



13 March 2012

Response by FIDH and Justiça Global to Vale's review of the report « How much are human rights worth ? The mining and steel industry's impacts on human rights in Açailândia, Brazil »

FIDH and Justiça Global took note of your response following the publication of our report. We thank you for getting back to us and we would like to submit the following response for your consideration.

As part of our work methodology and in line with a constructive collaboration spirit, FIDH would have indeed wished to submit the report for your consideration prior to its publication. However, we regret that the context did not allow us to proceed this way. Indeed partners associated with this study have expressed concerns that the company may take offensive measures that could jeopardize and discredit their work. Considering that one of these partners is currently facing charges as a result of its actions to promote and protect human rights in the context of Vale's operations and in light of the global increasing tendency to criminalize human rights defenders and social protest denouncing corporate-related abuses¹, FIDH considered their concerns serious and well-founded.

However and as your response highlights, FIDH and its partners have sought to obtain clarification elements from Vale throughout the whole process in order to ensure the accuracy of the report. Elements provided have been, whenever relevant, included in our final report. With regard to some wording that may have led to confusion, we have brought the required modifications and/or further explanations in the updated version of the report dated March 2012, of which a copy is attached to this letter and which is available on our respective websites.

Nevertheless, FIDH, Justiça Global and Justiça nos Trilhos maintain the conclusions and recommendations of the report and regret that Vale did not address core issues at stake in its response. As of today, the health conditions of residents of Piquiá de Baixo and Assentamento Califórnia remain deeply worrying and affected individuals have received no compensation for harm suffered. We hope Vale can contribute to remediate harm caused as a result of both direct and indirect operations in Açailândia and which have generated serious health consequences to the residents.

FIDH and Justiça Global reiterate its appreciation of Vale's willingness to engage with us throughout the investigation process. We regret that – upon publication of the report - Vale had to postpone, at the last minute, our confirmed meeting during our visit to Brazil and that you were not able to send any representative during the important meeting convened by the Public Prosecutor of the State of Maranhão along with other key stakeholders on May 24th 2011. We nevertheless welcome your desire to set up

¹ See for instance the last annual report of the Observatory for the Protection of Human Rights Defenders (joint programme between FIDH and OMCT), “Steadfast in Protest”, 2011 Annual Report, www.fidh.org/Steadfast-in-Protest-2011-Report

another meeting at your earliest convenience. Such meeting could ideally take place in our respective offices in Europe. For the moment and in the hope that our request will meet a favourable response, we will not make our response public.

We look forward to such meeting and hope that, on the basis of these written exchanges, we can have an effective dialogue.

Sincerely

A handwritten signature in black ink, appearing to be 'SB', with a stylized, somewhat abstract form.

Souhayr Belhassen
FIDH President

A handwritten signature in blue ink, appearing to be 'ACaldas', with a cursive and somewhat stylized form.

Andressa Caldas
Executive Director, Justiça Global

• **Page 17 – Vale « responded »**

Vale's response

We do not understand the ironic use of quotation marks around the word “responded.” Vale was available to answer FIDH’s questions in 2010 and, as soon as it received the request for information to complete the report, it sent the information requested. According to the report itself, Vale was the only company that received a visit from FIDH and that submitted responses when requested.

FIDH and Justiça Global's response

The use of quotation marks around the word « responded » is unintentional and does not appear in the updated version of the original report (attached) as well as in the English version to be published shortly.

• **Page 19 - « were being built along the Carajás Railroad (EFC), belonging to the company Vale »**

Vale's response

Vale holds the operating concession to the Carajás Railroad, but does not own it.

FIDH and Justiça Global's response

The term « belonging » has been modified in the updated version of the report for « for which Vale holds an operating concession »

• **Page 19- « Vale was one of the entities responsible for the PGC Master Plan and is its main administrator »**

Vale's response

The Greater Carajás Program was a government strategy in the 1980s, aiming to develop the region, but it was not, and is not, controlled by Vale.

FIDH and Justiça Global's response

Indeed, the Greater Carajás Program was a government strategy. However and as stated in the report, CVRD, then a public company, has been one of the main economic actors involved in the implementation of this program.

The term control in our report is used in the economic sense of the term. As highlighted on p. 24 of the report and in footnote 50, Vale would control close to 28% of the operation costs of the mining-metals companies of the PGC (iron ore supply, ore transport to the mills, pig iron transport to the port, pig iron transport by sea). Then CVRD, the company played an important role in the coordination of the development of the PGC.

• **Page 19- « Açailândia is one of the worst regions in terms of the number of human rights violations by the company Vale in Brazil since the 1980s » And footer note 25 - « Besides Açailândia and other municipalities in Maranhao (such as the capital Sao Luis), Vale has also been denounced for violations in regions in Minas Gerais, Para, Rio de Janeiro, Mato Grosso do Sul and Ceará. In addition to cases in Brazil, there is information about violations in Peru, Canada, Argentina, Mozambique, Chile and Indonesia ».**

Vale's response

« Vale has not committed any human rights violations » (See pages 114 to 116 of our 2009 Sustainability Report.) We comply with all legislation and we are involved in building solutions in conjunction with communities and public authorities.

FIDH and Justiça Global's response

First of all, we would like to specify that, contrary to the terms used in your response with regard to p. 19, the report talks about “allegations” of human rights violations in other regions (see footnote 25 in original report²). Since situations referred to were not part of the current investigation, FIDH did not take any stance with regard to alleged violations occurring in other parts of the country or the world. However, the footnote nevertheless made reference to numerous and serious documented allegations in relation to Vale's activities in Brazil and abroad (Canada, Peru, Argentina, Mozambique, Chile and Indonesia).

Secondly, we take note of your statement with regard to alleged human rights violations linked to your activities. We appreciate your willingness to comply with all legislation and to work with communities and public authorities to build solutions. However, we would like to recall that we are deeply preoccupied by the findings of our investigation, which clearly highlights irregularities, including legal, with regard to operations near Assentamento California in addition to indirect – yet clear and important – responsibilities in providing and transporting mineral transformed by iron companies operating near Piquiá de Baixo in Açailândia. (Please refer to subsequent answers in this document). With the publication of this report, one of our main objectives is to engage in a dialogue with your company with regard to these two situations in order to address the harm suffered by these communities and ensure they can obtain reparation as per national and international standards.

Lastly, while it is important to maintain good relations with communities and work with local authorities in building solutions, we would like to recall companies' responsibility to respect human rights in the conduct of their operations and Vale's commitment in this regard. This implies seeking to “prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships (including entities in its value chain), even if they have not contributed to those impacts³. The respect of due diligence processes to prevent human rights impacts is crucial to fulfill such responsibility.

• Page 21 - “[Vale's activity] had exhausted native forests”

Vale's response

Vale protects 10,321 km² of natural habitat, including sites owned by the company (4%), leased areas (3%) and official Conservation Units protected in partnership with local governments (93%). These areas cover territory in the Amazon Forest (82%), Boreal Forest (1%), Atlantic Forest (6%), New Caledonia (<1%) and Wallacea (11%) biomes, as well as properties located in the transition region between Atlantic Forest and Cerrado (1%). Some of the company's operational units are located inside protected areas that we help to preserve, such as Carajás National Forest and Tapirapé-Aquiri National Forest.

There are also protected areas around our operations, such as a number of private nature reserves in Minas Gerais, in the transition region between the Atlantic Forest and Cerrado biomes. Our conservation initiatives in Carajás extend to all nature reserves within the regional Mosaic of Conservation Units, including Itacaiúnas National Forest, Tapirapé Biological Reserve and Igarapé do Gelado Environmental Protection Area, which do not contain our operations. We also protect other areas, both on our own land

² Footnote 26 in updated version of the report : In addition to Açailândia and other cities in the state, (such as its capital, São Luis), Vale has been denounced for alleged violations in Minas Gerais, Pará, Rio de Janeiro, Mato Grosso do Sul, and Ceará. Aside from the Brazilian cases, there are reports of violations in Peru, Canada, Argentina, Mozambique, Chile, and Indonesia. Cf. International Meeting of Those Affected by Vale. Dossier on the Impacts and Violations by Vale in the World. Rio de Janeiro. 2010

³ See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, « Guiding Principles on Business and Human Rights : Implementing the United Nations « Protect, Respect and Remedy » framework, Guiding Principle 13 (b), June 2011.

and through partnerships, which are not related to our activities, such as the Vale Nature Reserve (Linhares, Espírito Santo), Sooretama Biological Reserve (Sooretama, Espírito Santo) and Ilha Grande State Park (Angra dos Reis, Rio de Janeiro). Source: Vale's 2009 Sustainability Report, pages 110 and 111.

Specifically in the Açailândia region, Vale is responsible for maintaining the only existing nature reserve, covering nearly 40,000 hectares of native forest. This area is preserved as a result of the Carajás Pig Iron project. This area of forest would no longer exist if 35,000 hectares of eucalyptus plantations for charcoal had not been planted elsewhere; in other words, reforestation has contributed significantly to maintaining areas of native forest. To install the Carajás Pig Iron project, Vale took on responsibility for, and has guaranteed, the protection of native forest, rivers, streams and lakes, thereby preserving the landscape, birdlife and biological diversity. All of the other areas of forest in the region have been cleared by cattle farmers and loggers who passed through the region and are now increasingly moving towards the north of the state.

