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Better than Nothing? The Idea of "Rough Justice" for Individual Compensation in Disaster Cases

¿MEJOR QUE NADA? LA IDEA DE "JUSTICIA POSIBLE" PARA LA COMPENSACIÓN INDIVIDUAL EN CASOS DE DESASTRES

MELHOR DO QUE NADA? A IDEIA DE "JUSTIÇA POSSÍVEL" PARA A COMPENSAÇÃO INDIVIDUAL EM CASOS DE DESASTRES

Thais Temer[1], *Karina Denari Gomes de Mattos*[2,3] and *Maria Cecília de Araujo Asperti*[4,5]

Abstract
When affecting a considerable number of victims, post-disaster remedy processes face significant obstacles related to assessing and measuring the exact extent of individual losses. Recent cases have adopted the concept of "rough justice", a method also applied to the September 11th Victim Compensation Fund and in transitional justice contexts. While achieving full compensation may be difficult, time-consuming, and sometimes impossible, resorting to "rough justice" can serve as a theoretical framework to legitimize insufficient reparations and the perpetuation of rights abuses. The article examines the application of the "rough justice" paradigm and assesses the relevance of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in disaster cases. It focuses on holding companies accountable for compensating damages incurred by individuals. The conclusion emphasizes the necessity for any accepted parametrization to be rigorous, based on solid and transparent methods for assessing the losses of affected individuals and communities. The process should be guided by the needs of those affected and incorporate traditional knowledge, establishing minimum values while allowing for individual adjustments when possible. Furthermore, procedures should be open to review whenever new data arises regarding the impacts of the disaster or the evolving needs of the affected parties, especially considering ongoing and future losses.

Keywords
Rough justice; disaster cycle; business and human rights; compensation parameters; mass tort litigation.

Resumen
Cuando afectan a un considerable número de víctimas, los procesos de remediación en contextos posteriores a desastres enfrentan obstáculos relacionados con la evaluación y medición exacta de las pérdidas individuales. Casos recientes han importado el concepto de "justicia posible", aplicado también al Fondo de Compensación de las Víctimas del 11 de Septiembre y en contextos de justicia de transición. Mientras que, por un lado, la consecución de la reparación integral puede ser difícil, demorada y a veces imposible, por otro lado, el recurso a la "justicia posible" puede servir como un marco teórico para legitimar reparaciones insuficientes y el mantenimiento del abuso de derechos. El artículo examina el uso del paradigma de "justicia posible" y la aplicabilidad de los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos (UNGPs) en casos de desastre para responsabilizar a las empresas por la compensación de daños por pérdidas individuales. Se sostiene que cualquier parametrización, cuando es aceptada, debe ser rigurosa, basada en métodos sólidos y transparentes para evaluar

las pérdidas de las personas y comunidades afectadas. Las necesidades de los afectados y el conocimiento tradicional deben guiar el proceso, con valores mínimos establecidos que no impidan ajustes individuales cuando sea posible. Además, los procedimientos deben estar abiertos a revisión siempre que surjan nuevos datos sobre los impactos del desastre o sobre las necesidades de las partes afectadas, especialmente teniendo en cuenta las pérdidas actuales y futuras.

Palabras clave
Justicia posible; ciclo de desastre; empresas y derechos humanos; parámetros de compensación; litigios colectivos.

Resumo
Ao afetar um número considerável de vítimas, os processos de reparação em contextos pós-desastre enfrentam obstáculos relacionados à avaliação e mensuração precisa da extensão das perdas individuais. Casos recentes têm importado o conceito de "justiça possível", também aplicado ao Fundo de Compensação das Vítimas de 11 de Setembro e em contextos de justiça de transição. Enquanto, de um lado, a consecução da reparação integral possa ser difícil, demorada e por vezes impossível, de outro lado, o recurso à "justiça possível" pode servir como um arcabouço teórico para legitimar reparações insuficientes e a manutenção do abuso de direitos. O artigo examina o uso do paradigma de "justiça possível" e a aplicabilidade dos Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos (UNGPs) em casos de desastre para responsabilizar as empresas pela compensação de danos por perdas individuais. Conclui-se que qualquer parametrização, quando aceita, deve ser rigorosa, baseada em métodos sólidos e transparentes para avaliar as perdas das pessoas e das comunidades afetadas. As necessidades dos atingidos e o conhecimento tradicional devem guiar o processo, com valores mínimos estabelecidos que não impeçam ajustes individuais quando possível. Além disso, os procedimentos devem estar abertos à revisão sempre que novos dados surgirem sobre os impactos do desastre ou sobre as necessidades das partes afetadas, principalmente considerando as perdas atuais e futuras.

Palavras-chave
Justiça possível; ciclo dos desastres; empresas e direitos humanos; parâmetros de compensação; ações coletivas.

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Introduction

When the dam broke apart at 3:30 pm, spilling a terrifying volume of mud and metals, Paula Geralda Alves was preparing reforestation seedlings for Samarco on a farm near the village; Eliene dos Santos, the director of Bento Rodrigues school, had just closed the glass door of the building after handing over documents to a carrier; Reinaldo Caetano was happily watching his mother's water tank, which he had just filled with water from the stream. About 350 kilometers away, in Governador Valadares, businessperson Sandro Faria Heringer, owner of a truck dealership, was talking on the phone with a customer. Further down, towards the sea, on the outskirts of the city of Resplendor, Dejanira Krenak was smoking her pipe on the river beach in the Krenak indigenous village. Downstream, in Colatina, Espírito Santo, photographer Edson Negrelli was taking pictures in his studio. In the Capixaba [local] village of Regência, community leader Carlos Sangália was walking on the white sand bathed by the blue sea, observing the nests of sea turtles laying their eggs on the beach, an environmental protection area.

None of them could imagine that, at that very moment, the world they knew so well was about to disappear.

Dieguez (2016, our translation).

