawsuit was proposed by the MPMG given Samarco’s refusal to sign a Preliminary Commitment Agreement that attempted to safeguard the ‘most basic rights’ of the people affected (MPMG 2015: 17).

forms of surveillance, principally self-control. This would involve a kind of 'civilizing process,' as analysed by Norbert Elias (1994), which would become part of the procedures of internal pacification and the formation of the 'civilized' States (Souza Lima, 1995).

The change in the forms of rationality and the use of new technologies to shape conduct and exercise power can be analysed via the idea of 'governmentality,' as defined by Foucault:

First, by 'governmentality' I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument. Second, by 'governmentality' I understand the tendency, the line of force, that for a long time, and throughout the West, has constantly led towards the pre-eminence over all other types of power – sovereignty, discipline, and so on – of the type of power that we can call 'government' and which has led to the development of a series of specific governmental apparatuses (*appareils*) on the one hand, [and, on the other] to the development of a series of knowledges (*savoirs*). Finally, by 'governmentality' I think we should understand the process, or rather, the result of the process by which the state of justice of the Middle Ages became the administrative state in the fifteenth and sixteenth centuries and was gradually 'governmentalized' (2007: 303).

Setting out from this notion of governmentality and its apparatuses of power, the article seeks to analyse the political rationality and the forms of control contained in the extrajudicial strategies of conflict resolution promoted by *governance technologies* (Foucault, 2007), such as the Alternative Dispute Resolution (ADR).

Formal use of these conflict resolution technologies became more widespread after the Second World War and intensified after the Washington Consensus in 1989. Entities like the United Nations, forged during the pacification of the post-war period and focused on diplomacy and dialogue as a form of avoiding confrontation, started to promote the need for administrative restructuring, the strengthening of legal institutions and the adoption of peaceful confliction resolution practices (ONU, 2016). Along the same lines, nation states, banks and multilateral international agencies, in lieu of the legal procedures that employed competitive and litigious methods, advocated the regulation of disputes through the use of pacific and cordial techniques of dialogue and participation as a way of accepting divergences in the field of conflicts (Bourdieu, 2002).

Although legislation allowing for extrajudicial agreements already existed in Brazil some time earlier,<sup>8</sup> the inclusion of new legal instruments – such as Law 13.140/2015 (which provides for the mediation between individual parties as a means of resolving controversies and allowing the self-mediation of conflicts in the area of public administration) and the new Civil Procedure Code (CPC), which came into force in March 2016 – emphasized the legal obligation to use these devices.

One of the main points addressed by the new CPC is the encouragement for courts and other executive bodies to create judicial centres and/or chambers of mediation and reconciliation, with powers related to the consensual resolution of conflicts, making their application compulsory at the start of all disputes. This centres on the understanding that a decision reached through reconciliation has more chance of resolving the question definitively (Brazil, 2016).

In accordance with their individual specificities, Brazil's legal institutions have been adjusting to these prescriptions and innovating through constant reorganizations of service provision centres. In developing these new approaches, members of the Public Prosecutor's Office have access to published negotiation and mediation manuals (CNMP, 2015). Anticipating the incentives contained in the new CPC, the Environmental

8 Reconciliation was instituted in Brazil with the CPC of 1973. Arbitration only appeared in Law 9.307 of 1996. Mediation was established by Resolution n. 125 of the National Council of Justice issued on 29 November 2010, which created the National Judicial Policy for adequate treatment of conflicts of interest within the scope of the Judiciary. All three methods have the objective of reaching a consensual agreement between the parties.

Conflict Negotiation Nucleus (NUCAM),<sup>9</sup> for example, had been created in Minas Gerais in December 2012, following the directive of the Minas Gerais Public Prosecutor's Office (MPMG) to act in the “extrajudicial resolution of conflicts that involve the use of natural resources and to protect the natural, artificial and cultural environment” (Minas Gerais, 2012). NUCAM's primary objective is “to articulate and guide the work of the Public Prosecutor's Office in the mediation and negotiation of complex environmental conflicts” (Minas Gerais 2012: Article 3). Also active in Minas Gerais state is the Social Inclusion and Mobilization Coordination Team (CIMOS),<sup>10</sup> linked to the MPMG, which promotes spaces for dialogue with diverse social actors, seeking “to establish cooperation projects and partnerships that guarantee and expand fundamental rights and make them effective in an approach based on social transformation through empowerment” (Cimos, 2016), as well as avoiding “judicialization and contributing to social pacification” (Cimos, 2014).

### **The perpetuation of the disaster through the use of social technologies of crisis and criticism management**

With an emphasis on preventing disputes and building ‘harmonious’ agreements between litigating parties, the Samarco disaster continues to be administratively transacted through *governance technologies* (Foucault, 2007). I rework Foucault's concept here to contribute to the analysis of the rationality of government and the instruments used to manage the disaster. I thus use the formula *social technologies of crisis and criticism management* to reflect on the technological and institutionalized framework, which combines disciplinary and regulatory mechanisms, created with the sole objective of managing both the *crisis* caused by the dam collapse and the *criticism* of official responses to the disaster.

Before exploring the mechanisms for crisis and criticism management in detail, I highlight the fact that, when referring to *social technology*, some authors take the term ‘social’ to presume the adoption of alternative solutions to the institutionally legitimated practices, arguing that they can be considered “an instrument of social emancipation and not as a means of domination, a form of control or a cause of social exclusion” (Baumgarten, 2008: 106). In the situations examined here, though, I observed the imposition and institutionalization of these technologies despite the opinions and forms of action of the more vulnerable parties in the relationship. Thus, the ‘inclusion’ of the affected people (*atingidos*) in the ‘participatory’ processes is more a tactic of pacification and social conformation than an alternative, dialogic and democratic solution. This is one of the facets of ADR (Nader, 1996) and other *technologies of citizenship* (Hunt, 2015, 2012; Cruikshank, 1993), instruments constitutive of power relations. The idea of ‘empowering’ and transforming lay people into “self-sufficient, active, productive and participatory citizens” (Cruikshank, 1993: 69), capable of choosing the best actions for resolving their own claims, conceals the traps laid by the asymmetric power relationships structuring these processes (Foucault, 2007). Through supposedly democratic means, the inclusion of victims of the disaster on a mediation table with those responsible for the damage and injury caused by the dam collapse gives an impression of autonomy and capacity for choice, when what is actually involved is the administration of criticism (Benson & Kirsch, 2010) and an indirect manipulation of the conduct of the individuals. As Dardot and Laval (2016) emphasize, this ‘freedom of choice’

[...] is identified with the obligation to obey a maximizing conduct within a legal, institutional, regulatory, architectural and relational framework, which must be constructed so that the individual chooses ‘with complete freedom’ what they should perform for their own interest (2016: 216).

