

14 January 2016

Margaret Jungk,  
Chairperson,  
Working Group on Human Rights and Transnational Corporations & other Business Enterprises,  
C/- Karim Ghezraoui,  
Chief - Special Procedures Branch,  
United Nations Office of the High Commissioner for Human Rights (OHCHR).

Dear Ms Jungk,

I refer to your letter of 7 December regarding the human rights impacts of the failure of the Fundao Dam at the Samarco iron ore mine in Minas Gerias and the subsequent meeting between members of the Working Group on Human Rights and Transnational Corporations with Samarco and BHP Billiton representatives on 11 December in Mariana. I also note the statement released by the Working Group in Brasilia on 16 December and a subsequent valuable telephone briefing on the Working Group's observations with Samarco and BHP Billiton personnel on 18 December.

We offer our deepest sympathies to the families and friends of those who have died as a result of this tragic incident. Our thoughts remain with the Samarco employees, contractors, their families and the communities impacted by the failure of the Fundao dam. BHP Billiton is fully committed to support Samarco and local authorities in the response and recovery effort and has provided a range of assistance to Samarco in the period since 5 November.

Your letter of 7 December raises a range of questions relating to BHP Billiton's response to the incident and broader approach to human rights due diligence to which responses are outlined below. I understand that Samarco has also provided detailed responses to these questions and, as your letter rightly notes, the situation remains very fluid and dynamic, and for this reason we will continue to keep the Working Group updated on an ongoing basis.

#### 1. BHP Billiton and Human Rights.

Respect for human rights is critical for the ongoing success and sustainability of our business. Our strategy of owning and operating large, long life operations across a diverse range of countries and commodities results in BHP Billiton being a significant long term actor in the countries in which we operate.

This brings with it the opportunity to contribute to the positive realization of human rights and the responsibility to effectively prevent and mitigate human rights related risks. We take our human rights obligations seriously and demonstrate this by committing to operate in accordance with the United Nations (UN) Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights.

BHP Billiton was pleased to directly engage in the development of the UN Guiding Principles and through this process ensured that BHP Billiton's human rights commitments evolved in parallel with the Guiding Principles. Our human rights commitments are operationalised through *Our BHP Billiton Charter*, our *BHP Billiton Code of Business Conduct* and a series of mandatory human rights performance requirements for all BHP Billiton businesses reflected in our Group Level Documents (GLD's). Key amongst these mandatory performance requirements in our GLD's are:

- Mandatory Human Rights Impact Assessments (HRIA's). All BHP Billiton operated assets are required to complete Human Rights Impact Assessments (HRIA's) which are reviewed annually. Every three years, each HRIA is verified through an engagement process with stakeholders and, in medium and high-risk jurisdictions, validated by a qualified human rights specialist. Where a HRIA identifies a material risk, a Human Rights Management Plan is required to be implemented and reviewed annually.
- Mandatory Grievance Mechanisms. All BHP Billiton operated assets are required to implement local-level complaints and grievance mechanisms for people potentially impacted by our Businesses' activities. The mechanisms are required to be scaled to the country context; to use an understandable and transparent process; to be culturally appropriate, readily accessible to all segments of host communities and to be available without retribution. Importantly, these mechanisms must not impede access to judicial or administrative remedies. We acknowledge, investigate and document all complaints and grievances; undertake appropriate remedial actions where a complaint is legitimate and advise complainants of the remedial action promptly and document outcomes.
- Mandatory Security & Human Rights Requirements. The United Nations Voluntary Principles on Security and Human Rights are reflected in our GLD requirements. All BHP Billiton operated assets are required to identify security-related material risks to people and property, and to engage relevant stakeholders to develop and manage security programs that respect human rights and fundamental freedoms across the Group. Our operations conduct an annual review for alignment with the Voluntary Principles and implement an improvement plan to close identified gaps.
- Mandatory Supply Chain Requirements. All BHP Billiton operated assets are required to assess all suppliers in accordance with zero tolerance criteria in relation to anti-corruption, local legal compliance, child and forced labour, freedom of association and collective bargaining, living wage, non-discrimination, workplace health and safety, employee dignity and freedom from abuse; and also to develop, implement and review Supplier Performance Evaluation Plans.