As of January 2008, other plants in Açailândia had around 107,000 hectares of forest plantations, generating more than 9,700 direct and indirect jobs. By November 2010, this figure had risen to more than 130,000 hectares, and over 4,500 jobs have been maintained, despite the serious crisis in the pig iron market. (Data from the Brazilian Association of Steelmakers, ASIBRAS.)

On the border with the state of Pará, the Vale Florestar project, already under way, is responsible for planting 150,000 hectares of eucalyptus plantations. In order for these plantations to be approved, commitments were undertaken to maintain the land's areas of native forest, in line with federal legislation. In addition to planting eucalyptus, Vale Florestar is investing in the restoration of degraded areas and is planting 100,000 hectares of forest with species that are native to the region. Vale Florestar is taking a new economic activity to the region in which it operates, which besides restoring degraded areas, presents an alternative to the culture of deforestation. By 2015, there will be 1,500 km² of land covered by initiatives to protect and restore native trees, as well as 1,500 km² of commercial plantations in southeast Pará.

One of the program's distinctive features lies in the economic alternative offered to local communities. Besides deterring deforestation and restoring degraded areas, multiplier effects are generated in terms of income, formal jobs, tax revenue and improvements in the quality of life.

FIDH and Justiça Global's response

We take note and appreciate the work Vale is doing in protecting natural habitats in order to mitigate and compensate the environmental impact of its operations. Taking into account the information provided, the terminology used was altered.

We would nevertheless like to underline that part of the efforts undertaken and publicized with regard to environmental preservation often appear to be, as documented by the investigation team, related to actual obligations the company has regarding the fulfilment of its operational licenses. This is for instance the case of the only existing natural reserve in Açailândia created as a result of Ferro Gusa Carajás project and is also the case of Vale Florestar project, where the company invests in eucalyptus monocultures whose potential environmental and human rights impacts appear to have been underestimated, including by public authorities.

As per the reference made to the responsibility of farmers and loggers in deforestation, while we do not deny the role they play in contributing to deforestation, we believe they cannot receive the entire responsibility for environmental degradation in the region, since charcoal production from timber used

in pig iron mills played and continues to play a major role.⁴

• **Page 21 – Accordingly, Vale, whose history has always been connected with the ‘need’ to earn international revenue for the country, would do there what it has already done in the state of Minas Gerais: mineral exploration directed towards external markets, generating few jobs, most of them of low quality, giving back low revenues to impacted municipalities (it may be considered a veritable source of economic ‘enclaves’), assuming a higher position of power...**”

Vale's response

This information is not correct. Vale contributes significantly to the generation of municipal, state and federal taxes. It is an important agent in formalizing the local workforce in the regions where it operates. It employs a significant number of people (in Brazil, in 2009, Vale has approximately 109,000 direct employees and contractors – 2010 data taken from Vale’s 2010 Sustainability Report, to be published in the coming months). Vale also promotes the development of its local suppliers and helps to attract external suppliers to the regions where it operates, thereby increasing local tax revenue.

In terms of the capacity for leverage generated by Vale, see this statement by Francisco Costa, a professor and researcher at the Advanced Amazon Study Center (Naea) at the Federal University of Pará (UFPA), with a PhD in economics from the Free University of Berlin, taken from page 46 of Vale’s 2007 Sustainability Report: “Before, we saw Vale as an enclave in the regional economy. In other words, we believed that its action did not generate economic development in towns. The Diagnosis showed a different reality. The company has a strong impact. It buys goods and services in the region to supply its operational and administrative units, and its employees, partners and suppliers do the same thing. The result of this is stimulation of development that we did not evaluate before,” says Francisco Costa. Since the researcher made this statement, Vale has significantly increased its investment in Brazil.

See also: “The destructuring caused by the arrival of large companies in any region is the essence of development. As development with imbalances does not exist, Vale began to make partnerships with specialist consultancies to go beyond legislative requirements. Both in management and among the workforce, this approach has since become an ideological commitment in the company’s business culture. Today we can say that the idea of sustainability is truly part of Vale’s institutional mission.” Paulo Haddad, former Brazilian minister of finance and planning, March 2008, quoted on page 154 of Vale’s 2008 Sustainability Report.

FIDH and Justiça Global's response:

The report did not focus, as highlighted when introducing the methodology of the report, on the potential economic benefits of Vale's activities in the region, but rather on the human rights impacts generated by the iron and mining activities in Açailândia. FIDH and Justiça Global would like to recall the need to ensure that economic development should not be done at the expense of the respect and protection of human rights. In this case, the findings of the report, statistics and data collected during the investigation process with regard to Açailândia's poverty rate and the socio-economic situation of residents remain alarming.

Regarding tax payment, we would like to underline that Vale remains suspected of not having paid nearly R\$ 4 billions of mineral royalties (CFEM) between 2001 and 2007 because of a fraudulent discount the company self-applied to its ore sale value.⁵

⁴See for instance “O aço da devastação” – The Steel of Devastation. Instituto Observatório Social 2011, http://www.observatoriosocial.org.br/portal/sites/default/files/biblioteca/o_aco_da_devastacao.pdf

⁵<http://www1.folha.uol.com.br/mercado/886197-divida-gera-novo-atrito-entre-uniao-e-vale.shtml>

Moreover, during a meeting held on May 17th 2011 with FIDH representatives, Vale and official representatives of the Municipality of Açailândia, the District Attorney of the Municipality did allude to the fact that the taxes received from Vale and the pig iron companies' presence in the region were insufficient in comparison with the costs falling upon the Municipality as a result of such economic activities (referring for instance to the health consequences).

Finally, we would be interested in obtaining information regarding tax payments made; the number of employees in Açailândia and any other information that might prove useful in appreciating Vale's contribution to the economic development of the region.

Members of the investigation team did formulate requests to the municipal authorities to obtain such data when meeting with representatives of the Municipality, but these were left unanswered.

• **Page 22 – “... only 32% of Brazilian municipalities have a worse Human Development Index (IDH) score [than Açailândia] in Brazil.”**

Vale's response

It was neglected to mention that in 2000, Açailândia was the 9th best municipality in Maranhão in terms of IDH score, with a better rating than 208 other municipalities in the state. Any data presented ought to be compared with the state of Maranhão, given that, in 2005, the state had the second worst IDH score in Brazil (0.683). Source: a 2008 report by PNUD/Fundação João Pinheiro. The infrastructure, housing and public service deficits identified are unfortunately a part of the reality of most of Maranhão's municipalities and they deserve special attention from defenders of human rights.

FIDH and Justiça Global's response

We do recognize the fact that the State of Maranhão is one of Brazil's poorest states. The comparison with Brazilian municipalities nevertheless remains useful as it rightly highlights the disparity between the IDH score in Açailândia and that of the rest of Brazilian municipalities. Such comparison proves to be useful for key duty-bearers, such as federal authorities who also assume responsibilities in discharging Brazil's obligations with regard to economic and social rights. Also, while Açailândia might have indeed been ranked 9th in terms of IDH in the state of Maranhão, it is worth recalling that such score would remain poor considering that Açailândia has the second higher gross income per person in Maranhão, according to the Brazilian Institute of Geography and Statistics. Unfortunately, such comparisons serve to demonstrate that economic development is too often not accompanied by a true improvement of peoples' quality of life and reinforces the need to develop indicators that could adequately measure peoples' enjoyment of their economic, social and cultural rights.

• **Page 23 – Measures to make environmental licensing more flexible**

Vale's response

The entire process conducted by IBAMA and the Environment Secretariat takes place transparently and in line with legal requirements. Vale met all legal requirements to implement the Carajás Pig Iron project, from the production of an environmental impact study (EIA-RIMA) and the holding of public meetings to compliance with strict conditions for issuing construction and operating licenses. Monthly, six-monthly and annual update reports are routinely submitted to SEMA-MA and other information is sent and duly registered, informing the authorities of any changes from the original plan. Every year, Vale is inspected by SEMA and other environmental entities, both federal and state.

FIDH and Justiça Global's response

Access to information

As highlighted on diverse occasions in our report, the investigation team has faced serious obstacles in obtaining key information from the Environment Secretariat of the State of Maranhão (SEMA-MA) such as the above-mentioned environmental impact study. Despite the fact that the right to access information is protected under international, regional and national law (refer to Section III.3 of the report), formal requests made to SEMA on the 21st of October 2008, the 14th of April 2009, the 28th of June 2010 and the 12th of July 2010 to obtain copies of the relevant documents (environmental licenses, environmental impact assessment), were left unanswered. As per the legal analysis of our report, this clearly goes against applicable legislation, including under article 225 of the Brazilian Constitution.

We would like to take this opportunity to ask for copies of environmental license as well as EIA-RIMA and all the reports submitted by Vale to SEMA-MA in relation to the “Ferro Gusa Carajás” operations in Açailândia for the last 3 years.

FIDH and Justiça Global believe that transparency and effective disclosure of information are key to ensuring affected individuals can meaningfully participate in decisions that affect them. Vale has on various occasions repeated its willingness to establish good relations with communities. Beyond the holding of public meetings, we believe such objective can be achieved only through communication undertaken in good faith and with meaningful participation of affected communities.