Discussions regarding mitigation, adaptation and compensation of damages caused by extreme climate events are often disconnected from legal debates concerning other equally severe disaster cases in Brazil. The cases often stem from activities in the mining, energy and oil sectors, as well as in the gas industry, which have shaped recent debates concerning liability and remediation.[1] The "Rio Doce case", described in the quote above, stands out as one of the most well-known disasters in Brazil. On November 5, 2015, the collapse of the Fundão Dam, a massive iron ore tailing in Mariana, State of Minas Gerais, operated by Samarco Mineração SA—a joint venture between Vale S.A. and BHP Billiton Brasil Ltda—caused a wave of several million cubic meters of mining tailings to spill into the Rio Doce river. The resulting flow traveled along a 663.2 km path for 17 days, until it reached the ocean in the city of Regência, Espírito Santo State. At least 45 municipalities were affected, 19 people died and a population of more than two million inhabitants across these localities suffered

1 Although this study does not focus specifically on issues related to climate change, it underscores the importance of corporate players in disaster cases. These considerations are equally relevant for discussing remedies and compensations in cases of disasters triggered or augmented by extreme climate events.

different impacts on their livelihoods. Four years later, another ore tailing dam collapsed close to the Fundão Dam, in the city of Brumadinho, Minas Gerais, killing at least 272 people and causing another series of injuries and losses to local communities. Both of these cases involved Vale do Rio Doce S.A., the largest mining company in Brazil and one of the largest in the world.

Considering the specific challenges of such large and complex disaster cases, this article aims to reflect on the pursuit of adequate and comprehensive remediation in disaster cases resulting from human rights abuses caused by corporate activities that affect a significant number of victims. It focuses particularly on the challenges in assessing and measuring the exact extent of damages for individual compensation.

Technological disasters—in which hazardous events originate from technological or industrial conditions, dangerous procedures, infrastructure failures, or specific human activities (UN, 2016, p. 19; FGV, 2019, p. 27)—are particularly challenging in terms of compensation and remedy. By their very nature, there is an asymmetry between the parties, given the extreme vulnerability of the affected people, extensive losses and adverse impacts that may exceed the community's reaction capacity (UN, 2016, p. 13).

Companies should be held responsible not only for compensating damages, but also for implementing a broad range of measures to prevent future disasters. The responsibility includes mitigating losses, reconstructing affected territories and livelihoods, and building resilience among the affected communities. Victims must negotiate and/or litigate against resourceful, repeat corporate players, well equipped with specialized lawyers and ready access to specialists (Galanter, 1974, p. 97-119). Amidst legal discussions concerning terms for compensation and reconstruction, companies often exert great influence in the affected territories and are able to resume their economic activities even after the hazardous event (FGV, 2019, p. 27).

Such asymmetry becomes even more accentuated when victims pursuing individual compensation must demonstrate the entire extent of their losses. To justify these designs, debates around "rough justice" or "possible justice" gained prominence, advocating for "non-ideal" models as alternatives to individual compensation. This terminology, initially used in contexts of strategic litigation, historical reparation, and transitional justice in post-war or post-authoritarian contexts, has recently been applied in post-disaster contexts. Examples include the September 11th Victim Compensation Fund (VCF) in the United States and the simplified compensatory system (known as "Novel"), created in Brazil in response to the Fundão Dam Break case in Mariana, in the state of Minas Gerais, Brazil (also known as the "Rio Doce case"). In the Brazilian case, the Novel system was aimed at facilitating the assessment of individual damages, applying pre-established parameters for eligibility, evidence, and compensation amounts.

Although the paradigm of "rough justice" may help overcome practical obstacles to individual compensation for disaster victims, it is necessary to assess whether its application may overlook standards established in the field of Business and Human Rights, such as those set forth in the Guiding Principles on Business and Human Rights by the United Nations Human

Rights Council (UNGPs). Is this a shortcut for companies to evade their duty to provide remedies, or is it a valid solution to the challenges related to the assessment of individual injuries resulting from complex disasters?

The analysis starts with examining the applicability of the UNGPs framework in disaster cases involving corporate players. Following that, specific challenges related to compensating individual damages in large and complex cases are explored, drawing upon the Brazilian context and rule of law as an example. The obstacles faced by victims in Brazil vividly illustrate the reality of vulnerable communities affected by disasters and climate change around the globe. Following the analysis of the paradigmatic decision rendered in the Rio Doce case, the discussion shifts to a literature review of the concept of "rough justice" in strategic litigation, transitional justice, and historical reparation. This review aims to provide a better understanding of the framework, its uses and limitations. Subsequently, it is examined through the parameters of human rights, legal and material obstacles identified in the previous topics with the aim of outlining some guidelines for the development of appropriate compensation parameters in cases of technological disasters.

1. Disasters, Remediation and the Business and Human Rights agenda

Since the unanimous adoption of the Guiding Principles on Business and Human Rights by the United Nations Human Rights Council (UNGPs) in 2011(UN, 2011), there has been a notable paradigm shift in terms of corporate responsibility for respecting human rights in business conduct, as well as companies' duty to address any adverse impacts they may cause or to which they may contribute.

In this sense, the Business and Human Rights agenda aimed to surpass the framework of Corporate Social Responsibility (CSR) based on the implementation of voluntary and discretionary actions (FGV, 2017), establishing minimum standards for human rights to be observed by companies in their activities and operations (FGV, 2020a; FGV, 2017; Wettstein, 2019). In its second pillar, specifically focused on business conduct, the Guiding Principles set out fundamental and operational standards that should guide corporate responsibility to respect human rights.

The fundamental principles establish that companies must refrain from infringing human rights and address any adverse impacts they may have caused or contributed to (UNGP 11). This responsibility extends to situations in which companies are directly connected to the negative effects of activities, operations, products, or services provided by their commercial relationships, even if they did not contribute to such impact (UNGP 13) (UN, 2011). When companies have caused or contributed to adverse impacts, they are obligated to provide or contribute to remedies through legitimate processes (UNGP 22), following parameters set out in the third pillar of the Guiding Principles.

Building upon the discussion, it becomes evident that determining when disasters resulting from business activities amount to "human rights abuse" is pivotal in applying the principles

governing corporate responsibility and human rights, as outlined in the Guiding Principles. As mentioned, these principles dictate that businesses must not infringe upon human rights and must address any adverse impacts they are associated with, whether through their own actions or their commercial relationships. However, the principles lack detailed guidance on classifying all disasters as human rights abuses, leading to ambiguity and room for interpretation. Furthermore, the concepts of contribution, cause, and connection are subjects of legal debates and disputes.

Nevertheless, in defining this responsibility, it is necessary to consider the provisions of Principle 12, which stipulates companies' responsibility to respect human rights relates to international recognition of such rights. These rights should be understood, at a minimum, as those set forth in the International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights, as well as the fundamental rights principles established in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work (UNGP 12) (UN, 2011).

Additionally, in addressing this question, it is essential to consider factors such as the extent of a business's involvement, its contribution to adverse impacts, and the connection between its activities, operations, products, or services and the impact in question. This nuanced assessment is crucial because, according to the Guiding Principles, if businesses have caused or contributed to adverse impacts, they bear an obligation to provide remedies or contribute to such remedies through legitimate processes. However, if businesses have not caused or contributed to the adverse impact, and it is related to their activities, operations, products, and services, the Principles do not explicitly mandate a remedy. Instead, they emphasize the duty of prevention and mitigation, which raises questions about varying levels of accountability.

