



PONTO DE CONTATO NACIONAL

MINISTÉRIO DA
ECONOMIA



National Contact Point

for the OECD Guidelines for Multinational Enterprises

FINAL STATEMENT

Complainants:

Building and Wood Workers' International, IndustriALL Global Union, Labor Union of Heavy Construction Industries of the State of Minas Gerais (SITICOP) and National Confederation of the Chemical Sector (CNQ/CUT)

Defendants:

Vale S.A. and BHP

NOVEMBER 01, 2019



PONTO DE CONTATO NACIONAL

Summary

Executive Summary	3
The Complainants.....	5
The Defendants.....	5
Initial Assessment.....	10
Reply.....	10
Meeting with Vale S.A. and BHP Billiton.....	12
Meeting with the Complainants.....	13
Additional Information.....	15
Conclusion.....	17
Recommendations.....	19
Annex I.....	21
Annex II.....	24
Annex III.....	27



PONTO DE CONTATO NACIONAL

EXECUTIVE SUMMARY

1. This Final Statement sets forth the conclusions of the analysis by the Brazilian National Contact Point (NCP) of the OECD Guidelines for Multinational Enterprises (Guidelines) with regard to the complaint filed in March 23, 2018 by the Building and Wood Workers' International (BWI), the IndustriALL Global Union, the Labor Union of Heavy Construction Industries of the state of Minas Gerais (SITICOP) and the National Confederation of the Chemical Sector (CNQ/CUT) against the multinational companies Vale S.A. and BHP.
2. After analysing the allegations and consulting the parties, NCP Brazil admitted and accepted the complaint on April 18, 2018.
3. Next, NCP Brazil forwarded the complaint to the companies, requesting them to submit replies. The companies presented their replies in August 2018.
4. On October 4, 2018, a meeting was held with the companies; It is noteworthy that BHP was represented by BHP Billiton Brasil. At the time, Vale S.A. provided clarification on the points presented in its response and reiterated the request to terminate the complaint. BHP, through BHP Billiton Brasil, informed that although it did not request the closure of the case, the continuation of it, only with this company, would make the instance less legitimate.
5. On February 13, 2019, a meeting was held with the complainants. At the time, the representatives reaffirmed the allegations brought, as well as refuted the responses presented by the companies.
6. NCP Brazil met with Vale S.A. on August 8, 2019 and with BHP Billiton Brazil on August 21, 2019, to request updated pieces of information on the allegations, as, for example, about compensation in judicial processes.
7. The lawsuit deals with specific measures taken from the tailings disaster that occurred at the Fundão dam in November 5, 2015, in relation to heavy construction employees working at the dam at the time of the accident that took place at the mining setting operated by Samarco Mineração S.A. in the



PONTO DE CONTATO NACIONAL

Mariana district. Samarco is a non-operating joint venture owned by BHP Billiton Brazil and Vale S.A., each one holding 50% of equity interest.

This Statement is in accordance with NCP Resolution Nº 01/2016 of November 16, 2016, which establishes the proceedings of the National Contact Point. It is also in accordance with the Guide Principles on Specific Cases, Part II of the Guidelines, item 35 of the Chapter Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, which provides that if the parties fail to reach an agreement on the issues raised, the NCP will issue a statement and make recommendations on the implementation of Guidelines.

8. This Statement has three annexes. In annex I, there is a chronological summary of the case with NCP Brazil. In annex II, a description of the government measures taken after the dam breach. Annex III provides information on the contacts of the parties involved.
9. This Final Statement is available on the NCP Brazil website at www.pcn.economia.gov.br.



PONTO DE CONTATO NACIONAL

THE CASE

THE COMPLAINANTS

Building and Wood Workers' International (BWI);

IndustriALL Global Union;

Labor Union of Heavy Construction Industries of the State of Minas Gerais (SITICOP);

National Confederation of the Chemical Sector (CNQ/CUT)

THE DEFENDANTS

Vale S.A. and BHP

THE COMPLAINT:

The complainants stated that:

On November 5, 2015, there was an accident at the Fundão dam, operated by Samarco company. The disaster resulted in 19 fatalities, including 14 workers, some of whom were directly employed by Samarco, but most of them were outsourced.

