



Seeking Justice

A follow-up report on the human rights impacts of Outokumpu's value chain in Pará, Brazil



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1. Introduction

In 2021, Finnwatch highlighted human rights concerns in the steel company Outokumpu's value chains in Brazil. For years, Outokumpu had been buying ferronickel from the Brazilian mining company Vale, more specifically from the Onça Puma mine in the Amazon region. Onça Puma is located very close to the territory of the indigenous Xikrin people. The Xikrin and a group of scientists from the Federal University of Pará believe that the mine has contaminated the Catete River and its environment. The river is vital to the indigenous people, and mine is accused of endangering the Xikrin's health and culture. Heavy metals such as lead have accumulated in the Xikrin people and the food they eat¹. The Xikrin also claim that the mine was established without adequate consultation. In 2021, Vale declined to comment on these allegations to Finnwatch.²

Finnwatch contended in the 2021 report that Outokumpu had failed to comply with its human rights due diligence obligations under international human rights standards as it had not assessed its human rights risks or responded to the allegations made by the Xikrin. However, following the Finnwatch report, Outokumpu quickly changed how it acted. The company launched human rights risk assessments, acquired more human rights expertise and suspended purchases from Vale for the time being.

This report is a follow-up to Finnwatch's 2021 report. It examines changes since 2021 in the dispute between Vale and the Xikrin and in Outokumpu's operations. Both companies have been given the opportunity to review the sections of the report that concern them and Finnwatch has engaged in dialogue with the companies when compiling the report.

1 On the heavy metals that have accumulated in local fish Laudo Pericial - Biólogo Processo, nº 2383-85.2012.4.01.3905, Análise da Água e Indicadores da Fauna. p. 118; On the heavy metals that have accumulated in the Xikrin Saboia de Paiva, R., 2020, Relatório parcial de monitoramento do rio cateté na terra indígena xikrin do catete no período de dezembro/2019 a março/2020, Universidade Federal do Pará

2 Finnwatch. 2021. Myrkytetty kansa – Outokummun arvoketjun vaikutukset Brazilian Amazonin alueella. Report can be accessed at: https://finnwatch.org/images/reports_pdf/Myrkytetty_kansa.pdf

2. Nickel mine Onça Puma produces raw materials for the steel industry

Vale is a Brazilian mining company operating globally. It produces ferronickel at the Onça Puma mine in the municipality of Ourilândia do Norte in the Brazilian state of Pará. The ferronickel produced by the mine is an alloy of iron and nickel, which is especially used in the production of stainless steel.

Onça Puma exploits part of the large mineral deposit in the Serra dos Carajás mountain range. The mine consists mainly of two open quarries³ located close to the boundary of the territory belonging to the indigenous Xikrin people. Commercial production at the mine and in its associated production plant began already in 2011⁴, since which the company has been subject to repeated legal challenges. The mine has been accused of environmental degradation and of insufficient consultation with the affected indigenous people during the mine's planning and start-up phases. Vale denies that it caused environmental problems (see chapter 5 for more details). According to the mining company, the Xikrin were consulted in 2011 on the Basic Environmental Plan for the mine. However, the Xikrin left the meeting without taking part in discussions on the plan.⁵

In 2023, Vale moved the production of copper and nickel (incl. the Onça Puma mine) to operate under its subsidiary Vale Base Metals Limited (VBM). According to Vale, by restructuring the company they can increase investments in the production of minerals needed for the energy transition. In the same year, VBM sold 10% of its own shares to Manara Minerals Jersey Limited (Manara Minerals) for USD 2.6 billion.⁶ Manara Minerals is a joint venture between the Saudi Arabian mining company Ma'aden and Saudi Arabia's Public Investment Fund. The goal of the transaction was to help VBM substantially increase copper and nickel production in its countries of operation: Brazil, Canada and

3 Mining Data Online. Onca Puma Mine. Accessed on 30 May 2024 <https://miningdataonline.com/property/1357/Onca-Puma-Mine.aspx>

4 BNamericas. 14 March 2011. Vale kicks off production at Onça Puma nickel operation. <https://www.bnamericas.com/en/news/miningandmetals/vale-kicks-off-production-at-onca-puma-nickel-operation?idioma=I&tipoContenido=detalle&pagina=company&idContenido=14055>

5 Vale's comments submitted to Finnwatch. Email 28 October 2024.

6 Vale's comments submitted to Finnwatch. Email 13 November 2024. Vale's 2023 Annual Report also mentions a merger with Engine No. 1. According to information received from Vale on 13 November 2024 this merger never took place.

Indonesia.⁷ According to its strategy, VBM has also worked to increase production at the Onça Puma mine. At the end of 2025, the rebuilt smelter at the Onça Puma mine will be started up again⁸.

Onça Puma is Vale's (and VBM's) only nickel mine in Brazil, and for this reason, its clients are fairly easy to verify from Brazil's public customs data. Brazil's customs statistics for 2023 indicate that Vale has supplied ferronickel from Brazil to over ten different companies (see Table 1). The Finnish company Outokumpu suspended direct purchases from Vale's Onça Puma mine after Finnwatch published a report on the human rights and environmental issues related to the mine in 2021 (see chapter 8.2). Before the Finnwatch report was published, the Outokumpu Group had purchased ferronickel from the mine through Outokumpu's Tornio-based factory, the US-based Outokumpu Stainless USA, and the Sweden-based Outokumpu Stainless Ab. According to export statistics, Outokumpu Group purchased a total of over 33 000 tonnes of ferronickel from Onça Puma between 2016 and 2019.⁹

While writing this report in spring 2024, the Secretary of Environment and Sustainability (SEMAS) of the State of Pará had once again suspended the Onça Puma mining licence, invoking the deficiencies in the social and environmental conditions for the licence. Vale appealed the decision.¹⁰ Later, Vale told Finnwatch that they had reached an agreement with the authorities in summer 2024 to continue the mining licence. As part of this agreement, the company must, for example, improve its environmental impact reporting.¹¹ Despite repeated inquiries, Vale did not give the concrete reasons for the temporary suspension of its mining licence, nor did it supply the document with the official decision to Finnwatch. The company encouraged Finnwatch itself to look for the official document in a Brazilian document register.¹² At the time this report was finalised in November 2024, production had been restarted at the Vale/VBM Onça Puma mine.

7 Vale. (27 July 2023). Vale announces strategic partnership with Manara Minerals and Engine No. 1 to accelerate growth of energy transition metals business. Press release. Accessed on 25 June 2024 osoitteesta <https://vale.com/w/vale-announces-strategic-partnership-with-manara-minerals-and-engine-no-1-to-accelerate-growth-of-energy-transition-metals-business>. The press release also mentions a merger with Engine No. 1. According to information received from Vale on 13 November 2024 this merger never took place.

8 Vale. (2023). Integrated Report. The company's 2023 Annual Report. <https://ri-vale.mz-sites.com/en/information-to-the-market/annual-reports/sustainability-report/>; Vale's comments submitted to Finnwatch. Emails 28 October 2024 and 13 November 2024.

9 Finnwatch. (2021). Myrkytetty kansa – Outokummun arvoketjun vaikutukset Brasilian Amazonin alueella, p. 10. https://finnwatch.org/images/reports_pdf/Myrkytetty_kansa.pdf

10 Brasil Mineral. (4 April 2024). Justiça do Pará suspende liminar que autorizava operação de Onça-Puma. Accessed on 25 June 2024 <https://www.brasilmineral.com.br/noticias/justica-do-para-suspende-liminar-que-autorizava-operacao-de-onca-puma>

11 VBM. Email to Finnwatch 6 August 2024

12 Vale/VBM. Email to Finnwatch 2 September 2024.

TABLE 1: Companies that purchase ferronickel from Mineração Onça Puma S.A in 2023

Company	Country to which ferronickel was exported
Acciai Speciali Terni Group	Italy
Alleima Tube Ab	Sweden
Cngr Material Science (HK)	Hong Kong
Glencore	China
Mbr Metals Ou	Estonia
Marcegaglia Stainless Sheffield Ltd.	Great Britain
Pengyuan Hk Int Ltd.	Hong Kong
Posco	China
Ugitech	France
Walsin Lihwa Corporation	Taiwan
Yantai Walsin Stainless Steel Co., Ltd.	China

The information is based on Brazil's customs statistics. Information that was believed to be incorrect, such as where a logistics company was listed as the recipient of the ferronickel, was removed from the table. Mineração Onça Puma S.A. is a Vale Base Metals subsidiary which is responsible for operating the Onça Puma mine.