Monitoring

“Every year, Vale is inspected by SEMA and other environmental entities both federal and State.” Such affirmation unfortunately does not constitute any guarantee whatsoever of compliance with environmental requirements. As clearly demonstrated in this report, the responsible state and federal entities are failing to ensure adequate monitoring of construction and operating licenses to effectively prevent environmental damages. (refer notably to Section IV.1)

Lobby

FIDH calls on Vale to ensure that lobby positions of the company, including through business associations, are aligned with the company's human rights commitments. This should imply abstention from lobbying against legal reforms that aims at protecting human rights and the environment and/or from adopting positions that prevent States from fulfilling their human rights obligations.

Duplication of the railway

Finally, we would also like to recall our concerns regarding the ongoing licensing process concerning the duplication of the Carajás railway, which has been characterized by several irregularities and have also lead to judicial actions to prevent potential negative incidences on Quilombolas traditional communities. We would thus like to emphasize the need to respect, in good faith, licensing process and to seek to prevent adverse human rights impacts that such project may cause. Such responsibility implies taking all necessary steps to prevent such impacts.

• Page 24 – Vale’s consent to slave labor in the steelmaking production chain

Vale's response:

In 2007-2008, Vale unilaterally suspended its supply of iron ore to nine pig iron producers in Pará, Maranhão, Espírito Santo and Minas Gerais, due to their violation of environmental and labor laws. Vale was able to act in this way when the public authorities, through inspection, proved the companies’ illegal conduct. Our contracts contain clauses that enable them to be terminated if slave or child labor is proved. This was the first time that a company has suspended contracts with customers due to human rights violations.

It was an unprecedented initiative, for the first time in Brazil, a Brazilian company suspended contracts with its clients – and not suppliers – for violations of human rights and environmental law. Due to this action, Vale set an important standard and was recognized in Brazil and internationally: “Vale is taking important and courageous steps, to promote the full eradication of forced labor exploitation throughout Brazil’s pig iron industry. This can be a model not only in Brazil but for steel producers worldwide, showing the vital contribution that committed business leadership can make to a world of work in freedom and human dignity. Vale’s efforts deserve widespread international recognition”. Roger Plant, Head of the Special Action Program to Combat Forced Labor of the ILO -International Labor Organization. March, 2008.

Vale has established specific clauses on child and forced labor in all iron ore sales contracts to pig iron producers. We also require pig-iron producers to provide every semester their operational license and the sustainable supply plan. We also consult the Brazilian Ministry of Labor on a regular basis, since it maintains an updated listing of all companies involved in issues where respect for labor may be absent and take action, suspending the supply of iron ore and demanding the documentation needed to show compliance with Brazilian laws. This procedure is contributing to improve compliance in the pig-iron sector.

It is a matter of great concern to us to help “clean” the pig-iron production chain since it employs a significant number of people: according to Brazilian Association of Steelmakers (ASIBRAS), considering the figures for November 2010, the activity of pig iron production currently provides around 4,500 direct jobs, both in the forest and in plants in the Açailândia region alone. Adding in pig iron activities in Pará, the total number of direct jobs generated exceeds 8,900.

FIDH and Justiça Global's response

As stated in our report, we welcome the inclusion, in Vale's contracts with its clients, of termination clauses in cases of non-compliance with environmental and labor legislation.

The report does take note of the suspension of contracts with three pig iron companies operating in Açailândia (Viana Siderurgica do Maranhao S.A., Simasa, Fergumar) in 2007 and 2008 for the use of forced labour and illegal logging. Such decisions are to be welcomed. The use of leverage, whenever appropriate and as a way of exercising due diligence, has been advised as part of companies' responsibility to respect human rights.⁶

As highlighted in your response, compliance with environmental requirements also constitutes a criteria to uphold contracts with clients. However and despite serious allegations that pig iron companies operating in the region are causing environmental damages (leading in some cases to serious injuries)⁷, Vale has not yet taken measures – including possible termination of contracts - to ensure these clients comply with environmental laws. The same way contracts with suppliers should be terminated in case of breaches of labor legislation, it is expected that Vale would act with due diligence and promptly react to reports of environmental and health rights violations such as those presented in our report, which are contradictory to both existing legislation and Vale' suppliers' code of conduct.

• Page 25 – Measures to make environmental laws more flexible

Vale's response

Brazil’s environmental legislation is among the strictest and most complex in the world, requiring

⁶ Guiding Principles no.19(ii).

⁷ For example, Vale itself has been involved in the negotiation process for the resettlement of the community of Piquiá de Baixo. The process in itself is a clear recognition of environmental pollution caused by the operation of pig iron companies in this region.

continuous efforts to be correctly applied.

FIDH and Justiça Global's response

In our report, we also recognize that Brazil's legislation with regard to the protection and promotion of human rights and the environment is advanced, with the exception of pollution standards for emissions (refer to Section IV p.80). However, we also highlight initiatives to relax existing legislation as bearing the risks of reducing the existing environmental protection, such as the “codigo forestal”. It is therefore justified that legal proposals such as the redefinition of Legal Amazon and the reduction of legal reserve of rural lands be mentioned as part of the political and legal context in Brazil.

• Page 26 – The Foundation did not grant public access to the EFC integrated socioeconomic diagnoses, as it had promised since 2008.

Vale's response

The EFC socio-economic diagnoses of municipalities have been widely distributed among the public authorities, civil society and private companies. The printed and CD version of the socio-economic diagnosis were distributed in 2008, to the audience attending the presentations made by Vale Foundation on the subject. Vale Foundation's website was recently remodelled and the socio-economic diagnoses are being uploaded gradually.

FIDH and Justiça Global's response

We are surprised by this response. Indeed, as part of our exchanges prior to the publication of the report, FIDH explicitly sought information with regard to these diagnoses.⁸ In your response of May 11th 2011, we did not receive a copy of these diagnoses, nor were we informed of the printed and CD version of the 2008 diagnosis. In the response you provided us with in May 2011, you informed us that they would be made available online in the coming months on the website of Vale's Foundation. The investigation team repeatedly tried to obtain a copy of the studies in different meetings with Vale's representatives. As per the Foundation's website, only a 7 pages-brief could be found. We would appreciate if you could indicate us where the full study can be found. Brazilian local organisations also experience difficulties in obtaining these studies. On April 17 2008, the Comboni Missionaries, member of Justiça nos Trilhos, sent a written request to obtain the full version of the diagnosis. Vale's response, on April 28 2008 was: “To ensure you obtain it quickly, we are providing copies of the slides we have, which consist of the most complete presentation we have so far. As far as the full diagnosis is concerned, it will be difficult for us to assist you, at least at the moment, due to the density of information and maps gathered, representing approximately 600 pages.”⁹ The following day, the Comboni Missionaries expressed their interest in obtaining the full copy. To date, they have not received a full copy.

• Page 30 – “Vale's ‘social responsibility policy’ was created following the greater visibility that the impacts of its operations produced and resulting denouncements and resistance movements”

Vale's response

⁸FIDH sent Vale's the following requests: “In an interview with the investigation team in the framework of this project, representatives from your company mentioned that every Vale's CSR action in Maranhão are guided by the *Diagnóstico Integrado de Socioeconomia da Estrada de Ferro Carajás*, which was released in 2008, involving 27 municipalities in Pará and Maranhão, including Açailândia. During the same interview, Vale's representatives offered to provide the investigation team with a full version of this report, which we have not received. Would it be possible to provide us with a copy of this report?”

⁹ Unofficial translation. «Estamos providenciando a cópia dos slides, a apresentação mais completa que tivermos, para enviá-lo em breve. Quanto ao estudo completo, creio que teremos dificuldades em atendê-lo, pelo menos por hora, devido a densidade de informações e mapas, totalizando aproximadamente 600 páginas. Atenciosamente, Letícia Franco »

Vale does not have a Social Responsibility Policy. However, it has had a Sustainable Development Policy since 2007 and a Human Rights Policy since 2009. Both were the result of a continuous improvement process. It is important to stress that Vale is one of the first Brazilian companies (if not the only one) to have a Human Rights Policy.

FIDH and Justiça Global's response

The term “Social Responsibility Policy” was meant to be used as a general expression encompassing all related policies. The expression has been replaced by “social responsibility policies” to better reflect this idea. A reference to Vale's human rights policy has also been included in the updated version of the report.

While having a human rights policy is a starting point and is part of the due diligence process companies are expected to put in place (cf. CSR initiatives to which Vale has adhered), it must be accompanied by internal measures aiming at ensuring the respect of such policy through adequate prevention, monitoring and remediation mechanisms.