Regarding the duty of remediation, the principles within the third pillar establish, on the one hand, that states must take appropriate measures to ensure, through appropriate means (such as judicial, administrative, and legislative mechanisms), that affected persons have access to effective remedy mechanisms (UNGP 25). This includes addressing obstacles to access when dealing with abuses related to business activities (UNGP 26). Secondly, companies must establish or participate in "effective operational-level grievance mechanisms" accessible to affected individuals to remedy any damage caused (UNGP 29).

This obligation to provide a remedy under the UNGPs should encompass two dimensions—procedural and substantive (UN, 2011; 2018). As explained by Dinah Shelton (2015, p. 15), the procedural dimension refers to the "processes through which human rights violations are heard and decided, whether by courts, administrative bodies, or other competent mechanisms". Substantive dimension, however, refers to the outcome of such measures and the relief granted to the victim.

In the procedural dimension, "the UNGPs determine that the procedures for providing remedies must be impartial and protected from corruption, political interference or other

attempts to influence the outcomes" (FGV, 2019, p. 67). Under this perspective, relevant parameters regarding the guarantee of effectiveness of extrajudicial grievance mechanisms (UNGP 31) are highlighted. These parameters should be observed in all remediation processes involving complex situations of human rights violations and abuses. The parameters include: (i) legitimacy; (ii) accessibility; (iii) predictability; (iv) transparency; (v) rights-compatibility; (vi) equitability and (vii) sustainability (UN, 2011).

Additionally, the UN Working Group on Business and Human Rights, in seeking to clarify the content of the right to remedy in the context of adverse impacts caused by companies, points out that the mechanisms employed must be accessible, prompt, and appropriate to the damages suffered (UN, 2018, p. 8).

In terms of material outcomes, the commentary to Guiding Principle 25 states that remediation may encompass a wide range of reparatory measures (UN, 2011). This includes the classification adopted by the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (in the following referred to as the Basic Principles) (UN, 2006; 2017). The use of this broad range of measures is crucial, particularly in situations involving serious violations and abuses of rights and complex damages. This is because the restoration of the previous situation (*status quo ante*) is often unfeasible in such cases. In fact, in disaster scenarios, an exact return to the previous situation is not even desirable, as it may not have adequately addressed risk and vulnerability management, thus contributing to the occurrence of the disaster itself (FGV, 2020b).

In this regard, it is important to adopt a "build back better" approach, as advocated by the Sendai Framework for Disaster Risk Reduction (UNISDR, 2015). This approach emphasizes that post-disaster actions should focus on "increasing the resilience of nations and communities by integrating disaster risk reduction measures into the restoration of physical infrastructure and social systems, as well as the revitalization of livelihoods, economies, and the environment" (UN, 2016, p. 11).

From the discussion above, it is assumed that ideally, in cases of serious human rights abuses caused by corporate activity, all available remediation measures should be employed to address the full extent of the damages suffered by individuals, communities and the environment. Additionally, measures should be implemented to "build back better" the affected territory or to avoid rebuilding the relationships and dynamics that enabled such abuses. In doing so, it is important to address the particularities of each affected person, their past and current situation, and all their losses individually. However, conducting such a detailed and individualized assessment is not always feasible, leading to the use of alternatives such as the establishment of standardized compensation values, as will be discussed in subsequent sections.

2. Specific challenges for compensating individual damages in disaster cases in Brazil

When dealing with risk management and right to remedy in disaster cases, the United Nations High Commissioner for Human Rights (OHCHR) adopts a human rights-based approach (UN, 2015, p. 4), which seeks to identify rights holders and corresponding duty bearers, promoting the strengthening of their capacities to make their claims (UN, 2015, p. 11; FGV, 2019, p. 39-40). Rights holders should be at the center of decision-making processes to effectively minimize risks and fully repair the damage resulting from the disaster (FGV, 2019, p. 38).

The reparation measures established in the Basic Principles include restitution, compensation, rehabilitation, satisfaction, and the guarantee of non-repetition (FGV, 2019, p. 67--68). These measures can be employed cumulatively rather than exhaustively, with attention to the particularities of each case and a central focus on the victims. This approach ensures that all identified harms are addressed and contributes to "build back better" reconstruction (UN, 2016, p. 11), as previously mentioned.

In a context of serious human rights abuses caused by corporations, the implementation of these remedial measures poses challenges in their implementation due to factors such as the asymmetry between parties, the complexity of damages, obstacles to victims accessing remediation, and the existence of vulnerable groups. Moreover, in the scope of technological disasters, a complicating factor often arises from the continued presence of individuals in the affected territory, strengthening the need for greater resilience in the remedial process (FGV, 2019, p. 93).

Despite this array of remedies, considerable emphasis is placed on compensatory remedies, which can encompass both material (loss of profits, emergent damages, loss of opportunity) and immaterial (moral damages, damage to personal life projects, spiritual damage, aesthetic damage, collective moral damage, and social damage) aspects within the Brazilian legal system (FGV, 2020b, p. 386-391).

Under the typology of judicial and extrajudicial remedies established by the UNGPs, claims for compensation in complex cases of human rights abuses by companies in Brazil, including cases of disasters, can be pursued through individual or collective legal actions. Additionally, reporting mechanisms developed by state actors or companies themselves are available, typically accessed by victims individually through the submission of documents and meeting pre-established requirements.

Regarding individual claims in Brazilian courts, victims must file a lawsuit demonstrating their personal injury and its link to the disaster, either with the assistance of a lawyer, public defender, or through the small claims court (when applicable). This process involves overcoming a series of obstacles in accessing legal services and information about their rights, gathering documentation to substantiate their damages and eligibility, and convincing the court of the connection between their injury and the disaster. Conversely, companies employ

sophisticated legal strategies to mitigate their duty to compensate victims, resulting in individual lawsuits that often fail to achieve comprehensive resolutions.

For these reasons, the Brazilian legal system provides for the possibility of filing class actions, usually sponsored by public players, such as the Public Attorney's Office and the Public Defender's Office. The actions aim to secure environmental injunctions, provide collective redress and individual compensation for victims. In such cases, the process involves executing a court judgment or reaching a collective settlement, which may establish criteria for assessing eligibility, presenting evidence, and setting minimum compensation values, which often can be translated into formulas to determine the amount owed to each person whose rights were violated (Didier Jr.; Zaneti Jr., 2020, p. 525). In this process of determining the individual compensation amount under Brazilian procedural rules, two main aspects are evaluated. First, the entitlement to compensation (or eligibility) is assessed based on evidence demonstrating the individual's suffered damage. Second, the corresponding value is based on the parameters or formula defined in the court's judgment.