3. How the report was compiled

This report is a follow-up report to the Finnwatch report “Myrkytetty kansa – Outokumpu arvoitetun vaikutukset Brasilian Amazonin alueella”¹³ published in 2021.

This follow-up report is based on a survey sent to Outokumpu and Vale's mining company VBM, dialogue with the companies, a review of Brazilian court documents on the dispute between Vale/VBM and the Xikrin, and interviews with the Brazilian regional prosecutor, investigators, and the Xikrin. In 2021, Vale did not want to comment on the report published by Finnwatch at that time, and the comments given by Outokumpu for the aforementioned report were scant. Lengthy conversations were held with both companies while preparing for this follow-up report, and this time around, both companies provided information to Finnwatch. The information provided by the companies has, where relevant, been included in this report.

13 The report can be accessed at <https://finnwatch.org/fi/julkaisut/myrkytetty-kansa>

Researchers from Finnwatch's partner, Reporter Brasil, interviewed the Xikrin predominantly in their own territory in March 2024. The researchers were given permission by the Xikrin to visit the area. The interviews were conducted in the City of Parauapebas at Instituto Indígena Botiê Xikrin (the Xikrin institute), in three Xikrin villages in the Catete region, and in the area of the Carajás National Forest. The research interviews were carried out in Portuguese, and they focused in particular on determining the relationship between the Xikrin and Vale/VBM and the current situation in the region. Additional interviews were also carried out by telephone in September 2024. In one interview, another Xikrin community member who spoke Portuguese acted as an interpreter.

Although the researchers had permission from the Xikrin people to visit the territory, carrying out the interviews was challenging. There have been some conflicts between different Xikrin groups, which may have led to many village chiefs declining interviews. Some of the terms and conditions of the agreement (see chapter 4) that the Xikrin had entered into with Vale/VBM were also interpreted as forbidding conversations on the matter.¹⁴ It was also difficult to find people in the villages who were willing to take part in interviews. The Xikrin speak their own Kayapo language, and only some of them speak enough Portuguese to be able to take part in an interview. None of the Xikrin women the researchers met wanted to take part in interviews. A total of six Xikrin interviews have been considered in this report. Finnwatch will not publish the names of interviewees, as not all of them wanted their names to be published. In 2021, Finnwatch interviewed seven representatives of the Xikrin people concentrating on the long-term impacts of Vale's operations and on the history of the conflict. The new interviews for this report gave an updated and more fleshed out picture of the situation.



¹⁴ The agreement concluded between the Xikrin and Vale is covered in more detail in chapter 4. The agreement contains a section which states that the parties do not intend to dispute or discuss compensation any further.

4. Current standing of legal processes between the Xikrin and Vale

The Xikrin and Vale/VBM have been engaged in various legal battles for more than a decade. However, the majority of lawsuits between Vale/VBM and the Xikrin have at this time been suspended. The achieved agreement dates back to a temporary umbrella agreement from 2020, when Vale paid money to the Xikrin and legal proceedings were suspended for a year to reach a final agreement between the company and the Xikrin. In 2021, negotiations reached a resolution and in 2022 the final umbrella agreement was signed.

These agreements are called umbrella agreements because they cover almost all the legal proceedings that were ongoing in the wider Serra dos Carajás region. Under the umbrella agreements, Vale/VBM will pay the Xikrin the money agreed upon. In return, the prosecutor will drop the Xikrin-related legal processes against the company. In addition to the Onça Puma mine, the contracts cover S11D (a large iron mine complex opened by Vale in 2017), the Salobo mine (Vale's largest copper mine, opened in 2013), the Alemão and Igarapé Bahia mines (Vale-owned gold mines where operations have ceased but where a reopening is planned) and Ferro Carajás (Vale's iron mine project).

In addition to the Xikrin, the agreements were also supported by a number of other stakeholders who had filed lawsuits against Vale's mining activities. Parties that committed to the agreements were the prosecutor's office of the state of Pará, the National Indian Foundation (Funai), and the Chico Mendes Institute for Biodiversity Conservation (ICM-BIO). As a result of the agreements, these entities will not pursue any further legal action against Vale/VBM during the term of the agreement and related to matters covered by the agreements.

The final umbrella agreement includes monthly payments to the Xikrin for each Vale/VBM project. With regards to Onça Puma, the mining company will pay the Xikrin approximately BRL 1.7 million (280,000 euros) per month.¹⁵

After the umbrella agreements were signed, several goodwill gestures by both the Xikrin and Vale/VBM were featured in the media. Vale/VBM told local media that the signing of the agreement would turn a new page in the relations between the Xikrin and Vale¹⁶.

15 Acordo Global Xikrin. 12/2021

16 Correio. (16 March 2024) Justiça Federal homologa acordo de compensação da Vale à comunidade Xikrin. Accessed on 25 June 2024 <https://correiodecarajas.com.br/justica-federal-homologa-acordo-de-compensacao-da-vale-a-comunidade-xikrin/>

The CEO of Vale, Eduardo Bartolomeo, visited the Xikrin territory for the first time. The 2022 visit and the accompanying ceremonies and speeches were recorded and posted on Youtube by Vale¹⁷. The Xikrin institute also published numerous social media posts presenting the Xikrin-Vale/VBM cooperation.¹⁸

In its response to Finnwatch, VBM stated that it considers its relationship with the Xikrin to be "healthy" and that it believes the feeling is mutual.¹⁹ However, the Xikrin people interviewed by Finnwatch remained highly critical of the company (see Chapter 6). According to Vale, its relationship with the Xikrin is now based on close communication and dialogue as well as consultations, and that the implementation of projects addressing social and environmental problems (that were previously agreed upon and for which money is earmarked separately in the contracts) has been in progress in the Xikrin community since 2022.²⁰

In November 2023, the compensation amounts for the Vale/VBM Ferro Carajas project were also updated, and the updated agreement was confirmed by the Pará public prosecutor's office in March 2024. On the Xikrin side, the agreement was signed by 21 Xikrin village chiefs (see chapter 6 on the increase in the number of Xikrin villages). The signing of the agreement in November 2023 was preceded by a five-hour meeting among the Xikrin, after which Chief Karangrel was authorised to announce the Xikrin acceptance of the agreement proposed by Vale.²¹

The compensation agreed to in the umbrella agreement and the lawsuits that were dropped as a result of the agreement only apply to claims pursued by the prosecutor. In other words, the agreement does not prevent the Xikrin or other parties from bringing separate civil actions on the issues covered by the agreement.

17 Vale. Xikrin do Catete e Vale. Video. <https://www.youtube.com/watch?v=ZvYl3dNGDpg>

18 Examples of posts on Instagram https://www.instagram.com/p/CIV81QXuO_2/, https://www.instagram.com/p/Cia8jcSJ-SiR/?img_index=4, https://www.instagram.com/p/CqT1uVxpxaY/?img_index=1

19 Vale/VBM. Answers to Finnwatch's questions 26 June 2024.

20 Vale/VBM. Answers to Finnwatch's questions 26 June 2024.

21 Office of the regional prosecutor. Minutes of meeting 23 November 2023. Ministério Público Federal, Procuradoria regional da república da 1a região memória reunião 23/11/2023. Document number 387578648.

5. Polluted river flowing through the Xikrin territory and its surrounding areas have not been cleaned

Although Vale/VBM and the Xikrin have reached an agreement on Vale/VBM's payments to the indigenous people under the umbrella agreement, the issue of the significant impacts on the Xikrin culture and livelihoods remains unresolved and is not covered by the agreements (see previous chapter). This unresolved dispute concerns the Itacaiúnas River, which flows through Xikrin territory, and its tributary, the Cateté, which the prosecutor believes have been polluted by Vale's mining activities.

The risks to the Cateté River posed by the Onça Puma mine were known before the mine began commercial operations. A 2010 consultant report drawn up for Vale states that the mine must specifically control the release of pollutants into natural waters, and that the most vulnerable area is the Cateté River, which flows through the Xikrin territory in the vicinity of the mine.²² The mine site is located at a higher altitude than the adjacent Xikrin territory²³. The mine must therefore manage the polluted water flowing from its site as well as the dust from the mine and its infrastructure before it enters the small and therefore ecologically sensitive Cateté river.