• Page 31 – “chapter setting out ‘ethnodevelopment actions,’ highlighting support for Quilombo communities and indigenous peoples. This support, however, coincides with political pressures and legal action that indigenous groups such as the Xikrin, Kayapó and Krenak peoples are proposing to take against the company”

Vale's response

In our Sustainability Report, we explain the ACPs and each one's status (2009 Sustainability Report, page 118): “Our aim is to establish constructive, mutually beneficial relationships that respect the rights and cultural diversity of Indigenous Peoples. However, we continue to face legal action. A lawsuit involving the Xikrin community of Cateté is in progress, and a suit has been filed by the National Indian Foundation (Funai) against Pará Pigmentos S.A., which is controlled by Vale, concerning financial benefits for the Tembé community. Another lawsuit has been brought by the Indigenous Missionary Council (Cimi) and the Association for the Development and Preservation of the Araguaia and Tocantins rivers, against Ibama and the Estreito Energia consortium, alleging inadequate assessment of the indigenous element during the licensing process. In 2009, a Cooperation Agreement for carrying out projects was proposed between the Consortium, Funai and Ibama. In Minas Gerais, the Hydroelectricity Consortium of Aimorés continued to implement the project agreed with the Krenak community, which includes social, environmental and cultural actions. In the state of Pará, Vale is waiting for the response of the Quilombolo Communities of the territory of Jambuaçu before it can continue with the actions that had been agreed.” This information will be updated in the 2010 Sustainability Report.

The mentioned investments in ethnodevelopment are voluntary and complement actions contained in the scope of legal action. They are part of our process of continuously improving our relations with these communities.

FIDH and Justiça Global's response

We strongly welcome the inclusion, in your Sustainability Reports, of legal actions faced by the company and we also encourage you to include such information and the reasons behind each legal action in your financial reporting whenever appropriate (such as under the reporting requirements of the US Securities and Exchange Commission – see p. 33 of the report).

However, presenting activities related to indigenous peoples from a philanthropic perspective - as is the case in the 2007 Sustainability Report referred to in our report and also in the 2009 Sustainability Report you refer to (entitled Indigenous Rights / Building Alliances) – is somewhat misleading for stakeholders. Efforts undertaken to comply with applicable legislation, should therefore not be presented as voluntary

initiatives but rather as legal compliance issues.

- **Page 32 – “in these reports (Form 20-F), Vale does not explain the reasons for such occurrences, and does not refer to the problems observed”**

Vale's response

Form 20-F is submitted to SEC every year. In this report, the company lists and analyzes the business's "Risk Factors" in a short, objective manner. It is an analysis of scenarios and possibilities. There is no space for going into risks in detail.

FIDH and Justiça Global's response

FIDH understands that risk analysis provided in 20-F forms have to be concise and objective. However, we do not believe that presenting communities and civil society groups' mobilized to denounce the negative impacts of Vale's activities as “protesters”¹⁰ corresponds to the objectivity criteria. Rather, FIDH urges Vale to report, in good faith, on actions undertaken by affected communities and civil society groups by providing investors with the necessary elements (including groups' main denunciations and demands) to be in a position to adequately assess the risks.

Providing such information would be in line with Vale's commitment to transparency.

- **Page 33 – “a significant share of the total allocated for the company's social and environmental responsibility is the result of tax incentive laws”**

Vale's response

In 2010 Vale carried out USD89.60 million of social investment through the use of tax incentive laws and made voluntary social investments of USD215.00 million. The use of tax incentive laws is legal and widespread among companies. Tax incentive laws exist precisely in order to encourage companies to invest in areas that are important to Brazilian society – in this case, culture, sport and the Children's and Teenagers' Fund. We do not understand how this action can be seen by FIDH as negative.

FIDH and Justiça Global's response

FIDH does not consider investments to Brazilian society such as in culture or sports as negative. However, FIDH would like to stress that, *as a matter of priority and as a baseline minimum requirement*, investments should be made into preventing and remedying any negative impact caused by the company or through its business relationships as a result of its activities. As highlighted in our report, the communities of Piquiá de Baixo and Assentamento California have been suffering from the pollution caused by the coal and steel industry in the region for years and yet, they are still waiting to obtain reparations.

- **Page 33 – “Corporate social responsibility initiatives in the fuel, gas and mining sectors have been widely questioned and ‘there is growing evidence of a chasm between the intentions declared by business leaders and their real behavior / impact on the real world’”**

Vale's response

According to the footnote on page 91, this comment refers to a study of conflicts between oil companies

¹⁰ “ Protesters, including from indigenous communities living in areas where we operate, may take actions to disrupt our operations in an effort to influence us to continue or increase the level of support we provide to such communities. Although we will defend ourselves vigorously against such actions, and will continue to provide support to the communities that live in the vicinity of the Carajas railroad, future efforts by protesters to disrupt our logistic operations could have a negative impact on our activities.” *SEC Reports, Vale, 2009, www.vale.com/en-us/investidores/resultados-e-informacoes-financeiras/relatorios-sec/pages*

and communities in Nigeria. There is no basis for such a comparison.

FIDH and Justiça Global's response

Indeed, references included in this footnote are insufficient. We would therefore like to take this opportunity to add the following:

Many multinational companies operating in the oil, gas and mining industry have signed on to international corporate social responsibility initiatives. For example, refer to the list of members of the Extractive Industry Transparency Initiative (EITI) and the United Nations Global Compact, of which Vale is also a member. Yet and despite these commitments, these sectors are also characterized by numerous cases of allegations of human rights abuses in all parts of the world. FIDH's 600 pages Publication on Corporate Accountability and Human Rights Abuses¹¹ lists numerous cases of corporate-related violations, many of which involving companies operating in the oil, mining and gas industry. Cases pertaining to this sector featured in the Corporate Legal Accountability Portal of the Business and Human Rights Resource Centre are also higher than any other sectors of the portal.¹² In 2005, ESCR-Net Corporate Accountability Working Group published a set of case studies related to the extractive industries that show patterns of violations and gaps in the protection of human rights, including environmental and indigenous peoples' rights¹³.

Finally, Professor Ruggie, as UN Special Representative to the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, affirmed that two-third of the report abuses relating to corporate activities were related to the oil, gas and mining sector. Professor Ruggie also stated that the extractive industries accounted from most allegations of the worst human rights abuses.¹⁴

Without pretending to provide for an exhaustive survey, these examples serve to illustrate the predominance of cases alleging human rights abuses in the context of corporate activities in the fuel, gas and mining sectors. While we recognize the challenges businesses face and the complexity of the situations, such state of affairs leads us to question the effectiveness of CSR initiatives in this sector to date.

• Page 33 – “Vale played an important role in blocking efforts to achieve obligatory international standards for corporations”

Vale's response

According to the footnote on page 92, the text mentions Anglo American's approach at the UN's meeting in Johannesburg. We do not understand this accusation.

FIDH and Justiça Global's response

The first drafts of the report referred to the extractive industry's position towards binding rules in general. An error has slipped in the published version of the report. This section was suppressed in the updated version of the report.

¹¹ FIDH, 'Corporate Accountability and Human Rights Abuses : A Guide for Victims and NGOs on Available Recourse Mechanisms', July 2010, <http://www.fidh.org/Corporate-Accountability-for-Human-Rights-Abuses>

¹² Business and Human Rights Resource Centre, Corporate Legal Accountability Portal, <http://www.business-humanrights.org/LegalPortal/Home/Industry/Transport>

¹³ ESCR-NET Corporate Accountability Working Group, December 2005, http://www.escr-net.org/usr_doc/ESCR-Net_on_HR_and_Extractive_Industry.pdf

¹⁴ John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006), para.25.

- **Page 34 – “For example, Vale recently financed the restoration of the Christ the Redeemer statue and new lighting for it... Once the work was complete, it published an advertisement showing the image of the statue in the biggest selling newspaper in Rio de Janeiro”**

The statue of the Christ the Redeemer is a heritage and landmark of Brazil, a tourist attraction of great importance to the city of Rio de Janeiro, and is of enormous symbolism, not only for Brazilians, but also for millions of people across the world. Besides sponsoring it, we continue to maintain the area, located in the largest urban forest in the world, of great ecological importance. The communication strategy adopted sought to make the restoration known to Brazilian society, especially the people of Rio.

FIDH and Justiça Global's response

See above response with regard to p.33.

- **Page 35 – “despite overburdening the municipalities in which it operates, Vale does not invest directly in urban and housing infrastructure, but only helps municipal governments to seek funding from PAC, BNDES and Caixa Econômica Federal, among others”**

Vale's response

Most of Vale's projects are located in regions far from large urban centres, which have significant shortfall in urban infrastructure. Deficiencies in water and sewerage, waste disposal, housing, drainage, paving and urban planning, among other areas, are still a fact of life and an obstacle to progress in many municipalities. Aware of these needs and the fact that community development will only be sustainable if people have better living conditions, the Vale Foundation chose support for reducing housing and urban infrastructure shortages as one of its main areas of activity.

Consequently, the Foundation produces preliminary engineering plans aligned with public policies and containing all the technical details necessary to raise the municipality's chance of obtaining available state and federal government resources – such as through the Growth Acceleration Program (PAC) and the “My House, My Life” program – to implement them.

The Vale Foundation commitment is not only with the improvement of the infrastructure installed, but also with the management process, including the monitoring of building work, rendering of accounts and capacity building of local teams to manage the maintenance systems of installed facilities and services.

Between 2009 and 2010, 202 designs were produced in partnership with 56 municipalities in the areas of sanitation, housing and solid waste management. The Vale Foundation invested a total of R\$28.2 million (R\$19.3 million in 2009 and R\$8.9 million in 2010) to produce engineering plans for infrastructure and housing, enabling municipal governments to access R\$714,549,560.02 from the federal government (R\$326,325,729.86 for projects started in 2009 and R\$388,223,830.16 for 2010).

