



CASE REPORT

The safety business: TÜV SÜD's role in the Brumadinho dam failure in Brazil

At least 272 people were killed on 25 January 2019 when the B1 dam near Brumadinho (Brazil), broke at the Córrego do Feijão iron ore mine. Twenty-one of the dead were never found. The toxic sludge destroyed buildings, and polluted fertile soil and large sections of the Paraopeba River, which supplies the region's drinking water.

The Brazilian transnational mining group Vale S.A., the world's largest iron ore exporter, operated the mine. German certification company TÜV SÜD confirmed the dam's safety in September 2018, just four months before it broke, despite several unfulfilled maintenance recommendations.

On 15 October 2019, five Brazilians who lost close family members in the dam failure, together with [ECCHR](#) and [MISEREOR](#), and supported by Brazilian NGOs Associação Comunitária da Jangada and International Articulation of People Affected by Vale, filed a criminal complaint against a TÜV SÜD employee and a law infringement complaint against the company as such with the public prosecutor in Munich. A task force in Brazil is currently also investigating Vale and TÜV SÜD's Brazilian subsidiary Bureau de Projetos e Consultoria Ltda.

This case makes clear that not only mine operators bear responsibility, so do certification companies. Especially in high-risk industries such as mining, long and confusing decision-making chains must not obscure responsibility for safety, the environment and human rights.

“A crime, not an accident”

The dam burst in Brumadinho is not an isolated incident. In November 2015, a similar dam broke near Mariana, just 130 kilometers from Brumadinho. The cases show frightening parallels: both had clear warning signs, and very serious consequences. None of those responsible for the Mariana dam failure have been prosecuted.

Both dams were built using the so-called upstream method. Upstream dams are less expensive, but banned in many countries because they are less stable than other construction methods. In Brazil, however, dozens of upstream dams are still in operation. The dam near Brumadinho displayed various problems. As early as March 2018, TÜV SÜD's Brazilian subsidiary reported problems with the dam's drainage. However, the auditor's recommendations were either not, or only partially, implemented. As a result, the dam's water level continued to rise, pressure on

the dam wall increased, and the otherwise solidified sludge liquefied – until the dam broke in January 2019.

Those affected say this was a crime, not an accident. Although known defects were not fixed, Brazilian TÜV subsidiary Bureau de Projetos e Consultoria Ltda declared the dam stable in September 2018. According to the Brazilian public prosecutor, this is not an isolated case of such safety declarations being issued despite obvious defects. The raw materials industry is considered to be one of the most corrupt sectors in Brazil.

Who is responsible for the dam failure?

Several state and federal authorities in Brazil are investigating the Brumadinho dam breach. Criminal and compensation proceedings have been initiated against Vale and the TÜV SÜD Brazilian subsidiary, as well as employees of Vale and TÜV SÜD in Brazil and Germany. Vale rejects all responsibility for the failure, saying it relied on TÜV SÜD Brazil's stability declaration. The German certifier says it warned Vale about safety concerns.

In fact, during an inspection, TÜV SÜD's Brazilian employees found that the dam did not reach the necessary stability factor according to their calculation standards. Instead of refusing to issue a stability declaration, the responsible employees looked for new calculation methods to achieve the desired result. They also consulted TÜV SÜD's head office in Munich. In the end – against its better judgement – TÜV SÜD did not prevent its subsidiary from certifying the dam's stability. As a result, neither the mine operators nor the authorities initiated effective stabilization or evacuation measures.

So who is responsible for the 272 deaths, the destroyed houses and polluted environment? One thing is certain: the mine operator Vale must not be allowed to evade responsibility. There is also no question that TÜV SÜD's role as a certifier must also be investigated.

The structural issues of the mining and certification systems that led to the dam failure need to be legally addressed. This is the only way to fundamentally change the certification system. Actors involved in such a high-risk industry to human rights and the environment should not be able to deflect responsibility. The current system leads to gaps in responsibility, therefore enabling human rights violations to repeat.

