



*Permanent Mission of Brazil to the United Nations Office  
and other International Organizations in Geneva*

Geneva, November 16, 2018

Sir,

I refer to the joint communication from special procedures OL BRA 11/2018, issued on September 5, 2018, which asks the Brazilian Government for information concerning the renewed agreement of 25 June, 2018, that Samarco Mining S.A., Vale S.A. and BHP Billiton signed with the federal government and the state governments of Minas Gerais and Espírito Santo regarding socioeconomic and environmental reparations necessitated by the 2015 Doce River disaster. In this connection I present the annexed commentaries from the Brazilian General Attorney of the Union (AGU, in Portuguese).

Please accept the assurances of my highest consideration.

A handwritten signature in blue ink, reading 'Sérgio R. dos Santos'.

Sérgio Rodrigues dos Santos  
Minister-Counsellor  
Permanent Mission of Brazil

## ANNEX

The homologation of the Term of Transaction and Adjustment of Conduct (TTAC), in the Public Civil Action (CPA) no. 0069758-61.2015.4.01. 3400, originally celebrated by the Conciliation Center of the Federal Regional Court of the 1<sup>st</sup> Region (TRF1), was annulled. It had been signed by the federal government, by the state governments of Minas Gerais and Espírito Santo, and by the involved companies. The Federal Public Prosecutor's Office (MPF, in Portuguese) started a new CPA (0023863-07.2016.4.01.3800) in the 12<sup>th</sup> Federal Court of Minas Gerais, in which several rounds of negotiation took place, from October 24, 2017, to the first semester of 2018. The AGU, the MPF, Samarco, Vale, BHP Billiton do Brasil, Public Defenders, Minas Gerais' and Espírito Santo's State Public Prosecutor's Office, the Brazilian Institute of Environment and Renewable Natural Resources (Ibama), and the Interfederative Committee (CIF) participated in the meetings. As a result, the parts obtained a draft for the Governance Conduct Adjustment Agreement (TAC-GOV) in the mentioned CPAs (0069758-61.2015.4.01.3400 and 0023863- 07.2016.4.01.3800).

2. The parts involved signed the new agreement on June 25, 2018, and its text is attached to this communication. It has shifted the governance process established by the TTAC in order to design and implement the programmes, projects, and actions for integral reparation of the damages caused by the collapse of the dam of Fundão. The new agreement improves the mechanisms for the participation of the victims of the dam collapse, as well as the phases of the TTAC. Furthermore, it establishes a negotiation process that allows future redefinition of the programmes. The highlight among the guidelines of the agreement is the strengthening of the articulated joint action of the different levels of government of the federation with the aim of protecting the rights and restoring the living conditions of the people affected by the collapse of the dam.

3. The 12<sup>th</sup> Federal Court of Minas Gerais approved the agreement on August 8, 2010. The decision acknowledges that it is in accordance with international human rights law. As highlighted in the homologation: "obtaining institutional consensus on such a complex, delicate and multidisciplinary issue as the Mariana disaster is something truly new in our justice system. We inaugurate today a new institutional paradigm in terms of environment protection. It is a new behavior model for the Brazilian judicial institutions, who demonstrate to the country the ability to perform coordinated institutional actions in the search for the real public good."

4. The ongoing research on the Quilombola Component in the Region of Degredo has detected the need for strengthening environmental assessments, especially concerning to water and fish quality (in progress), according to information provided by the Technical Chamber on Indigenous and Traditional Peoples and Communities (CT-IPCT) of the Interfederative Committee (CIF), created as a response to the disaster. Another investigation currently under way is the Tupiniquim and Guarani Indigenous Components

Study. As requested by the community, its terms of reference include biological and environmental analyses of water and fish. Those are in the licensing phase. Despite the existence of terms of reference to the Krenak Indigenous Component Study, there are difficulties for advancing the assessment process because of indigenous reluctance to open negotiation with the Renova Foundation, created by Samarco and its shareholders to manage and implement measures for the recovering of the damages resulting from the disaster. An evaluation method able to compensate for the socioeconomic damages caused to these traditional communities has not been established yet. It is still necessary to analyze the possibilities of measuring immaterial aspects and providing collective compensation to the communities. The CT-IPCT is launching this discussing phase with the participation of representatives of those affected by the collapse of the dam.