Onça Puma is an open pit mine located on a ridge and all native vegetation has been cleared from the area to make way for the mine and other infrastructure. Studies have found that the river flowing near the mine and its fish are contaminated with heavy metals that may be linked to Vale's mining activities. Heavy metals have also been found in the blood of Xikrin people.²⁴ According to a 2020 report by the Federal University of Pará, the contamination is due to both mineral leaching from deforestation caused by mining activities and to the wastewater discharged into the river by Vale.²⁵

22 Golder Associates. (2010). External audit of mineral reserves, p. 69. https://www.hkexnews.hk/listedco/listconews/sehk/2010/1202/06210_950098/e127.pdf

23 da Silva Gomes, G. Bispo do Vale, S. et al. (2021). Preliminary analysis of contamination and silting up of the Cateté River by a mining project in Pará Brazil. First Part. <https://ojs.brazilianjournals.com.br/ojs/index.php/BRJD/article/view/27308/21604>

24 Saboia de Paiva, R. (2020) Relatório parcial de monitoramento do rio cateté na terra indígena xikrin do catete no período de dezembro/2019 a março/2020, Universidade Federal do Pará; Laudo Pericial - Biólogo Processo, nº 2383-85.2012.4.01.3905, Análise da Água e Indicadores da Fauna. p. 118

25 Saboia de Paiva, R. (2020). Relatório parcial de monitoramento do rio cateté na terra indígena xikrin do catete no período de dezembro/2019 a março/2020, Universidade Federal do Pará



Vale/VBM has disputed the environmental problems caused by the mine and believes that the study by the Federal University of Pará is of bad quality. According to the company, there is insufficient information on the accreditation of the laboratory used in the study, the results have not been statistically evaluated or properly presented, and the conclusions are not supported by the results.²⁶

Vale stresses that the Cateté River is located in a geological area where metals such as iron, nickel and copper are naturally present, and therefore metals are also naturally present in the river. The company has invoked, for example, expert studies commissioned by the court in 2017 and carried out in 2018, which concluded that a direct causal link between the mine and water pollution could not be established at the time.²⁷ The expert study concluded that, during the investigation, urban and village wastewater, agricultural pesticides and the clearing of vegetation along the banks were the main causes of the deterioration of the river's water quality. The study also concludes that pollutant concentrations above the legal limit values indicate a historical human impact on the river throughout the study area. The study highlights that mining activities adjacent to the river have an impact on the environment, for example through mine dust entering the water with rainfall. However, the study considered the measures put in place by Vale, in particular the spraying of roads with water and the construction of a rainwater dam and sedimentation basins, to be effective measures to minimise the impact.²⁸

26 Comments submitted by Vale to Finnwatch. Email 14 November 2024.

27 Vale. Controversies. Onça Puma Nickel Mine, Brazil. 2021. Page on the Vale website that has subsequently been removed and has been accessed through internet archive Wayback machine <https://web.archive.org/web/20210423154746/https://www.vale.com/esg/en/Pages/Controversies.aspx>

28 Laudo Pericial - Biólogo Processo, nº 2383-85.2012.4.01.3905, Análise da Água e Indicadores da Fauna. p. 124.

In addition to the study, in its reply to Finnwatch Vale/VBM also refers to its own monitoring of the water quality in the lower and upper course of the river that flows past the mine, an analysis of the river basin, and studies on biodiversity in the area.

According to Vale/VBM, the data it has collected shows that the mine has not polluted the river basin and that the biodiversity of the area has not been affected. The company says that starting from 2005, it has regularly monitored water quality in the upper and lower courses of the river. However, the company admits that the data accumulated over 19 years shows that pollutants have been detected in the river at levels higher than the limits set by the Brazilian authorities. According to Vale/VBM, these are related to so-called natural mineralisation, where heavy metals are released from the soil into surface waters through a natural process.²⁹

Not everyone accepts this explanation. In the study carried out 2019-2020 by the Pará State University, several pipelines were found in the mining area. According to university researchers, wastewater from the mine had been covertly discharged into the Cateté River through these pipes. According to the university's report, there is no doubt that the degradation of the Cateté River is due to Onça Puma's activities.³⁰ A study³¹ published in 2021, based on data collected between 2017 and 2018, also highlighted problems with the water discharged from the mining site into the Cateté River. According to the study, the water discharged from the mining site contains the same metals that are found in harmful concentrations in the Cateté River: iron, copper, nickel and chromium, as well as manganese and zinc. The study also pointed out that the river is also suffering from sludge accumulation (i.e. the accumulation of loose soil on the riverbed) caused by mining activities. The study predicted that the impacts on the river would lead to the dispersal of the Xikrin community (see Chapter 6).³²

An expert report commissioned by the court in 2017 and which Vale invokes in relation to water quality (see above), found levels of pollutants, including lead and chromium, exceeding legal limits in almost all fish samples analysed in the area³³. A study by the Federal University of Pará investigated the accumulation of heavy metals in the Xikrin. The study found that all participants had abnormal levels of heavy metals in their blood.

29 Vale/VBM. Answers to Finnwatch's questions 26 June 2024.

30 Saboia de Paiva, R. (2020) Relatório parcial de monitoramento do rio cateté na terra indígena xikrin do catete no período de dezembro/2019 a março/2020, Universidade Federal do Pará

31 da Silva Gomes, G. Bispo do Vale, S. et al. (2021). Preliminary analysis of contamination and silting up of the Cateté River by a mining project in Pará Brazil. First Part. <https://ojs.brazilianjournals.com.br/ojs/index.php/BRJD/article/view/27308/21604>

32 da Silva Gomes, G. Bispo do Vale, S. et al. (2021). Preliminary analysis of contamination and silting up of the Cateté River by a mining project in Pará Brazil. First Part. <https://ojs.brazilianjournals.com.br/ojs/index.php/BRJD/article/view/27308/21604>

33 Laudo Pericial - Biólogo Processo, nº 2383-85.2012.4.01.3905, Análise da Água e Indicadores da Fauna. p. 118.

The study called for immediate action to stop the accumulation of heavy metals and warned that they could cause irreversible damage to the health of Xikrin.³⁴

Vale/VBM is not the only one to criticise the studies carried out by the Federal University of Pará. Outokumpu commissioned an analysis from a water expert in autumn 2024, and shared this analysis with Finnwatch. The analysis is highly critical of the studies carried out by the Federal University of Pará, stating that the studies do not provide credible evidence that the Onça Puma mine has had a negative impact on the Cateté River. However, the analysis concludes by recommending further studies to determine, for example, the reasons for the presence of lead in the area. According to the expert, the environmental impact of flue gases originating from the production plant at the Onça Puma mine should be investigated, as they are carried by the wind and mainly to the Xikrin territory. The analysis also recommends further studies of the river sediment. The summary also notes that there are elevated metal concentrations in the tributaries of the mining site, but the expert does not believe that these currently affect the quality of the water or sediment in the Cateté River. However, according to the expert, expanding the sediment collection basins built by Vale is important for the protection of the river.³⁵

To summarise, various pollutants have been observed in the Xikrin territory, and heavy metals have accumulated in local fish and the Xikrin. However, different parties have contrary views on what or who caused the pollution of the river and when.

It is possible that several different actors³⁶ are having an impact on the river at the same time. According to Vale/VBM, its mining activities do not have any impact on the Cateté River.³⁷

34 Saboia de Paiva, R., (2020), Relatório parcial de monitoramento do rio cateté na terra indígena xikrin do catete no período de dezembro/2019 a março/2020, Universidade Federal do Pará

35 Summary of analysis drawn up by Buka Environmental consultancy agency that Outokumpu shared with Finnwatch, 5 November 2024.

36 In addition to Vale/VBM, the studies covered in chapter 5 list wastewater from cities and villages and pesticides from agriculture as factors influencing the river. Vale/VBM also stresses that natural mineralization takes place. The expert analysis commissioned by Outokumpu states the need for additional studies on e.g. the flume gases from Onça Puma's production plant.