In certain cases, such as the Rio Doce itself, courts and companies may design mechanisms to assess and compensate individual losses. In all these arrangements, Brazilian procedures must ensure the effective and informed participation of victims. Additionally, there should be minimum parameters that enable the proper valuation of material and immaterial damages suffered, as well as the proper registration of all victims and their losses. This lesson also applies to other jurisdictions.

However, in both judicial and extrajudicial venues, there is a tension between effectiveness and due process in assessing individual losses. The passage of time accentuates the severity of damages and the vulnerabilities of victims. In addition, disaster victims, not only in the Brazilian context, often live in highly informal settings with limited access to documentation proving their eligibility and losses. These losses are diverse and complex, reflecting the various aspects of livelihood affected by a disaster.

These factors have led, in some cases, to the establishment of formulas, standardized compensation values, or compensation matrices that contemplate, to varying degrees of detail, individual, material, and immaterial damages. These damages include the death of victims, bodily injuries, health damages, loss of property, loss of income, loss of access to water, loss of housing, and forced displacement, among others. This approach was used in the context of the compensation fund for the victims of the September 11th attacks at the World Trade Center, the Pentagon, and in Shanksville in the United States, as well as in the case of the Rio Doce disaster, where the concept of "rough justice" or "feasible justice" was applied.

3. The Rough justice framework

In the North American context, where the expression "rough justice" appears most frequently,[2] references are often associated with strategic litigation, transitional justice, and historical reparations (Munro, 1991; Wagner, 1999; Satz, 2012; Vermeule, 2012),[3] whether in post-war contexts (Chinkin, 2006) or in post-authoritarian democratic transitions (Tucker, 2009). There is also a subgroup of more recent works that addresses "rough justice" in the context of responsibility for climate change (Farber, 2007; Stern, 2010; Mayer, 2017). Technical productions by special master Kenneth Feinberg also refer to the concept of "rough justice" when describing the September 11th Victim Compensation Fund (VCF) (Feinberg, 2012). Additionally, Alexandra Lahav's work (2010) discusses the use of statistics in defining compensatory values in complex cases.

References to "rough justice" often signal informal or "non-ideal" models of access to justice, indicating a certain level of precariousness, whether in the procedural framework or the substantive reparation of the violation at hand (Chinkin, 2006; Satz, 2012; Mayer, 2017). While addressing the complexities of establishing individual compensatory parameters, these sources present "rough justice" as the most pragmatic alternative available (Feinberg, 2012; Farber, 2007; Lahav, 2010; Vermeule, 2012).

Christine Chinkin (2006) presents a critical perspective when discussing the case of the Women's Tribunals created for the judgment of the crimes of sexual slavery committed by Japanese soldiers against Asian women during World War II in the context of ad hoc People's Tribunals. The same case is discussed in Debra Satz's article (2012), in which it is noted that the compensation offered by the Japanese Prime Minister to the 500 surviving women, out of the more than 200,000 victims, was accepted by only six of them. This is because offer of financial compensation was deemed an inadequate form of redress for the violation suffered, as it was not accompanied by official apologies from the government and came from private resources (Satz, 2012, p. 136). In such cases, the term "rough justice" highlights both the challenges victims face in accessing the justice system and the precariousness of the redress they receive. Christine Chinkin (2006) explores

2 The United States stands out as the country with the highest academic production on the subject, followed by the United Kingdom, albeit with a significantly lower average (SCOPUS and Web of Science, search with the term "rough justice" on 6/9/2022). Much of the research is concentrated in the scientific fields of history, law, and political science (Web of Science, search with the term "rough justice" on 6/9/2022).

3 Works related to the "Bush v. Gore" case of the US Supreme Court also reference the term "rough justice", as used by Richard Posner and Richard Hasen to describe the outcome of the decision. However, these results are excluded. See on this topic: Marshall (2001).

this through the legitimation of People's Tribunals as a civil society response, while Debra Satz (2012) empirically demonstrates the inadequacy of financial compensation as redress in these cases.

In addition to discussing the case of Asian sex slaves during World War II, Debra Satz (2012) explores other situations in which financial compensation is not an adequate reparative mechanism, particularly those related to historical and intergenerational injustice, such as structural racism in the United States. Satz (2012) argues against the use of "rough justice" in contexts where financial compensation is proposed as the primary means of reparations, offering principled and practical objections. Her argument is that, especially in intergenerational contexts, compensation should be a means to seek the restoration of relationships based on mutual respect (Satz, 2012, p. 141). However, she acknowledges that flaws in compensatory programs often undermine these aims.

In the field of environmental litigation, Rachel Stern (2010) criticizes the concept of "rough justice", considering it the opposite extreme of strict legality—a form of judicial informality and discretion. She normatively defends the judicial position that she calls "legal innovation", which would be the balance between legalism and discretion (Stern, 2010, p. 83).

In addition to Stern (2010), Mayer (2017) presents a critical view of the use of "rough justice", especially in cases involving systematic human rights violations by states and governments, whether inadvertent, negligent, or even intentional (Mayer, 2017, p. 209).

During the first decade of the 2000s, the United States established significant compensation programs that became models for others worldwide. As an example, the creation of the World Trade Center Victim Fund (WTCVF) stands out, which compensated victims of the September 11th, 2001 attacks, under the responsibility of special master Kenneth Feinberg.[4]

4 The compensation fund for victims of the attacks on the World Trade Center, Pentagon, and Shanksville (Pennsylvania) on September 11th, 2001, is a landmark in the history of non-judicial compensation measures for highly complex damages. Established by the "Air Transportation Safety and System Stabilization Act", also known as the "September 11th Victim Compensation Fund of 2001", it aimed to provide non-litigious compensation for eligible individuals who suffered bodily injuries or representatives of deceased victims. The fund's regulations outlined substantive and procedural rules, including criteria for who could submit claims and the values to be paid for damages deemed compensable, listing both economic and non-economic losses considered (Schneider, 2003, p. 461). For lost profits, values were calculated based on assumed age and income levels. Standardized values for moral damages to relatives of deceased victims were set at $250,000 per victim, with an additional $100,000 for the surviving spouse and each dependent child, and bodily injuries were individually assessed (Schneider, 2003, p. 462). According to the special master responsible for the fund, Kenneth Feinberg, the values and procedures adopted were based on a notion of "rough justice", or possible justice, as previously mentioned.