Legal proceedings and accusations against TÜV SÜD

In the joint legal action, five survivors, ECCHR and MISEREOR accuse TÜV SÜD of having contributed to the dam breach. Despite obvious safety risks, TÜV SÜD's subsidiary declared the dam to be stable, allowing the mine to continue operating. In addition, witnesses reported that an employee from Munich regularly visited Bureau de Projetos e Consultoria Ltda headquarters in Brazil, where the team responsible for the dam was located.

For these reasons, those affected, ECCHR and MISEREOR, supported by the Brazilian NGOs Associação Comunitária da Jangada and International Articulation of People Affected by Vale filed criminal charges against a TÜV SÜD employee for negligence in causing a flood, negligent homicide and private bribery, as well as administrative charges against the company for breaching its supervisory duties. Lawyer Bernhard Docke and Prof Dr Carsten Momsen represent those affected in the complaints.

As in other ECCHR cases, this legal action aims to seek justice beyond the individuals affected. The criminal and law infringement complaints highlight that German firms like TÜV SÜD, even when they are only involved in the second or third stage of a production cycle, bear responsibility for human rights violations. Similar ECCHR proceedings were directed against certifiers in the textile industry, such as TÜV Rheinland in the case of the [Rana Plaza factory collapse in Bangladesh](#), and Italian RINA Services S.p.A. in the case of the factory fire at [KiK supplier Ali Enterprises in Pakistan](#). In these cases too, it was apparent that audit and certification companies contribute less to improving textile factory safety standards than to diluting responsibility: purchasers cite audits, claiming that the damage was unforeseeable.

The Brumadinho case also shows how problematic German authorities' scope is when German companies operating abroad are suspected of committing crimes. In Germany, companies are not punishable by law. However, they have a supervisory duty to prevent criminal offences from being committed within the company. Neglecting this duty is a criminal offence for which companies can be fined. Under the *Ordnungswidrigkeitengesetz* (Administrative Offences Act), the competent authority decides whether to investigate a company or impose a fine. Like in criminal law, other injured parties cannot join proceedings as plaintiffs.

Background: Certification companies' role in Brazilian mining

Why is a German certification company responsible for a Brazilian dam's safety? Due to budget cuts, the Brazilian government greatly reduced the size of authorities responsible for inspecting dams. Mine operators are now responsible for safety inspections and report findings to the responsible authorities. Based on these reports, authorities assess whether action is needed.

Mining companies outsource the necessary inspections to external certifiers like TÜV SÜD. The certifier market is highly competitive. Mine operators select, commission and pay certifiers directly. This creates a conflict of interest and raises questions about certifiers' reliability and objectivity. According to the Brazilian public prosecutor, Vale would hire a different certifier if safety test results were not in the company's best interests. This enabled the mine operator to obtain the necessary stability declarations even for risky dams. Since the Brumadinho dam failure, TÜV SÜD Bureau de Projetos e Consultoria Ltda has submitted new assessments of several dams to the Brazilian authorities, calling previous certificates into question.

Germany urgently needs a supply chain and corporate criminal law

Liability law must step in where prevention fails. Companies and managers bear responsibility for respecting human rights along their entire production and supply chains. If a company violates this obligation, laws must ensure that it is liable for harming people and the environment.

Eight years after the adoption of the UN Guiding Principles for Business and Human Rights, German companies still fail to adequately implement their human rights due diligence obligations. Like many others, the Brumadinho case shows that voluntary action is insufficient to prevent dam breaches and other human rights violations with similarly devastating consequences for people and the environment.

ECCHR and MISEREOR welcome recent proposals to tighten sanctions on companies, including from the German Federal Ministry of Justice. They also support the [German human](#)

[rights due diligence law initiative](#), together with 72 other NGOs and trade unions. The initiative calls for a legal framework to require German companies to respect human rights, with the goal of preventing future violations and making companies liable for damages.

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European Center for Constitutional and Human Rights (ECCHR)

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