Samarco, Vale S.A. and BHP Billiton Brazil, in order to repair the damage caused by the Fundão dam rupture, established the Fundação Renova. This Foundation was created through a Transaction and Adjustment of Conduct Agreement (TTAC), signed by Samarco, Vale S.A. and BHP Billiton Brasil, by the federal government, the governments of the states of Minas Gerais and Espírito Santo and by environmental entities of the Federal Government.



PONTO DE CONTATO NACIONAL

Samarco reportedly failed to provide remedy in November 2017, as only two families had received compensation at that time.

There are deficiencies in the governance of the Fundação Renova, since it was constituted without the participation and involvement of the affected worker's entities. The union stressed that the Foundation is made up only of representatives of Samarco and that the community alleged that it was not consulted about programs as well as some decision-taken by the Foundation.

Samarco would not respect workers' right because the company would not allow access of union to enter the workplace in order to inform workers about their rights, especially those related to health and safety conditions.

Samarco has failed to respect the Collective Bargaining Agreement of outsourced workers, keeping in mind that the condition of outsourced workers was not in accordance with the Brazilian Law.

Samarco would have committed, through a Conduct Adjustment Agreement, not to outsource workers for the main task of the company, including the maintenance of the sedimentation basin.

Samarco has been violating basic safety standards such as providing the adequate personal protection equipment to promote safety.

Samarco would not comply with legislation related to working hours, as there were employees who worked overtime beyond the two hours allowed by the labour law.

Based on these facts, the complainants stated that BHP and Vale S.A. violated the following OECD Guidelines, as Samarco:

WOULD NOT PROVIDE LEGITIMATE REMEDIATION PROCESSES

Applicable Guideline:

"IV Human rights



PONTO DE CONTATO NACIONAL

Companies should:

2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address those impacts when they occur.

6. Provide or cooperate through legitimate processes in the remediation of adverse human rights impacts when they identify that they have caused or contributed to these impacts”.

FAILURE TO ALLOW UNIONS ACCESS TO WORKPLACE

Applicable Guideline:

“V Employment and Industrial Relations

Taking into account that in the context of the applicable law, current regulation and practices on employment and labour relations, as well as the applicable of international law standards, companies shall:

1. a) Respect the right of workers by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing.

b) Respect the right of workers employed by the multinational enterprise to have trade unions and representative organizations of their own choosing recognized for the purpose of collective bargaining, and engage in constructive negotiations with such representatives, either individually or through employees’ associations with a view to reaching agreements on terms and conditions of employment.



PONTO DE CONTATO NACIONAL

2. a) *Provide such facilities to workers' representatives as may be necessary to assist in the development of effective collective agreements;*

b) *Provide workers' representatives with such information as may be required to conduct meaningful negotiations on working and employment conditions;*

c) *Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.*

WOULD NOT HAVE MADE AVAILABLE PROPER HEALTH AND SAFETY MEASURES AND WOULD NOT HAVE RESPECTED THE WORKING TIME OF OUTSOURCED WORKERS

Applicable guideline:

"V. Employment and industrial relations

4. c) *Take adequate step to ensure occupational health and safety in their operation.*

I. Concepts and Principles

2) *Obeying domestic law is the first obligation of enterprises."*

FAILURE TO CONDUCT DUE DILIGENCE, INVOLVING TRADE UNIONS

Corresponding directive:

"II. General Principles

10. *Conduct risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts, as described in paragraphs 11 and 12, and account for how those impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*



PONTO DE CONTATO NACIONAL

“IV Human Rights

5) Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks and adverse human rights impact.”

The Complainants requested:

1. The development of a remediation plan that addresses the issue of compensation for families who have lost relatives, including providing care for the children of victims until 21 years of age;
2. Participation of the union in the decision-making Board of the Fundação Renova ;
3. Recognition of the union, providing it respect and access to workplace;
4. Support for union’s activities to promote occupational health and safety standards;
5. Regularization of outsourced workers hired in accordance with national law and so that they can exercise their rights;
6. Carrying out due diligence involving the union.