FIDH and Justiça Global's response

We take note of Vale's actions regarding urban infrastructure development.

Generally speaking, we would distinguish actions that purely belong to initiatives taken as part of a company's “social responsibility” with those that are linked to the corporate obligation to respect human rights. CSR actions indeed remain voluntary and we encourage all companies to do as much as possible to support communities where they operate. As per support or actions that would relate, for instance, to the resettlement of the community of Piquiá de Baixo, which necessity has been recognized by all actors involved, would fall under the scope of measures to take as part of companies' responsibility to protect human rights, including companies' responsibility to mitigate adverse impacts caused by its activities or business relationships.¹⁵

¹⁵ Guiding Principle 15(c).

• Page 35 – “Even though the mining industry is responsible for causing and aggravating respiratory problems, in the health area, for example, the Foundation has been active in maternal health.”

Vale's response

Mining does not cause the aggravation of respiratory problems. Concerning the Health Action Program, it initiates with the identification of the aggravations in the respective municipality in order to create multidisciplinary health cells that plan in an integrated approach the interventions needed. Since Mother-child health in the state of Maranhão is critical – including significant sub-notification problems – we have included this focus in the work.

Concerning Açailândia, according to an article by Repórter Brasil (December 22, 2007), based on 2003 Ministry of Health figures, the rate of infant mortality in Açailândia exceeds 30 deaths out of every 1,000 live births. The average figure for Maranhão is closer to 20 deaths per 1,000 births. It is impossible to say that this is not a priority focus for action.

FIDH and Justiça Global's response

With regard to the affirmation that “mining does not cause respiratory problems”, it suffices to mention that abundant documentation refer to the environmental and social risks associated with mining and steel activities. It is generally recognized that the mining sector constitutes a sector presenting high environmental and social risks. The International Council on Mining and Metals (ICMM), of which Vale is a member, has and continues to address – through conferences and publications- the issue of health & safety in mining activities. It has recognized that mining and metal projects may exacerbate the risks of suffering from respiratory illnesses.¹⁶ As recalled above, the extractive industries, including the mining sector, account for most allegations of the worst human rights abuses.¹⁷ The Brazilian Constitution specifically addresses the need to restore the environment in case of environmental degradation caused by the exploitation of mining resources.¹⁸

The vast majority of dust from mining activities consists of coarse particles (PM10) and particles larger than PM10. Particles are also generated when wind blows over bare ground and different types of stockpiles. These larger particles can have amenity impacts as well as health impacts¹⁹ According to the World Health Organization: «Air pollution is a major environmental risk to health. By reducing air pollution levels, we can help countries reduce the global burden of disease from respiratory infections, heart disease, and lung cancer »²⁰. In addition, « It is possible to derive a quantitative relationship between the pollution levels and specific health outcomes (increased mortality or morbidity). This allows invaluable insights into the health improvements that could be expected if air pollution is reduced. Even relatively low concentrations of air pollutants have been related to a range of adverse health effects. »

The consequences of air pollution should therefore not be diminished or ignored as they can cause serious and irreparable damage to individuals. We therefore remain concerned by your statement. We believe that recognizing and identifying the risks associated with your sector of activities represents one of the first steps to effectively address, in good faith, your responsibility to respect human rights.

Although Vale's efforts to target infant mortality can be commended, such efforts should not replace

¹⁶ ICMM, Good Practice Guidance on Health Impact Assessment, 2010, p.9.

¹⁷ See John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006), para.25.

¹⁸ Brazilian Constitution, Article 225 §2.

¹⁹ Air quality guidelines - global update 2005, fact sheet

²⁰ Air quality guidelines - global update 2005, fact sheet

measures that ought to be taken to address negative impacts caused by the company or through its business relationships. In this case, it seems imperative that Vale contribute, to the greatest extent possible, to mitigating negative health and environmental consequences resulting from its activities in Açailândia. Such actions should be decided and undertaken with the consultation of affected communities and local authorities.

• **Page 36 – “The railroad exacerbated migratory movements and land speculation, aggravating conflicts, without any measure taken by the government or Vale itself”**

Vale's response

Vale was a state-owned company until 1997.

FIDH and Justiça Global's response

The words “as a state-owned company (then CVRD)” were added after “Vale”.

The substance of the statement remains unchanged and is particularly worrying in the context of the foreseen duplication of the railway.

• **Page 36 – “As of 1987, steel companies connected to Vale”**

Vale's response

Vale does not own any stakes in these steel companies, which are distinct entities. Our relationship with them involves selling them iron ore and providing them with transport services. In the case of transport, we are bound by the concession contract. We contribute to the region’s social and economic development, including the generation of jobs.

FIDH and Justiça Global's response

The relationship between Vale and the steel companies was already defined between parenthesis in the report and rightly describes the relationship you describe in your report, that is that the steel companies buy iron from Vale and Vale provides them with transport services. Please refer to p.36 of the original report.

• **Page 37 – “all the money from there [pig iron producers] goes to Vale, because everything they [pig iron producers] make is sold to Vale; nothing leaves here without being sold to it (...)”**

Vale's response

This statement is incorrect. Vale has contracts to supply iron ore to pig iron producers in Açailândia. In 2010 only, in exceptional circumstances and in response to requests from pig iron producers in a difficult situation due to the severe crisis, Vale bought some of the pig iron produced in order to contribute to maintaining the pig iron producers’ activities and ensure that their employees would remain employed.

Besides supplying iron ore to the pig iron producers, Vale transports the pig iron produced by them to the port of São Luiz, along the Carajás Railroad. Vale is obliged to follow the terms of the Carajás Railroad concession contract.

FIDH and Justiça Global's response

We take note of the information provided regarding the purchase of steel from the iron producers in 2010. However, this does not alter the fact that Vale remains in a dominant influential position vis-à-vis the iron producers as the iron provider. Please refer to section IV.4 of the report on the analysis of businesses' responsibilities in this case.

The statement you are referring to is a quote from a community leader from Piquiá de Baixo and not an

FIDH/ Justiça Global assertion. In the report, each statement from community members is clearly identified. Statements serve as a reflection of the understanding by community members of the impacts caused by companies operating near their residences. As emphasized in the first part of the report, the methodology used is based on the active participation of affected communities. You have on diverse occasions repeated Vale's commitment to developing good relationships with communities and upholding human rights. FIDH and Justiça Global believe testimonies such as those presented in the report and which recount numerous and serious negative experiences expressed by affected community members should be seriously taken into consideration and addressed as part of such commitments.

With regard to the transport of mineral, we would like to take this opportunity to reiterate our request to obtain a copy of the Carajás Railroad concession contract that you refer to and which has not been made public.

• Page 39 – Smoke causing harm to health in the Califórnia settlement

Vale's response

UPR02 has been operating at the Monte Líbano Farm since 2005 and, so far, no cases of smoke-related disease have been detected among any of its employees or contractors. All of them take annual medical exams. Respiratory problems may be caused by the dry, dusty conditions at the settlement, given that the region is very arid in the summer and the street are unpaved. Crop burning on farms close to the settlement also produces smoke during the dry season, as does the burning of garbage at the settlement.

The residents of the Califórnia settlement have never had problems as neighbors of the Monte Líbano Farm charcoal production unit, particularly because many of them have worked there. Recently, on May 12, 2010, Francisco Araújo Pinto, who at the time represented the Califórnia settlement, requested a meeting to propose a partnership with Vale. He apologized for the events of March 2008, and said that they were led by members of the MST from other locations and that further action would not occur. At the meeting, Francisco Pinto asked for a donation of tiles, bricks, chairs and support for holding the settlement's anniversary party. Vale agreed to his request and offered the support of its contractors.

As Pinto himself stated, at a meeting held on September 15, 2010 with Vale employees, including a representative of the Community Relations area, Ronald Neri, and various residents of the settlement, it is impossible to prove that a disease is related to smoke, as he reported knowing of the existence of these same health problems in other settlements.

He also said that he had great hopes of obtaining improvements for the settlement through the partnership with Vale and also Suzano. He concluded by stating that there had been no smoke-related problems for a long time, and that it was only noted very sporadically, unlike in the past.

Since then, Vale has received and evaluated requests for support from leaders and residents of the Califórnia settlement and has sought to intercede with the municipal government of Açailândia to complete the project of building a road inside the settlement, as requested by Francisco Araújo Pinto. Copies of some official letters sent by representatives of the Califórnia settlement, proving their good relations with Vale, are attached.

It is important to highlight that an environmental evaluation study has been conducted at UPR02.

In July 2010, Vale hired the company AVAM Avaliação Ambiental Ltda to conduct an environmental evaluation study, in order to investigate chemical agents (aerosols, gases and vapors) and physical agents (noise) associated with charcoal production at the Monte Líbano UPR. Samples were collected in July and evaluated for the following substances: acetaldehyde, acrolein, formaldehyde, benzopyrene, carbon monoxide, respirable inhalable dust and total inhalable dust.

These studies demonstrated that the results are below the tolerance levels established by the American Conference of Governmental Industrial Hygienists (ACHIG).

- See Vale's table in response transmitted.

The full document, which has around 220 pages, is available at the Monte Líbano Farm office. A copy of the results will be sent to SEMA-MA by the end of May, proving compliance with another of the operating license conditions.