37 Vale/VBM. Comments to Finnwatch 22 October 2024.

Vale has worked to increase trust in the company's in-house checks after the collapse of the Brumadinho Dam

As stated above, Vale/VBM stresses that its self-monitoring data over 19 years show that the Onça Puma mine has had no adverse impact on the Catete River. However, there have been significant concerns regarding the reliability of the company's self-monitoring data in Brazil. In 2022, the company was sued by the US Securities and Exchange Commission (SEC) for distorting audits related to the 2019 collapse of the Brumadinho dam at the Vale mine in the Brazilian state of Minas Gerais. A total of 270 people died in the collapse. According to the SEC, Vale obtained safety certificates for the dam through fraudulent means. For example, the company removed auditors when they refused to bend to Vale's will and utilized "blackmail" to coerce other auditors to comply with Vale's demands and intentionally used laboratory results it knew were unreliable.³⁸ In the spring of 2023, Vale settled the lawsuit with the SEC. The settlement will require the company to pay USD 55.9 million, of which 25 million is a fine.³⁹

In a comment to Finnwatch, the company denied the SEC's charges. Even so, Vale says that after the Brumadinho dam collapse, it has made a number of changes to increase transparency and improve its governance. The company has, for example, started to report more openly on its sustainability (including the Catete River situation) and the board has taken steps to change the culture of the company. The company's executive remuneration programmes are increasingly linked to sustainability objectives in the short and long term. The company has also developed a new risk management policy and other policies to improve the flow of information within the company. Safety issues are now handled by an independent division, which has the right to shut down units if there are safety-related reasons to do so. The company has also hired a Compliance Officer, who reports directly to the Board of Directors and is responsible for, for example, internal auditing and whistleblower channels.⁴⁰

38 SEC. (28 April 2022). SEC Charges Brazilian Mining Company with Misleading Investors about Safety Prior to Deadly Dam Collapse. Accessed on 7 November 2024 <https://www.sec.gov/newsroom/press-releases/2022-72>

39 SEC. (28 March 2024). Brazilian Mining Company to Pay \$55.9 Million to Settle Charges Related to Misleading Disclosures Prior to Deadly Dam Collapse. Accessed on 19 November 2024 <https://www.sec.gov/newsroom/press-releases/2023-63>

40 Vale. Email to Finnwatch 14 November 2024.

5.1 Clean-up of the river as the subject of new lawsuits

As stated earlier, the umbrella agreement on the suspension of legal proceedings discussed in Chapter 4 does not apply to the issue of the degradation of the Cateté River. The local prosecutor is currently pursuing legal action against Vale for the degradation of the river. Vale told Finnwatch that it is currently negotiating with the prosecutor to settle environment-related lawsuits⁴¹.

Felício Pontes, the regional prosecutor interviewed for this report, believes that cleaning up the river is a much more important issue than the already agreed-upon monetary settlements. "Cleaning up the river is about protecting the culture of the indigenous people," says Pontes.⁴²

The prosecutor has commissioned the Federal University of Pará to conduct a study on the river's clean-up. According to an estimate by the university's researchers, the cost of cleaning up the river and preventing future pollution is estimated at BRL 117.6 million, or about EUR 19.4 million⁴³. The calculation includes the construction of two treatment plants to purify the mine water, the costs of which are included in the calculation over a period of six years.⁴⁴ According to Vale/VBM, the university has also proposed dredging of the river over a distance of 60 km. The company believes the proposed measures would be harmful to the river and the surrounding environment and thus unfeasible. According to the company, the proposal lacks scientific justification and is not based on data.⁴⁵ An analysis by the water expert commissioned by Outokumpu also found that the plans to "clean up" the river by means such as sediment exchange are not viable.⁴⁶

Vale has proposed a deal on environmental issues in which it agrees to pay a lump sum of BRL 60 million, or around EUR 9.9 million, into a fund to be used to improve the environmental state of the area. However, the company will not admit to having polluted the river. The prosecutor rejected the proposed settlement by Vale/VBM.⁴⁷

In its reply to Finnwatch, VBM states that the protection and conservation of the Cateté River is crucial. However, the company stresses that cleaning up the river is not enough, as it would only focus on the consequences instead of addressing the root causes. According to the company, an effective approach must focus on identifying the root causes

41 Comments submitted by Vale to Finnwatch. Email 28 October 2024.

42 Reporter Brasil's interview with Felício Pontes 27 March 2024

43 Exchange rates from the Bank of Finland, 9 October 2024

44 The state court's electronic minutes number 0002383-85.2012.4.01.3905, p. 29

45 Finnwatch meeting with Vale 20 August 2024

46 Summary of analysis drawn up by Buka Environmental consultancy agency that Outokumpu shared with Finnwatch, 5 November 2024.

47 The state court's electronic minutes number 0002383-85.2012.4.01.3905, p. 1245

of pollution and rehabilitating the sources of Cateté's tributaries' springs and existing permanent protected areas. According to VBM, a multidisciplinary approach involving NGOs, businesses, and the state is needed for tackling the problem. As a starting point for this work, VBM says that to improve the environmental state of the Cateté River, it has developed a land use and settlement map with criteria for prioritising sources and areas for protection and restoration. In addition, VBM says that it has reported illegal activities related to water pollution to the environmental authorities and the police. The company also told Finnwatch that it is considering a multi-stakeholder approach to the protection and conservation of the river by working with local actors, including NGOs, local government, local landowners, and others.⁴⁸ However, in a meeting with Finnwatch, the company stressed that it does not believe that there is any such problem in the river that would prevent the use of its water.⁴⁹ The company says it does not recommend drinking untreated water from any source.⁵⁰

6. Polluted environment has adverse impacts on the Xikrin

The Xikrin are an indigenous people who speak the Kayapo language and live in two separate areas of the Brazilian state of Pará: the Cateté area and the Trincadeira Bacajá area. One of these groups, living along the Catete River, is directly affected by the Vale Onça Puma mine. According to the 2022 census, 1,727 Xikrin live in the Catete area.⁵¹

The Xikrin territory in Catete, covering a total of 439,000 hectares, was established as an indigenous territory by the Brazilian State in 1991⁵². The area is located in the municipalities of Água Azul do Norte, Marabá, and Parauapebas and is crossed by two rivers, the Itacaiúnas and the Catete. These rivers are of great cultural importance to the Xikrin, and the main Xikrin villages are located on the lower course of the Catete River, which passes the Onça Puma mine. The largest and historically most important Xikrin village is located right on the banks of the Cateté River. The Xikrin call this village the "mother village".

48 Answers to Finnwatch's questions sent by Vale 26 June 2024

49 Finnwatch meeting with Vale 20 August 2024

50 Comments submitted by Vale to Finnwatch. Email 28 October 2024.

51 Globo. (7 August 2023). Censo do IBGE 2022: Pará tem 80,9 mil indígenas. Accessed on 25 June 2024 <https://g1.globo.com/pa/para/noticia/2023/08/07/censo-do-ibge-2022-para-tem-809-mil-indigenas.ghtml>

52 Decision number 384, 24 December 1991. Can be accessed at <https://www2.camara.leg.br/legin/fed/decret/1991/decreto-384-24-dezembro-1991-449577-publicacaooriginal-1-pe.html>



The Xikrin's traditional livelihoods have included fishing, hunting, small-scale farming, and gathering. The environmental degradation in the indigenous people's territory has had a notable impact on the living condition of the Xikrin and thus on their culture and income. According to the interviewed Xikrin, fishing in the Cateté River has decreased and game populations around the river have shrunk. Hunting has also decreased as it is feared that the heavy metals in the river have accumulated in the bodies of animals that get their food and drinking water from the river. Gathering has also decreased as, according to the Xikrin, Brazil nut trees have suffered from pollution caused by Vale's other mine in the area, the Salobo copper mine⁵³.

When writing this report, there were signs of internal conflict between the Xikrin people as well as physical dispersion. This can also in part be considered to be the result of the variety of problems caused by Vale's mining activities. The interviews conducted for the report revealed for example that the number of Xikrin villages in the Catete region has increased rapidly. When Finnwatch first investigated Outokumpu's purchases from Vale, there were four Xikrin villages in the area. Now the number of villages has grown to 21, which the Xikrin feel causes a multitude of problems. These problems are covered in more detail in this chapter.

Several reasons were mentioned for the increase in the number of villages. Many of those interviewed believed that the increase in the number of villages is the result of the Cateté River's degradation: the Xikrin community members who have established new vil-

⁵³ The negative impacts caused by Salobo mine are included in the umbrella agreement concluded between the Xikrin and Vale/VBM. The agreement is covered in detail in chapter 4 of this report.

lages have made an effort to find places to live in less polluted areas. This explanation is supported by the study on the state of the river detailed in the report published in 2021. The study predicted that the environmental impacts on the river would cause a rise in the number of Xikrin villages and cause the community to disperse.⁵⁴

One of the Xikrin interviewed for this report also highlighted a more general shift towards a more individual-centred culture: *"white people in the city want to live alone as well"*.

Another reason given for the dispersion of villages was that it is a way for Xikrin to better fight against encroaching illegal tree-fellers and poachers. The latter are attracted by, for example, the growing infrastructure around the indigenous territory, including the road networks built by Vale. This problem is common in Brazil and has also been identified in academic research: mines and related infrastructure projects have been found to increase deforestation by attracting a variety of economic activities and settlements⁵⁵.

