

29 March 2016

Mr Dante Pesce
Chair
Working Group on Human Rights and Transnational Corporations & other Business Enterprises
C/- WG HRB Secretariat
United Nations Office of the High Commissioner for Human Rights
workinggroup-business@ohchr.org

Dear Mr Pesce

In correspondence to Ms Margaret Junck dated 14 January 2016, I undertook to keep the UN Working Group on Human Rights and Transnational Corporations updated with regard to the response to the Samarco dam failure on 5 November 2015. In keeping with this commitment, I would like to take this opportunity to update you on the signing, on 2 March 2016, of a Settlement Agreement between Samarco and its two shareholders, Vale S.A (Vale) and BHP Billiton Brazil, and the Federal Government of Brazil, the States of Minas Gerais and Espirito Santo and certain other public authorities.

The Agreement provides a long-term remedial and compensation framework for responding to the impact of the Samarco dam failure and covers the relocation and recuperation of the most heavily impacted communities (Bento Rodrigues, Paracatu de Baixo and others). It will come into effect if approved by the Brazilian courts. The term of the Agreement is 15 years, renewable for periods of one year successively until all obligations under the Agreement have been fulfilled.

Samarco, Vale and BHP Billiton Brazil will establish a Foundation that will develop and execute environmental and socio-economic programs to remediate and provide compensation for damage caused by the Samarco dam failure.

The parties approached the negotiations with the strict principle of putting the impacted people first, and the primary aim of the Agreement is to establish a framework for the preparation, development and implementation of work programs with the objective of restoring the environmental and socio-economic conditions of the area to conditions existing prior to the event. Scientific studies will determine the scope of environmental remediation and socioeconomic works needed to repair damage caused by the dam failure. As described below, a Consultative Committee will be established to ensure strong community input to the implementation of the programs.

1. Key Elements of the Agreement

The Agreement comprises a total of 39 programs, divided into two general categories – Remediation and Compensatory.

Examples of agreed Remediation Programs include:

- *Environmental* – removal (where practical and feasible according to environmental studies) of sediment from the river; stabilisation and reforestation of river banks; biodiversity conservation programs.

- *Social* - rebuilding the towns of Bento Rodrigues and Paracatu de Baixo, repairing houses and buildings impacted in other communities; capacity building; and alternative livelihood programs.

The Settlement Agreement also provides for compensatory measures where no feasible remediation solution can be found (for instance where it is not practical or environmentally beneficial to pursue further remediation works).

In addition, the Settlement Agreement identifies special Compensatory Projects (BRL 500 million) in two defined areas of sewage treatment and landfill facilities.

Samarco will be responsible for the funding contributions to the Foundation under the Agreement. However, if Samarco fails to meet its funding obligations under the Agreement, its shareholders BHP Billiton Brazil and Vale will become responsible for any shortfall in the proportion of 50% each.

2. Social and Environmental Priorities

In the **social area**, major milestones include resettlement of Bento Rodrigues, Gesteria and Paracatu de Baixo.

Processes have been initiated to progress the re-establishment of these communities as a matter of priority; however as you would be aware resettlement is complex and dynamic. All community engagement and discussions around resettlement will be based on human rights and self-determination. The resettlement process will be entirely consistent with the international standards associated with resettlement set by agencies including the World Bank Group.

In the **environmental area**, major focus areas are the prevention of further tailings flow into the river and reducing turbidity. It is expected that substantial progress in reducing turbidity values will be achieved within the first few years, particularly under low flow conditions.

3. Foundation and Governance

A new not-for-profit Foundation will be established. The Foundation board will include representatives from Vale (2), BHP Billiton (2), Samarco (2) and the federal Government (1).

An **Inter-Federative Committee** (I-FC) comprising of representatives from a range of government agencies and the affected States will also be established. The role of the I-FC is to monitor the work of the Foundation and provide advice and guidance, as well as review and approve the scope of work determined by the Foundation. In the event that the Foundation is deemed to be failing to perform, the I-FC can take action to impose financial penalties.