<sup>9</sup> In Portuguese, *Núcleo de Negociação de Conflitos Ambientais*.

<sup>10</sup> In Portuguese, *Coordenadoria de Inclusão e Mobilização Sociais*.

Thus the construction of governance is effective to the extent that it succeeds in digesting and (selectively) incorporating criticism, disarming some of the critics, while sterilizing and erasing dissent (Pereira, 2011). Moreover, it links to the process the legitimization needed to respond to criticism and ‘resolve’ the crisis caused by the damage, definitively, at an institutional level.

To construct this asymmetric framework of power, a series of devices are employed, such as making regulations more flexible, restructuring decision-making bodies, proposing democratic consensual spaces, disciplining social participation and defining administrative categories.

To better understand these apparatuses that form part of the *social technologies of crisis and criticism management*, I have organised them along two axes. The first is *structural*, comprising significant changes in bureaucratic composition and management, including the dissolution, re-adaptation and/or creation of agencies and of executive and judicial bodies, as well as the reassignment of officials to new functions. In this axis I include legislative flexibilization, which, under the guise of modernization, has facilitated licensing and eroded socioenvironmental rights achieved by earlier social movements, principally in the 1980s and 1990s. The second axis, which I call *processual*, includes the construction of instruments that contribute to social legibility (Das & Poole, 2008), control and pacification. These include the definition of categories, registration, mediation, reconciliation, arbitration and terms of agreement – in sum, procedures that allow the capture of critique and its channelling into harmonious dialogue with the aim of the management and peaceful resolution of conflicts. Generally, these are methodologies presented to litigants as attractive options, with the justification of avoiding the slow pace of the justice system and the unpredictability of court decisions. Theoretically, it presumes that cooperation will make consensual resolution possible and that both sides of the dispute will stand to gain simultaneously (Fisher & Ury, 1991). It is important to stress that a strong interchange exists between the two axes proposed in this analysis, with mutual influences that work to strengthen and effectuate their scope. Below I explain how these questions unfold in practice.

### *Structural* axis of the social technologies of crisis and criticism management

In the month prior to the collapse of the Samarco dam, in October 2015, the Minas Gerais State Government submitted Law Bill 2.946/2015 to the Minas Gerais Legislative Assembly (ALMG)<sup>11</sup> as a matter of urgency. The bill proposed the restructuring of the State Environment and Water Resources System (SISEMA)<sup>12</sup> to ‘expedite’ environmental licensing. Even after the disaster, the bill soon became Law (n. 21.972) in January 2016. This legislation establishes time limits for the analysis and contestation of state and municipal bodies or entities in the process, after which their acceptance is legally assumed. The law also allows licenses to be issued concomitantly, condensing various essential steps in the analysis of the project’s environmental viability into short periods. Additionally, the law stripped away the functions and powers of the body responsible for environmental licensing, transferring analysis to an ad hoc administrative unit (Zhour, 2015), which selects those development projects to be considered ‘priority,’ whose licensing processes are then fast-tracked.<sup>13</sup>

11 In Portuguese, *Assembleia Legislativa de Minas Gerais*.

12 In Portuguese, *Sistema Estadual de Meio Ambiente e Recursos Hídricos*.

13 Law 21.972/2016 created the Priority Projects Superintendence (SUPPRI), a “complementary structure of SEMAD [State Environment and Sustainable Development Secretariat] [...] responsible for the analysis of priority projects, considered such due to the significance of the activity or construction project for the protection or restoration of the environment or for the social and economic development of the state” Article 5, § 1). The first criterion of ‘significance’ or ‘priority’ concerns the value of the investment, as specified in Deliberation n. 01/2017 of GCPPDES – Sustainable Economic Development Public Policy Coordination Group: “projects with an investment over R\$ 200,000,000 (two hundred million reais) will automatically be considered significant” (Article 2, § 2).

Similar proposals are on the agenda of national public administration, such as Law Bill 2.159/2021, currently under evaluation by the Federal Senate. Mining disasters have wrongly been used by parliamentarians as justification for approving this bill. Rather than adopting more robust measures to prevent similar recurrences, the changes recommend *self-licensing* or simplified licensing for commercial activities with a potential to pollute and degrade, including mining support structures, linear transportation projects, energy supply networks and so on. Obviously, parliamentarians are not unaware of the fact that dam stability reports are produced by companies hired by the mining corporations themselves, a procedure that amounts to self-monitoring. The changes proposed to the framework of environmental deregulation thus reveal different objectives. For the state-corporation alliance, the ‘modernization’ of licensing signifies the guarantee of legal certainty and the opening up to an increased participation of foreign capital.

The Brazilian government’s alignment with the deregulation agenda became evident in the discourses of members of the upper echelon of the executive, as demonstrated in the ministerial meeting of 22 April 2020, when the Environment Minister himself emphasized that distraction of the media’s attention at the moment on the Covid-19 pandemic represented an ‘opportunity’ to implement such reforms:

The **opportunity** we have with the media not... [with the media] giving us a bit of relief on other issues, is to pass the infra-legal reforms allowing deregulation, simplification, all the reforms that the entire world [...] So for this to happen we need to make an effort now **while we are in this tranquil moment in terms of media coverage, because they’re only taking about Covid, and drive through changes to the rules and a simplification of the regulations**. IPHAN [Institute of National Historical and Artistic Heritage], the Ministry of Agriculture, the Environment Ministry, whatever. Now is the time to combine forces **to relax and simplify** the regulations... it’s the [simplified] regulatory structure we need in every aspect (INC/PF 2020: 19-20; emphasis added).

