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**PFDC TECHNICAL NOTE No. 2/2024**

**Subject:** Gender-perspective Performance of the Prosecution Service in cases of human rights violations by companies.

## **I – Contextualization**

Violation of human rights caused by corporate activities and the growing political power of large transnational corporations have resulted in a growing concern, especially in a context of neoliberal globalization.

World history reveals that business activities, although indispensable for economic growth, in addition to the consequent affirmation of a social welfare State, often cause numerous and great negative impacts of socio-environmental nature. Likewise, not rarely, they result in violations of rights, especially of populations in situations of greater vulnerability, such as residents of the outskirts of urban centers, as well as traditional peoples and communities, which usually suffer damage to life, physical integrity, health, adequate food, among others, due to this type of enterprise.

In Brazil, among many, we bring attention to the cases of the construction of the Belo Monte hydroelectric plant, on the Xingu River, in Altamira/PA; the rupture of the Fundão dam, operated by the company Samarco Mineração S. A., in Mariana/MG, in 2015; the rupture of the Córrego do Feijão mine dam, operated by Vale S. A., in Brumadinho/MG, in 2019; the subsidence of the soil and consequent destruction of over 14 thousand properties in the Pinheiro, Mutange, Bebedouro, Bom Parto and Farol neighborhoods in Maceió/AL, which caused the displacement of over 60 thousand people, due to the collapse of rock salt exploration mines in an urban area under the responsibility of the petrochemical company Braskem, whose largest shareholder is Novonor (formerly Odebrecht); the operation of Thyssenkrupp companhia Siderúrgica do Atlântico-tksa, in Rio de Janeiro, without an environmental license; expansion of



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borders of agribusiness in the cerrado (Brazilian savannah) with eviction of traditional peoples from their land and serious damage to the supply of water to urban and rural populations; environmental damage and land issues related to the expansion of the Port of Suape, in Pernambuco, and the leakage of tailings from Hydro Alunorte, in Barcarena, in Pará<sup>i</sup>.

The study of these cases, especially those of mining and hydroelectric construction, has revealed that the negative impacts of the socioeconomic and environmental transformations resulting from them affect women in a disproportional manner, due to the structural gender oppression imposed by patriarchy values. The impact is even greater when considering the intersectionality between the multiple causes of discrimination based on the overlapping factors of sex, race, ethnicity, social class, sexual orientation and others.

In 2010, the Report of the Special Commission on Dams of The National Human Rights Council (CNDH) came to the conclusion that the building of dams causes “serious human rights violations, whose consequences aggravate the already serious social inequalities, which result in situations of misery and social, family and individual disruption”<sup>iii</sup>. In the specific case of women, the report points out the following:

(...) women are particularly severely affected and face greater obstacles to rebuilding their means of survival and ways of life; [...] they have not, as a rule, been considered in their particular specificities and difficulties”, and for this reason “they have been the main victims of the processes of impoverishment and marginalization resulting from the planning, implementation and operation of dams”<sup>iii</sup>.

Faced with this scenario, in 2011, the Movement of Those Affected by Dams (MAB) published a booklet that lists the main causes of violations of the human rights of women affected by large enterprises, structured around the following axes: work, political participation, relationship with companies, family and community coexistence, sexual and reproductive rights and access to public policies.<sup>iv</sup>

With regard to work, the main violations of the rights of the affected women are associated with lack of value given to activities developed by them, especially when they are supplementary to the family income, with emphasis on the

domestic work, for self-employment, for rural work and in fishing<sup>v</sup>. Companies



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repeatedly classify such activities as secondary in the development of the family economy, since it is common to carry them out through precarious and informal ties, or inside their homes, excluding the impacts caused to their exercise in the matrix of damages caused by the enterprises<sup>vi</sup>. In addition, the increased burden of household chores caused by the social impact of large enterprises also affects women in their work and family relationships in a disproportionate manner.<sup>vii</sup>

The second aspect addressed in the document refers to violations of the right to participate in decision-making processes, especially due to absence or disqualification of women in places for deliberation, as well as difficulties in representing their interests before companies and public bodies. As a result, men are considered the legitimate interlocutors between the affected community and the corporate and State sectors, with full exercise of power over the various social groups that make up the local population, reflecting the increase in gender-related vulnerabilities. Given this, women who stand out as leaders are often targets of persecution, criminalization, threats and even murders<sup>viii</sup>.

With regard to the relationship with companies, the main cause of violation of rights is the disregard for the affected woman as an autonomous subject in the socioeconomic registers carried out by corporations for the survey of families. In many cases, registration is carried out on the basis of the notion of "family nucleus" and "head of the family", derived from the outdated concept of "Fatherland power", which assigns to the male figure responsibility for receiving and managing financial resources, as well as owning property<sup>ix</sup>. The denial of women's direct access to assistance and compensation measures by companies deepens gender inequalities, as they increase women's financial dependence on men.