A fourth cited reason was the way in which the monetary compensation under the agreement was distributed. The umbrella agreement concluded between the Xikrin and Vale in 2022 directs the funds paid by the mining company as compensation directly to associations managed by the Xikrin themselves. In previous agreements related to Vale's original mining licence, the Brazilian National Indian Foundation (Funai) managed the payments to the Xikrin⁵⁶. Now, the Xikrin associations distribute the compensation among Xikrin villages, where village leaders have the power to decide how the money is distributed.

"They polluted the river. First there was only one village, but now that they have polluted the river, the people have left Cateté village. They first established the village of Djudjeko and then the village of Oodja. The pollution continued, it destroyed fish and other game died. The Xikrin dispersed because of the [pollution in the] river.

- A member of the Xikrin people interviewed for the report

The interviewed Xikrin people felt that the increase in the number of villages was a problem for their culture. A concrete example mentioned was the changes to the Xikrin's traditional celebrations. In small villages, culturally important celebrations may no longer take place, making it difficult to pass on traditions from one generation to the next. There were also doubts about the ability of new village leaders to look after the interests of their village, for example in negotiations with Vale/VBM. According to those interviewed,

54 da Silva Gomes, G. Bispo do Vale, S. et al. (2021). Preliminary analysis of contamination and silting up of the Cateté River by a mining project in Pará Brazil. First Part. <https://ojs.brazilianjournals.com.br/ojs/index.php/BRJD/article/view/27308/21604>

55 Sonter, L., Herrera, D., Barrett, D., et al. 2017. Mining drives extensive deforestation in the Brazilian Amazon. <https://doi.org/10.1038/s41467-017-00557-w>

56 Originally Vale (named Companhia Vale do Rio Doce – CVRD at that time) was granted a mining licence for the utilization of the Carajás area. In exchange for this, the company was expected to e.g. provide support for the indigenous people living in the area. (RESOLUTION No. 331, OF 1986)

only the chiefs participate in discussions with Vale/VBM. The increase in the number of villages, and thus of negotiating partners, was also generally perceived as making it more difficult for the Xikrin to make their own decisions in Vale-related negotiations.

In a meeting with Finnwatch, VBM did not see any particular reason for the sudden increase in the number of Xikrin villages. According to the company, the increase in the number of villages is due to an increase in the number of Xikrin and the fact that the communities have elected new chiefs. The company stated that this has led to the creation of new villages by the old chiefs.⁵⁷ In the comments the company submitted for the Finnwatch report, the company said that the increase in the number of villages is due to better village management and the fact that this allows the Xikrin to better maintain their traditions, as the growing villages have put pressure on nature's carrying capacity.⁵⁸ According to the company, the larger villages organise traditional celebrations on behalf of the smaller ones so that the smaller villages can participate. Vale also wanted to emphasise that the Xikrin have the right to establish new villages in their territory.⁵⁹ This right is of course not questioned by Finnwatch or the Xikrin interviewed.

The degradation of the Cateté River also affects Xikrin culture and traditional livelihoods in other ways. Food is bought from the city with the compensation paid by Vale and drinking and household water is brought to the villages in tanks. This has increased the importance of the monetary economy in the daily lives of the Xikrin. The Xikrin people interviewed for this report considered the compensation from Vale/VBM (see Chapter 4) to be too low. Among the problems mentioned in the interviews was inflation and the resulting increase in the price of basic goods. In its reply to Finnwatch, Vale pointed out that the concluded agreement takes inflation into account and that the agreed amounts are adjusted annually on the basis of the consumer price index.⁶⁰

Brazil nut tree crops have also declined, according to those interviewed. For this they blamed Salobo, the other Vale-owned mine in the area. The Xikrin have not only used Brazil nuts as nutrition but have also sold them in the city to generate additional income. In its comments to Finnwatch, Vale argued that the Brazil nut harvest depends on the age of the nut trees and that the number of people involved in the collection of nuts has decreased. Vale says that it has a programme to support gathering and collection by indigenous peoples in the region.⁶¹

57 Finnwatch meeting with VBM 20 August 2024

58 Comments submitted by Vale to Finnwatch. Email 28 October 2024.

59 Comments submitted by Vale to Finnwatch. Email 13 November 2024.

60 The agreement is tied to the IPCA index, <https://www.bcb.gov.br/en/monetarypolicy/priceindex>. Comments submitted by Vale to Finnwatch. Email 28 October 2024.

61 Comments submitted by Vale to Finnwatch. Email 28 October 2024.



"There used to be an abundance of Brazil nuts here. I ate them. Now, there are no Brazil nuts anymore, as the Salobo mine produces so much pollution.

- A member of the Xikrin people interviewed for the report

Buying food from the city also impacts the Xikrin diet. Excess weight, diabetes and other diet-related diseases have increased among the indigenous community, and processed food such as soft drinks and noodles are eaten in parallel with traditional foods. When interviewed for this report, Pontés, the public prosecutor for the state of Pará, said that prior to Vale arriving in the area, the traditional Xikrin diet based on fishing and small-scale farming was very healthy, and it cannot be recovered without cleaning the river. This is one of the reasons why the prosecutor is working to hold Vale accountable for the degradation of the river. According to Vale, the Xikrin's life expectancy has increased in the time the community has been in contact with the mining company: in 1982, the life expectancy of the Xikrin was just 35 years, while today it exceeds 60.⁶²

The interviewed Xikrin people were disappointed in the company for not having cleaned the river and that the company downplays the problems related to the river.

"Vale says that everything is good and that the river is fine. But we who live here in the village can see that it is no okay. [Vale] says that it will not pay, no, because the river is fine. But it is not fine. Everything is dirty these days."

- A member of the Xikrin people interviewed for the report

⁶² Comments submitted by Vale to Finnwatch. Email 28 October 2024.

The change in the Xikrin people's livelihoods has fuelled an unbalanced relationship between the Xikrin and Vale/VBM. Environmental degradation and financial payments from the company have at least partly replaced the income provided by traditional livelihoods. An anthropologist who is familiar with the indigenous people and was interviewed for this study noted that, in the eyes of the Xikrin, Vale has become even more important than the Brazilian State and local authorities. This was also reflected in the interviews conducted for this report, where some Xikrin expressed a desire for more money from the Vale/VBM to build roads and improve healthcare, among other things. One interviewee said directly that Vale is a more important partner for the Xikrin than National Indian Foundation (Funai).

If the river and its surrounding area are not cleaned up, there is a risk that the Xikrin culture and traditional livelihoods will disappear, and the community will become increasingly dependent on the mining company.

"The river is the heart. The river is where we drink from and take water from and where we catch fish for food from. Now [due to the river's pollution] we are left with nothing, and we cannot do anything about it."

- A member of the Xikrin people interviewed for the report

"Vale is polluting the river. It will kill us; it will kill the Xikrin."

- A member of the Xikrin people interviewed for the report

7. What has Outokumpu done to resolve the situation?

7.1 Outokumpu has developed its own corporate sustainability processes

After Finnwatch published its first report in 2021 on the problems at the Vale Onça Puma mine, the steel company Outokumpu, a client of the mine, quickly started to improve its sustainability work. Following the publication of the report, Outokumpu committed to the UN Guiding Principles on Business and Human Rights, established a human rights policy⁶³, and launched an assessment of its human rights risks. The company also set up

⁶³ Outokumpu. Human Rights Policy. The policy first drawn up in 2022 has been updated most recently on 18 January 2024.

a dedicated supply chain responsibility team and recruited new staff to manage supply chain responsibility. The responsibility for Outokumpu's human rights work was transferred to the company's senior management.

In its Human Rights Risk Assessment published in 2022, Outokumpu identified as its most significant risks the monitoring of its suppliers, human trafficking in supply chains, the working conditions in its logistic value chains, the company's attractiveness to women and minorities, and climate change.⁶⁴ Since then, the company has updated and clarified its risk assessments to explicitly include the environmental and human rights risks posed by nickel production in relation to health and safety, the right to a clean environment, and the rights of indigenous peoples.⁶⁵ However, the company does not yet have separate policies/plans to address these key human rights issues.

For this report, Finnwatch reviewed the current status of Outokumpu's human rights-related responsibility work. The company's commitment to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines based on them has been integrated into the company's supply chain sustainability work. Outokumpu states that its *"supply chain management is guided by the UN Guiding Principles on Business and Human Rights, which are integrated into our Supplier Code of Conduct, Supplier Standards and Human Rights Policy. We are committed to compliance with the Modern Slavery Act and take into account the OECD Due Diligence Guidance for Responsible Mineral Supply Chains for Upstream Actors."* In its reporting, Outokumpu lists its requirements for suppliers and outlines its supply chain due diligence process.⁶⁶

As part of its due diligence process, Outokumpu conducts audits of its supply chain and commissions broader human rights impact assessments based on sustainability risks. Outokumpu conducts social responsibility audits for moderate-risk suppliers whose activities can have adverse human rights impacts either in the supplier's own operations or in its value chain. For high-risk suppliers, Outokumpu commissions human rights impact assessments. The impact assessment is carried out by an external auditor and, according to Outokumpu, takes longer than the social responsibility audits for moderate-risk suppliers. The human rights impact assessment also extends beyond the supplier's operations and personnel as external stakeholders are also involved in the impact assessment.