The ‘deregulation’ and ‘simplification’ sought by the minister involved the time needed to produce an environmental viability assessment for projects, an aspect frequently criticised by investors as excessive, bureaucratic and thus time-consuming and costly.<sup>14</sup> This is the context in which we observe numerous flexibilizations in the environmental legislation aiming to provide greater ‘legal certainty,’ thereby attracting and facilitating capital investments.

Finally, in relation to the *structural axis*, it is important to point out the role performed by the *conditions* and *mitigating measures*, which, despite the socioenvironmental nonviability of many projects, prevent the anticipation of likely damage from turning into a decision to refuse permission. In the case of conditions, a diagnosis of nonviability is replaced by obligations in the present, most of which entail the production of new studies and impact monitoring activities (Carmona & Jaramillo, 2015). However, the audit conducted by the Minas Gerais State Court of Auditors (TCE)<sup>15</sup> found weaknesses in the follow-up and monitoring of the conditions set in the mining licenses. As well as a lack of “preventative follow-up and supervision of compliance with conditions for mitigatory and compensatory measures” (TCE 2017: 54), it also identified the “issuing of licenses without any compliance with conditions” (TCE 2017: 55) and examples where “conditions that should have been set in earlier licenses were postponed to the next phase” (TCE 2017: 54), among other irregularities.

The mitigatory and compensatory measures also work towards the institutional viability of the projects by including ‘future requirements’ that authorize, in principle, the granting of the requested license. In this way, these devices end up functioning as *flexibilization mechanisms*, which postpone actions or effectively block decisions to turn down permission for the projects (Zucarelli, 2006). Samarco’s license was no different.

<sup>14</sup> This criticism does not take into consideration, for example, the extremely poor quality of the environmental impact studies presented by the companies, most of which require complementary information from the licensing environmental bodies. On the political-structural and procedural problems of licensing, see Zhouri, Laschetski & Paiva (2005).

<sup>15</sup> In Portuguese, *Tribunal de Contas do Estado de Minas Gerais*.

The conditions set in the pre-licensing phase remained unmet, even when the operating license was issued, and nor were they implemented in response to the technical reports produced at the request of the Public Prosecutor's Office during the revalidation phase for the operating license (Instituto Prístino, 2013).<sup>16</sup>

### *Processual* axis of the social technologies of crisis and criticism management

In this axis, I specifically examine two mechanisms that produce significant political effects in relation to the management of environmental conflicts, whether through the capture and 'channelling' of criticism and opposition, or through the promotion of 'harmonious' dialogue as a means of preventing litigation and dissolving resistance. Both mechanisms rely on controlling the eligibility of compensation claims and the public expression of conflicts. Under the guise of social pacification, two main strategies are put into operation in order to: 1) discipline participation in spaces of mediation, and 2) define and fragment taxonomies.

#### Disciplining participation in mediation spaces

The spaces planned for the execution of mediation practices constitute an asymmetric field of power where specific symbolic capital is required (Bourdieu, 2002). Those possessing this technical and political capital generally tend to dominate the process of formulating supposedly adequate measures. Participants who lack the required capital need to perform a series of procedures foreign to their immediate universe. In this new form of imperative relationship, marginalized sectors of the field are not permitted to express their own ways of doing, creating and existing without a specific 'translation' (Spivak, 2005) or reconfiguration of their political languages.

Along these lines, an excerpt from the poem written by the teacher Angélica, a woman from Paracatu affected by the dam collapse, "expresses the distress and anguish experienced by social actors who find themselves dealing with a new and strange political and bureaucratic reality" (Zhou et al., 2017: 83).

It's so difficult, this task of mine, our task: to learn how to be an affected person.

What do you mean?

We need to behave like affected people.

Is there a particular way for affected people to behave?

I don't know.

I know that we need to learn how to live together like that.

That makes me think about rights, meetings, assemblies, agreements, foundation, reconstruction, resettlement...

Concepts which make me confused. Confusion which makes it difficult to understand simple words like: ask, require, negotiate, fight, right, wrong.

That's why I cry. I feel affected by not knowing how to be an affected person (*A Sirene* 2016: 7).

The excerpt shows how participation is based on a set of conditions and normative expectations relating both to the lexicon of the field itself and to ideal behaviours, habitual knowledge and learnt skills that function as prerequisites or dispositions of the body and spirit that enable action and position-taking. When unmet, these requirements and forms of disciplining result precisely in the impossibility of the person being recognized by other actors from the field and in the discrediting or invalidation of the form and content of their actions (Zucarelli, 2021). The effort to translate thus reveals a certain narrowing of political idioms in

<sup>16</sup> These and other examples of failures to comply with the conditions set in environmental licenses can be accessed via the Map published by Minas Gerais Observatory of Environmental Conflicts at <http://conflitosambientaismg.lcc.ufmg.br/observatorio-de-conflitos-ambientais/>.

which the authorized forms fail to apprehend the diversity and complexity of the demands and narratives of suffering (Zhouri et al., 2017; Santos 2007; Das 1995). The wider dimension of the ruptures caused to social life is eclipsed, at the same time as spaces are organized for setting out demands and for their potential apprehension in institutional terms. In this way, the constitution of formal spaces for 'hearing' the other conceals an indisposition towards other forms of knowledge, as Valencio argues (2010: 760):

It is worth stressing that participatory arenas are by themselves no guarantee that their processes will produce a socially better outcome, given that the direction taken by the argumentative and deliberative strategies can be manipulated by groups that neither desire nor expect to lose control over the institutional decisions that, under pressure from society, they adopt. The institution is seen as an instrument of personal power and prestige by the actors in charge. Thus language games are again employed to produce statements that divert the course of public action away from support of the rights of the socially organized and politically represented dispossessed. This is because any new institutional politics constructed through a genuine polyphony could potentially threaten the instituted power relations and discontinue the patrimonialization of public assets that underpins stigmatizing discourses and practices.