PONTO DE CONTATO NACIONAL

INITIAL ASSESSMENT

In a preliminary analysis, NCP Brazil concluded that the complaint submitted by the parties brought together elements that had thematic relevance with the following themes addressed by the Guidelines: Human Rights, Employment and Labour Relations. The complaint had a sufficiently delimited focus, presented information that could be analysed by objective criteria and was presented by agents directly or indirectly affected. For these reasons, the case was accepted by NCP Brazil.

However, it was pointed out that the acceptance of the case did not imply any decision on its merits, but only a preliminary consideration of admissibility. The parties would, from then on, be called upon to provide the necessary clarifications for further consideration of the matter.

REPLY

In response, Vale S.A. pleaded:

- Ineptitude of the complaint, as it presented the claim without including Samarco Mineração S.A., natural owner of most of the information received.
- Illegitimacy of SITICOP, since the union would not represent Vale S.A., BHP or Samarco workers. According to Vale S.A., there is only one union that has the factual and legal representation of Vale and Samarco workers in the Mariana region, which is the Mariana Iron and Metals Extraction Workers Union (Metabase Mariana).
- It has hired international experts to investigate the causes of the rupture and has taken steps to repair the victims.
- That, together with Samarco and BHP, Vale constituted on June 24, 2016 the Fundação Renova, the result of a Conduct Transaction and Adjustment Agreement (“TTAC”), which was responsible for executing the socio-environmental and socio-economic programs necessary to repair the damage caused by the breach of Fundão dam.



PONTO DE CONTATO NACIONAL

- That, based on all information obtained from Samarco, none of the OECD Guidelines for Multinational Enterprises has been disregarded concerning the right of unions to access workplaces.
- That Samarco activities, like all mining industrial activity, have intrinsic environmental risks to workers' health and that these risks are monitored, and personal protective equipment is provided to workers and that, when overtime occurs, these are subject to payment or compensation for future day offs and with non-deduction of absences.

Request

At the end, Vale required to dismiss the case in view of the complainant's illegitimacy and the ineptitude of the request.

In response, BHP, through BHP Billiton Brasil, claimed that:

The principles and rules set forth in the OECD Guidelines and alleged by the complainants have been and continue to be met by Samarco, Vale S.A. and BHP Billiton Brazilin with respect to the allegations brought by the Complainants;

Information from the Complainants regarding the remediation of the situation of communities and workers affected by the failure of the Fundão dam is incorrect and/or outdated;

Samarco had proper due diligence processes in place at the time of the Fundão dam failure. It has also an ongoing due diligence, in accordance with Fundação Renova's governance and advisory processes, that is being used to identify appropriate forms of remedy and to prevent or mitigate the risk of future adverse impacts.

The existence of a legitimate remediation mechanism is already in force, implemented by the Fundação Renova under the terms of court settlements between Samarco, BHP Billinton Brasil, Vale S.A. and the Brazilian authorities. The Fundação Renova is governed by a Board of Trustees, composed of representatives nominated by BHP Billiton Brasil, Vale S.A., Samarco and the Inter-federative Committee. Fundação Renova's governance structure also



PONTO DE CONTATO NACIONAL

comprises an Advisory Board, which includes representatives of impacted communities and experts in community development and education.

This remediation mechanism meets the criteria of accessibility, predictability, fairness, participatory nature (including being based on dialogue) and compatibility with the OECD Guidelines.

It would be inappropriate and redundant to use the NCP mechanism (through NCP Brazil) as a means to engage Vale S.A. and BHP Billiton Brazil, as these two companies, together with Samarco, are already subject to TTAC obligations, therefore intimately involved in the remediation process.

The complaint confuses the role of the OECD NCP (through NCP Brazil) with the role of the Brazilian Labour Courts and attempts to enter into an inadequate process of inquiry and specific legal determination that only the Courts could properly make.