A decade later, Feinberg also administrated the Gulf Coast Claim Facility (GCCF), aimed at compensating victims of the environmental disaster in the Gulf of Mexico on June 16th, 2010. These funds are notable examples of the use of compensation in complex cases in the United States.

Alongside Kenneth Feinberg (2012), the works of Alexandra Lahav (2010), Daniel Farber (2007), and Adrian Vermeule (2012) also presented similar positions during the same period. Engaging with Satz's work (2012), Vermeule (2012, p. 151) conceptualizes "rough justice" as "the intuition that sometimes it is permissible, even mandatory, to enact a scheme of compensatory reparations that is indefensible according to any first-best criterion of justice". Vermeule (2012, p. 154) advocates for the "rough" approach, arguing that the alternative would be simply "no remedy at all", which is how the legal system typically operates. Therefore, he argues that Satz's principled criticisms do not apply, as "rough justice" is a subsidiary mechanism (second-best expedient). However, Vermeule (2012, p. 153) agrees that Satz's pragmatic criticisms remain valid, as they "are clear-minded and, on their own terms, incontestable". This implies the need for reflection on improving the mechanism by establishing better rules for access, resource distribution, identification of responsibility and victims, and better valuation considering the type of violation suffered (Vermeule, 2012, p. 153).

Daniel Farber (2007), while addressing the individual proof system and the definition of compensatory values, argues that "determining exactly the right level of compensation in every case would be extremely expensive and time-consuming" and that "it is better to have a rough-and-ready system of compensation that provides at least partial justice and operates efficiently" (Farber, 2007, p. 1655).

In similar terms, Alexandra Lahav (2010) considers "rough justice" not only efficient but also fair if correctly implemented in compensatory actions of a collective nature, especially regarding the use of "informal statistical adjudication techniques to determine more or less what damages, if any, the plaintiffs ought to be awarded" (Lahav, 2010, p. 2). She argues that "rough justice" is beneficial from the perspective of an individual settlement, statistical strategy in collective compensation actions for damages.

The author gained popularity in Brazil after her 2010 paper was cited in judicial decisions in the Rio Doce case by the 12th Federal Civil and Agrarian Court of the Judicial Section of Minas Gerais. The civil public actions No. 69758-61.2015.4.01.3400 and 23863-07.2016.4.01.3800 address the damages resulting from the rupture of the Fundão Dam. Such decisions, endorsed by the Federal Regional Court of the 1st Region (TRF-1), cited Lahav and her study on "rough justice" (Lahav, 2010) to justify the creation of a "simplified compensatory system" based on pre-established standards of evidence and compensatory amounts. Thus, for each category of economic activity—such as extractors, fishermen, merchants, farmers/rural producers—a compensation amount was established for lost profit and moral damages, along with a list of documents to prove eligibility

and damages.[5] This resulted in a compensation with fixed rates, as exemplified in one of the court rulings for the city of Linhares, in Espírito Santo State. In this ruling, the judge set compensation amounts for several professional categories, most of them based on the current minimum wage:

> Following the reasoning presented, for the exclusive purposes of this decision and as a general and presumed "average possible solution" applicable to all "craftsmen", I believe they are entitled to the following compensation amounts.
> MATERIAL DAMAGES (lost profits): Adoption of the minimum wage in effect on this date (R$ 1,045.00) multiplied by the total retroactive and prospective months related to the interruption of income-generating activity (71 months), totaling R$ 74,195.00.
> MATERIAL DAMAGES (direct damages): R$ 6,000.00 (six thousand reais), as compensation for the unusability of stored raw materials and finished products, although not sold.
> MORAL DAMAGES: R$ 10,000.00 (ten thousand reais) as compensation (per individual) for moral damages.
> Therefore, the "craftsmen" who wish to adhere to this damage matrix and the consequent compensation system, upon final settlement, will be compensated at the following values:

• • •

5 In this sense, it is worth quoting a passage from a decision that brings this reflection on the complexity of the situation and the insufficiency of existing legal responses to address it: "[…] It is estimated that the Mariana Disaster ('SAMARCO CASE') impacted, directly or indirectly, a universe of more than 500 thousand affected […] In a classic conception, this would mean that each of these affected individuals should prove in court the individual extent of their damages (constitutive fact of their right—art. 373, item I, of the CPC), so that the compensation could be fixed correspondingly. However, this (classic) situation is totally inapplicable in the scenario of large disasters, with a multiplicity of victims and damages. Firstly, the Judiciary would not be able to process and judge, in a timely manner, hundreds of thousands of individual actions, not to mention, obviously, the risk of contradictory and anti-isonomic decisions, leading to distrust in the system. Secondly, the classic solution provided for in the civil law system often does not consider the reality of the location. In the Rio Doce context, the location is an extremely disadvantaged and sometimes socially vulnerable region. Reality shows that most victims (affected individuals) do not have adequate conditions to prove many of the damages that they allegedly (but surely) experienced. The situation of informality is so present in the basin that many affected individuals cannot even prove their alleged profession or even their residential address. Thirdly, the Judiciary, by acting in an individual-case way, is unable to resolve the conflict, much less lead to any kind of social pacification. All of this shows that, from an eminently classic perspective, the legal system does not offer an adequate solution for processes of this magnitude. This is why this (historic) case requires the Judiciary to adopt a new approach to compensation for the affected individuals, allowing the judicial provision to fulfill its mission of bringing social pacification. Given this context, it is up to this federal court to find a theoretical substrate to present a possible solution to the complex and delicate issue of 'compensation for the affected individuals'" (TRF1, 2020, p. 32, our translation).

MATERIAL DAMAGES: R$ 80,195.00.
MORAL DAMAGES: R$ 10,000.00
TOTAL: R$ 90,195.00 (TRF1, 2020, p. 64).

Based on the incorporation of the concept of "rough justice" as a form of justice in complex cases such as the Rio Doce disaster, this decision established standardized values and evidentiary parameters pre-established by categories of individuals affected, according to the type of economic activity they were engaged in at the time of the disaster.

Compensation amounts followed this same logic across most professional categories in all of the 45 municipalities affected by the Rio Doce disaster. Although this system was designed based on claims from committees representing those affected in various territories, the categories and values adopted were not directly tied to specific factual or evidentiary elements in the case records. Instead, they were grounded in "common experience", as stated in the decisions handed down by the judge overseeing the case at the time (TRF1, 2020, p. 28). The concept of "rough justice" was explicitly used to justify this approach, deemed by the judge as the only feasible method to provide some form of compensatory redress to the affected individuals, more than five years after the dam rupture.