FIDH and Justiça Global's response

With respect to the health conditions of former workers of Monte Libano UPR, it appears that testimonies would be contradictory. While all community members might not share the same views, it is worth recalling that 79% of the 155 households of Assentamento California interviewed reported various, including serious, health problems which they have associated with the pollution caused by UPR2.

In addition, the following testimony given by a former worker in the context of the documentary “Não Vale” realized in 2010 leads us to question the validity of health exams provided:

The equipment they gave us offered no protection against the smoke. We often asked them to give us better equipment, but they only gave us the minimum. And so I got sick in there, I had health problems and I left. My head was always spinning, a lot. I spent all my money, and what they gave me wasn't much, I had also to sell some of my stuff to try and get better. I'm still ill, but, thank God, I'm a bit better. The company didn't do anything. The day I had the exam before getting out of company, you know what the doctor told me? "I don't care how you are. I'm just here to declare you are healthy."

It also appears that Mr. Francisco Araújo Pinto's capacity to act as a representative of the community has been questioned by other residents members of the resident associations in the settlement.

We would appreciate receiving copies of the official letters sent by representatives of the Califórnia settlement you mention in your response and which were not attached to the response. We also take this opportunity to ask for the possibility to receive a copy, by email or regular mail, of the study undertaken in July 2010. We would also be interested in obtaining additional information as to why such study was undertaken in 2010 (after nearly five years of operation of the UPR already) as well as regarding the choice of using an American industry standard (ACHIG) as opposed to an international standard for air quality. Authors of the report have been calling upon governmental authorities to conduct independent tests on air and water quality. The company should fully cooperate with the authorities in this regard.

• Page 40 – “intensive release of pesticide in eucalyptus plantations linked to the project”

Vale's response

Pesticide is not used intensively at the eucalyptus plantations. When it was applied in 2007, use was made of backpack sprayers whose bars have a protective “skirt” to prevent the product from being dispersed by the wind. The pesticide was applied manually, 10 cm above the ground. All of the products used are authorized by current environmental legislation and their use is duly controlled.

Since 2008, Vale has not used any chemical product in forests around the Califórnia settlement, or in any other forest, due to the sale of assets to Suzano Papel e Celulose.

FIDH and Justiça Global's response

We take note that Vale stopped using pesticides as a result of the sale of assets to Suzano Paper. However the investigation team did have report of past cases in which substances were delivered to the eucalyptuses using air plane and heavy machinery. Since it had not been possible to access information on the kind of substances that were used, we would appreciate if Vale would agree to provide such information.

Since there are concerns that pesticides used might have had consequences on the cultivated areas located nearby the forest and which is mainly used for family food production, we would appreciate if you could provide us with the results of any impact assessment that would have been carried out prior to using such products.

• Page 43 – Smoke as a persistent organic pollutant (POP)

Charcoal smoke is not a POP. Persistent organic pollutants (POPs) are highly stable compounds that persist in the environment, resisting chemical, photolytic and biological degradation. They are able to bio-accumulate in living organisms, and are toxic to them, including the human body. They have a negative effect, especially in disrupting the reproductive, immune and endocrine systems, and are also carcinogenic. Another very important characteristic is that they can be transported for long distances by water, wind and animals. POPs may be divided into pesticides (e.g. DDT, aldrin and toxaphene), polychlorinated biphenyls (PCBs), dioxins and furans. The latter two are usually produced through industrial and waste incineration.

See table provided in Vale's response.

Of the list of POPs covered by the Stockholm Convention, the pig iron production facilities have only used mirex, to combat ants. The product is sold in the form of granulated bait that is placed directly in the anthill entrance, and it is not possible for it to be taken from the forest to the settlement due to the existence of physical barriers. Vale stopped using the product in January 2008.

FIDH and Justiça Global's response

First of all, we would like to highlight that the report does not sustain that charcoal smoke is a POP. Rather, the report refers to relevant international instruments requiring States to take measures to control pollutant agents. That being said, the negative impacts of bio-mass smoke on health (causing chronic obstructive pulmonary diseases) are documented²¹.

With regard to the use of Mirex (which is indeed a POP), we would like to know whether the company has performed actual tests to verify that contaminated water or wind did not reach the settlement despite physical barriers? Finally, we would like to ask you what justified the decision to stop using mirex in 2008?

• Page 56 – “Vale delivers an incomplete report, without data on sulfur dioxide emissions, and does not take into account data that would prove that emissions of Total Suspended Particles were higher than CONAMA standards”

Vale's response

a) Levels of sulfur dioxide were evaluated in April 2005, at the same time the PCA was produced. The monitoring results indicated that concentrations of these parameters were below the primary and secondary standards for maximum daily concentrations.

²¹ See notably COPD, ref. Risk of COPD From Exposure to Biomass Smoke. Guoping Hu, MD, PhD et al., CHEST July 2010 vol. 138 no. 1 20-31

A transcription of the text is given below:

”4.2.8. Air Quality

The air quality diagnosis presented in the RCA/PCA of the UPRs already licensed was based on monitoring of background air quality in the areas where UPRs 1 to 6 are located. The new UPRs are located in the region covered by this monitoring network, and so the air quality indicated by the study is also very likely to correspond to the air quality in the new areas. Total suspended particles (TSP) and sulfur dioxide (SO₂) parameters were monitored at three points distributed between the Carajás Pig Iron company’s farms. The monitoring results indicated that concentrations of these parameters were below the primary and secondary standards for maximum daily concentrations and also average annual concentrations, as established for both parameters in prevailing environmental legislation. The results therefore indicate good air quality in the region. Significant differences between the TSP of SO₂ results were not found at the three sampling points, indicating a level of air quality very similar to that found in the Carajás Pig Iron farm region.“

b) On April 8, 2008, Vale received notice 512810 from SEMA-MA, containing a request to present a report about the installation of Hi-Vol air quality monitors, in line with the operating license’s PCA. The notice was promptly responded to, by means of a letter officially registered on April 14, 2008.

See notice scanned by Vale in its response.

The notice did not request measurement of sulfur dioxide levels, as they were considered insignificant, and so this study was not conducted.

FIDH and Justiça Global's response

We remain deeply concerned by the fact that no measures on sulfur dioxide emissions seem to have been taken after 2005 and while operations were ongoing. Also, it is important to recall that it remains extremely difficult for civil society organisations or any individual affected or concerned to refute information provided regarding companies' social and environmental performance due to the lack of access to information, despite formal requests made as per the Brazilian legislation on access to information. As already mentioned, we would appreciate if you could provide us with copies of reports sent to the different governmental responsible bodies.

• Page 58 – “SEMA decided to deploy environmental analysts to conduct an evaluation of the impacts generated by the project.”

Vale's response

We have not received any technical statements from SEMA about the impacts generated by the project (Monte Líbano UPR) installed in Açailândia.

FIDH and Justiça Global's response

The sentence refers to a decision taken by SEMA to further investigate the impacts generated by the Monte Libano UPR. The results of this investigation are presented in the report at page 60. Vale subsequently responded to SEMA with a study on air quality.

• Page 58 – “families from the Califórnia settlement who have suffered from smoke produced by the burning of eucalyptus in that charcoal production facility”

Vale's response

With the ending of activities by December 2011, due to the sale of forest assets to Suzano

Papel e Celulose, the demands will be met.

FIDH and Justiça Global's response

While FIDH took note that activities of UPR ceased in December 2011, we would like to obtain more information regarding your affirmation. What would “demands” refer to? FIDH would like to recall that demands of the residents include obtaining reparations for harm suffered. For responsibility regarding the compensation of communities in Açailândia, see answer below (referring to p.90-91 of the report).

• Page 59 – “SEMA’s notice presented the company with a series of demands, some of which were not fulfilled”

Vale's response

Vale has promptly complied with all notices and demands received from SEMA-MA.

The monthly, six-monthly and annual reports are duly produced, submitted and officially registered within the established timeframes.

Specifically in relation to the notices issued by SEMA-MA in 2008, cited on page 59 of the report, we wish to state the following:

- a) Notice 512810 from SEMA-MA, dated April 8, 2008, copied above, demanded that Vale present a report about the installation of Hi-Vol monitors, and this was promptly done, in accordance with a letter officially registered on April 14, 2008 at the same state entity.
- b) On October 9, 2008, Vale received Notice and Summons 2214, requesting the following information:
 - Description of management of “smoke burner” equipment;
 - Final disposal of tar;
 - Schedule for the construction and operation of other smoke burners;
 - Description and characteristics of Hi-Vol monitoring equipment (data storage);
 - Hi-Vol air quality environmental monitoring reports submitted monthly to SEMA-MA.

The notice was answered before the deadline and the response was officially registered at SEMA-MA on October 24, 2008.

- c) On December 7, 2010, SEMA issued notice 001547, demanding the following documents:
 - CEPROF registration;
 - Publication of the request for the operating license in a large-circulation regional newspaper and the official gazette (Diário Oficial da União);
 - Up-to-date operating license.

The notice was answered before the deadline and the response was officially registered at SEMA-MA on December 29, 2010.

FIDH and Justiça Global's response

The SEMA technical analysis of April 8 2008 undertaken by experts of the Secretariat (César Carneiro and Cláudia Dominice) contains clear recommendations with regard to the installation of gas burners. Vale has confirmed that it had not complied with these recommendations.