Outokumpu says it wants a transparent supply chain and, for this reason, also monitors suppliers other than its direct suppliers. In its 2023 annual report, the company states

64 Finnwatch. (18 March 2022). Outokumpu arvioi ihmisoikeusriskinsä. Saatavilla osoitteessa: <https://finnwatch.org/fi/ uutiset/outokumpu-arvioi-ihmisoikeusriskinsae>. Outokumpus' original release on the assessment of its human rights risks is available in internet archive Wayback Machine <https://web.archive.org/web/20220419011459/https://www.outokumpu.com/en/sustainability/people-and-society/impact-on-society-and-human-rights> (site visited on 7 August 2024)

65 Outokumpu. Respecting human rights. Accessed on 7 August 2024 <https://www.outokumpu.com/en/sustainability/people-and-society/impact-on-society-and-human-rights>

66 Outokumpu. Annual Report 2023, p. 59. <https://www.outokumpu.com/fi-fi/sijoittajat/materials/2024>

that it has continued to document its supply chains, moving from its direct suppliers to their subcontractors, especially in raw materials procurement. However, Outokumpu still does not publish the origin of its raw materials or even the names of its direct suppliers. Outokumpu does report that it has more than 7,400 suppliers worldwide in 58 countries.

It is not clear from Outokumpu's reporting to what extent the company knows its own value chains. The company told Finnwatch that the proportion of suppliers of raw materials used in its products is relatively small compared to Outokumpu's suppliers for general procurement. The company says it has improved the transparency of its supply chains in recent years with the help of a risk-based assessment and as a result, has focused increasingly on high-risk areas. For their most important raw material categories (nickel, chromium, molybdenum and lime), Outokumpu says it knows its supply chain down to the mine from which they are sourced. However, for speciality products (such as manganese or purchased wires), the company says its supply chains are complex, and it is still working on investigating them. Outokumpu also says that it will continue to work on its supply chain processes.⁶⁷ The company plans to improve its external reporting and enhance supply chain transparency, including reporting how many value chains are known or how many of them are fully transparent. Outokumpu's own clients will be provided additional information about the supply chain on request. This can include origin information of anything from primary raw materials to the origin of an individual product batch.⁶⁸

Outokumpu told Finnwatch that it is currently updating its human rights due diligence processes to comply not only with the UN Guiding Principles on Business and Human Rights, but also with the German Corporate Social Responsibility Act, the EU Corporate Sustainability Due Diligence Directive and the EU Corporate Sustainability Reporting Directive.⁶⁹ In discussions with Finnwatch, Outokumpu stated that its organisation-wide human rights work is still ongoing.

7.2. Outokumpu has engaged in dialogue with Vale and suspended purchases from the mine

For this report, Finnwatch asked Outokumpu what kind of dialogue it has had with mining company Vale/VBM regarding the issues raised in the Finnwatch 2021 report. Outokumpu says that immediately after the publication of the Finnwatch report, it carried out a human rights impact assessment in cooperation with Vale at the Onça Puma mine site. The assessment was carried out with the assistance of Enact Consultancy and aimed at

⁶⁷ Outokumpu. Emails to Finnwatch 12 June and 13 August 2024

⁶⁸ Outokumpu. Email to Finnwatch 11 September 2024

⁶⁹ Outokumpu. Emails to Finnwatch 12 June and 13 August 2024

gaining a better understanding of the impact of Vale's operations on local indigenous peoples, in particular the Xikrin community.

According to Outokumpu, the assessment included background research, interviews with local management, and direct interaction with members of the Xikrin community in order to hear their concerns. Through the assessment, Outokumpu says it identified complex problems related to the local community and learned more about the challenges related to the community's living conditions that require action. The state of the Cateté River, which is important for the Xikrin, and the water quality were particularly highlighted. Outokumpu also reports that it has observed the negative impacts of the changes in the Xikrin way of life. The Xikrin community also stressed the importance of a continuous dialogue with Vale.

After the assessment, Outokumpu discussed the results and needs for improvement with Vale and initiated a monitoring project, including developing key monitoring indicators and encouraging dialogue to manage impacts on communities. The project defined indicators for measuring the water upstream and downstream of the mine in the Cateté River, for challenges posed to the Xikrin community by changes to their lifestyle, and for the effectiveness of cooperation between the Xikrin community and Vale.

Outokumpu stresses that the purpose of the assessment was not to investigate whether Vale may have polluted the river. This assessment was left to a Brazilian court. However, in its reply to Finnwatch, Outokumpu pointed out that "*the biological expert appointed by the local court concluded that the main cause of the deterioration of the Catete River is human activity upstream from Onca Puma*". For further details of this report and other research on the river's pollution, see Chapter 5.

However, at the time of writing this report in autumn 2024, Outokumpu commissioned environmental consulting services company Buka Environmental to carry out an assessment of the previous studies concerning the Cateté River. The conclusions of this assessment and its recommendations for action are discussed in more detail in Chapter 5 of this report.

Outokumpu reports that it suspended purchases from Vale in 2021 to carry out the aforementioned human rights impact assessment. As part of the planned continuation of its cooperation with Vale, Outokumpu reports that it has tightened its sustainability requirements for Vale.

Outokumpu states that Vale has complied with the recommendations of the human rights assessment carried out by Outokumpu and has provided Outokumpu with information, including on water quality measurements in the Cateté River. Even so, the development of indicators related to the changes in the Xikrin community's lifestyle and stakeholder cooperation between the Xikrin and Vale is still a work in progress.

In September 2024, Outokumpu visited the site again to ensure that the company's requirements for Vale were met. Outokumpu also wants to meet again with members of the Xikrin community to hear their views. However, Outokumpu reported that it had recently learned that the local environmental authority had suspended Onça Puma's mining permit (see further details in Chapter 2). Outokumpu says that it is currently not planning any new orders or receiving ferronickel alloy from Vale's Onça Puma mine. After 2021, Outokumpu has sourced ferronickel from other producers in South and Central America, Europe, and New Caledonia.

7.3 Outokumpu's remedy processes and involvement in possible adverse human rights impacts caused by Vale/VBM

Finnwatch asked Outokumpu about its processes for providing remedies for rights holders. Outokumpu stated that its process complies with the UN Guiding Principles. The company provides remedies for adverse human rights impacts when the company itself has caused them, has been involved in causing them, or has contributed to them. In addition, Outokumpu states that it uses its influence when the company is directly linked to adverse human rights impacts.

Outokumpu states that it considers remedy on a case-by-case basis, because adverse human rights impacts and related remediation are always based on a case-specific assessment. The company is currently working to create a more comprehensive process for remedy to ensure that the stakeholders subject to adverse impacts have effective access to the remedies required by each situation. As part of the process, the company says that it is making an effort to ensure that it will exert its influence as effectively as possible to address situations where potential human rights violations can occur.

Outokumpu considers that in Vale's case it is only (directly) linked, as opposed to causing or contributing, to a potential adverse human rights impact. Determining the level of involvement is important as the UN Guiding Principles state that companies are only obliged to take remedial action when they have caused or contributed to an adverse human rights impact. Assessing the level of involvement in alignment with the UN Guiding Principles is required by the EU Corporate Sustainability Due Diligence Directive.

Outokumpu has justified its position with the assessment it commissioned from Enact in 2021, which concluded that *"Outokumpu is not directly responsible for the human rights impacts on the Xikrin community, as Outokumpu does not cause harm through its own activities or contribute to it by managing or controlling Vale's operations. Even so, Outokumpu can be (and has been) linked to possible adverse results due to its position, size, and financial resources and because Nordic companies are expected to pay closer attention to human rights*

issues.” However, Outokumpu emphasises that its importance as a Vale client should not be overstated as demand for ferronickel in the market is not large.

Finnwatch believes that the Enact assessment commissioned by Outokumpu does not take the nuances of the critical parameters of the UN Guiding Principles involvement framework (*cause, contribute, directly linked to*) sufficiently into account. In Outokumpu’s situation, the involvement framework does not require that Outokumpu would have had to control Vale or have had a direct supervisory responsibility over Vale’s operations. Furthermore, the framework is not precise and mechanically applicable, and the level of involvement is also influenced by a company’s own actions. Contribution can also occur in a subcontracting relationship, for example when a company is a major client or otherwise creates an incentive for another company to violate human rights.⁷⁰ According to the framework, “contribution” and “directly linked to” are in continuum, where the same activity, if continued, can change from “directly linked-to” to “contribute”⁷¹.

