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Q&A BRAZIL MINING & METALS

## What to expect from the final report on Brumadinho?

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The report from the Brazilian lower house commission (CPI) that investigated the Brumadinho tailings dam disaster, [presented to congress last week](#), was due to be voted on by lawmakers on Tuesday, November 5.

The document calls for the indictment of companies [Vale](#) and [Tüv Süd](#) and 22 individuals connected to them regarding the

collapse of the dam, which caused the deaths of around 270 people and caused serious social and environmental damage on January 25 this year.

Among the executives cited are former Vale CEO [Fabio Schvartsman](#) (pictured) and [Tüv Süd](#) engineers [Makoto Namba](#) and [André Yassuda](#), who signed the dam's stability report months before it collapsed.

Rapporteur [Rogério Correia](#) presented the report on October 29, but the vote was postponed because of a request for more detailed analysis of the text, which extends to nearly 600 pages.

[BNamericas](#) spoke with [Mariana Avelar](#), a lawyer specialized in administrative and public affairs at Brazilian law firm [Manesco, Ramires, Perez, Azevedo Marques](#), to understand what is at stake for the companies and their executives and the likely consequences of the report for them.

**BNamericas:** What are the main points of the final CPI report?

**Avelar:** The CPI rapporteur's opinion on the Brumadinho dam collapse proposed the indictment of individuals and legal entities, in this case Vale and Tüv Süd, for offenses outlined in the Brazilian penal code, including homicide and personal injury, and also in the country's environmental crimes law.

It also indicated the existence of grounds for holding these companies responsible under article 5 of the local anti-corruption law.

**BNamericas:** Regarding the proposed indictments, what happens if the report is approved?

**Avelar:** The indictments in question don't occur automatically after the commission's activities are ended.

However, once the CPI's conclusions are approved, they should be sent to the public prosecutors' office to move forward with any civil and/or criminal liability measures.

**BNamericas:** Do you see any of the executives being convicted of the offenses of intentional homicide and intentional personal injury, as cited in the final report?

**Avelar:** In criminal matters, conviction can only occur if all the assumptions of criminal liability exist.

In the case of crimes by omission, it is worth mentioning a recent ruling by the regional federal court TRF-1 that granted habeas corpus to block criminal proceedings against executives indicted after the Mariana dam tragedy [in November 2015].

In that case, it was understood that there was no just cause for criminal action, considering that the complaint presented was not clear and did not show intent and causality for the purposes of applying criminal law.

This precedent is likely to be considered by the judiciary in the event of criminal actions arising from the CPI investigations.

**BNamericas:** As for the liability of the companies involved, are any punitive measures expected?

**Avelar:** The indication for civil-administrative liability under the anti-corruption law was based on the action of hindering the investigation or inspection activities of public bodies, entities or agents by the alleged submission of reports with misleading statements regarding the stability of the dam.

It should be noted that even if the liability outlined in the anti-corruption law is objective in nature, the conviction of the legal entity depends on the effective evidence of the act of hindering investigations or acts of the companies' supervision.

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