Importantly, all BHP Billiton operated assets are internally audited on a regular basis to verify they are meeting all of the above requirements, as well as further GLD requirements in relation to health, safety and environmental management. While BHP Billiton does not operate the Samarco asset, we have made our GLD standards available to Samarco and BHP Billiton personnel audit the Samarco operation against these standards to seek to confirm that Samarco standards are consistent with our requirements.

The BHP Billiton Forum on Corporate Responsibility (FCR), a standing group of global civil society leaders, has played a key role in the development of BHP Billiton's policy positions and standards since the group was established almost 15 years ago. The FCR has challenged the Company's thinking and provides multiple perspectives that have helped the Company develop and maintain progressive policies and standards. This has included helping to develop the Company's standards on human rights and indigenous peoples issues. As noted below, the FCR has also been asked to advise the Company in relation to its response to the Samarco issues.

## 2. BHP Billiton Governance of Samarco Incident.

The following Governance and support arrangements have been established within BHP Billiton:

- A dedicated sub-committee of the BHP Billiton Board has been established to assist the Board in overseeing the governance of BHP Billiton's management and response to the events at Samarco. The members of the sub-committee are John Schubert (as Chairman), Lindsay Maxsted and Malcolm Brinded.

- A dedicated BHP Billiton office has been established in Belo Horizonte and Flávio Bulcão has been appointed as BHP Billiton Country Director, Brazil. Flavio will represent the BHP Billiton team in Brazil and will report to the Chief Commercial Officer, Dean Dalla Valle, who has assumed day-to-day responsibility at a Group Management Committee (GMC) level for BHP Billiton's response to the Samarco dam breach. Flavio has extensive experience in the metals and mining industry, having held a number of senior executive roles with BHP Billiton in Brazil. A team of BHP Billiton specialists including geotechnical, disaster relief and humanitarian response experts, senior health and safety executives, and environmental scientists operate out of this office supporting Samarco's response.
- A BHP Billiton Crisis Management Team (CMT) comprising BHP Billiton GMC members is chaired by Dean Dalla Valle.
- A BHP Billiton Crisis Advisory Team (CAT) reports to the CMT and comprises internal specialists providing advice and support to Samarco in areas including humanitarian response, health, safety, environment and technical support.
- The BHP Billiton FCR has been tasked with providing a high-level, strategic overview of the recovery processes and lessons learned for BHP Billiton. The FCR will visit the Samarco site in January 2016 and participate in a dialogue with civil society leaders regarding the Samarco response.

### 3. BHP Billiton Humanitarian Assessment.

Immediately following the failure of the Fundao Dam, BHP Billiton commissioned a rapid humanitarian assessment of the downstream social and community impacts of the incident in order to support the response of Samarco Mineração S.A. ("Samarco") and relevant government agencies.

An Assessment Team was assembled to meet the following capability criteria:

- Extensive humanitarian operational experience relevant to the Samarco incident.
- Demonstrable understanding of international humanitarian response standards (eg Sphere Standards) and ability to assess their application in practice.
- Gender balance and fluency in both Portuguese and English.
- Knowledge of and relationships with Brazilian government agencies involved in the humanitarian response and recovery at national, state and local levels as appropriate.
- Knowledge of and networks with other relevant actors including Brazilian based international and domestic NGO's who may provide additional response capacity if required.

The Assessment Team comprised BHP Billiton Senior Manager Social Policy James Ensor and independent Brazil-based international disaster response consultants Simone Rocha and Conor Foley. The assessment took place over a nine day period between 12 and 21 November 2015 and followed a mixed method approach combining quantitative and qualitative elements including:

- Analysis of relevant humanitarian, social and economic impact data as available.
- Interviews with representatives of key Municipal and State government agencies.
- Accompaniment of and interviews with key Samarco staff.
- Observation of relevant emergency response co-ordination and planning meetings.
- Visits to impacted communities and interviews with community members.
- Observation of government and Samarco meetings with impacted communities.