The Novel system, as it came to be known, was considered a landmark in terms of the valuation of mass injuries in Brazil, sparking debates among researchers and practitioners regarding its legitimacy and adequacy. While the discursive use of the "rough justice" concept was primarily seen in the Rio Doce case,[6] the practice of "roughly" establishing categorized parameters for compensation also emerged in subsequent decisions and negotiations. Examples include the dam rupture disaster in the city of Brumadinho, in the state of Minas Gerais, and the ground subsidence disaster in Maceió, state of Alagoas, caused by salt mining activities conducted by the mining company Braskem.[7]

6 An exploratory study on case law which included the Superior Court of Justice (Superior Tribunal de Justiça), Federal Courts (Tribunais Regionais Federais) and State Courts (Tribunais de Justiça) in January 2024, using the term "rough justice", identified 470 rulings, all related to the Rio Doce case (JusBrasil, [*s.d.*]). It can be concluded that the concept played a crucial role in justifying a systematic approach and legal reasoning in mass compensation issues, even though subsequent court rulings have not yet explicitly incorporated it.

7 The approach employed in the Rio Doce case has been similarly applied in cases such as Braskem and Brumadinho. Matrices, as structured frameworks for damage assessment, were employed in these instances, mirroring the methodology used in the Rio Doce context. For example, Vale used the Brumadinho Individuals' Compensation Matrix (2019) to negotiate over 500 agreements two years after the disaster, according to the Brazilian National Justice Council (Agência CNJ de Notícias, 2021). In the Braskem case, the Caritas Matrix from the Rio Doce case was recommended for estimating damage (TRF5, 2023). However,

Concerns persist among affected communities and their representatives regarding the lack of victim participation, as well as the absence of a solid legal and evidentiary foundation to support the identification and valuation of damages. These concerns are evident not only in the Rio Doce case, but also in other disasters influenced by the "rough justice" paradigm in compensatory processes. On July 28th, 2023, three years after the implementation of the Novel system, a newly appointed judge, who recently took over the Rio Doce case (following another judge who had replaced the one who initially established the Novel system), rendered a decision recognizing legal flaws in the Novel system. These flaws were attributed to inadequate representation of disaster victims and procedural inadequacy that fails to properly address the individual situation of each victim (TRF6, 2024).[8]

4. Rough Justice in Disaster Cases: Better than Nothing?

The creation of simplified individual remediation procedures, particularly of compensatory nature based on the notion of "rough justice", has gained prominence in Brazil. This approach has been notably applied in the creation of the Novel system, which addresses the difficulty of proving and individually assessing the losses faced by those affected. In the case of immaterial damages, which often heavily rely on judicial discretion, it is understandable that judges seek theoretical frameworks to support simplified responses. This is especially relevant considering the complexities of quantifying non-material damages, diffuse or continuous material damages, and the establishment of reparatory structures such as funds, which involve highly intricate considerations. While this approach is understandable, as mentioned earlier, it may not be the most appropriate in all cases.

challenges and varying interpretations have arisen, a common occurrence in such agreements, as indicated by a document from Nacab (2022) regarding the Brumadinho case: "It should be noted that, although the content of the Term of Commitment presents basic references for thinking about individual indemnities, there may be some kind of restrictive interpretation on the part of Vale S/A or the Judiciary itself regarding the use of the indemnity parameters contained therein for the purposes of condemnation in individual lawsuits".

8 According to Judge Vinicius Cobucci in relevant excerpts from his ruling: "The current system adopted does not fully comply with the rules of Civil Procedural Law", "The Commissions of Affected People, which were responsible for the origin of the Novel, do not have procedural standing. In the present case, the defect is insurmountable since these are depersonalised groups that cannot be converted into associations", "The judgement that determined its creation cannot be understood as a judicial enforcement order that allows the liquidation and individual enforcement of the judgement, since there was an absolute nullity, consisting in the lack of standing and extraordinary legitimacy of the Commissions occupying the claimants' position" (TRF6, 2024).

It is worth questioning whether this paradigm is compatible with the parameters applicable to the remediation of human rights abuses caused by corporations, especially in disaster cases.

Firstly, the idea of "rough justice", however well-formulated, should be a subsidiary and exceptional option. Remedies must be adequate and comprehensive, attentive to the particularities, complexities, and specific extent of all individual and collective losses. Simplification or parameterization is only applicable when individual remediation procedures are excessively complex, time-consuming, or even unfeasible in a specific case. Reparation based on the idea of "rough justice" must meet the interests of the victims, not those of the companies that are involved.

In such cases, it is necessary to design, implement, and operationalize these mechanisms—whether judicial or extrajudicial—in accordance with the paradigms related to due process, remedy and a victim-centered approach. The flexibilization proposed by the "rough justice" paradigm should therefore concern the procedures for assessing values and evidentiary criteria, not observance of the principles applicable to the remediation of human rights abuses. These principles are non-negotiable.

As for the substantive and procedural dimensions of the duty to remedy, it seems that the concerns underlying the use of "rough justice" are primarily focused on the fairness of the outcome (such as the amount of compensation), with little debate on the procedural aspects that precede this outcome.

In this sense, while the establishment of standardized compensation values may enhance efficiency, equity, predictability, and even facilitate access to redress, it is questionable whether the procedures that lead to the establishment of these values and formulas adhere to other applicable parameters, such as transparency, compatibility with rights, continuous learning, and, above all, participation and dialogue (UNGPs 25, 26, 29 and 31, UN, 2011).

Thus, it is crucial to highlight the need for victim participation in all decisions related to such a system—whether regarding the values to be fixed, eligibility and proof criteria, or the definition of the procedures to be implemented for qualification, recognition, and receipt of the established remedy. It is essential to remember that the criteria set forth in the UNGPs indicate the relevance of transparency, participation, and dialogue with affected individuals for the effectiveness of remediation mechanisms. Consulting affected individuals regarding the conception and performance of such mechanisms is necessary. Furthermore, according to the UN Working Group on Business and Human Rights, victims should participate effectively in the creation, development, and operationalization of these mechanisms (FGV, 2019, p. 73; UN, 2018, p. 8).

Even regarding the substantive dimension, there are concerns regarding the practical application of the "rough justice" framework: the concept of rough justice must not lead to excessive informality, discretion, or even arbitrariness, as this could result in real injustice.