In fact, the incorporation of other actors is enabled and accompanied by the mobilization of sophisticated control mechanisms. The victims experience the game of interaction in practice and, at the same time, despite all the difficulties, confront the challenge by incorporating adaptations to the imperatives of official communication in order to produce the discourse of dialogue and, as far as possible, the discourse of resistance too.<sup>17</sup>

However, to insert oneself in this model of social relationship, as well as the obligation to become familiarized with the symbolic capital demanded, it is necessary to exercise self-control, tame behaviour (Foucault, 2003) and maintain the expressive coherence demanded in interactive spaces. During the reconciliation hearings of the Mariana Justice Forum, the legal consultancy hired to 'translate' the losses of the victims,<sup>18</sup> after some disappointment in earlier meetings (Zucarelli, 2018), perceived that using appropriate forms of address and attire had the symbolic effect of enhancing the credibility of their technical and legal arguments (Goffman, 2004). Given the requirement of formality and order in the occupation of these spaces and discussions, those who wished to participate were asked to submit to control and correspond to the expectations of the social situation.

At the hearing held on 5 October 2017, the rite of participation was incorporated by the legal counsel. From this moment, the *atingido* (the person affected by the dam disaster) no longer had to explain their loss to the judge on their own. When invited to speak, a member of *Cáritas*, the consultancy in question, this time wearing an elegant suit and asking for permission from 'his Honour,' looked up the 'technical file' and introduced the 'case,' recounting the 'situation of the *atingido*' with the formality expected in the mediation space. Next, the judge confirmed with the *atingido* the account presented by their counsel, which was then open to contestation by the bench of lawyers representing the companies.<sup>19</sup>

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<sup>17</sup> In cyclical movements of strengthening and discouragement, the *atingidos* have responded to the challenges of the struggle for rights through expressive actions of subversion, reorganization and engagement in demanding stances against the inaction of the companies. The blocking of highways, national and international denunciations of human rights violations, rearrangements of organisation and mobilizations, demonstrations and public protests. All these formats are contrary to the logic of 'pacification,' resulting from a politics of resistance to the hegemony of participation, which have emerged from the painful passage of time entailed by endless negotiation meetings. I am unable to explore the topic further in this article, but to visualize the demonstrations and resistance strategies, I suggest consulting my thesis (Zucarelli, 2018) and the newspaper *A Sirene* (all editions, from February 2016 to October 2023, are available on the website <https://jornalasurene.com.br/>).

<sup>18</sup> The technical team chosen to assist the Mariana victims was *Cáritas Brasileira Regional Minas Gerais*. For a more detailed analysis of the institutionalization of this and other technical consultancies in the context of dams in Minas Gerais, see Oliveira (2022).

<sup>19</sup> FIELDNOTES. 2017a. *Fieldwork*. Centro, Mariana-MG, 5 October 2017.

Based on these observations, I emphasize that the order mobilized in the interactions contributes to normalization of the field of conflicts and perpetuation of the dominant values. Luc Boltanski (2013), discussing modes of domination, has similarly called attention to a *management policy apparatus* that presents devices capable of containing criticism and maintaining the existing social asymmetries intact. He writes:

In this type of system, the actors, especially the most dominated, are not asked to surrender to an illusion, since they are not asked to adhere to the established order with any enthusiasm. They are asked to be *realistic*. Being realistic means accepting restrictions, especially economic, just as they are, not because they are good or fair 'in themselves,' but because it is impossible for them to be any different (Boltanski, 2013: 450, original emphasis).

This excerpt from Boltanski reminds me of informal conversations I had in the field with representatives of the Public Prosecutor's Office, in which negotiating out-of-court settlements was presented as imperative, the only possible way forward. In this case, the authoritative calculation mobilized by these legal operators is premised on a kind of 'evidence,' namely, that the judiciary would not cede to the claims of the *atingidos* given the economic power of the companies and the illusion of development proportioned by mining in the region.<sup>20</sup>

In this respect, governors and governed, dominant and dominated, confront the same problem. They are all supposed to be servants of reality. They are all asked to be *realistic*. But this equality in theory masks a profound asymmetry. The fetishization of reality conceals what actually constitutes it: namely, the network of rules, laws, formats of proof, norms, modes of calculation and control, which most of the time, but to varying degrees, possess an institutional origin. But one of the main differences between the dominant and the dominated is precisely the asymmetrical position they occupy in relation to institutions and, consequently, in relation to the rules that the institutions set (Boltanski, 2013: 451, original emphasis).

Hence, the *management policy* applied to the administration of conflicts in the environmental field reveals something ever more perverse: the relationship between the creation of a desire for participation and the violence of exclusion (Baviskar, 2003). For Tania Li (1999), these are the effects of a *compromising power*, which, rather than accommodating or resisting, leads to the formation of everyday compromises to achieve a consensual resolution. In this sense, Tania Li (1999: 316) invites us to reflect not only on the institutionalized acts of those who rule but on "how rule is accomplished".

The presence of the Public Prosecutor's Office, historically responsible for defending collective rights and possessing a certain willingness to collaborate in understanding and compensating for damages, provoked this type of feeling and engagement from the *atingidos* during the reconciliation meetings. The accordance of the *atingidos* with the actions adopted by the PPO induced the enchantment needed for their participation and indeed their view of the Mariana prosecutor as a kind of 'guardian angel' (A Sirene 2016a: 5). On many occasions, as I noted in my field notebook, *atingidos* declared that they only ever attended meetings when the prosecutor was present. His presence signified a certain empowerment, the capacity to ensure some kind of deliberation, unlike the innocuous meetings with the company alone.

Perhaps this is the main element accounting for the force of these social management technologies. Ultimately, the legitimacy of the so-called democratic and harmonious decision-making spaces can only be assured by the inclusion of diverse representatives in the agreement negotiations. Nonetheless, in enabling this compliance, it is worth emphasizing the importance attributed to discipline when the population becomes the object of management.

The discourse of discipline has nothing in common with that of law, rule, or sovereign will. The disciplines may well be the carriers of a discourse that speaks of a rule, but this is not the juridical rule deriving from sovereignty, but a natural rule, a norm. The code they come to define is not that of law but that of normalisation (Foucault, 1980: 106).