The complainants make claims related to labour law against BHP Billiton Brazil and Vale S.A. based on issues that (even if valid, which is now contested) would only be attributable to Samarco.

In any case, complainants lack a legitimacy to make allegations based on OECD Guidelines against BHP Billiton Brasil or Samarco; and

The Brazilian labour law breaches claimed by the Complainants are not factually or legally correct, but in any case it would be inappropriate and redundant to use the NCP mechanism (through NCP Brazil) to address these allegations.

MEETING WITH VALE S.A. AND BHP

NCP Brazil held a meeting on October 4, 2018 with the alleged companies. At the time, BHP was represented by BHP Billiton Brasil. The Ministries of Environment and Labour were also present.

Vale S. A. pointed out that SITICOP had not made any previous contact with the company before or after the accident occurred in November 2015 and that, therefore, there was no request to Vale S.A. to justify submitting a claimant under the NCP.

BHP Billiton Brazil explained the possibilities of trade union involvement in the ongoing work on governance of the Inter-federative Committee and the



PONTO DE CONTATO NACIONAL

Fundação Renova, in view of the Governance TAC signed in August 2018, which had as one of its objectives to increase the participation of these affected people in the governance structure of the Fundação Renova.

The representative of the Ministry of the Environment, which is part of the Inter-federative Committee, whose function is to guide and supervise the Fundação Renova, stated that it was possible for SITICOP to participate through the governance established in the governance TAC. He also informed the existence of the Observers Forum and the Mariana Local Commission, through which SITICOP could address the request about outsourced workers. The Forum will be an advisory body composed of representatives of civil society, academics, affected people and traditional communities. Local Commissions will be transformed into Regional Chambers, which may appoint three representatives who will occupy vacancies of members (full members and alternates) in the Inter-federative Committee.

In turn, Vale S.A. stressed the importance of having an articulation between SITICOP and other unions in the region, in order to enable them to participate as a union representative in any governance structures of the Fundação Renova, as foreseen in Governance TAC.

MEETING WITH THE COMPLAINANTS

Although Vale S.A. requested the case to be terminated, NCP Brazil held a meeting on February 13, 2019 with representatives of SITICOP-MG, CNQ-CUT, IndustriALL and ICM-BWI. At the time, the replies presented by the companies were discussed, as well as the request of Vale S.A.

The representative of SITICOP presented a copy of a letter submitted by the Union to the Fundação Renova, dated July 24, 2018, in which the union requested a meeting with that foundation to discuss and negotiate workers' rights.

The reply by Fundação Renova, dated August 2, 2018, clarified that it did not have the legitimacy or right to discuss third party obligations, and this discussion would correspond to the employers of these workers; also, it would not share



PONTO DE CONTATO NACIONAL

information about hiring because it considers that such sharing should be guided by ethical criteria that preserve the individual and corporate rights of those who contribute to the process of reparation.

Regarding the companies' argument that there was no foundation and that the claimant was therefore ineffective, SITICOP stated that as a result of Fundão dam accident, fourteen of the nineteen people who died were workers: seven from Integra company, one from Samarco and six from Geosol, Manserv and Vix Logística companies. In addition, one hundred and eighty other Integral workers did not receive unhealthy benefits despite being in the dam at the time of the accident.

Those present reported that Samarco currently subcontracts, through the Fundação Renova, the employees working at the Fundão dam and surrounding areas and that the Fundação Renova operates as a buffer between contracted workers and the Samarco company. They also stated that currently it is no longer Samarco who hires the unionized workers by SITICOP, but it is the Fundação Renova itself.

Regarding the negotiations of the Collective Governance Agreement, TAC Governance, signed in August 2018, those present reported that Samarco participated at the entire negotiation of the TAC. However, the participants claimed that after the negotiations, Samarco failed to recognize all negotiations it had entered into and agreed before August 2018.

SITICOP also reported that it had already won three lawsuits, one against construction company Integral, another against Samarco, and a third lawsuit against Vale S.A. As stated by SITICOP, these lawsuits seek to provide reparation to victims and their families.

