

Kluwer Mediation Blog

The Value of Mediation in Times of Crisis

Andrea Maia (Mediar360 - Dispute Resolution) · Friday, March 8th, 2019

On January 25th 2019 Brazil experienced its largest industrial catastrophe, the collapse of a dam from Vale, one of the world's largest Mining Company. The disaster devastated the town of Brumadinho, in Minas Gerais. It was of such magnitude that, until March 8th, the day I write this post, there were 193 confirmed deaths and 115 people still missing. This catastrophe is already considered the worst labour related catastrophe of the past hundred years in Brazil. The human loss is a sad reality which one can rapidly understand. However the magnitude of this event is still unknown, with economic, psychological and social effects that will endure for decades, not to mention the environmental effects, many of which are still unknown, due to the long term consequences on the soil and water and also the cycle of reproduction for fauna and flora.

When catastrophes such as this occur, the first immediate measurement is to take care of victims and their families. Concurrently a long debate regarding the payment of indemnisations takes place. This is a great challenge due to the diversity of actors, criteria for measuring the extent of damagement, risk of fraud, complex legal norms, lack of confidence and dialogue between parts among others. In Brazil, work informality makes it harder to measure and determine the extent of the damage, since it is common for victims to pursue several activities without any official record. All those circumstances make the process of indemnization slow and ineffective especially when it occurs exclusively in the judiciary. Indeed, there is a very large challenge in Brumadinho.

A similar catastrophe happened in 2015 in Mariana, after the collapse of a dam which cause the death of 18 people and 1 missing person. Even though the human loss was not comparable to Brumadinho, the tragedy affected communities settled along 650 kilometers of Rio Doce. It had gigantic environmental effects, which damaged agricultural, fishing and tourist activities, the way of living of a number people. In order to deal with the complexity of the case, a foundation was created to act as a third party and mediate the procedure between victims and the company. The project developed by my colleague Diego Faleck is called Programa de Indenização Mediada (Mediate Indemnisation Program). In the Brazilian judicial system, the value of the indemnization is not related to the level of guilt or liability, but to the value of losses. It is an intent to return to the original status. In this sense it is essential to develop ways of measuring the loss. The level of informality made the process difficult, but the

program accepted other documents, such as bank receipts, testimony of witnesses and photographic records. Mediation can guarantee several positive aspects to this process by enabling the creation of objective parameters, especially when public authorities and the people affected by the crisis are involved in the creation of the program. In a mediation process, there are more possibilities to build trust and to bring dignity for the victims of tragedies. Especially when it comes to providing a faster and more effective answer for them.

In times of crisis, mediation can be an effective tool for dealing with the needs of the victims, while guaranteeing the dignity, especially when it is made with the participation of the different actors in a transparent way of building objective criteria.

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