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The fourth aspect of violation of the rights of affected women is related to the disruption of family and community relations due to socio-environmental impacts caused by the construction, operations and, even more, by the rupture of dams, with the complete destruction of cities and villages that often promotes the compulsory displacement and deterritorialization of communities. This scenario is aggravated in the case of traditional populations, such as Indigenous people, *quilombolas* and riverside communities, who live off the exploitation of natural resources. Factors such as the increase in alcohol and drug consumption, the breakdown of family support networks and the increase in domestic violence are also related to the deterioration of community ties caused by the negative impacts of business enterprises on society.

The violation of the sexual and reproductive rights of the affected women is associated with the increase in male labor contracted for the construction and operations of these enterprises, resulting in a process of known as commodification of bodies with the prostitution of women, as well as in sexual exploitation of children and adolescents and, consequently, in the increase in cases of teenage pregnancy<sup>x</sup>.

The sixth and last axis of violations of the rights of affected women refers to the difficulty of access to public policies. That takes place, in large part, by the arrival of thousands of people to work and reside in the regions of large enterprises, noting the overload of essential public services of health, education and social assistance, as well as problems in the supply of water and basic sanitation, and access to electricity. The basic services to assist the population do not correspond to the needs of the communities, much less of the women, in a clear mismatch between the planning of the construction and the State planning for welcoming a human being.

## **II – Human Rights and businesses from a gender perspective**

In addition to the situation of women affected by dams in Brazil, the specialized literature points out that loss of income, lack of recognition while



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productive citizens, domestic overload, mental health problems and the increase in physical and sexual violence are the most common damages women suffer in the context of activities carried out by transnational corporations or large-scale disasters<sup>xi</sup>.

Given this, the Office of the Federal Ombudsman for Human Rights (PFDC), an agency of the Brazilian Prosecution Service, prioritizes monitoring issues on human rights, business and disasters with the strengthening of a gender perspective and the protection of the rights of vulnerable populations affected by business activities<sup>xii</sup>.

The great challenge in this agenda is the lack of a specific regulatory framework, of a binding nature, with the establishment of rights and obligations for the exploitation of economic activities by the business sector.

At the international level, the United Nations Human Rights Council is currently leading two parallel initiatives to strengthen normative frameworks on human rights and business. The first led to the creation of the Working Group on Business and Human Rights, whose mandate relates to the dissemination and implementation of the UN Guiding Principles on Business and Human Rights. The second concerns the publishing of an international treaty on the subject, which is currently at the stage of discussion of the fourth draft.

The Guiding Principles on Business and Human Rights, a total of 31, were drawn up by professor John Ruggie of Harvard University on the basis of a mandate granted by the UN Secretary-General. They are divided into three pillars: the State duty to protect human rights; the corporate responsibility to respect human rights; and access to remedy. Unanimously adopted by the UN Human Rights Council on 16 June 2011 (Resolution 17/4), The Guiding Principles have become the benchmark international normative framework on Business and Human Rights.



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In their 10 (ten) years of existence, there is no doubt that these guiding principles have contributed, and much, to drive change in the global scenario of human rights violations by corporate entities. It is also true that they revealed the limited scope of a normative act of voluntary adherence in the field of human rights, and the consequent need to issue a binding framework capable of establishing a clear legal framework on the obligations of companies, associated with an effective remedial system, able to balance the correlation of forces between private economic agents, States and populations affected by business activity, thus impacting, in fact, the decision-making processes in corporations.

At the national level, the first draft of the incorporation of the Guiding Principles into the Brazilian legal system took place in 2018, with the publication of Decree No. 9571/2018 (already revoked), which, based on voluntary adherence rules by corporations (Article 3), instituted the “National Guidelines on Business and Human Rights”. Also without a binding nature, but built in a largely democratic manner, with intense participation of representatives of civil society, Resolution No. 5/2020 of the National Human Rights Council deals with the “National Guidelines for a Public Policy on Human Rights and Business”. Currently, by virtue of Decree No. 11.772/2023, the preparation of a proposal for the National Human Rights and Business policy is underway.

A definitive turn on the issue, however, should only take place with the publishing of the international treaty, but also with the approval of Bill No. 572/2022 of the Chamber of Deputies, which aims to create a binding national framework on human rights and business.

On another front, the approval in the National Congress of Bill CD No. 2.788/2019 stands out. It establishes the National Policy on the Rights of Populations Affected by Dams (PNAB), describes the Rights of Populations Affected by Dams (PAB), provides for the Program on the Rights of Populations Affected by Dams (PDPAB) and establishes rules of social responsibility<sup>xiii</sup>.