Fundação Renova reported that they do not want to participate in the Fundação Renova Deliberative Council and that they would like to create a Tripartite Advisory Council (local communities and trade union) to solve labour issues through the Agreement and with the participation of the Public Prosecution Service. They argued that the need for this dialogue is imposed on unions due to the fact that, as reported, Brail has four hundred endangered dams out of a total of twenty-seven thousand mining dams.



PONTO DE CONTATO NACIONAL

The complainants reaffirmed the demands of the complaint and stated that the mining union itself, Metabase Mariana, Samarco's employees' union, does not have access to the company's mining areas.

ADDITIONAL INFORMATION

Following this meeting and based on information about the compensation proceedings, NCP Brazil requested updated information to Vale S.A. and BHP Billiton Brasil regarding the labour lawsuits brought by the victims' families that are being kept under judicial confidentiality.

Based on this, the companies informed that agreements have already been concluded with 12 families (a total of 124 people) of the 14 workers. The agreements were approved by the Labour Court and Samarco made the payment, according to the agreed terms. They also clarified that the debate concerning the reparation of two (2) families was still *sub judice*, given that some families have different expectations, preferring judicial arbitration rather than settlement.

Samarco's right to union representation shall remain fully observed, whether in relation to primary operating activities or reconstruction activities in the affected areas.

The process of community repair and reconstruction is being led by the Fundação Renova and comprises 42 programs. The Foundation's activities are overseen by an Inter-federative Committee composed of 14 representatives of the Brazilian government, according to TTAC and TAC Governance.

BHP Billiton Brazil has reported that it is focused on supporting the activities of the Fundação Renova: (i) through funding Programs of TTAC- ; (ii) being represented on the Foundation Councils; (iii) offering professionals to work at Fundação Renova, to share their expertise in priority areas; (iv) being involved in issues such as safety, risk management, human rights and compliance.



PONTO DE CONTATO NACIONAL

Vale S.A. reported that it had never refused to participate in mediations with the postulant trade unions, but had never been officially contacted by the Complainants to discuss issues related to the Fundão dam failure. After the contact with Samarco and BHP, Vale had found that these companies had never been contacted by the complainants. Thus, Vale S.A. stated that it understood that it had not established any conflict that would lead to mediation by third parties, given that the possibility of mediation presupposes the existence of a conflict and the parties' inability to resolve it directly without the assistance of a neutral and impartial third party. It concluded that it considers inappropriate and unproductive to set up a mediation before a direct dialogue between the parties has been established, and before a conflict and its boundaries have been set up.



PONTO DE CONTATO NACIONAL

CONCLUSION

It is important to mention that institutional changes occurred in the NCP Brazil, while handling this case. This procedure became the responsibility of the Ministry of Economy from January 2019, because it assumed responsibilities of the former Ministry of Finance. With this change, there was a transitional period, the main reason why the new team needed some time to become aware of this specific instance and publish this Final Statement.

Analysing information and arguments brought by the Defendants, there is a limited understanding of the concept of due diligence on which the OECD Guidelines are based. Due diligence, as foreseen in the Guidelines, should be done not only in the own operations of companies, but also along the supply chain and with service providers, since multinationals are able to, via contractual relationship, influence other companies to operate in accordance with the OECD Guidelines.

Clearly, because of the great bargaining power that multinationals have with their suppliers, such companies are able to influence the behavior of suppliers and subcontractors to operate in accordance with the OECD Guidelines.

The purpose of these Guidelines is to assist companies in preventing them from taking actions with adverse impacts related to labour, human rights, environment, corruption, consumers and corporate governance issues that may be associated with their own operations, supply chains and other business relationships.

Despite the seriousness of the accident and all negative externalities caused to the population and to the environment, the companies declared they were taking steps to remedy the impact.

In general, the remediation has been done in two ways: through the Fundação Renova, the entity responsible for repair the damage caused by the Fundão dam rupture, and through agreements made by Samarco in the Labour Court, with the participation of Vale and BHP Billiton Brasil.