5. Government institutions responsible for the policies for affected traditional communities participate in the process from the outset, conducting technical visits and meetings, as well as stimulating and supporting the self-organization of local commissions. As of July 2018, there were meetings in the affected territory, one in Degredo and Linhares and another in Coqueiral de Aracruz, integrating the affected communities and representatives of all government bodies involved. The integration of the affected communities, made possible by the financing of the necessary logistics for the transportation of the affected ones to the meetings, allowed the exchange of knowledge and information. As of October, the CT-IPCT invited representatives of the affected populations to join the Technical Chamber as members, an invitation accepted by the Tupiniquim and Guarani indigenous (three titular representatives, one from each ethnicity and indigenous land) and by the quilombolas of Degredo (one representative and one alternate). A representative of the Krenak also attended the meeting as an observer, and Krenak representatives participated in the meeting held in Tupiniquim and Guarani territory. It is worth noting that an increase in the representation of peoples and communities affected by the rupture of the dam in the CT-IPCT is expected, with the inclusion of categories such as the “faiscadores” and the artisanal fishermen.

6. The Federal Public Prosecutor's Office and the State Public Prosecutor's Offices of Minas Gerais and Espírito Santo also acted to ensure the participation of those affected in all decision-making bodies of the TAC-GOV, the new agreement, signed in August 2018. This agreement created local committees, which will congregate in Regional Chambers able to nominate representatives to the Interfederative Committee (highest decision-making body) and the Consultative Council of the Renova Foundation (responsible for carrying out actions to mitigate, repair and compensate damages caused by the collapse of the dam of Fundão). In addition, technical assistance from organizations specifically hired to provide guidance and to follow those affected in their representation bodies, within the framework of the CIF System, is assured. Estimates are that within six months from signing the TAC-GOV, local committees and regional chambers will already be set up, ensuring the participation of those affected in all the decision-making bodies created by the agreement.

7. Based on public consultations, the CT-IPCT concluded that the community does not trust the quality of the water available in the wells, rivers, and lakes. After complaints from the quilombola community of Degredo on the low water quality since the arrival of the sludge in the territory, the CT-IPCT issued a Technical Note indicating the need for Renova Foundation to supply drinking water for consumption. Initially, there was a request to deliver 5 liters/person/day. In September, after alignment with the “CT-Saúde” (Technical Chamber-Health), the Interfederative Committee decided to increase the supply to 15 liters/person/day, according to the UN disasters protocol. During a meeting attended by the affected, the CT-IPCT requested the Foundation Renova that the delivery of water should be accompanied by a campaign guiding the use of the water provided exclusively for consumption, food preparation, and personal hygiene. Moreover, the CT-IPCT requested a local commission to monitor the distribution of water, in coordination with the Renova Foundation, for eventual adjustments, in order to avoid waste. Failure to comply with the CIF resolution within the stipulated deadline has resulted in a fine of R\$ 280.000, to be paid for further compensatory action to be executed in the Degredo community.

8. During the meeting in the Tupiniquim and Guarani indigenous area in August 2018, it became also clear the need to provide drinking water to the community, especially to six villages that do not have their own supply system or are supplied by wells. During the assembly held in Pau Brasil village last August, leaders pointed out that the six villages should receive water in a similar way to the one in Degredo. The CT-IPCT issued a new Technical Note, requesting deliberation to the CIF, which determined the start of water supply at the rate of 15 liters/person/day in up to 15 days. The Renova Foundation reported that difficulties in finding suppliers and establishing water distribution logistics made it difficult to comply with the CIF's determination.

9. The City Hall of Linhares provides healthcare for quilombolas. Although the number of residents does not allow an on-site health unit, there are efforts for building a facility for doctors and nurses and, thus, improving the assistance to the local community. Unlike the quilombolas, the indigenous communities have a specific health system and at least one health unit per indigenous territory.

10. CT-IPCT has also asked the Renova Foundation for presenting its Mediated Indemnity Program, to initiate discussions with the affected on the possibilities of compensation focused in the collective rather than the individual, as is the current practice.

11. The Technical Chamber for Infrastructure Reconstruction and Recovery (CT Infra), in turn, has actively contributed to the definitions of resettlement and infrastructure recovery of affected sites. Issues related to resettlement in the municipality of Mariana are underway in Public Civil Action n. 0043356-50.2015.8.13.0400, in the 2<sup>nd</sup> Civil Court of that city. Specific information on resettlement is as follows:

- Resettlement of Bento Rodrigues:

12. In June 2017, after the approval by the population, Minas Gerais state government technicians involved in CT-Infra identified an error in the first version of the conceptual project of the resettlement. It provided for allocation in an area with a slope higher than 47%, which for safety reasons is not appropriate for settlement. (Law 12651/2012 and State Decree 44646/2007).