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This is an unprecedented normative framework on the subject, which introduces the principle of the centrality of the victim's suffering in Brazilian legislation, with a view to fair reparation for those affected, aiming to prevent or reduce occurrence of similar harmful events.

According to the aforementioned norm, entrepreneurs must create, at their own expense, the PDPAB, with the aim to provide for and ensure the rights established in the PNAB, by including specific programs aimed at women, the elderly, children, people with disabilities, indigenous populations, traditional communities, fishermen and socially vulnerable populations. In addition, the text approved by the Congress guarantees the presence and participation of the Prosecution Service and the Public Defender's Office as permanent guests, with the right to voice, in the meetings of the collegiate bodies that should be created to monitor, supervise and evaluate the elaboration and implementation of the PDPAB. This is an important measure to balance the forces in the negotiations between the affected population, companies and the government.

After its enactment, the new law will add to the advanced national legislation on human rights, which imposes certain standards of conduct by the public and private sectors in the context of the development of business activities in Brazil.

It should be noted, in this sense, that the Federal Supreme Court has long established the understanding that violations of fundamental rights do not occur only in the context of relations between citizens and the State, but also in the relations between individuals and legal entities of private law, so that the fundamental rights guaranteed by the Constitution directly bind not only the government, but also the protection of individuals in the face of private powers, such as corporations (horizontal effectiveness).

With regard to the legal treatment of women, special attention is paid to the Federal Constitution of 1988, which incorporated into the Brazilian legal system the main rights claimed by the historical struggle of feminist movements to overcome gender inequality.



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In addition to ensuring general equality, establishing that "all are equal before the law, without distinction of any kind" (Article 5, head provision), for the first time, equality between men and women was addressed as a fundamental right, under Article 5, item I, of the constitutional text. The Constituent Assembly also gave form to the right to gender equality in specific fields, when, for example, it provided for special protection for women in the workplace, through the granting of incentives (Article 7, item XX), prohibited discrimination in the labor market, on grounds of sex (Article 7, item XXX), established equality between men and women in the marital relationship (Article 226, paragraph 5), and established the State duty to curb violence in family relationships (Article 226, paragraph 8).

Provisions of the constitution were later supplemented by infra-constitutional legislation, especially the Civil Code of 2002, ending the discriminatory legacy provided for in the Civil Code of 1916, which treated married women as relatively incapable, dependent on the husband's authorization to exercise some acts of public life, including voting.

In Criminal Law, Law No. 8930/1994 stands out, which included rape in the list of heinous crimes; Law No. 9318/1996, which aggravated the penalty for crimes committed against pregnant women; Law No. 11340/2006 (Maria da Penha Law) that effectively penalizes cases of domestic violence; and Law No. 13104/2015, which classified the crime of femicide.

In the field of Electoral Law, affirmative actions have been taken to increase women's participation in politics, such as the gender quota of Article 10, paragraph 3, of the Elections Law (Law No. 9504/1997), included by Law No. 12034/2009, which establishes a minimum percentage of 30% (thirty percent) and a maximum of 70% (seventy percent) for candidacies of each sex. These are norms that illustrate the significant advances made in the protection of women's fundamental rights in the context of the country's legislative history.



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At the external level, the post-1988 period is also marked by Brazil's accession to the main international human rights treaties. We should note the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), approved by the United Nations General Assembly in 1979, and ratified by Brazil, with reservations, in 1984. Ten years later, the Brazilian government withdrew the reservations and incorporated the entire content of the convention into domestic law. The Optional Protocol to the Convention, adopted by the UN in 1999 and ratified by the National Congress in 2002, recognized the competence of the Committee on the Elimination of Discrimination against Women to receive communications from individuals or groups of individuals under the jurisdiction of a State Party.

The Convention on the Elimination of All Forms of Discrimination against Women defines the term “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (Article 1).

**According to subparagraph "e" of Article 2 of the Convention, States undertake “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”.**

The Committee's General Recommendation No. 19 CEDAW clarified that the definition of Article 1 "includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately." In addition, General Recommendation No. 35 Stated that the concept of gender-based violence shall be understood in a broaden manner, not detached from the framework of this type of violence and its social and broad nature. It shall be understood beyond its individual nature, that is, beyond the individual responsibility of the perpetrators, the investigation of the criminal cases and the focus on the fatal victims and survivors.