<sup>20</sup> FIELDNOTES. 2016. *Fieldwork in Bento Rodrigues*. Mariana-MG, 10 January 2016.

It is in this sense that the engagement and acceptance of norms regulates the conduct of the actors in the discussion spaces – at least to the extent that these norms are followed. Specific rules are created and passed on via ceremonies, like the official opening, approval of minutes, ordered seating arrangements, stipulation of the time allocated to speaking, denunciations and replies, as well as future courses of action. In this way, disciplining acts to structure a certain hierarchy and regulate attitudes, as observed during fieldwork in the rituals surrounding the reconciliation hearings in the Mariana Forum, participation in which required appropriate posture, dress, use of language and emotional control (Zucarelli, 2021).

During one of the meetings for revision of the registry, an *atingido* from Paracatu broke with the ritual of order, legibility of speech and waiting for the ‘appropriate’ moment to participate in the meeting. The space prepared in advance [the Mariana Conventions Centre] was packed but only a small group of lawyers were talking in low voices at the front of the hall with the prosecutor and another three selected members of the Commission. Shouting slogans, this *atingido* demanded that everyone be allowed to participate because it was a discussion important to the life of all the people present there. In a way, his ‘undisciplined’ behaviour roused the others present who applauded his speech and moved towards the front to hear the company lawyers at close hand. Under pressure and still speaking in low voices, the lawyers felt coerced and threatened to abandon the meeting. Despite having received everyone’s support initially, the *atingido* was then vilified precisely because his actions had failed to coincide with the idea of ‘cordial dialogue’ and the proposals for reconciliation, mediation and acceptance ‘indispensable’ to peaceful resolution of the conflicts. He was described as agitated, ‘hot-headed’ and unbalanced and told that his attitude could jeopardize the compromises reached.<sup>21</sup>

Hence, the ‘selected’ members, trained in the framework of so-called citizen culture, are the actors admitted as ‘organised civil society’ with access to ‘participation’ in the new governance. Captured by this logic, they will be obliged to organize themselves in a civilized form, disciplining themselves not only by complying with the law but also by considering the constructed codes of normalization (Foucault, 2003) of the new *technologies of citizenship* (Hunt, 2015 and 2012; Cruikshank, 1993), oriented towards the construction of agreed solutions via a market contract model. By adopting this conduct, they become ‘empowered participants’ with the symbolic capital needed to act in the field of negotiation (Zhourri, 2015; Carneiro 2003; Bourdieu, 2002).

In effect, all other divergent forms of thought, knowledge, language, posture and behaviour are disqualified, ignored and projected beyond the field of reasonableness or intelligibility, thereby excluded. As witnessed in the field, those who publicly express dissent in relation to these predicates of participation are pejoratively depicted as emotional, problematic and sensitive subjects who do not act rationally – attributes incompatible with the discipline that prevails in the negotiation ritual.

As Weber (2002) has already highlighted, though, when control mechanisms fail to operate effectively, the possibility exists of resorting to violence, which includes the policing and forceful removal of critics from meetings. Despite physical violence being the ‘simplest’ means of exerting power, however, other more efficient forms of perpetuating domination were developed over the final decades of the twentieth century (Weber, 2002). As Veena Das and Deborah Poole (2008) attest, the question is not simply denying belonging or participation, but exercising new forms of regulating resistant populations through special laws. As Nader (1996: 4) denounces:

The elements of control are far more pervasive than the direct extension of state control. An intolerance for conflict seeped into the culture to prevent, not the causes of discord but the expression of it, and by any means to create consensus, homogeneity, agreement.

21 FIELDNOTES. 2017. *Negotiation meeting between those affected, MPMG and Samarco. Convention Center, Mariana-MG.*

Taking a similar approach to Nader (1996), Acselrad and Bezerra (2010) explore the diffusion of 'environmental conflict resolution' techniques in Latin America through a survey of the literature. The authors proceed to argue that this model of 'harmonization' adopted in negotiated resolution practices displaces the political dimension of the debates taking place in public arenas, "assigning the conflicts a depoliticized 'treatment' based on direct agreement – usually through compensations – between the actors directly involved in them" (Acselrad & Bezerra, 2010: 35).

The adoption of resolution technologies based on a 'coercive harmony' works to establish a mechanism of cultural control, acting as a policy of social pacification (Nader, 1996; Souza Lima, 1995). In this sense, a kind of training is imposed on victims in order for them to adapt to the demands of the field of negotiations. Following this logic, the 'training' involves a tutor who establishes a "pedagogical mediation compensating for their relatively inferior position in the political community, preparing them for the exercise of full citizenship" (Souza Lima, 2012: 784).

Hence, when the Public Prosecutor's Office joined the case under analysis, we can perceive a certain tutelary orientation with suggestions that individual lawsuits be dropped in favour of collective settlements (the PPO's area of work) and that commissions and/or organisations should be created to represent the claims in the debate. These actors propose to explain the potential legal or extrajudicial procedures and gradually introduce the culture of 'citizen participation' to the *atingidos* (Hunt, 2015, 2012; Cruikshank, 1993).<sup>22</sup>

Problematizing the tutelary mechanism of the legal framework applied to indigenous peoples, Souza Lima argues that tutelage represents "the exercise of state power over spaces (geographic, social, symbolic) through the identification, nomination and delimitation of social sectors taken to lack the full range of capacities necessary for civic life" (2012: 784). In the Mariana case, the Federal Court judge referred to those affected by the Samarco disaster as follows: "an intellectually less-favoured population who must be protected".<sup>23</sup> In proposing a technical consultant to assist them, the judge explained: "The *atingidos* are complaining about the registration process. They have a very low sociointellectual level and find it difficult to endure the three hours needed for registration".<sup>24</sup> Rather than questioning registration as an effective and fair instrument for victims to record their losses, therefore, any problems with the process are attributed to the victims themselves, deemed unable to cope with the methodology used. The situation is clearly inverted, ignoring the need to create tools capable of responding to the new reality and the demands of those who suffered the impact of the disaster. Instead, the presumption is that victims must adapt to formal and bureaucratic procedures unfamiliar in their everyday lives. Hence, the negotiation sets in motion a process of domesticating conflict, ensuring the predictability of the victims' manifestations in the public arena (Oliveira & Zucarelli, 2020; Bronz, 2011).