An **Expert Panel**, comprised of representatives of subject matter experts (one appointed by the Foundation, one appointed by the I-FC and a third appointed by the first two) will facilitate the resolution of any disputes between the parties.

An **Advisory Committee** comprising 17 members from a range of key stakeholder groups (including five from the impacted communities) will be established to advise the Foundation board and ensure a strong community voice in all aspects of the Foundation's work.

An **Ombudsman** will also be established to address any community complaints about the performance of the Foundation.

The Settlement Agreement includes a firm commitment to best practice governance and transparent arrangements which will be applied in all aspects of the Foundation's work.

The Foundation will be subject to independent audit.

4. Restart of Samarco Operations

The Government has an economic and social incentive to facilitate the restart of Samarco's operations because Samarco is an important source of jobs (6,000 employees and contractors) and economic activity.

The Settlement Agreement does not include any binding commitment to a restart. Samarco will only restart operations after full technical reviews of the restart plan are completed, when it is safe to do so and only with the support of the regulatory authorities and the community.

5. Funding

Samarco will fund the Foundation with contributions as follows:

- BRL 2 billion (approximately US\$500 million) in 2016, less the amount of funds already spent on, or allocated to, remediation and compensation activity (for example amounts already paid by Samarco, or held in Court or frozen accounts),
- BRL 1.2 billion (approximately US\$300 million) in 2017, and
- BRL 1.2 billion (approximately US\$300 million) in 2018.

The amount of annual contributions for each of the years 2019, 2020 and 2021 will vary between a minimum of BRL800 million (approximately US\$200 million) and a maximum of BRL1.6 billion (approximately US\$400 million), depending on the remediation and compensation projects which are to be undertaken in the particular year. In addition, a further BRL 500 million has been committed to the sewage treatment and landfill works.

Post-2021, we expect the number of programs and, therefore, the funding requirements to decrease.

6. Timing

Works are currently underway to establish the Foundation with incorporation scheduled for mid-year 2016. Until the Foundation is fully operational, Samarco will be responsible for meeting the obligations under the Settlement Agreement, including all emergency humanitarian and environmental recovery actions.

7. Community Engagement

The nature of the settlement negotiations initiated by the Brazilian government has been such that *direct* stakeholder engagement has not been possible. However, the Settlement Agreement has been based on extensive work by qualified environmental and social scientists and responds to the concerns raised at regular community meetings.

Advice from the BHP Billiton's Forum on Corporate Responsibility (a group of international civil society leaders), following their visit to the Mariana region and engagement with a range of impacted people, has been taken into account and the Agreement addresses primary community concerns regarding the environmental and social impacts. Community engagement is a principle that is recognised as being key to the implementation of the Agreement.

8. Cause of the Tailings Dam Failure

We in BHP Billiton are determined to find out what caused the Fundão dam failure. Samarco, BHP Billiton, and Vale have jointly retained Cleary Gottlieb Steen & Hamilton LLP, an international law firm with offices in the United States and Brazil, to support a panel of world-leading geotechnical engineers in conducting the external investigation into the cause of the breach. This is a detailed forensic investigation that will draw on world-class science to ensure we understand the causes of the dam failure.

We have undertaken to share publicly the findings to reduce the chances of a similar accident happening again, in Brazil or anywhere else.

Our hearts remain with the families and communities who lost their loved ones and their homes as a result of the dam failure. We cannot undo the damage that has occurred but we are putting enormous efforts into the rebuilding and recovery work as well as working to ensure compensation where restoration is impossible.

We will continue to keep you updated, however, please do not hesitate to contact me should you have any queries or require clarification. I will be in Geneva from 13-15 April 2016 for a meeting with the IUCN and would be happy to brief you and any of your colleagues in person if this would be helpful. I am contactable on ian.b.wood@bhpbilliton.com or +61 419 359 981.

Yours sincerely,

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

Ian Wood

VP Health, Safety, Environment and Community
BHP Billiton Samarco Support Team

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