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**In 2015, the CEDAW Committee issued General Recommendation No. 35<sup>xiv</sup> advocating that women's right of access to justice is essential to having access to all rights protected by the Convention on the Elimination of All Forms of Discrimination against Women. The fight against impunity and corruption, as well as the equal participation of women in the judiciary and other law enforcement mechanisms are also a fundamental element of the Rule of Law and good governance, such as independence, impartiality, integrity and credibility of the judiciary. The right of access to justice should be multidimensional in nature, encompassing effective judicial protection, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems.**

**For the purposes of the General Recommendation above, good quality of justice systems means that all components of the system respect international standards of competence, effectiveness, independence and impartiality and provide, in a timely manner, appropriate and effective remedies that lead to lasting settlement of disputes and take into account gender equality for all women. It also means that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, and that they take into account gender equality and the increasing use of justice by women.**

In 2018, the CEDAW committee edited General Recommendation No. 37 on the gender dimension of disaster risk reduction in changing climate<sup>xv</sup>. The document provides guidance to States on disasters, including those arising from business activity, determining the implementation of the general principles of the CEDAW convention that ensure women substantive equality and non-discrimination, participation and empowerment, and access to justice.



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As the agenda for women's human rights advanced, in 2019, the United Nations Development Program (UNDP) and the UN Working Group on Business and Human Rights published a document that gives a gender dimension to the Ruggie principles, based on the perception that girls and women suffer often disproportionate impacts resulting from business activity and face several barriers to accessing redress measures<sup>xvi</sup>.

In the Inter-American Human Rights System, gender-based violence was defined in a norm by the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), signed in 1994 and ratified by 32 (thirty-two) States, including Brazil<sup>xvii</sup>. This convention defines gender-based violence in its Article 1 as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” In addition, it establishes an extensive list of duties and measures to be implemented by State Parties to address gender-based violence in their territories.

Based on this legal framework, we observe the progressive development of a focus on the protection of women's human rights within the institutions of the Inter-American Human Rights System, either within the framework of the Inter-American Commission on Human Rights (IACHR), which receives individual petitions and issues recommendations, conducts field visits, promotes studies and prepares reports; or the Inter-American Court of Human Rights (IACHR), which has jurisdictional, advisory and contentious competence.

The case of *Maria da Penha vs. Brazil* (2001), for the first time, the IACHR adopted the Belém do Pará Convention to recognize the responsibility of the State in relation to the non-compliance with the duty to prevent, punish and eradicate domestic violence against women, which resulted in Law No. 11.340/2006 (Maria da Penha Law). This law provided for innovative mechanisms to confront this type of violence in Brazil<sup>xviii</sup>.



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The Inter-American Court of Human Rights also began to use the gender perspective in the analysis of violations of women's rights in the Castro Penitentiary case *vs. Peru* (2006), when analyzing the physical, psychological and sexual violence practiced by public agents against detainees, including pregnant women. The subsequent cases on violence against women considered by the Court marked the evolution of its jurisprudence on the subject<sup>xix</sup>.

In October 2020, the Inter-American Court of Human Rights Brazilian State condemned the Brazilian State in the case of employees of the Fireworks Factory at Santo Antônio de Jesus and their family members *vs. Brazil*<sup>xx</sup>. The circumstances date back to the explosion, which took place in December 1998, in a fireworks factory, in the city in Bahia that gives the case the name. About 70 (seventy) people died in the tragedy, mostly women, mostly young women, some children, all in a special condition of vulnerability.

The sentence is an important precedent in several respects, especially for advancing the IACHR's understanding of the duty of the States to promote the progressive development of economic, social, cultural and environmental rights (ESCR), in accordance with Article 26 of the American Convention on Human Rights (ACHR).<sup>xxi</sup> and for addressing the disproportionate impacts suffered by the victims of the disaster, based on gender and race.

The court recognized that the workers in the fireworks factory in Santo Antônio de Jesus/BA are usually marginalized women from society, who have not finished their education, since they had began working in the industry between the ages of 10 (ten) and 13 (thirteen) years old. Given this scenario, it was determined that Brazil shall implement a socioeconomic development program aimed at the population of the municipality, especially for young people over 16 (sixteen) years old and for African-Brazilian women living in poverty.

In addition, the decision of the case named Employees of the Fireworks Factory of Santo Antonio de Jesus and their Family Members *vs. Brazil* invoked UN Guiding Principles on Business and Human Rights to reinforce State obligations



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in the face of business activities of a dangerous or high-risk nature. According to the decision, these principles provide a harmonious view regarding the obligations that must be observed from Articles 1.1 and 2 of the American Convention on Human Rights (Pact of San José, Costa Rica), as well as other international instruments (such as Conventions 81 and 155 of the International Labor Organization – ILO) and the interpretations that lead to obligations for States in this type of context.

In this regard, the gender perspective employed by the Inter-American Court of Human Rights, in a broader view that goes beyond cases of physical, psychological or sexual violence to also encompass economic and social discrimination, should serve as a parameter not only for the elaboration of public policies, but for the entire treatment of violations of rights that affect women in the workplace and when it comes to sharing tasks in society in a more general sense<sup>xxii</sup>.