• Page 60 – “non-compliance with the environmental license and unjustified discarding of

inspection data”

Vale's response

Vale proactively informed SEMA of the removal of the measuring instruments and gave the respective justification. In other words, this fact was not hidden from the Environment Secretariat but rather clarified, making it evident that there were no ulterior motives or improper manipulation of data. The action reflects Vale's concern to analyze and understand data in the pursuit of continuous improvement in the process of evaluating particulate emissions.

Another observation is that, from 2009 to the last report, no other readings that exceeded the 205 mc/m³ limit were taken, confirming the hypothesis that the data from the reading supposedly removed were biased or suffered from external interference, and so did not represent the site's environmental reality.

Finally, it should be stressed that, in line with particulate evaluation norms, the target is to obtain readings below 240 mg/m³, but annual measurements above the maximum limit may still occur. In 2008, the average reading was 439.4 mg/m³ and in 2010, after reducing production and installing smoke burners, the average reading was 81.82 mg/m³, meeting SEMA's demands.

We consider it to be true that the movement of vehicles could interfere in monitoring, if this should occur close to the particulate measuring equipment. The Environmental Control Plan itself, approved by SEME-MA, in the section about evaluating air quality, states that “The movement of machines and vehicles will generate particulate material and gases from engine fuel.”

The values obtained from readings between 2009 and 2011, shown below, indicate that the actions taken by Vale, such as the reduction in the number of furnaces and the installation of smoke burners, has been sufficient to minimize any environmental impact.

FIDH and Justiça Global's response

We take note of the efforts undertaken by the company to minimize environmental impact on the population of Assentamento California. The fact that Vale did not promptly install the measuring instruments to verify the air quality remains, even if the company presented to SEMA a justification that is not detailed above. The reading of the year 2008 shows that such measures were necessary. Furthermore, the numerous testimonies collected during the investigation process showed continued concerns over the pollution caused by the operated unit.

Since measures were taken approximately 4 years after the beginning of the operations, what measures has your company taken to remedy adverse impacts caused on the health of the residents of Assentamento California?

• Page 61 – Vale representatives were not able to respond

Vale's response

Vale received representatives of FIDH and Justiça Global on September 17, 2010 and, during the meeting, provided all manner of information; in fact, page 61 of the report cites the information obtained from Vale. During the visit, FGV's valid environmental license was shown and it was explained that Vale, through the equipment it had installed, was complying with its environmental conditions. It should be clarified that the presence of specialists from the environmental area had not been requested, but we expressed our willingness to receive queries in writing and forward responses from the technical area.

However, not a single question about the issue was received.

FIDH and Justiça Global's response

During the meeting with FIDH and Justiça Global with representatives of Vale that is referred to on p.61 of the original report, contradictions between Vale' statements and findings in the Air quality monitoring report were highlighted. The report mentions that on this occasion, the company representatives were not able to provide explanations to justify the differences and incoherences highlighted during the meeting or to provide requested documents (such as the reports submitted to the SEMA, of which copies were also requested to governmental authorities, cf. response below in relation to p.74).

• Page 74 – “In the situation examined, the people do not have adequate access to information concerning Vale’s activities”

Vale participated throughout the complex process to build the operating units, which involved conducting environmental impact studies (EIA-RIMA) and holding public meetings to present the project to the local communities, among other measures.

In addition, Vale’s environmental actions near the Califórnia settlement were widely reported. They consist of the following:

- Reducing production by using 50% of the furnaces. Of the 72 furnaces, just 36 are in operation;
- Construction of smoke burner equipment. There are currently three smoke burners attached to 20 furnaces;
- Maintenance of a 1.5 km green belt between the UPR and the settlement;
- Locking of chimneys in the case of thermal inversion;
- Emission monitoring using Hi-Vol equipment;
- Holding of fire prevention campaigns.

FIDH and Justiça Global's response

As highlighted on diverse occasions in our report, the investigation team has faced serious obstacles in obtaining key information from the Environment Secretariat of the State of Maranhão (SEMA-MA) such as environmental impact study. Despite the fact that the right to access information is protected under international, regional and national law (refer to Section III.3 of the report), formal requests made to SEMA on the 21st of October 2008, the 14th of April 2009, the 28th of June 2010 and the 12th of July 2010 to obtain copies of the relevant documents (environmental licenses, environmental impact assessment), were left unanswered. As highlighted in the legal analysis of our report, this clearly goes against applicable legislation, including under article 225 of the Brazilian Constitution.

While Vale declares having provided all necessary information regarding its actions to ensure environmental protection in the Califórnia settlement, the investigation team and the residents of the settlement consider information provided to be insufficient.

Page 77 – “Lawsuits proposed by Vale against leaders and other members of the Brazilian landless movement (MST)”

Vale's response

Vale has merely defended itself legally from attacks. Representatives of MST and other movements (Via Campesina, MAB, etc.) have a recent history of invading and damaging the company’s property, as has been reported in the press around the world. Accordingly, all legal measures adopted, as well as being permitted by legislation, have had the purpose of stemming the number of attacks promoted by these movements. The right to full defense and to submit any legal injury to the scrutiny of the judiciary is provided for in Brazil’s federal constitution (article 5 XXXV of the CF).

FIDH and Justiça Global's response

In your response, you allude to a recent “history of invading and damaging the company's property “. While we do not encourage actions that would lead to violations of the right to property or violent acts, international human rights organizations have, for their part, recorded a history of criminalization acts against MST and other social movements acting to protect human rights.²² The increasing tendency to criminalise human rights defenders and social protest has also demonstrated the disproportionate means used against those acting in opposition to investment projects.

In the cases referred to in our report, legal actions were filed notably on the basis of meetings agenda to be held by Justiça nos Trilhos.²³ Such actions cannot be considered an 'imminent threat' against the company's property and it appears difficult to argue that such meetings constitute an offence as per the Brazilian criminal code. In this regard, we would also like to recall, as per the UN Declaration on Human Rights Defenders, that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”. Article 16 adds: “Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas [...]”.

FIDH and Justiça Global call upon Vale to refrain from undertaking any legal or political actions with the objective of intimidating human rights defenders. FIDH believes their concerns must be taken seriously and can eventually contribute to preventing adverse impacts on human rights resulting from the company's activities.

• Page 79 – “Vale filed a lawsuit in the courts of Açailândia against members of the Justiça nos Trilhos network”

Vale's response

Brazilian law gives aggrieved parties the right to request prohibitive injunctions, which have the purpose of preventively repelling a threat to an owner's propriety. It is applicable when the threat of damage to the propriety is imminent and the concern is well sustained.

In addition, the Brazilian penal code stipulates that interfering with a railroad is classified as a railroad accident hazard crime (article 260 of the penal code). As a result, Vale simply used these judicial resources to legally oppose attacks it suffered or was about to suffer, and this was upheld by the decision of the court, which agreed to Vale's request.

FIDH and Justiça Global's response

See answer above.

• Page 79 – “In the opinion of this research, the impartiality of the decisions of the public security and legal departments is questioned”

Vale's response

This accusation to the judiciary authority, including the Rio de Janeiro one, concerning the lawsuit against the MST leader, should be directed to the courts themselves and not to a social responsible

²² On the increasing tendency to criminalise human rights defenders and social protest in the context of corporate projects, see for instance Observatory for the Protection of Human Rights Defenders (joint programme between FIDH and OMCT), “Steadfast in Protest”, 2011 Annual Report, www.fidh.org/Steadfast-in-Protest-2011-Report

²³ Ver ação judicial n. 1083-83.2010.8.10.0022, 2a. Vara Judicial da Comarca de Açailândia, ação judicial 3074-94.2010.8.10.0022 e ação judicial n. 2715-53.2010.4.01.3701, Vara Unica da Justiça Federal de Imperatriz.

company which seeks the judiciary as a way to resolve the events with which it is involved.

FIDH and Justiça Global's response

As stated in our report, we do raise concerns about the independence of the judiciary system. This part of the report is not directed at the company but at the judicial authorities. Most recommendations of the report are actually directed towards governmental actors and FIDH has been discussing the findings and recommendations of the report during meetings with governmental authorities held both in September 2010 and in May 2011.

• Page 90 and 91 – Responsibility for compensating the communities of Califórnia and Piquiá de Baixo

Vale's response

The commercial activity of selling iron ore is absolutely legitimate and permitted by national legislation. This simple act cannot make Vale liable if the purchasers of the iron ore use it in some way that causes harm to communities.

Nevertheless, as part of Vale's social responsibility initiatives and in line with the concern it has always demonstrated for human rights in its value chain, the company is voluntarily contributing to the performance of socioeconomic studies required to support the resettlement process in Pequiá de Baixo.

With regard to the Califórnia settlement, all preventive measures to reduce smoke emissions are being taken and the operation will be closed by December 2011.

FIDH and Justiça Global's response

Please refer to answers below (in relation to p.93 and p.94 of the report).

• Page 92 – “Besides its role as the main coordinator in implementing the Greater Carajás Program”

Vale's response

The Greater Carajás Program was a government strategy in the 1980s that aimed to develop the region, but was not, and is not, controlled by Vale.