As pointed out by Lahav (2010), it is necessary that values are underpinned by surveys and calculations conducted with methodological rigor, employing statistical methods, and gathering both primary and secondary data, and any information that can be used to approximate these values to the damages to be repaired. A model based on "rough justice" requires absolute transparency (Lahav, 2010, p. 54). Therefore, such methodology must adhere to due process and participation standards, ensuring the meaningful involvement of victims in defining margins and criteria. This includes incorporating their knowledge and experiences throughout the process to impart consistency and legitimacy to compensation parameters. Additionally, assessing the effectiveness of the remedy from the perspective of the rights holders is necessary to understand what the victim understands as an effective remedy (UN, 2018, p. 8).

Furthermore, it is important to consider allowing for a certain degree of flexibility and differentiation in the implementation of remedy procedures. Based on a clear and transparent methodology, it becomes possible to identify particularities and address varying degrees of severity and vulnerability, particularly through the use of appropriate sampling methodologies (Lahav, 2010, p. 36).

Finally, while standardizing values and parameters may streamline both judicial and extrajudicial compensation processes, it is possible that this simplification may not adequately compensate for all individually suffered damages. In such cases, the established values serve as minimum parameters, allowing victims to individually demonstrate that the damages exceed these amounts or to claim ongoing losses and future damages. Evidence standards, in that sense, must also be flexible and coherent with cultural and social features of the affected communities. Specifically in environmental claims, Brazilian legislation stipulates that the burden of proof must be reverted to the benefit of affected individuals.

Conclusions

The purpose of this article was to reflect on the challenges of achieving full redress in cases of human rights abuses caused by companies, especially in technological disasters. In such situations, it is particularly difficult to provide complete and adequate individual remediation due to challenges in identifying all victims and accurately assessing the damages suffered for compensation purposes. Moreover, addressing the challenges arising from the imbalance between the parties involved is crucial, as significant corporations with significant economic, legal, and informational influence often tend to align predominantly on one side of the equation.

To facilitate compensation in large-scale procedures, courts, public players, and companies have increasingly adopted a "rough justice" framework to justify standardized parameters and simplified procedures. While flexibility and efficiency are desirable in any remedy mechanism, the paradigm of "rough justice" may overshadow individual losses and the comprehensive array of damages, resulting from the loss of livelihoods.

For that reason, this "far from ideal" form of justice should remain exceptional in theory and practice. When parametrization is employed, it must be rigorous, based on solid statistical and/or empirical methods, and conducted through transparent and participatory procedures to thoroughly assess the losses suffered by the affected communities. The needs of affected individuals and their traditional knowledge, when applicable, should guide every stage of this process. Any established values should be viewed as minimum parameters, allowing for individual increases or adjustment when possible. Finally, the use of fixed amounts must not prevent stakeholders from revisiting procedures and standards whenever new data arises concerning the impacts of the disaster and the evolving needs of victims, including ongoing and future losses.

Therefore, the use of "rough justice" or the concept of approximate justice in establishing compensation parameters can only be "better than nothing" if these parameters meet the minimum criteria outlined. Failing to do so risks perpetuating inherent injustice and worsening the existing imbalance between the involved parties. Consequently, it is crucial to prioritize rigorous validation of reparation efforts rather than accepting substandard resolution that falls short of achieving genuine justice.

REFERENCES

AGÊNCIA CNJ DE NOTÍCIAS. Defensoria de Minas se aproxima de 500 acordos sobre desastre em Brumadinho. *CNJ*, Jan. 24th, 2021. Available at: https://www.cnj.jus.br/defensoria-de-minas-se-aproxima-de-500-acordos-sobre-desastre-em-brumadinho/. Accessed on: Jun. 29th, 2024.

CHINKIN, Christine M. People's Tribunals: Legitimate or Rough Justice. *Windsor Yearbook of Access to Justice,* [*s.l.*], v. 24, n. 2, p. 201-220, 2006.

COSTA, Susana Henriques da. *O processo coletivo na tutela do patrimônio público e da moralidade administrativa*. São Paulo: Quartier Latin, 2009.

DIDIER JR., Fredie; ZANETI JR., Hermes. *Curso de direito processual civil*: processo coletivo. 14. ed. Salvador: Juspodivm, 2020. (v. 4).

DIEGUEZ, Consuelo. A onda: uma reconstituição da tragédia de Mariana, o maior desastre ambiental do país. *piauí*, Edition 118, Jul. 2016.

FALECK, Diego. *A busca pela justiça possível*. [*S.d.*]. Available at: https://web.archive.org/web/20230202234144/https://www.caminhodareparacao.org/a-busca-pela-justica-possivel/. Accessed on: Jul. 31th, 2024.

FARBER, Daniel A. Basic Compensation for Victims of Climate Change. *University of Pennsylvania Law Review*, [*s.l.*], v. 155, p. 1605-1656, 2007.

FEINBERG, Kenneth R. *Who Gets What*: Fair Compensation after Tragedy and Financial Upheaval. PublicAffairs, 2012.

FUNDAÇÃO GETULIO VARGAS (FGV). *Prevenção do trabalho forçado na indústria da moda*: análise de políticas e práticas. Resultados preliminares. São Paulo, 2020a. Available at: https://repositorio.fgv.br/items/5750dba9-b31a-4dde-b4fd-3914f6afe1a8. Accessed on: Jul. 31th, 2024.

FUNDAÇÃO GETULIO VARGAS (FGV). Parâmetros e subsídios para a reparação dos danos socioeconômicos nos territórios de Rio Doce, Santa Cruz do Escalvado e Chopotó. Rio de Janeiro: São Paulo: FGV, 2020b. Available at: http://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/rosa-fortini-parametros-e-subsidios-para-a-reparacao-dos-danos-socioeconomicos_parte-1.pdf. Accessed on: Jun. 29th, 2024.

FUNDAÇÃO GETULIO VARGAS (FGV). Análise da decisão emitida no Eixo Prioritário n. 7 ("Cadastro e Indenizações") que define a matriz de danos referente ao Município de Baixo Guandu (ES). Rio de Janeiro: São Paulo: FGV, 2020c. Available at: http://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv_opiniao-tecnica-analise-da-decisao-de-baixo-guandu.pdf. Accessed on: Jun. 29th, 2024.

FUNDAÇÃO GETULIO VARGAS (FGV). *Parâmetros para uma abordagem baseada em Direitos Humanos para a resposta e reconstrução de desastres envolvendo empresas*. Rio de Janeiro: São Paulo: FGV, 2019. Available at: http://www.mpf.mp.br/grandes-casos/caso-samarco/documentos/fgv/fgv_parametros-para-uma-abordagem-baseada-em-direitos-humanos-para-a-resposta-e-reconstrucao-de-desastres-envolvendo-empresas.pdf. Accessed on: Jun. 29th, 2024.