PONTO DE CONTATO NACIONAL

Regarding the governance of the Fundação Renova the Governance TAC was signed in June 25, 2018, which serves the purpose of increasing the participation of those affected in all stages of the reparation process.

It is important to mention that, as reported, agreements have already been made with the families of all seven outsourced workers of Integral; Only for one victim was a partial agreement reached with most family members, except with wife and mother.

This proceeding is terminated without the provision of good offices by NCP Brazil as Vale S.A. has requested the termination of the proceeding and, as stated in the Guidelines, both Parties must agree to pursue with the proceeding of mediation.

As a result of this process, the Defendants seem to have understood the importance of ensuring that their actions prevent potential adverse impacts as both companies have joint action to support remediation processes. BHP, in its final statement, ratified its role with Samarco to mitigate the impacts caused and prevent others in the future.

It is also important to mention that the accident that motivated the claim, despite the negative aspects presented, has motivated also the adoption, by the Brazilian government, of a set of measures for the mining sector to prevent further accidents.

The Government performance in recent years has been guided by initiatives related to the construction of a new institutional and regulatory framework, covering three issues: I) update of the Mining Code regulation, II) modification of rates, forms of calculation and distribution of royalties (CFEM), and III) creation of the National Mining Agency, replacing the National Department of Mineral Production (DNPM).

Such changes in the regulatory and institutional frameworks aim at achieving greater legal stability and regulatory and institutional modernization, allowing for a vision of the future based on the social and environmental sustainability of the sector and on its technological development, associated with the increase of its efficiency and competitiveness.



PONTO DE CONTATO NACIONAL

It is also worth mentioning the meeting held by NCP Brazil, on March 22, 2019, with the Brazilian Mining Institute (IBRAM), to discuss possible cooperation between NCP Brazil and IBRAM to promote the OECD Guidelines and the due diligence throughout the mining industry. This issue is under consideration within the NCP.

A draft of this report has been sent to the parties for comment. This release has considered most of their contributions and responses.

RECOMMENDATIONS

Based on the information submitted and the discussions held, NCP Brazil recommends that the companies involved:

1. In order to prevent future risks, assess whether the accident occurred at the Dam was directly related to Samarco's own operations or to the services contracted by Samarco;
2. Disseminate relevant information about due diligence processes, taking into account commercial confidentiality and other competition or security concerns;
3. Make sure that their decisions take into consideration not only economic but also social and environmental aspects;
4. Seek to exercise their power of influence within the Samarco Board of Directors, so that Samarco acts in accordance with the OECD Guidelines;
5. Encourage the positive contribution of Samarco's dialogue with SITICOP and CNQ-CUT so that they can cooperate jointly to take action to promote the Guidelines and to verify whether labour rights of employees and outsourced are being observed;
6. Include risks that are external to their risk management system. The word "risks" in the OECD Guidelines refers not only to the company itself, but also to risks outside the company, that is, the likelihood of adverse impacts on people environment and society.
7. Disseminate the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct within their respective companies at the high management and operational levels, so that, these practices are incorporated into the organization culture of companies.
8. Encourage discussion and disseminate the OECD Guidelines for Multinational Enterprises in the mining sector forums, so that mining companies can better understand the recommendations contained in the Guidelines.



PONTO DE CONTATO NACIONAL

9. Strengthen resources for due diligence in their operations for the purpose of adopting Responsible Business Conduct so that they are able to avoid negative impacts related to non-compliance with the Guidelines (labour rights, human rights, environment, anti-corruption, extortion and bribery, protection of consumers and others), in their activities and in relation to third parties.

10. Carry out due diligence on mining activities, mainly in the dams, providing IBRAM with evidences of due diligence agreement with trade unions to promote the Guidelines.

11. Companies shall take into consideration the ability and willingness of business partners to comply with the Guidelines. The OECD Guidelines state that companies must remedy the adverse impacts they cause or contribute to. It is therefore important that they assess the ability and willingness of their suppliers to carry out due diligence. This is the process that companies must undertake to identify, prevent, mitigate and account for how they deal with these actual and potential adverse impacts on their own operations, their supply chain and other business relationships.