An example of this situation can be observed in the transcription below, referring to the case of a woman from Bento Rodrigues affected by the disaster, who was asking to stay in the house rented by Samarco, in Mariana, while also receiving a sum equivalent to monthly rent for her uncle. He used to live on his own in Bento, but, after falling sick, had gone to live with his niece who took care of his needs. The company alleged that the high amount paid for renting the house already covered the rights of both households.

**Victim:** It's the *atingido's* right to choose where they want to live until they return home... and it's where I chose. You didn't say that it has to be a rent of 2000, 3000, 4000. I went there, chose the property and that's that.

**Representative of Samarco:** But you can see that it's a long way from the emergency amount that we gave.

**Victim:** No. The emergency was over a year ago. It's been ten months. The emergency is over.

<sup>22</sup> In the aftermath of the disaster, the Public Prosecutor's Office created human rights and training courses for Popular Community Defence Prosecutors in Mariana.

<sup>23</sup> FIELDNOTES. 2016a. *Conciliation hearing*. Belo Horizonte-MG: 12<sup>a</sup> Vara da Justiça Federal, 13 September 2016.

<sup>24</sup> FIELDNOTES. 2016a. *Conciliation hearing*. Belo Horizonte-MG: 12<sup>a</sup> Vara da Justiça Federal, 13 September 2016.

**Judge:** You can't wish for everything. The agreement was for you to have the rent and him too. From what I can understand, Samarco isn't refusing to pay your rent. What it's questioning is that you're receiving a house whose monthly rent is double the average that the others are receiving. So I ask you: are you willing to move to a house with a lower rent for your uncle to receive the 1200 [the average amount determined for rent]?

**Victim:** I'd ask you in return: does Samarco have a property I could choose to put my three horses, my fifty chickens, my geese, my dogs, all of them?

**Judge:** The question is that you have to make choices. [...] I think you have to be more flexible.

**Victim:** It's Samarco that has to be more flexible with us.

**Judge:** No. For the purposes of agreement, we have to be more flexible, you understand? Can you follow the reasoning?<sup>25</sup>

In effect, the caveat that 'you can't wish for everything' and the demand for 'more flexible behaviour' fall entirely on the more vulnerable side of the relation. Demands that deviate from the established patterns and the customary practices of the negotiating situation are directed towards the renunciation of claims deemed inappropriate or excessive, as a way of ensuring that the relationship remains domesticated, predictable and in conformity with the filters of legibility that block certain claims for rights.

### Definition and fragmentation of taxonomies

In the context of environmental policies, many classifications are used to organize information on the different environments in which interventions are planned. It is not my intention here to examine the entire range of taxonomies in this field. However, we do need to reflect on various questions in order to grasp the fundamental role of certain categories in delimiting and shaping the *social technologies of crisis and criticism management*.

The first taxonomy I wish to examine is the *atingido*, the 'affected' victim, the construction of which initially referred to the struggle and resistance of social movements to environmental licensing processes for hydroelectric plants in Brazil. Vainer (2008) highlights the implications of its definition:

A contested concept, the notion of *atingido* concerns, in fact, the recognition – read, legitimization – of rights and those possessing them. In other words, establishing that a particular social group, family or individual is, or was, affected by a specific construction project means recognizing the legitimacy – and in some cases the legality – of their right to some kind of compensation or indemnity, recuperation or non-pecuniary reparation (Vainer, 2008: 40, original emphasis).

In fact, the biggest problem in recognizing who is the *atingido* are the legal implications of any such legitimization. This is where we encounter the dispute over reducing costs (for the companies) and guaranteeing rights (for the *atingidos*). Responding to the social struggle for recognition of the damage inflicted on those identified as *atingidos* (affected), the state and companies make use of various devices to delimit the nature of this category. A tangle of other classifications and subcategories are mobilized, therefore, in the attempt to justify the inclusion or exclusion of claimants in the universe covered by any reparation measures. The formulation of the Area Directly Affected (ADA),<sup>26</sup> normally used in the environmental impact studies commissioned by the mining companies, seeks to limit the size of the affected area and population, based on a 'technical' discourse. It is common for the ADA to constitute the exact localization of the project infrastructure – in other words,

<sup>25</sup> AUDIO RECORDING. 2016a. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 14 set. 2016. Digital recorder, (275 min.). Transcribed by the author.

<sup>26</sup> In Portuguese, Área Diretamente Atingida: ADA.

where the company leaves its physical mark. The objective of the restriction to this area is linked to the project budget since the broader the definition, the larger the expenses will be on compensation for compulsory relocation and mitigation measures.<sup>27</sup>

Also with the aim of limiting the 'social cost' of the projects, use is made of what Vainer (2008: 41) calls a *territorial-patrimonialist* conception, which identifies someone as affected only if they own land in the area concerned. This definition works to exclude other customary forms of possession and use rights in the affected territories, although some advances – albeit in the face of considerable resistance and limitations – have been made in terms of recognizing smallholders, tenant farmers and sharecroppers, for example.

In the mining sector, companies strive to avoid use of the notion of *atingido*. However, this category of struggle, derived from the clashes with the electricity sector, has also been incorporated by victims of mining projects and disasters. In the dispute over the naming of right-holders, mining companies seek to restrict the category, whether by the fragmentation of the requests for licenses or even by the creation of new subcategories. The term most commonly used by the companies and the state to designate those affected in this area is *impactado* (impacted) or *superficiário* (superficiary), which maintain the idea of the spatiality of land ownership (Vainer, 2008).

It is common for the mining company to propose a compensation agreement only to those affected within the *impacted* area, that is, the physical area in which properties overlap with the area utilized or harmed by the project. The category *impact* possesses the spatiality of the mining project as a basic reference and presumes the capacity to objectively assess all the damage in the demarcated region. However, damage extends beyond this physical visibility of the interventions, since the transformations have affected social practices and group territoriality (Teixeira, Zhouri & Motta, 2021).