FIDH and Justiça Global's response

See response provided with regard to p.19.

• Page 93 – Vale as an “indirect polluter” in Piquiá

Vale's response

The commercial activity of selling iron ore is absolutely legitimate and permitted by national legislation. This simple act cannot make Vale liable if the purchasers of the iron ore use it in some way that causes harm to communities.

Nevertheless, as part of Vale's social responsibility initiatives and in line with the concern it has always demonstrated for human rights in its value chain, the company is voluntarily contributing to the performance of socioeconomic studies required to support the resettlement process in Pequiá de Baixo.

With regard to the Califórnia settlement, all preventive measures to reduce smoke emissions are being taken and the operation will be closed by December 2011.

FIDH and Justiça Global's response

The analysis of the report does not conclude that selling iron ore is unlawful. In our report, we make reference to the adverse impacts caused by the iron production. As highlighted below and as part of companies' responsibility to respect human rights, the latter have the responsibility to undertake human rights due diligence to prevent and mitigate adverse impacts caused by their activities *or business relationships (which includes entities in its value chain*²⁴). This includes putting in place processes to remediate any adverse human rights impacts a company causes or to which it contributes.²⁵

Furthermore it is worth stressing that the fact that an activity may be legal does not preclude a responsibility from arising (see response below in relation to p.94 of the report).

Recalling the fact that Vale plays a crucial role as the main iron provider to the pig iron producers operating in Açailândia and that its support is therefore essential, FIDH and Justiça Global believe that Vale contributes (through such business relationships) to the adverse impacts caused by the steel companies mentioned in the report. FIDH and Justiça Global therefore call upon Vale to contribute to provide reparations for the affected communities (Piquiá de Baixo and Assentamento Califórnia). As reaffirmed in the Guiding Principles, companies should use their leverage 'to mitigate any remaining impact to the greatest extent possible.'²⁶ In order to be in a better position to appreciate the leverage you may exercise, we would like to reiterate our interest, as formulated in May 2011, to obtain information regarding your business relationships with the steel plants operating in Açailândia.

Compensation

In the situation of Piquiá de Baixo, FIDH and Justiça Global believe that Vale possesses the necessary leverage to ensure adequate reparation for victims. Vale itself or through using its leverage with iron pig producers, should contribute, including financially, to provide reparation for affected individuals. This includes, as per international human rights law, measures of rehabilitation, restitution, compensation, satisfaction and guarantees of non-repetition. Professor Ruggie highlights that companies participating in remediation should do so through through legitimate processes.²⁷

With regard to Assentamento Califórnia, measures taken can hardly be characterized as being “preventive” since they occur after the plant's operations and hence, after damages have been caused. The termination of activities following the sale of assets to Suzano should not absolved Vale from its responsibility to remediate the negative impacts caused by its past activities. (See answer above in reference to p.90-91 of the report)

While reparation may take diverse forms, FIDH and Justiça Global believe this imply that Vale should collaborate in good faith with the authorities to ensure effective and immediate reparation for victims. In addition, decisions related to reparation for victims should ensure the active and meaningful participation of affected individuals. For instance, the report recommends the creation of a fund to ensure the socio-economic development of affected communities. FIDH and Justiça Global remain available to discuss with you the different recommendations contained in the report.

²⁴ Emphasis added. Guiding Principle, Guiding Principle, 13, Commentary.

²⁵ Guiding Principle, 15(c).

²⁶“Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.”, Guiding Principles, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Commentary Guiding Principle no.19.

²⁷Guiding Principles, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Commentary Guiding Principle no.22.

• **Page 94 – Vale “jointly and severally liable for harmful acts” in Piquiá**

Vale's response

This cannot be accepted, given that joint responsibility arises exclusively from the intention of the parties or the law. The supply of iron ore, when contractually agreed, does not provide for this responsibility and there are no laws to this effect, and so the assertion made in this report is not credible. Under the environmental law, there is no cause-effect relation between Vale activities and the problems raised.

FIDH and Justiça Global's response

The issue of responsibility is indeed an important question and we regret that Vale does not recognize its role in this situation. We believe this would be a first step to set the ground for dialogue and effective conflict-resolution in both the case of the community of Piquiá de Baixo and that of Assentamento Califórnia.

First of all, we would like to recall that the element of intention you refer to is not required when dealing with environmental law matters in Brazil. Indeed, a fault is not necessary and the mere fact that an activity may be legal under applicable legislation does not constitute a condition for liability to arise, as confirmed in article 3 (IV) and 14 §1 of the “Política Nacional do Meio Ambiente (PNMA - Lei 6.938/81)”. Besides, the Brazilian Constitution contains a specific clause dealing with environmental pollution caused by mining activities and confirms that “those who exploit mineral resources shall be required to restore the degraded environment” (art. 225§2) regardless of whether the polluter is at fault or not (objective liability). Secondly, indirect liability may also arise under the Brazilian environmental law (PNMA - Lei 6.938/81) and as confirmed by national jurisprudence, which has shown that joint liability may arise as a result of damage caused by the business partners of a company²⁸, particularly in risky businesses such as in the mining sector (See Petrobras case referred to in the report). Therefore, the company, through its activities as client and buyer of iron, could also be held responsible for acts committed by its subcontractors.

Furthermore, it is worth recalling that the Brazilian Constitution as well as national legislation include respect for the principles of prevention; the polluter pays principle as well as the need to provide integral reparation for environmental damage caused.²⁹ Vale should adopt a conduct in accordance with these principles.

Beyond and in addition to applicable national legislation, Brazil and/or Vale has committed to respect *soft law* instruments calling upon companies to respect human rights in their operations³⁰. It is now widely recognized that companies' responsibility may also arise as part of their relationships with business partners.

• **Page 98 – “Legal action, both administrative and judicial, against the company Vale, the owner of Carajás Pig Iron, arising from its violation of one of the conditions of its environmental license, according to which it ought to have installed and put into operation 16 (sixteen) gas burners, as recommended in a technical statement issued by Antonio César Carneiro de Sousa, environmental analyst at the Maranhão State Environment and Natural Resources Secretariat.”**

²⁸ Ministro Luiz Fux, quoted by M. Mendlewicz and D. de Andrade Moreira, A evolução da jurisprudência do superior tribunal de justiça em matéria de direito ambiental : licenciamento ambiental e responsabilidade civil, pág. 24, http://www.puc-rio.br/pibic/relatorio_resumo2011/Resumos/CCS/JUR/JUR-Michelle%20Mendlewicz.pdf

²⁹ See notably Ministro Luiz Fux, quoted by M. Mendlewicz and D. de Andrade Moreira, A evolução da jurisprudência do superior tribunal de justiça em matéria de direito ambiental : licenciamento ambiental e responsabilidade civil, pág. 24, http://www.puc-rio.br/pibic/relatorio_resumo2011/Resumos/CCS/JUR/JUR-Michelle%20Mendlewicz.pdf

³⁰ Such as the OECD Guidelines for Multinational Enterprises, the UN Global Compact or the UN Framework « Respect, Protect, Remedy ».

Vale's response

Condition 24 of operating license 130/2007 states that FCG is obliged to “find ways of avoiding smoke emissions from charcoal production as much as possible.” Based on this condition, FGC installed emission control equipment, including gas burners. In other words, the company complied with the environmental condition.

The first smoke burner was installed on October 6, 2008. The second was installed in January 2009, but it suffered an accident, falling from its position due to a design problem. The third burner, to replace the second one, was built in February 2009. There is now a fourth burner, attached to four furnaces. We have received no notice or request from SEMA-MA providing guidance about the building of 16 burners. This number is excessive, given that there are 72 furnaces and each burner is attached to eight furnaces. This means that nine burners would be required if the UPR were operating at 100% capacity. At current production levels, four burners are sufficient.

On October 24, 2008, a notice was officially registered at SEMA-MA, reporting the intention to build eight smoke burners, to be attached to 72 furnaces. At this time, the first burner had been built and was showing good results.

However, following the reduction in output at the end of 2008, a new notice was sent to SEMA, officially registered on January 12, 2009, in which Vale stated that the construction of new burners would be conditional upon:

- a) the correct functioning of the second burner, which was at the end of the construction phase;
- b) a return to production at 100% of capacity, which has not yet happened.

So far, SEMA-MA has not commented on this issue.

FIDH and Justiça Global's response

Once again, we would like to make reference to the technical analysis realized by experts of SEMA in April 2008 and which contained specific recommendations Vale has not complied with regarding the number of gas burners. In addition, we would like to seek clarification on certain points that appear contradictory or directly in contraction with applicable laws regarding environmental and health protection. The company specifies that only 9 burners are necessary when production is at a 100% of its capacity. While operations started in 2005, the first burner was only built in 2008 and the second one was built in February 2009. How would you explain the lack of functioning burners during the first years of operation of UPR2? In addition, while Vale states that given the actual production level only 4 smoke burners would be required, it is also mentioned above that “there are currently three smoke burners attached to 20 furnaces” (see response in relation to p.74 of the report). How would you explain these different statements? Besides, would it be possible to specify how many burners were functioning between 2009 and 2010?

Finally, it remains difficult to understand why the company would built 72 furnaces if only to use 50% of them?

We would greatly appreciate to obtain clarification on these points.