The Assessment Team identified three categories of affected populations:

- a) ***Involuntarily Displaced Families***: Principally but not solely residents of Bento Rodrigues and Paracatu who have lost houses or are otherwise unable to remain in their houses and whose immediate needs are acute.

- b) **Other Directly Impacted Communities:** Nine communities along an 80 kilometre stretch of river below Bento Rodrigues suffering inundation of tailings with varying degrees of impact including loss of houses, infrastructure, water and access. The majority of residents of these communities remain in-situ.
- c) **Affected Downstream Communities:** Those communities, businesses, towns and cities affected by interrupted water supplies but not subject to tailings inundation.

The report of the Assessment Team has made recommendations to Samarco in relation to the immediate and long term response to the incident. Overall, the report found the humanitarian response of government agencies and Samarco is meeting the immediate humanitarian needs of the affected population and being carried out in a timely, well co-ordinated and effective manner. Co-ordination and communication mechanisms between agencies were found to be professionally managed, with senior Samarco representatives actively engaged in key co-ordination forums, which were in turn effectively managed by government agencies.

The Report found that Samarco is placing the full weight of its human and physical resources at the disposal of the humanitarian response effort. It is also carrying out complementary needs assessments, and other research, to provide better qualitative data that can ensure the response remains appropriate, relevant, effective and timely.

#### 4. Independent Investigation and Reviews.

Together with Vale and Samarco, BHP Billiton is committed to determining and learning from the cause of the incident. We have jointly engaged New York-based law firm Cleary Gottlieb Steen & Hamilton to conduct an external investigation into the cause of the breach of the Fundão tailings dam and the Santarém water dam. Cleary Gottlieb will draw on expertise in disciplines such as geotechnical engineering and hydrology. Whilst we expect it will be some time before this investigation concludes, we have committed to publicly release the findings and share them with other resource companies.

BHP Billiton is also reviewing all tailings dams across the company's operations around the world. In addition, the International Council on Mining and Metals (ICMM), has announced it will convene a global review of surface tailings management across its member companies, including a review of standards, critical control strategies and emergency preparedness. BHP Billiton has supported this initiative and will actively contribute to it.

#### 5. Summary of Immediate Samarco Humanitarian Response.

The first priority of the emergency response was the welfare of impacted and affected community members. Samarco's mining operations were immediately halted following the incident. We expect the operations to remain suspended as authorities investigate and rectification work plans are developed. The Samarco workforce (comprising approximately 2000 employees and 2000 contractors) not involved in recovery are on mandatory vacation leave.

In close co-ordination with relevant government agencies, Samarco has undertaken a wide range of activities to support families and communities impacted by the failure of the Fundao Dam in the initial six week period following the incident. These activities are regularly updated on the Samarco website at <http://www.samarco.com/en/comunicados/> and can be summarised as follows:

- Support for displaced families including transition to rental housing in Mariana for all families by 25 December 2015.
- 100% restoration of community road access.
- Cleaning of mud inundation of impacted communities.
- Progressive reconstruction of bridges and community infrastructure.

- Provision of alternative essential services for impacted families and communities. This includes alternative primary and secondary education arrangements for displaced children, vocational training and provision of large scale additional health and psychosocial support.
- Income support for families with impacted livelihoods through issuance of debit cards containing minimum wages with provisioning for dependents. Importantly, this income support is being provided broadly to groups including displaced families, residents of impacted communities with interrupted livelihoods remaining in-situ and downstream and coastal affected groups with river dependent livelihoods including fishermen and sand and stone extractors.
- Tailored support for the Krenac Indigenous group in the region of Resplendor and dialogue with the National Indian Foundation (FUNAI) to discuss potential future impacts on the Indigenous Tupiniquim and Guarani communities in the region of the Comboios Reservoir in Espírito Santo.
- Distribution of temporary alternative drinking water and restoration of water treatment plant operations. Where water supplies have been affected, alternative water supplies are being provided by Samarco, working with local authorities.
- Water quality monitoring and analysis along the Rio Doce and in coastal areas.
- Animal rescue and care.
- Revegetation of impacted riverine environments.