Finnwatch considers that this is the case with Outokumpu’s activities. Outokumpu had been a large client of Vale for many years, and it should have been aware of the problems. However, it had not made an effort in the years prior to the 2021 Finnwatch report to intervene in Vale’s activities regarding the dispute related to the Xikrin. After conversations with Finnwatch, the consultancy Enact provided more detailed information on the assessment it used in the Outokumpu report. Outokumpu stated that it is aware that a control or management relationship is not the only condition for contribution, but that other factors must also be taken into consideration when determining involvement. According to the company, this was also taken into account in the original Enact report.⁷²

When a company is directly linked to a possible adverse human rights impact, as Outokumpu sees itself as being in the Vale case, the company is obligated to use leverage to intervene in the situation. Outokumpu states that it strives to cooperate with other companies and organisations to exert its influence on suppliers. Even so, the company states that in some specific cases, such as Vale/VBM, it is difficult for the company to engage in cooperation with other clients of the supplier company as Outokumpu has no knowledge of Vale’s/VBM’s other clients. Finnwatch notes that Vale’s client list is public informa-

70 E.g. the OECD Due Diligence Guidance for Responsible Business Conduct provides more detailed instructions on how to determine involvement. See page 70, question 29 “What is meant by adverse impacts that are “caused”, “contributed to” by the enterprise or are “directly linked” to its operations, products or services by a business relationship?” <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

71 See e.g. Institute for Human Rights and Business, State of Play – The Corporate Responsibility to Respect Human Rights in Business Relationships. Chapter Two, p. 36. https://ihrb-org.files.svdcn.com/production/assets/uploads/reports/2012-12_Report_State_of_Play_-_Human_Rights_in_Business_Relationships_-_Ch_2_UNGPs_Business_Relationships.pdf. On a practical level, the topic is addressed, among others, by Vanessa Zimmerman, a human rights expert who helped write the UNGPs, in the Global Compact Australia training video “Unpacking the continuum of involvement in the UNGPs”, see, among others, 8:29: https://www.youtube.com/watch?v=N6_GYjdDIEQ

72 Outokumpu. Email to Finnwatch on 11 September 2024.

tion, as Brazil's custom's statistics are not confidential. Finnwatch has compiled a list of the clients of the Vale/VBM Onça Puma mine (see chapter 2). In addition, Outokumpu states that the stainless steel industry is the largest user of ferronickel, but cooperation between the sector's companies is strictly limited for reasons related to competition law. Outokumpu believes that it has exerted all the leverage it has considering its size and its demand for ferronickel.

8. Engaging with stakeholders and possibility for accessing justice

The dispute between a small indigenous community of less than 2,000 people and one of the world's largest mining companies with a turnover of tens of billions of euros, can be seen as an example of the imbalance of power in international value chains. Various legal processes between the Xikrin and Vale/VBM have continued for more than a decade as the indigenous people's situation has at least in part taken a turn for the worse. The Xikrin people interviewed by Finnwatch detailed the adverse environmental impacts that have impacted their livelihood and culture. They hold Vale responsible for these problems. Investigation of the environmental impacts of the mine has been difficult and requires expertise and resources.

The issues relating to the legal protections and access to justice of the victims of human rights violations caused by companies have long been known. An effort has been made in recent years to improve the position of rights holders with new regulations. In the future, these new regulations will also make it possible to hold accountable those companies in value chains that procure minerals.

In May 2024, the European Union adopted the *Corporate Sustainability Due Diligence Directive* (CSDDD), which entered into force in July 2024.⁷³ The directive requires that the largest companies doing business in the European Union's area must determine the adverse environmental and human rights impacts related to their activities and intervene. Stakeholders must be consulted during the identification and prioritisation of adverse impacts, during the preparation of a prevention and correction plan, when making a decision on terminating a business partnership, when approving appropriate remedies, and when developing indicators for monitoring the due diligence process.

⁷³ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. Text of the directive is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401760

Companies must also identify and remove obstacles for the participation of stakeholders and give stakeholders relevant and comprehensive information to ensure that the consultation is effective and open. Companies must ensure the confidentiality or anonymity of consultations to ensure that participants are not subject to retaliation or punishment.

In addition, companies should provide a wide range of natural persons and organisations the opportunity to file complaints about adverse environmental and human rights impacts caused by the company or its business partners. The opportunity to file a complaint should be offered to affected persons, trade unions, and non-governmental organisations.

If the due diligence process related to human rights and the environment described in the directive is neglected by a company, the victims and the parties they have authorised have the possibility to file civil cases against the company and seek compensation for damages.

Originally, the compromise achieved on the directive between EU institutions also included the right to collective action. This right would have, for example, given human rights organisations the possibility to pursue legal action for damages in their own name without formal authorisation by the victims or all the victims. The organisations would have had the rights and obligations of a plaintiff in judicial proceedings, i.e. they would have for example been solely responsible for the costs of the proceedings. If an organisation would have won damages in the case, the compensation would still have been paid to the victims.

However, the right to collective action was removed from the directive at Finland's request after the directive had already been approved in tripartite negotiations.⁷⁴ Without Finland's vote, the directive would not have been approved at that time in the Council of the European Union. To ensure that the qualified majority was established at that time, the chair country Belgium, which was heading negotiations, was forced to bow to Finland's demands. Finland's actions and grounds for objecting to the right to collective action received strong criticism from both civil society and legal scholars.⁷⁵

The removal of the right to collective action from the directive will shift responsibility for the civil legal process to victims, who are often in a very disadvantaged position. The directive still allows victims to authorise others such as civil society organisations or labour

74 Helsingin Sanomat. (15.3.2024). EU:n kiistelty yritys vastuulaki hyväksyttiin sittenkin viime metreillä, mukana Suomen vaatima lievennys. Accessed on 19.11.2024 <https://www.hs.fi/talous/art-2000010296977.html>; Finnwatch. (2024). Mitä puutteita yritys vastuudirektiiviin jäi? <https://finnwatch.org/fi/tutkimukset/mitae-puutteita-yritys vastuudirektiiviin-jaei>

75 See for example Yritysvastuu oikeuden yhdistys, statement for the Parliament's EU Committee on 6.2.2024, https://yritysvastuu oikeus.fi/wp-content/uploads/2024/02/Yritysvastuu oikeuden-yhdistys-ry_Lausunto-6.2.2024-yritysvastuudirektiivi_FINAL.pdf; Finnwatch, briefing for decision makers 2.2.2024, https://finnwatch.org/images/Lausunnot/Taustapaperi_yritysvastuudirektiivin_siviilioikeudelliseen_vastuuseen_liittyvista_elementeista.pdf; SAK, STTK and Akava, statement for the Parliament's EU Committee 6.2.2024, <https://www.sak.fi/aineistot/lausunnot/suomen-olisi-tarkeaa-puoltaa-yritysvastuudirektiivia-eika-pidattayta-aanestamasta>

unions to act on their behalf, but the victim will still maintain the rights and obligations of the plaintiff. Regarding obligations, this means that, for example, the plaintiff has the obligation to see the process through and cover the costs of the judicial proceedings. It is very likely that this will significantly reduce the possibilities of victims to seek and access justice.

The Xikrin people interviewed for this report had a very narrow understanding of Vale's global value chains. After the Finnwatch report was published, Outokumpu visited the Xikrin territory in 2021, and at that time the Xikrin said that Outokumpu was the first buyer to ever visit the area⁷⁶.

The people interviewed had no knowledge or understanding of the due diligence obligation that require stakeholder consultation. As a rule, when they were asked how they would like to be heard by Vale's foreign clients, they did not understand the question. Only one of the people interviewed stated that it would be good if they knew to whom Vale sold the ore they extracted.

"We have to know where the ore goes. The countries that buy the ore and the price they buy it at. We want to know everything, but Vale hides all information from the Xikrin."

- A member of the Xikrin people interviewed for the report

"It is important for companies that buy ore from Vale to also support us. To help improve the situation, you see? Vale has worked with the Xikrin for long, but things are not getting better. This is why we need to open communication channel with a new company."