13. CT-Infra then notified the Renova Foundation, requesting adjustments to the urban design of the Bento Rodrigues resettlement, in an area known as Lavoura, establishing new guidelines for the resettlement process of this district and the communities of Paracatu de Baixo and Gesteira.

14. In February 2017, a conciliation hearing, under the aforementioned Public Civil Action, approved basic guidelines for the resettlement of Mariana (Bento Rodrigues and Paracatu de Baixo). As a result, a working group, called "Moradia Digna" (Decent Housing WG), was set up to monitor the resettlement process, with the participation of the Public Prosecutor's Office, commissions of affected persons, Cáritas, the Minas Gerais state government and representatives of the Renova Foundation, Samarco, Vale, and BHP. In the scope of the Decent Housing WG, the government of Minas Gerais proposed immediate start of the construction of the architectural projects of the houses of Bento Rodrigues, before, thus, of the end of the registry of those affected in Mariana, executed by Cáritas. At the same time, the analysis of the allotment project and the environmental studies were in progress. From July to August 2018, the environmental license and the urban project were approved, and the building permit was obtained. The work began in August, with a 22-month timeline for completion;

- Resettlement of Paracatu de Baixo:

15. Due to concerns about the land chosen for resettlement, Renova Foundation received a request to ensure that the area would allow the implementation of a sustainable rural development model, with water supply for human consumption and for farming. The community took part in workshops to define the resettlement project, approved in September 2018. The current perspective is to finalize the works by mid-2020;

- Resettlement of Gesteira:

16. Currently, the main aspects under negotiation for the Gesteira resettlement are the acquisition of land, the eligibility criteria, and the next steps for defining the project. The current estimate is to finalize the process by the middle of 2020.

17. With regard to the health condition of the populations affected by the disaster, a Technical Chamber on Health Issues was set up by the Resolution CIF 67, of May 9,

2017. This was coupled with the creation of regional technical groups in the States of Minas Gerais and Espirito Santo. As a result of the meetings held by the Health Technical Chamber between May 2017 and October 2018, the following outcomes were produced:

- proposed changes to the current TTAC, including the establishment of a program for monitoring the quality of water for human consumption;
- assessment of the Terms of Reference for a Epidemiological and Toxicological Study presented by the Renova Foundation;
- proposed minimum parameters for epidemiological and toxicological studies of the populations directly or indirectly affected by the event, to be developed by the Renova Foundation;
- proposed minimum parameters for quality assessment of water for human consumption in the water supply and distribution systems and of the alternative solutions utilized by the population directly and indirectly affected by the event. Also under the auspices of the Renova Foundation.
- assessment of the reports on activities of the Renova Foundation in the field of health.

18. In addition, the Health Technical Chamber is in charge of the Program for Total Health Care, Promotion, Protection and Rehabilitation of the population affected directly or indirectly, as well as by the Program of Quality Assessment of Water for Human Consumption. The first program includes a set of measures and actions necessary for the mitigation of the damage caused to the health of the population affected directly or indirectly by the event, including the monitoring of environmental, epidemiological and worker's health, sanitary and laboratorial conditions, health promotion, basic and specialized health care as well as pharmaceutical care; the commissioning of an epidemiological and toxicological study aimed at identifying the epidemiological, productive and sanitary profile of the population directly and indirectly affected, from Mariana to the mouth of the Doce River, so as to assess risks, impacts and damages, and their correlations resulting from the event; and the commissioning of a study to assess the health hazards associated with exposure in accordance with the guidelines of the Ministry of Health. The aim of the study is to identify impacts of the event to the health conditions of the affected population so as to indicate mitigation and compensatory measures to ensure their well-being. The second program includes the development of a sample plan to monitor the water quality in the affected municipalities, which is supposed to be carried out over a period of 10 years.