The recent Advisory Opinion No. 27/2021 intensifies the IACHR's position on the protection of women's social and economic rights, concluding “that the right to non-discrimination on grounds of sex and gender obliges States to adopt measures that provide all labor and trade union rights to women on equal terms with men, that promote the equal distribution of domestic labor, and that combat the structural causes of these inequalities”<sup>xxiii</sup>.

Thus, it is the State's responsibility to observe the guidelines provided by the Inter-American Human Rights system, in the exercise of its conventional duty to create protection mechanisms, either by respecting and complying with the determinations set forth in the advisory opinions and in the condemnatory sentences of the IACHR, or by considering the reports produced within the framework of the IACHR.

Recommendation No. 123/2022 of the National Council of Justice (CNJ) and Recommendation No. 96/2023 of the National Council of the Prosecution Service (CNMP) reinforce the duty of magistrates to implement the rights provided for in the American Convention on Human Rights and international human rights treaties, especially by complying with the sentences that hold Brazil responsible for the violation of these rights.



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### **III – Good practices in collective protection in cases of human rights violations by corporations**

Since the enactment of Law No. 7347/1985, Public-Interest Civil Actions (ACPs) and non-judicial remedies of collective protection (Recommendations and Terms of Adjustment of Conducts) have been used, with repeated positive results, aiming to avoid harmful conduct and search for reparation in cases of human rights violations by corporations.

In the case of the rupture of the Fundão dam, which took place in November 2015 in Mariana/MG, which is considered the largest environmental, social and economic catastrophe in Brazil and one of the largest in the world, the actions of the Prosecution Service and the Public Defender's Office together with civil society provided a detailed diagnosis of gender discrimination in the context of the disaster, especially regarding the disregard of women as beneficiaries of the emergency financial aid program and the mediated compensation program, set by the Renova Foundation, a private legal entity created to manage the disaster repair process damage.

In search of correcting the methodology of the compensation process for socio-environmental damages resulting from the rupture of the Fundão dam, joint recommendation No. 10/2018 was published<sup>xxiv</sup>, signed by the 7 (seven) justice institutions acting in the case, namely: the Federal Prosecution Service (MPF), the Labor Prosecution Service (MPT), the Prosecution Service of the State of Minas Gerais (MP-MG), the Prosecution Service of the State of Espírito Santo (MP-ES), the Public Defender's Office of the Union (DPU), the Public Defender's Office of the State of Minas Gerais (DPE-MG) and the Public Defender's Office of the State of Espírito Santo (DPE-ES). In the various points related to assistance and repair programs, Recommendation No. 10/2018 brought up the following gender-perspective determinations to Samarco Mineração S/a, Vale S/a, BHP Billiton Brasil Ltda. and Renova Foundation:



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*"13. Refrain from using questionnaires with the affected woman that lead to the non-recognition of her work as self-employed, independent of her partner;  
15. Recognize the income of the affected woman as autonomous, granting an emergency card in her name, out of respect for the economic independence gained before the rupture of the dam  
23. Compensate affected women on equal terms with affected men, without any distinction in treatment and values, in compliance with ILO Convention No. 100;  
25. Please note that in the case of negotiations with family nuclei in which the existence of a woman in a situation of violence is found, Law No. 13140/2015 (Mediation Law), item II, Article 2, provides for isonomy between the parties as a guiding principle. Thus, it is not possible to assess this negotiating power when it comes to the procedure of self-composition between a victim of domestic and family violence and an offender;  
26. Note that self-composition practices involving victims of domestic and family violence and offenders, in addition to generating a real process of revictimization, can place women at risk in cases where there is danger of new violence to take place;  
27. Comply with Recommendation No. 33 of July 25, 2015, of the CEDAW Committee – Committee on the Elimination of all Forms of Discrimination against Women, dealing specifically with access to justice, ensuring that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedure;"*

The reasons presented by the Renova Foundation in response to joint recommendation No. 10/2018 were limited to seeking to clarify the methodology used in the reparation process and to denying the obstacles raised, in addition to removing issues related to the increase in domestic violence from the damage matrix, as it understood that it did not integrate the scope of its action<sup>xxv</sup>. Despite the entity's resistance in relation to most of the points raised, some claims were recognized by the Inter-Management Committee, such as the consideration of artisan activity for compensation purposes.

At the same time, in the judicial sphere, the legitimate parties filed the ACPs registered under No. 1024354-89.2019. 4.01. 3800 and No. 1016756-84.2019. 4.01. 3800, seeking the complete repair of the socio-environmental damage resulting from the event.