## 6. Water Quality.

Samarco and local authorities continue to work in close collaboration to assess and monitor water quality throughout the Rio Doce river system. Public information on water quality is disclosed and continually updated by Samarco on its website at <http://www.samarco.com/en/category/water/>. In addition, a number of federal and state institutions of Espírito Santo have recently formed a governance group to jointly address issues related to the Doce River basin and to publicly report on water quality issues at [www.governançapelodoce.com.br](http://www.governançapelodoce.com.br).

Samarco has reported that tests on the sediments carried out by the Brazilian Geological Service (CPRM) from samples taken at four points in the Rio Doce river system over the period 14 November to 18 November 2015 indicate that concentrations of metals obtained at these sites do not significantly differ from the results produced by CPRM in 2010.

On 15 December 2015, the Brazilian Geological Service (CPRM) and National Water Agency (ANA) issued a second report in relation to additional sampling and analyses of the water quality of the Rio Doce. The report supports earlier assessments that the tailings material is non-toxic. The report states that, after proper treatment to comply with the potability standards defined by the Brazilian Ministry of Health, the water can be consumed by the population without any risk. Consistent with earlier studies, the report also indicates that levels of dissolved heavy metals in the Rio Doce (arsenic, cadmium, mercury, lead, copper, zinc and others) are, in general terms, similar to those found in analyses performed by CPRM in 2010.

All communities affected by the dam breach have access to drinking water, with Samarco having worked with municipal authorities to maintain potable water supplies. All water treatment plants downstream of the mine are now operating normally.

## 7. Remediation and Long Term Response.

BHP Billiton is fully aware of the scale and complexity of the long term recovery process. Samarco has engaged international experts across a range of disciplines to support their approach to long term recovery planning.

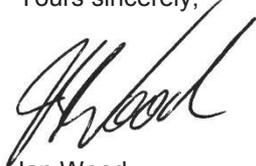
ERM and Golder & Associates have been engaged by Samarco to develop a strategy and plan in five workstreams for the next phase of the recovery process which will potentially include resettlement of Bento Rodrigues and possibly Paracatu, reconstruction of affected areas from Bento Rodrigues to Candonga Dam (80km downstream in the Rio Doce municipality), review of economic displacement and livelihood impacts from Candonga Dam to Linhares, opportunities for long term development of the regions and a stakeholder engagement strategy. In addition, Golder and Associates are developing a strategy and plan for the rehabilitation and restoration of affected areas of the river.

Samarco has signed a Preliminary Commitment in connection with the State of Minas Gerais to guarantee the allocation of funds totalling 260 million US dollars (or 1 billion reals) to an emergency fund to guarantee funding for a range of emergency measures including prevention, mitigation, remediation and compensation for environmental and social effects of the incident. An additional Commitment has been signed by Samarco that covers measures to prevent and mitigate socio-environmental impacts in the adjacent State of Espirito Santo.

On 27 November Vale and BHP Billiton announced plans to establish a voluntary, non-profit fund to support the rescue and recuperation of the Rio Doce river system, affected by the incident. The Fund will initially be sponsored by Vale and BHP Billiton. It is proposed that the Fund would have a committee to guide investment and oversee budget approval. A dedicated team will be responsible for its management and the Fund will undergo regular independent audits. We are finalising the governance, scope, financial and stakeholder arrangements associated with the Fund to ensure it can be put into effect as soon as practicable.

I would like to take this opportunity to thank the Working Group for providing the opportunity for BHP Billiton personnel to engage with them in Brazil both during and following their visit. BHP Billiton will continue to keep the Working Group updated on an ongoing basis.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'I. Wood', written in a cursive style.

Ian Wood,  
VP Community Relations and Sustainability

Cc:

Victoria Leuia Tauli-Corpuz, Special Rapporteur on the rights of Indigenous Peoples.

Baskut Tuncak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

Dainius Puras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Leo Heller, Special Rapporteur on the human right to safe drinking water and sanitation.