19. The analysis of the water test results carried out by the Evandro Chagas Institute on the basis of the Ministry of Health Ordinance nr. 2.194/2011, showed signs of the instability at certain instances because, in some samples, the values obtained for some parameters were above the minimum level allowed. This did not compromise the required

level of quality for the water supplied to be considered drinkable. Since 2017, the analyses carried out showed normal results for metals. It should be stressed that the Sample Plan the metals analysis includes several collection points in the affected municipalities.

20. The Health Technical Chamber is also in the process of developing a participatory process for the elaboration of action plans by the affected municipalities. This process includes the holding of workshops with health managers and teams of health experts, the commission representing the affected population and the local technical assistance teams. The goal is to present the methodology for the elaboration of the action plans for each municipality so as to enable them to plan, schedule, assess and execute actions in the field of health that are necessary as a result of the breach of the Fundão Dam.

21. As regards the individuals that were contaminated by heavy metals or that are in danger of being contaminated, there has been a restructuring of the conditions for caring for these patients, including their relatives, so as to ensure a proper clinical follow-up of their health situation as well as a monitoring of the levels of heavy metals in their bodies. This is system benefits from the partnership of entities such as the General Hospital (Hospital das Clínicas) and the Medical School of the Federal University of Minas Gerais (UFMG), which have the capacity to respond more efficiently to the monitoring needs of these patients. In addition, Human Health Risk Assessment Study is underway with regard to the municipalities affected by the disaster, which will be able to identify the risks of exposure and possible contaminants to each population as well as the potential consequences of the intake of contaminants.

22. With regard to water security, it is worth noting the implementation, in August 2007, of the Program for Systematic Qualitative and Quantitative Monitoring of the Waters and Sediments (PMQQS) in the Doce River and the coastal and marine areas. The program has the following goals:

- to determine, in a systematic fashion, parameters for water quality in the Doce River as well as the rivers do Carmo and Gualaxo do Norte in order to allow for the identification of anomalies, variations and tendencies in the quality parameters of those waters;
- to monitor short-term, abrupt changes in the quality of the waters in connection with interventions that may be undertaken in the bed of the Doce River and its tributaries;
- to inform users about the state of the waters in the aforementioned rivers.

23. In order to achieve these goals, 56 monitoring stations have been put in place along the Doce River and coastal region as well as 14 stations on lakes in the State of Espírito Santo, in the estuaries of rivers in the State and the coastal area, with the application of 42 physical and chemical parameters. There have been biomonitoring tests, ecotoxicological tests and measurements of the solid and liquid outflow and discharge.

There are, in addition, 22 automatic monitoring stations that work in real time and are equipped with devices capable of measuring the level of the river waters and assessing continuously the quality of the water. These stations will also be equipped with devices for the measurement of the meteorological parameters. The monitoring of sediment quality is carried out on the basis of samples collected every quarter.

24. The data generated by the PMQQS are assessed and compiled by the Renova Foundation, while there is also a Technical Supervision Group, staffed by experts from Federal and State environmental agencies to monitor and assess these data. In June 2018 the first partial report of the PMQQS was released with analysis from 29 monitoring stations comprising rivers Gualaxo do Norte (8), do Carmo (6) and Doce River (15) until Regência in the State of Espírito Santo. The report contains an assessment of 15 parameters of surface water quality. The analysis of the physical and chemical parameters, taking into account the legal limitations defined by the Joint Normative Deliberation COPAM/CERH-MG No. 01, of May 5th, 2008, as well as Resolution CONAMA No. 357, of March 17th, 2005, reveals that the violations did not surpass the values defined for Class 2 of the categorization of superficial bodies of water in the territory of Minas Gerais, which, according to Joint Normative Deliberation No. 01, of May 5th, 2008, consists of water that may be destined for: i) human supply and consumption after conventional treatment; ii) protection of water and riverbank communities; iii) primary contact recreation such as swimming, water skiing, diving; iv) orchard crop irrigation, as well as irrigation of parks and fruit trees, gardens, sports and leisure fields, with which the general public might come into direct contact; v) aquaculture and fishing activity.

25. It should be pointed out, in this regard, that, in accordance with the National Register of Water Resources Users, maintained by the National Water Agency, the following uses for the water of the Doce River have been identified: i) public water supply; ii) water supply for animals; iii) irrigation; iv) industrial activities; v) mining activities. With regard to public water supply, it is importante to stress that the waters that are originated from surface water sources (rivers, lakes, dams, among others) or underground (ground water, aquifers, water tables), and that are not subjected to any kind of treatment, are considered unfit for human consumption.

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