- A member of the Xikrin people interviewed for the report

The Xikrin's chances of making independent use of the remedies available under the Corporate Sustainability Due Diligence Directive appear slim. The disadvantaged position of the indigenous people is due to the fragmentation of the community (at least partly as a result of Vale's activities), a language barrier, and a lack of education and knowledge. Although the Xikrin have a high level of interaction with surrounding society compared to many other indigenous peoples, contact with them still requires a significant amount of time and advance planning. As an example, the Xikrin only have access to telephones when they are visiting the nearest city. The Xikrin's financial capability to initiate legal action and handle the associated risks can be considered limited; their financial resources primarily rely on cash payments from Vale.

⁷⁶ Outokumpu. (joulukuu 2021). Site visit to Onca Puma, Brazil. Accessed on 25.6.2024 <https://www.outokumpu.com/fi-fi/sustainability/people-and-society/sustainable-supply-chain/site-visits/onca-puma-brazil-2021>. Xikrins interviewed for this report did not know or remember the visit.

9. Summary

Outokumpu has suspended its ferronickel purchases from the Vale/VBM-owned Onça Puma mine in Brazil's Amazon region. The purchases were suspended in 2021 after Finnwatch brought to light disputes between the mine and the Xikrin, who live in the mine's close vicinity. Outokumpu has made significant changes to its human rights-related corporate social responsibility work, considerably invested in human rights expertise, and adopted systematic social responsibility processes. However, the integration of human rights due diligence throughout the company is still a work in progress, and there is still room for improvement in the transparency of Outokumpu's value chain.

The regional prosecutor continues to accuse Vale/VBM of polluting the Cateté river and its surrounding area. The river runs through the Xikrin's territory and is important to the people. This allegation is supported by studies commissioned by the local prosecutor's office from researchers at the Federal University of Pará and by reports by the Xikrin on pollution in the area. It is also undisputed that, for example, high levels of heavy metals have accumulated in the fish in the river. Vale has denied any wrongdoing, citing both its own water quality measurements and a study commissioned by the court in 2017, which failed to establish a causal link between the pollution in the river and the mine. An expert analysis commissioned by Outokumpu is also critical of the studies by the Federal University of Pará. Even so, the analysis suggests various needs for further study of the river sediment and for investigating the impact of the flue gases from the Vale mine processing plant.

After 2021, Vale/VBM and the Xikrin reached an agreement on the compensation paid by the company to the indigenous population to compensate for other adverse effects caused by its mining activities. In exchange, the Xikrin, the prosecutor and several other stakeholders have dropped their lawsuits against the mining company. However, the agreement to drop the charges does not apply to the pollution of the Cateté river.

The regional prosecutor is still seeking legal action against Vale/VBM for polluting the river. The mining company has proposed an agreement whereby it would set up fund, for which it would provide capital. The fund could be used to finance various projects to improve the state of the environment in the area. However, the company would not admit to polluting the river. The prosecutor has rejected the proposed agreement.

Although the agreement described above has been agreed upon by the indigenous people and Vale/VBM, all the interviewed Xikrin had a negative attitude towards the mining company. Both the Xikrin interviewed for this report and those interviewed earlier in 2021 hold the Onça Puma mine responsible for polluting the Cateté River. The river's pollution and the accumulation of heavy metals in the river's fish and thus in the Xikrin

diet have affected the indigenous people's traditional livelihoods. As predicted by an academic study published in 2021 on the river's pollution, the Xikrin as a community are now dispersed over a larger area than ever before. When Finnwatch researchers visited the area in 2021, there were four Xikrin villages; now there are 21. This can undermine the conditions for the preservation of Xikrin culture, and almost all the Xikrin interviewed considered the increase in the number of villages to be problematic.

Vale/VBM is also impacting the vulnerable Xikrin community in other ways. Due to both environmental degradation and the monetary payments included in the agreement between the Xikrin and Vale/VBM, traditional hunting and gathering has been increasingly replaced by products bought from the city and the importance of the cash economy for the community has increased. Processed food bought from the city has affected the health of the Xikrin. The mining company is now expected to provide a number of services that in reality are the responsibility of the government. Overall, environmental degradation and the mining activities by Vale/VBM, with their various impacts on Xikrin territory, have undermined the traditional livelihoods and cultural practices of Xikrin communities and created an unhealthy dependency on the mining company.

In recent years, the European Union has developed a regulatory framework that imposes a legal obligation on companies to ensure that human rights and the environment are safeguarded in their chain of operations. The most important piece of legislation is the Corporate Sustainability Due Diligence Directive, which entered into force in July 2024 and is currently being implemented into national legislation. However, the legal protection of victims was weakened in the final stage of negotiations on the Directive, where Finland demanded and was successful in getting the right to class action removed from the text. In practice, this amendment meant that organisations such as NGOs will not be able to bring charges on behalf of victims.

A large proportion of Xikrin only speak their own language, Kayapo. Not all of them are able to read or write, and their villages are not connected to the internet. The Xikrin interviewed had no knowledge of the Onça Puma mine's international clients or their obligation to consult the Xikrin. The Xikrin people's economic resources can be considered limited, which makes it difficult for them to commission studies on such things as the pollution of the river and its environment, and thus to collect evidence. The ability of the Xikrin to act as a plaintiff and bring legal action in the European Union's Member States is therefore quite meagre.

10. Recommendations

Vale and its subsidiary VBM

- Vale/VBM must take immediate action to clean up the Cateté River basin, which is important for the Xikrin's livelihoods and culture, and to reduce new pollution. The company denies any involvement in polluting the river, but further investigations are needed. Of particular concern is the observed accumulation of heavy metals in the food of the Xikrin and the people themselves. For example the contribution of the mine's flue gases to the accumulation of heavy metals requires further investigation. The Cateté River's situation is currently being heard by the courts and settlement negotiations between the prosecutor and Vale/VBM are ongoing. Regardless of the court's ruling or the outcome of the negotiations, VBM, which is engaged in mining activities near the river, must take additional measures in line with the precautionary principle to minimise its environmental impact. It must also actively seek to engage in multi-stakeholder cooperation to reduce its environmental impact on the river and the surrounding ecosystem. The river's situation affects the relationship between the company and the Xikrin, including how satisfied the Xikrin are with the payments made to them for mining projects. Furthermore, it is difficult to see how Vale/VBM could attract responsible corporate customers interested in social responsibility without significant investments in the restoration of the Cateté River and its surroundings. It is therefore also in the company's interest to resolve the situation in a sustainable manner.
- Vale/VBM should publicly and regularly report the data collected while monitoring the status of the Cateté River and communicate extensively about the actions taken to reduce and clean up the pollutant load in the river.
- Vale/VBM must comply with the human rights due diligence process outlined in the United Nations Guiding Principles on Business and Human Rights, identifying key human rights issues and developing detailed policies to address these. The company must report in detail on the progress of the work.
- Vale/VBM must strive to ensure, with measures such as additional security, that the infrastructure it has built does not steer trespassers such as poachers or actors engaged in illegal wood trade to the Xikrin territory.

Outokumpu and other VMB clients

- Vale's/VMB's Onça Puma mine is in an exceptionally high-risk area where the parties possibly responsible for adverse human rights impacts have been engaged and are still being engaged in a judicial process. It is in the interests of both Vale/VBM and its clients to make an effort to resolve the pollution of the Cateté River and its surroundings, which are at the heart of the dispute. The company's clients should encourage Vale/VBM to take action to improve the state of the environment and prevent future pollution as well as demand open and comprehensive public reporting on measures. There is also a need to commission and fund additional investigations.

Policymakers

- The legal protection of victims and access to justice must be developed. Class action was removed from the EU Corporate Sustainability Due Diligence Directive in the final stages of negotiations. This would have allowed NGOs to take legal action in their own name. The possibility for class action must be reinstated when the directive is re-examined.
- Different types of support measures to promote the access to justice of victims should be considered in the EU. The union could fund actors that help victims bring legal action and provide complimentary expert assistance and resources for the collection of evidence.
- The national implementation of the Corporate Sustainability Due Diligence Directive must be ambitious. Sufficient resources must be allocated to authorities for enforcing the future national corporate sustainability law as well as for providing advice for companies.
- Pollution-related conflicts are technically challenging, and the collection of reliable evidence can be very expensive and time-consuming. As part of improving the legal protection of victims, new mechanisms should be created to support disadvantaged rights holders in collecting evidence. One concrete mean for this is to support different expert networks that can provide technical assistance to victims. One existing example of such a network in the mining sector is Find An Independent Mining Expert (FAIME).
- When implementing the Corporate Sustainability Due Diligence Directive, countries must ensure that the necessary amendments are also made to competition legislation to facilitate the cooperation of companies in the assessment of human rights risks and in addressing adverse impacts.



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