In these actions, the Preliminary Adjustment Agreement (TAP) and the Alteration of the Preliminary Adjustment Agreement (ATAP) were signed, which provided for the hiring of specialists to work as experts, advisors and/or technical assistants



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of the Federal Prosecution Service to carry out socio-environmental and socio-economic assessment, as well as to evaluate and monitor socio-environmental and socioeconomic compensation programs implemented by the Renova Foundation, in addition to granting assistance to those affected.

The experts hired to advise the MPF carried out a broad diagnosis of the socio-environmental and socioeconomic damages resulting from the pollution caused by the rupture of the Fundão dam. We should note the report published in 2019 by the Getúlio Vargas Foundation (FGV) that deals with the situation of affected women based on data from the Renova Foundation Internal Affairs Office.

At the end of the report, FGV concluded that: *"the main themes and relationships that emerged from the data assessed here present results close to those reached by other studies of women in the context of disasters, which make up the literature review established here. Thus, the importance of prioritizing this group is reiterated, as well as due attention to the response and reparation processes, as they suffer damage in different ways and whose consequences are based on gender inequality."* <sup>xxvi</sup>

Thus, it was verified that the case of the rupture of the Fundão dam, operated by the company Samarco S/A, provides a rich panorama on the disproportionate impacts to which women victims of human rights violations by companies are subjected, which demanded the adoption of innovative solutions by Justice institutions, giving the gender issue its own space for analysis and proposal of measures aimed at full reparation to the affected women.

The performance of the institutions in charge of collective protection of rights in the aforementioned case exposed the problems of the repair programs created by the Renova Foundation and served as experience for improving disasters management model carried out in subsequent cases, such as the rupture of the Córrego do Feijão mine dam, in Brumadinho/MG, in 2019, operated by Vale S/A, whose socio-environmental registration of the affected population



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to have access to the monthly emergency payments (substitute for emergency financial aid in the case of the Fundão/Rio Doce dam rupture) took into account the person as an individual, and not the problematic criterion of the family nucleus.

#### **IV – Conclusion**

Given the scenario of systematic violations of women's rights due to socio-environmental disasters of serious proportions, as well as mega-events and large development projects, the elaboration of a “Gender Perspective Protocol for the Prosecution Service”, currently under discussion within the CNMP, is particularly relevant.

Taking into account that such protocol aims to provide a guide for members of the Brazilian Prosecution Service to adopt an attentive gender perspective in their functional performance regarding all forms of discrimination against women, in a manner similar to what was carried out within the scope of the Judiciary<sup>xxvii</sup>, the aim of this technical note is to provide information, although non-exhaustive, due to the breadth of the topic, so that the National Council of the Prosecution Service is able to assess whether or not it is relevant to include specific guidelines for action in that document regarding cases involving human rights violations by companies.

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<sup>i</sup> Data extracted from Technical Note No. 07/2018 of the PFDC. Available at: <https://www.mpf.mp.br/pfdc/manifestacoes-pfdc/notas-tecnicas/nt-7-2018>. Access on: October 7, 2023.

<sup>ii</sup> Council for the Defense of Human Rights. Special Commission "Affected by Dams". Brasília: CDDPH, 2010, p.13.

<sup>iii</sup> Council for the Defense of Human Rights. Special Commission "Affected by Dams". Brasília: CDDPH, 2010, p.38.

<sup>iv</sup> Movement of Those Affected by Dams (MAB). *The energy model and the violation of human rights in the lives of women affected by dams*. São Paulo: MAB, 2011. Available at: <https://mab.org.br/wp-content/uploads/2021/02/O-modelo-energetico-e-a-violacao-dos-direitos-humans.pdf>. Access on October 8, 23

<sup>v</sup> In the case of the rupture of the Fundão dam, women who carried out the activity of cleaning the fish were not considered in the fishing chain by the Renova Foundation, being denied access to emergency programs, according to the report of the Public Defender's Office of Espírito Santo. Available at: <http://www.defensoria.es.def.br/site/wp-content/uploads/2016/10/Relato%CC%81rio-questao-de-genero-5-de-nov-de-2018-2.pdf>. Access on: October 8, 2023.

<sup>vi</sup> Several informal economic activities such as cleaning the houses, caring for children, preparing lunch boxes, manicure, hairdressing, caring for the garden, cease to exist due to the transformations resulting from the construction works. According to the CDDPH, "there are numerous cases of women who have lost their working and survival conditions as a result of the dam and the destruction of the city." MASO, Tchenna Fernandes & MASO, Tchella Fernandes. *Where are our rights? The feminist gender field embroidered by women affected by dams*. Revista Brasileira de Políticas Públicas, v. 10, n. 2, p. 481-510, 2020. Available at: <https://www.publicacoes.uniceub.br/RBPP/article/view/6822>. Access on: November 15, 2023.