In the case of the Samarco disaster, the company uses the term *impacted* in order to effectively grade levels of damage and limit any compensatory and remedial measures exclusively to the area and population located within the physical limits reached by the mud – that is, the perimeter defined by the river channels. In this way, the category *impacted* obscures the spatial amplitude of the cultural, social and economic relations and the unfeasibility of recuperating diverse uses previously made of the now transformed territory. Hence, the contrivance of a commensurability between the *impact* and a technical solution, or the *impact* and the amount of compensation required, shifts the political discussion onto the *experts*. The use of a *competent discourse* (Chaui, 2003) – that is, the 'technical' definition of *impact* zones – can be seen precisely to provide the symbolic capital needed to legitimize a narrowly managerial and economic vision.

During one of the mediation hearings with the judge from the Mariana District Court, the companies (Samarco, Vale and BHP Billiton) refused to recognize one *atingido* (a victim affected by the disaster) as someone *physically displaced*, and thus eligible to receive rent, because his house had not been destroyed.<sup>28</sup> However, access to his property and its use had been made impossible by the mud, as well as the isolation from nearby neighbours who had been forcibly displaced. In a statement to the judge, a representative of the commission of the *atingidos* explained:

After the dam collapse, he had to abandon his house. The residence still exists but he was unable to access his house. So what happened? During this period he stayed in my home for two months as a favour. His sister has a house there in Pedras. Today then... he spends the weekend with his family in his sister's house... Today he's staying

<sup>27</sup> Environmental Impact Studies commonly specify the amounts due to be spent on the 'socioeconomic environment,' even though this does not present the universe of the affected families.

<sup>28</sup> In the negotiations on the Samarco disaster, lawyers made use of the categories '*physically displaced*' (for those who lost their homes) and '*economically displaced*' (for those who lost their income) based on the recommendations of the International Finance Corporation (IFC, 2012). "This distinction was used as a baseline for scaling 'affectations' in terms of gravity and degree of emergency, ordering the scene of the catastrophe into differentiated situations of intervention and institutional response" (Zhouri et al., 2017: 91).

there for free. Until today he hasn't asked Samarco for anything. He's registered but hasn't sought any help. [...] So today, *doutora*, he can't return to his house because he's sick but he has no neighbours close by [if he needs help]<sup>29 30</sup>.

After an interval of 20 minutes for the lawyers to discuss in private and 'align' their understanding of the situation, they decided that they would reimburse him with the Emergency Financial Aid card,<sup>31</sup> retroactively for the period from 05/11/2015 (the date of the dam burst). However, they did not agree to pay the 20,000 reais established for those who had suffered *physical displacement*.<sup>32</sup> The representatives of the companies insisted that the house was habitable and that he could be considered *economically displaced* only.<sup>33</sup> In the hearing of the following month, the *atingido's* claim for 20,000 reais was once again on the agenda. The lawyers argued that access had been reestablished, the community of Pedras had 29 families and just seven of them were still displaced, hence the 'claimant' would not be isolated. However, the witness explained to the judge that the *atingido* used to have two neighbours living close by on whom he could rely whenever necessary. The house of one of them had been destroyed by the mud and the other had left the community in the aftermath of the disaster. The other families live on the other side of the river, on top of the hill, a lot further away. But the lawyers alleged that the area had not been destroyed, he could reside in his original home and the claim for 20,000 reais for this case would be a distortion of the emergency agreement.

We may have other cases, other cases appear where the house is still intact... localities far from his house, who might also claim 20,000 reais because the precedent is set here, different from what was agreed, 20,000 reais isn't just for the loss of the home. I mean, if I decide I'll no longer live in my house, **for whatever reason**, I'll also want to receive 20,000 reais now.<sup>34</sup>

The biggest concern of the company lawyers was always to avoid giving into decisions that might set precedents. Consequently, they tried to disqualify forced displacement as 'whatever reason,' as though it composed a voluntary choice of the *atingido*. The defence's main argument was designed to limit any compensation to the emergency measures, although a year had passed since the signing of the agreement for the emergency response. In this case, the Mariana judge asked for the amount requested to be paid, as a special case, since although the house had not been lost, the social ties that had previously supported him and made living in the territory possible for the victim had been broken.<sup>35</sup> However, at the request of the company lawyers, the reason for which the judge granted the claim – 'breaking of social ties' – was not included in the Hearing Minutes signed by all the participants on completion of the negotiations (Zucarelli, 2018).

The same logic was used by the companies in relation to rural landowners who had lost their fields, meadows and pastures but not their houses. The company argued that the supply of silage for cattle, for example, would be sufficient for the producer to continue producing and selling milk and cheese and that, therefore, payment of the AFE was unnecessary. The same argument was applied to the manicurists and bricklayers who received

29 In Brazil, *Vossa Excelência* is the form of address formally used for judges, the equivalent of 'Your Honour' in English. However, the term *doutor* (feminine: *doutora*) is also commonly used by working-class people as a form of respect and a marker of authority, recognizing the addressee's superior status in the social hierarchy.

30 AUDIO RECORDING. 2016b. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 10 out. 2016. Digital recorder, (270 min.). Transcribed by the author.

31 In Portuguese, *Auxílio Financeiro Emergencial* (AFE). Payment of the AFE was a measure negotiated between the Commission of Affected Parties, Samarco and the MPMG and secured by the courts. The aid is equivalent to one minimum wage for each family member who has lost their income, plus 20% per dependent, plus the value of a basket of basic goods.

32 Like the AFE, the payment of 20,000 reais was a right acquired in the first hearing with the judge from the Mariana District Court (23/12/2015), which established the payment to families who had suffered "physical displacement, irrespective of losing income or not" (State Justice 2015: 6). Of this total amount, 10,000 would not be subject to future compensation and the other 10,000 would constitute an advance indemnity.

33 FIELDNOTES. 2016b. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 14 September 2016.

34 AUDIO RECORDING. 2016a. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 14 set. 2016. Digital recorder, (275 min.). Transcribed by the author.