FUNDAÇÃO GETULIO VARGAS (FGV). Centro de Direitos Humanos e Empresas. *Avaliação de impacto em direitos humanos*: o que as empresas devem fazer para respeitar os direitos de crianças e adolescentes. São Paulo: FGV, 2017. Available at: https://direitosp.fgv.br/sites/default/files/2021-12/guia_de_avaliacao_de_impacto_em_direitos_humanos.pdf. Accessed on: Jun. 29th, 2024.

GALANTER, Marc. Why The "Haves" Come Out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review*, [*s.l.*], v. 9, n. 1, p. 95-160, 1974.

JUSBRASIL. *Análise da jurisprudência sobre "rough justice"*, [*s.d.*]. Available at: https://www.jusbrasil.com.br/jurisprudencia/busca?q=%22rough+justice%22. Accessed on: Jun. 29th, 2024.

LAHAV, Alexandra D. Rough Justice. *SSRN Electronic Journal*, [*s.l.*], p. 1-55, Mar. 2nd, 2010. Available at: https://ssrn.com/abstract=1562677. Accessed on: Jun. 29th, 2024.

MARSHALL, William P. The Supreme Court, Bush v. Gore, and Rough Justice. *Florida State University Law Review*, [*s.l.*], v. 29, n. 2, p. 787-809, Winter 2001.

MAYER, Benoit. Climate Change Reparations and the Law and Practice of State Responsibility. *Asian Journal of International Law*, [*s.l.*], v. 7, n. 1, p. 185-216, 2017.

MUNRO, Robin. Rough Justice in Beijing: Punishing the "Black Hands" of Tiananmen Square. *UCLA Pacific Basin Law Journal*, [*s.l.*], v. 10, n. 1, p. 77-135, Fall 1991.

NÚCLEO DE ASSESSORIA ÀS COMUNIDADES ATINGIDAS POR BARRAGENS (NACAB). *Aspectos processuais da reparação individual do crime da Vale S/A em Brumadinho*. Mar., 2022. Available at: https://nacab.org.br/wp-content/uploads/2022/03/Cartilha_Aspectos_processuais_reparacao_individual.pdf. Accessed on: Jun. 29th, 2024.

PURVIN, Guilherme. Notas sobre a suspeição no caso Samarco: Rough Justice é justiça imperfeita. *O Eco*, May 13th, 2021. Available at: https://oeco.org.br/colunas/notas-sobre-a-suspeicao-no-caso-samarco-rough-justice-e-justica-imperfeita/. Accessed on: Jun. 29th, 2024.

SATZ, Debra. Countering the Wrongs of the Past: The Role of Compensation. *Nomos*, [*s.l.*], v. 51, p. 129--150, 2012. Available at: http://www.jstor.org/stable/24220126. Accessed on: Jun. 29th, 2024.

SCHNEIDER, Elizabeth M. Grief. Procedure, and Justice: The September 11th Victim Compensation Fund. *DePaul Law Review*, [*s.l.*], v. 53, n. 2, p. 457-500, 2003.

SHELTON, Dinah. *Remedies in International Human Rights Law*. 3rd. ed. Oxford: Oxford University Press, 2015.

STERN, Rachel E. On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits. *Law & Policy*, [*s.l.*], v. 32, n. 1, p. 79-103. Jan. 2010.

THE UNITED NATIONS OFFICE FOR DISASTER RISK REDUCTION (UNISDR). *Sendai Framework for Disaster Risk Reduction 2015 - 2030*. Geneva: United Nations, 2015.

TRIBUNAL REGIONAL FEDERAL DA 1ª REGIÃO (TRF1). 12ª Vara Cível e Agrária da SJMG. *PJe n. 1016742-66.2020.4.01.3800*. "Caso Samarco" (desastre de Mariana). Belo Horizonte, 2020.

TRIBUNAL REGIONAL FEDERAL DA 5ª REGIÃO (TRF5). Gabinete da Desembargadora Federal Joana Carolina Lins Pereira. *PJe n. 0806743-11.2023.4.05.0000*. Recife, 2023.

TRIBUNAL REGIONAL FEDERAL DA 6ª REGIÃO (TRF6). 4ª Vara Cível e Agrária da SSJ. *PJe n. 1000415-46.2020.4.01.3800*. Belo Horizonte, 2024.

TUCKER, Aviezer. Rough Justice: Rectification in Post-authoritarian and Post-totalitarian Regimes. *In*: ELSTER, Jon (ed.). *Retribution and Reparation in the Transition to Democracy*. Cambridge: Cambridge University Press, 2009. p. 276-298.

UNITED NATIONS (UN). Human Rights Council. *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*. Geneva: UN, 2018.

UNITED NATIONS (UN). *Report of the Open-Ended Intergovernmental Expert Working Group on Indicators and Terminology Relating to Disaster Risk Reduction*. [*S.l.*]: UN, 2016.

UNITED NATIONS (UN). Human Rights Council. *Final Research-based Report of the Human Rights Council Advisory Committee on Best Practices and Main Challenges in the Promotion and Protection of Human Rights in Post-Disaster and Post-conflict Situations*. Geneva: UN, 2015. Available at: https://undocs.org/A/HRC/28/76. Accessed on: Jun. 29th, 2024.

UNITED NATIONS (UN). *Guiding Principles on Business and Human Rights*: Implementing the United Nations "Protect, Respect and Remedy" Framework. New York: Geneva: Office of the UN High Commissioner for Human Rights (OHCHR), 2011.

UNITED NATIONS (UN). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. [*S.l.*]: UN General Assembly, 2006.

VERMEULE, Adrian. Reparations as Rough Justice. *NOMOS: American Society for Political and Legal Philosophy*, [*s.l.*], v. 51, n. 1, p. 151-165, 2012.

VITAL, Danilo. Decisões referendam uso de matriz de danos para indenizar desastre ambiental. *Consultor Jurídico*, Nov. 9th, 2020. Available at: https://www.conjur.com.br/2020-nov-09/trf-referenda-uso-sistema-indenizatorio-simplificado. Accessed on: Jun. 29th, 2024.

WAGNER, Wendy E. Rough Justice and the Attorney General Litigation. *Georgia Law Review*, [*s.l.*], v. 33, p. 935-978, 1999.

WETTSTEIN, Florian *et al*. International Business and Human Rights: A Research Agenda. *Journal of World Business*, [*s.l.*], v. 54, n. 1, p. 54-65, Jan. 2019.

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