<sup>vii</sup> In the study carried out by the Getúlio Vargas Foundation, in the Rio Doce case, based on data from the Internal Affairs Office of the Foundation for reparation, 40.3% of women complain of housework overload. Available at: [https://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv\\_a-yestuacao-das-mulheres-atingidas-pelo-desastre-do-rio-doce-a-partir-dos-dados-da-ouvidoria-da-fundacao-renova](https://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv_a-yestuacao-das-mulheres-atingidas-pelo-desastre-do-rio-doce-a-partir-dos-dados-da-ouvidoria-da-fundacao-renova). Access on: November 15, 2023.

<sup>viii</sup> In 2016, Nilce de Souza Magalhães, a fisherwoman, was murdered. Hit by the Jirau dam, she was the leader of MAB, which sought recognition of the impacts of the works on the fishing chain. Nicinha, as she was known, was stabbed to death in the camp she lived in, and had her body dumped with a stone into the Madeira River. In March 2019, Dilma Ferreira, leader of MAB, a settler of Tucuruí dam, was tortured and murdered inside her home. Their struggle was associated with improving conditions in the rural settlement. (MASO, Tchenna Fernandes & MASO, Tchella Fernandes. *Where are our rights? The feminist gender field embroidered by women affected by dams*. Revista Brasileira de Políticas P, v. 10, n. 2, p. 481-510, 2020. Available at: <https://www.publicacoes.uniceub.br/RBPP/article/view/6822>. Access on: November 15, 2023.

<sup>ix</sup> When families affected by the Belo Monte hydroelectric plant in 2012 were registered, the survey for urban resettlement was based on the information of the head of the family, a man. The result was that most of the houses built did not reflect the needs of the family, because the patriarchal vision of family, composed of head, wife and children, did not represent the reality of the region. (MASO, Tchenna Fernandes & MASO, Tchella Fernandes. *Where are our rights? The feminist gender field embroidered by women affected by dams*. Revista Brasileira de Políticas P, v. 10, n. 2, p. 481-510, 2020. Available at: <https://www.publicacoes.uniceub.br/RBPP/article/view/6822>. Access on: November 15, 2023. According to FGV, in the socioeconomic registration carried out in the Samarco case, in 2015, the patrimonial and patriarchal notion of the register led to only 30% of women being recognized as affected and only 15% accessing some direct benefit on their behalf. (*The situation of women affected by the Rio Doce disaster based on data from the Renova Foundation*. FGV, 2019). Available at: [https://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv\\_a-yestuacao-das-mulheres-atingidas-pelo-desastre-do-rio-doce-a-partir-dos-dados-da-ouvidoria-da-fundacao-renova](https://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv_a-yestuacao-das-mulheres-atingidas-pelo-desastre-do-rio-doce-a-partir-dos-dados-da-ouvidoria-da-fundacao-renova). Access on: November 15, 2023.

<sup>x</sup> In the construction of the Jirau and Santo Antônio dams, in the State of Rondônia, 25 thousand workers were registered around the works and there was an increase rate of 208% in cases of rape. At the height of the construction of the Belo Monte dam, according to the Altamira women's Police Station (DEAM), there were 584 reports of crimes against women in the city. In a recent MAB publication, testimonies denounce the use of "sex vouchers" by workers of the Neoenergia consortium. Prostitution is another byproduct on the sites of these large construction sites and goes hand in hand with other variations of violence. (...) In the case of the Xingu nightclub, in 2013, the police revealed a network of sexual exploitation involving human trafficking, in situations similar to slavery. Women were found locked in unventilated rooms, forbidden to leave the premises, looked for indebtedness (MASO, Tchenna Fernandes & MASO, Tchella Fernandes. *Where are our rights? The feminist gender field embroidered by women affected by dams*. Revista Brasileira de Políticas P, v. 10, n. 2, p. 481-510, 2020. Available at: <https://www.publicacoes.uniceub.br/RBPP/article/view/6822>. Access on: November 15, 2023.

<sup>xi</sup> SCABIN, Flávia; FERRAZ, Júlia Lambert Gomes; GUARANHA, Olívia Landi Corrales. *Gender-based violence and disasters. A human rights and business perspective on the Fundão/MG dam failure. In Women, Human Rights and Business*. Melina Girardi Fachin, Ana Claudia Ruy Cardia Atchabahian, Danielle Anne Pamplona (Coordinators). São Paulo: Almedina, 2011.

<sup>xii</sup> See Technical Note No. 7/2018 of the PFDC. Available at: <https://www.mpf.mp.br/pfdc/manifestacoes-pfdc/notas-tecnicas/2018>. Access on: December 1, 2023.