35 FIELDNOTES. 2016c. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 10 October 2016.

so-called ‘work kits.’ Irrespective of the fact that they were now living in other localities, far from their original clientele, the corporate representatives maintained that granting the financial aid would constitute a situation of dependency: “the company wants people to re-establish their way of life”.<sup>36</sup> One *atingido* from Mariana explained the situation when testifying for a woman who had also been affected:

Her husband sells milk at the association, it can be proven that he lost [his production]. He complained to me very recently that the silage supplied by Samarco was too little, his cows lost all their weight. Do you understand? I think he’s re-established himself now, right? But when a cow loses weight, it has to fatten up again to become pregnant and produce milk again.<sup>37</sup>

‘Re-establishing the way of life’ is not as easy, therefore, as the Samarco representative implied during the hearing.<sup>38</sup> A period of assistance is required along with effective actions that allow, minimally, practices and property to be recuperated in a form that enables the *atingidos* to pursue their economic strategies autonomously.

The categories and their fragmentations thus tend to underestimate the scope of the impacts. The examples mentioned show how the affected areas exceeded the physical mark of the mining projects or the mud with regard to the conditions for staying in the area or the viability of land access and use. The impacts include the consequences of becoming isolated from local networks of sociability, abrupt socioenvironmental changes and/or alterations in the cultural and commercial relations that previously existed.

Some taxonomies analysed in the Samarco disaster reveal that they are informed by criteria of eligibility and legitimation for which there is neither clarity nor consensus (Zhou et al., 2017):

There is dissent when, on some topic of the Register, the Renova Foundation/Samarco disagrees with what was indicated by the *atingidos* and presents another proposal. All these divergences, which amount to 2% for the company, are extremely significant and interfere directly in guaranteeing the rights of the victims, which delays the compensation processes.

The company’s choice of the term *impactado*, for example, diminishes the magnitude of the crime, which it calls an ‘event,’ and, as a strategy, eventually wears down the *atingidos* who, after two years, still have to insist on basic issues such as this nomenclature. Hence, defence of the concept of *atingido* reaffirms Samarco’s responsibility for the collapse of the Fundão Dam, identifies the existence of a crime with real victims, and says who should be compensated, contradicting the criterion of mud used by the company (A Sirene, 2017: 25).

While for the mining companies these categories are constructed on the basis of ‘technical’ definitions, limiting them to the juxtaposition of the activity and the conditions for mitigation and/or compensation, for the *atingidos* the categories are constructed through a phenomenological connection between effect, suffering, anger and learning, which exposes the dramatic situation into which they became involuntarily immersed.

The various ways in which the companies and the state avoid being held responsible occur not only through the emphasis on consensus and the rejection of criticism (Benson & Kirsch, 2010), but also through control of the crisis by other means, such as the construction of terminologies that seek to minimize the reparation costs, the huge amount of time taken by the conflict mediation processes (Teixeira & Lima, 2022; Zucarelli, 2021) or the imposition of definitions and their respective solutions. These strategies thus contribute to distancing

36 AUDIO RECORDING. 2016a. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 14 set. 2016. Digital recorder, (275 min.). Transcribed by the author.

37 AUDIO RECORDING. 2016a. *Conciliation hearing*. Fórum da Comarca de Mariana-MG, 14 set. 2016. Digital recorder, (275 min.). Transcribed by the author.

38 In January 2021, rural producers affected by the disaster, along with the technical advisors, submitted a denunciation to the Public Prosecutor’s Office and launched a social media campaign disseminating videos with reports on the silage supplied by the company, which has been causing the sickness and death of animals from malnutrition (Cáritas, 2021). Even in 2022, the denunciations of irregularity in the supply of animal feed still persist (Cáritas, 2022a).

those responsible from the cases of the ongoing disaster, perpetuating a sense of impunity and the weakness of the public institutions responsible for guaranteeing human rights.

## Conclusion

The initiation of the *atingidos* into the rituals imposed by the social technologies of conflict resolution, such as the mediation meetings (with their set temporalities, discipline and required behaviour), does not allow for any understanding or incorporation of the sensible world of the victims. Paraphrasing Clastres (1979) in his analysis of the initiation rituals and torture of indigenous Guayaki youths in Paraguay, it is left for the victims to carry the *marks on their bodies* and in their territories as a *memory* of this continuous time of disputes.

In this way, these subjects accumulate marks that worsen with the mediation processes, whether in the traumatic effects of the disaster and so many frustrating meetings or in the wounds opened by the toxicity of the mud and the dust of the waste spilled onto the lives of thousands of river dwellers along the Doce river. Various other *marks* can be found in the *atingidos* and in their territories, visible or not, that will leave a record of the *memory* of the violence suffered.

The disaster has continued in the life of these victims for eight years now. Many, even in 2023, have never been 'contemplated' by the emergency measures, given the unilateral corporate decision on the ineligibility of their claims. On 25 October 2019, Samarco received a Corrective Operation License allowing the company to resume its activities in the Mariana region. Meanwhile, the victims still wait for their homes to be built and the restructuring of their ways of life, affected since November 2015 by diverse ruptures.

In this sense, the out-of-court settlements can be seen as ways of guaranteeing some rights, while marginalizing or obliterating other claims, in exchange for the continuation of commercial activities. Hence the 'participation' of subaltern groups and their ability to defend their rights in the face of the governance technologies employed in so-called negotiating spaces is questionable.

The construction of a 'citizen culture,' in this case oriented towards peaceful out-of-court resolution, conceals the power asymmetries and the differences and dissidences at work. Analysis of the case exposes various criticisms concerning the assumptions made by this political rationality. As explored in the article, the requirements for participation involve the control and disciplining of criticism. And as for 'peaceful resolution,' it is worth asking who benefits from the pacific nature of the relationship, since it tends to remove dissenting agendas and languages from the political discussion in favour of a supposed harmonious and consensual negotiation.

What the ethnographic evidence examined here reveals is the long path of suffering, humiliation and exhaustion endured by the Mariana dam disaster victims in their search for recognition. Meanwhile, the corporate agents assume prerogatives and expand their capacity for managing and controlling the construction of the reparation process itself, including dictating rules and defining the obligations that the companies will or will not assume. The outcome is the successful implementation of institutional practices capable of containing 'social risks' and ensuring the infamous 'legal security' of the mining operations.

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