

CHRB Response to Brumadinho Dam Disaster – Vale Suspension from Human Rights Benchmark



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Overview

Due to the devastating dam collapse at Vale's Córrego do Feijão mine in Brumadinho, Brazil, the Corporate Human Rights Benchmark (CHRB) has decided to remove Vale's scores from the 2018 benchmark rankings and exclude their scores from the CHRB downloadable dataset. CHRB deeply regrets the loss of life, the extensive and long-term environmental and health impacts, and the massive disruptions to communities – all of which are severe human rights impacts.

The CHRB assessment provides a snapshot in time looking at an entire year, but this tailings dam tragedy highlights the need for CHRB to be able to respond to exceptional circumstances at ranked companies that occur between the yearly scoring periods. It would not be correct for CHRB to continue to rank Vale in the higher performance bands in the wake of such a tragedy. Vale's inclusion in the 2019 benchmark, as well as any needed adjustments to the CHRB Methodology to deal with such emergent, large scale, human rights impacts, will be reviewed.

Dan Neale, Director of the Corporate Human Rights Benchmark commented:

This latest dam collapse in Brazil is a tragic example of what can go wrong on business and human rights - we firstly want to express our deep sympathy for those workers, communities and families affected.

The Corporate Human Rights Benchmark seeks to provide robust and credible information on companies' action to respect human rights across their business. Given this latest disaster involving Vale, we have moved to ensure their inclusion in our Benchmark is not now misleading. We have suspended Vale from the 2018 Benchmark and will review this and any adjustments to our Methodology needed to deal with such emergent, large scale, human rights impacts when more information is available.

Detail

In 2017, CHRB scored Vale in the lower end of the 30-40% band on their human rights performance. Eighteen months later, Vale's score had improved by almost 30%. We recognised at the time of the CHRB launch in November 2018 that there would be sensitivities around Vale, particularly with the ongoing legal action to achieve redress for the 2015 Bento Rodrigues dam disaster (referred to here as 'Samarco'). But our assessment against the CHRB methodology showed a level of improvement in several areas, with changes being implemented in the wake of the Samarco incident. In particular, Vale's scores improved in terms of their systems for providing remedy and in demonstrating how they responded to allegations of serious human rights impacts. They did however continue to score poorly against identifying human rights risks and impacts, integrating risk assessment findings and turning them into actions and monitoring and tracking those actions.

Most of the improvements in scores were related to high level commitments/systems and better disclosure, but they were also backed up in part by conversations around a positive change in attitude within the company, in part linked to the new CEO and pressure from joint venture partners. The score changes and the informal reassurance still had to be tested to understand how well the new approach, policies and systems would impact day to day operations on the ground.

In early January 2019, CHRB had already decided that the current approach for assessing human rights allegations against companies was not particularly well suited to dealing with rare, large scale harm events, such as the Samarco disaster. Our scores provide a proxy for good performance overall, but it is not possible to review human rights performance at the site level with an institution-wide benchmark analysis such as CHRB's. When we have reasonable grounds to believe that the governance, policy and management frameworks are not leading to good performance then we should have the ability to suspend a company's rankings subject to a detailed review of the incident.

Supporting our recognition of the limitations of the approach to assess harm via the company response to allegations, peer companies in the extractives sector also expressed their discontent that a company such as Vale could score almost full marks in their 'response to allegations' assessment, despite having had a huge negative impact on people through something like the Samarco incident, when compared with companies without such allegations. This underlines some key challenges in the necessary task of assessing negative human rights impacts and a company's responses to them, particularly in the context of questions about 'failures to act' and the search for remedy which may include (sometimes long-term) legal action. In addition, a negative scoring approach for allegation has its own limitations¹.

To deal with our concerns and to keep the Methodology consistent until the next major review in 2020, CHRB has decided to increase its reporting in the 2019 Key Findings Report on Theme E (Response to Allegations). We considered several approaches that will be integrated into the 2019 Benchmark: highlighting companies that have scored well over all, but that were also linked to serious human rights allegations, reporting on the number of human rights controversies found for each company, and reporting on the most serious allegations (including getting more information on company activity) in detail. We had not made a final decision about the option of suspending companies from the Benchmark at the time of the Brumadinho dam failure but have now decided it is necessary in light of the tragic events.

The current CHRB assessment provides a snapshot in time of how the company is doing, with a strong focus on governance, commitments and implementing the processes for managing human rights, including remedy. As such, there is normally a 12-month gap between scores, which does not permit a response to real-time issues. Given these focus areas, it is also feasible that in the wake of a disaster, where companies rightly change their policies and approaches, the company scores may rise before the full roll out and implementation of the new systems can be tested on the ground. This is a particular concern for the extractives industry, where much of the focus of due diligence may be on understanding risks in new projects, rather than revising and dealing with issues in old facilities (such as closed tailing dams) which represent ongoing liabilities. This tragedy has clearly highlighted the need for a meaningful human rights lens to be applied to tailings facilities' risk assessments, particularly in jurisdictions where the legal minimum standard may not sufficiently reduce the likelihood of high-impact events from occurring.

As the true scale, cause and responsibility for this disaster is yet to be understood, CHRB is not presently excluding Vale from the 2019 assessment. However, it does not appear correct to the CHRB to keep showing Vale on our website and datasets as a relatively high-performer compared to their peers. In these exceptional circumstances, CHRB has decided to suspend Vale from the 2018 Benchmark and will remove / adapt their information on our website and in our downloads. As more information becomes available, CHRB will make further decisions regarding the inclusion of Vale in the 2019 benchmark. Aside from such large-scale disasters, CHRB will continue to deal with serious allegations against companies as part of the regular, yearly assessment.

¹ For a more detailed explanation of CHRB's Methodological approach to human rights allegations, please see P.104 of our Methodology (<https://www.corporatebenchmark.org/sites/default/files/CHRB%202019%20Methodology%20AGAPEX%2016Jan19.pdf>) and P.6 & 14 of our methodology explanatory note (<https://www.corporatebenchmark.org/sites/default/files/CHRB%202019%20Methodology%20AGAPEX%2016Jan19.pdf>)