<sup>xiii</sup> On November 14, 2023, the final text of Bill No. 2788/2019 was approved in the Federal Senate and sent for presidential sanction. Full version available at: [https://www25.senado.leg.br/web/atividade/materias/-/materia/138122#tramitacao\\_10067498](https://www25.senado.leg.br/web/atividade/materias/-/materia/138122#tramitacao_10067498). Access on: December 11, 2023.

<sup>xiv</sup> United Nations. CEDAW/C/GC/33. Available (online) at: <https://assets-compromissoeatitude-ipg.sfo2.digitaloceanspaces.com/2016/02/General-recommendation-n33-Committee-CEDAW.pdf>. Last accessed on January 20, 2024.

<sup>xv</sup> Available at: <https://www2.defensoria.sp.def.br/dpesp/repositorio/31/Caderno%20ONU02122020.pdf>. Access on: September 15, 2023.

<sup>xvi</sup> UNITED NATIONS. Gender Dimensions of the Guiding Principles on Business and Human Rights. A/HRC/41/43. Geneva, 2019. Available at: <https://www.undp.org/publications/gender-dimensions-guiding-principles-business-and-human-rights>. Access on: November 12, 2023.

<sup>xvii</sup> The convention of Belém do Pará was enacted by Decree No. 1.973, of August 01, 1996.

<sup>xviii</sup> The Brazilian State was also held responsible by the Inter-American Commission on Human Rights in the Simone André Diniz Case vs. Brazil (2006), involving discrimination against a black woman, with the recognition of institutional racism.

<sup>xix</sup> The following cases stand out regarding caselaw on gender: González and others vs. Mexico (2009), better known as Campo Algodoeiro, which addressed the Femicide of girls and women as a systemic violence; Atala Rizzo and daughters vs. Chile (2012), on the custody of daughters by a homosexual mother after divorce; case Genoveva et al. vs. Brazil-Favela Nova Brasília (2017) violation of rights, especially with regard to sexual violence against women, in the context of police operations in slums.

<sup>xx</sup> IDH COURT. Case of Employees of the Fireworks Factory of Santo Antônio de Jesus and their families vs. Brazil. Preliminary

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objections, merits, reparations and costs. Judgment of July 15, 2020. C Series No. 407. Available in: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_407\\_por.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_por.pdf). Access on September 15, 2023.

<sup>xxi</sup> The court concluded that, in light of Article 26 of the ACHR, Brazil had an obligation to ensure fair and satisfactory working conditions that ensure safety, health and hygiene, and prevent occupational accidents, which is especially relevant when it comes to activities that involve significant risks to the lives and integrity of people. However, the court found that the employees of the fireworks factory worked in precarious, unhealthy and unsafe conditions, in tents located in a pasture area, which did not meet the minimum safety standards, nor conditions that would allow to avoid or prevent work accidents. Nor did they receive instructions on safety or protective materials for carrying out their work. That, without the State carrying out any supervision activity aimed at verifying working conditions, nor undertaking any action aimed at preventing accidents. Due to the above, the Court determined that the State is responsible for violation of Article 26 of the Convention.

<sup>xxii</sup> Vide FACHIN, Melina Girardi; OLSEN, Ana Carolina Lopes. *Gender perspective in the Inter-American Court of Human Rights*. In CNJ Magazine - Special Edition Women and Justice, August 2022, ISSN 2525-45002. Available at: <https://www.cnj.jus.br/ojs/revista-cnj/article/view/344>. Access on: October 20, 2023.

<sup>xxiii</sup> Available at: [https://www.corteidh.or.cr/docs/opiniones/soc\\_3\\_2019\\_por.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_3_2019_por.pdf). Access on: November 5, 2023.

<sup>xxiv</sup> Full content available at: <http://www.mpf.mp.br/mg/sala-de-imprensa/docs/recomendacao-conjunta-mpf-fundacao-renova>. Access on: December 11, 2023.

<sup>xxv</sup> Renova Foundation response available at: <https://www.fundacaorenova.org/wp-content/uploads/2019/04/respostaoficiodpesseq14234.pdf>. Access on: December 11, 2023.

Available at: [https://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv\\_a-situacao-das-mulheres-atingidas-pelo-desastre-do-rio-doce-a-partir-dos-dados-da-ouvidoria-da-fundacao-renova](https://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv_a-situacao-das-mulheres-atingidas-pelo-desastre-do-rio-doce-a-partir-dos-dados-da-ouvidoria-da-fundacao-renova). Access on: November 15, 2023.

<sup>xxvii</sup> According to the Gender-Perspective Trial Protocol, edited by the National Council of Justice, whose guidelines are mandatory, according to CNJ resolution No. 492/2023.



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