12. Reassess impacts at regular intervals and pay attention to potential adverse effects on individuals in groups or populations that may be at increased risk of vulnerability.

Despite the fact that the Guidelines represent a set of voluntary compliance guidelines, NCP Brazil expects the recommendations presented to be considered by the parties involved, as compliance with them reduces the occurrence of risks of the magnitude observed.

This Final Declaration is completed and closed.

Renato Baumann

National Contact Point Coordinator of OECD Guidelines for Multinational
Enterprises



PONTO DE CONTATO NACIONAL

Annex I

Chronological summary of the case

26 March 2018 IndustriALL published on its website an article stating that it referred the case to the NCPs of the three countries.

<http://www.industriALL-union.org/industriALL-and-bwi-file-complaint-against-bhp-billiton-and-vale-sa>

27 March 2018 NCP Brazil received an electronic message about the case..

04 April 2018 Vale S.A. contacted NCP Brazil to discuss an article published on the Internet.

18 April 2018 GTI-NCP meeting to discuss the allegation received. The claimant was accepted by the Working Group. The Ministry of Labor, Ministry of Environment and Ministry of Human Rights were defined as rapporteurs of the case.

25 April 2018 Receipt of the claim on paper by NCP Brazil

25 April 2018 Message sent to IndustriALL, reporting on the meeting that admitted the allegation and requiring additional information to accept the case.

02 May 2018 Ministry of Labour forward questions to be sent to the Claimants for clarification and further information.

17 May 2018 Submission of the questions to the complainants

11 June 2018 NCP Brazil receives the answers and sends them to the Ministries.

15 June 2018 Meeting with the NCP Working Group to discuss the acceptance of the instance. Although all the representatives of the group have manifested favourably, the Labour Inspection Secretary of the Ministry of Labour, rapporteur of the case, should still give his final word on the acceptance of the case.

18 June 2018 Deadline for the reply from the Secretary of the Ministry of Labour.



PONTO DE CONTATO NACIONAL

20 June 2018 NCP Brazil receives the acceptance report from the Ministry of Labour.

27 August 2018 NCP Brazil receives the reply from Vale S.A., when the company requested the case to be closed.

28 August 2018 The reply by BHP Billiton Brazil was received.

04 October 2018 Meeting with the companies BHP Billiton Brazil and Vale S.A., in Brasilia.

07 November 2018 NCP informed the Complainants about Vale's request to close the specific instance.

10 January 2019 NCP invited the Complainants to a meeting in Brasília, so that, despite Vale having requested the closing of the claim, all parts involved could receive the same treatment and the good services of the NCP.

13 February 2019 Meeting with the representatives of SITICOP, CUT, BWI and IndustriALL, in Brasilia.

19 February 2019 Submission of the reports of the meetings with both parties to the OECD, in Portuguese.

09 August 2019 Meeting with Vale S.A. to request updated information.

21 August 2019 Meeting with BHP Billiton Brazil to request updated information.

02 September 2019 Submission of additional information by Vale S.A.

10 September 2019 Submission of additional information by BHP Billiton Brazil.

02 October 2019 Final Statement sent to the parties for manifestation.

15 October 2019 Vale S.A. presented contribution to the Final Statement.



PONTO DE CONTATO NACIONAL

16 October 2019 BWINT manifestation regarding the Final Statement is received.

17 October 2019 BHP Billiton Brazil's presented manifestation to the Final Statement.

23 October 2019 Submission of the Final Statement to GTI-NCP members (Decree nº 9.874/2019) for approval.

01 November 2019 NCP sent the Final Statement (Portuguese version) to the Parties and to OECD.



PONTO DE CONTATO NACIONAL

ANNEX II

Government measures taken after the dam rupture

2015-2018

1. Monitoring the implementation of measures proposed by Samarco to reinforce remaining structures damaged due to the accident.
2. Initially an emergency action plan was drawn up by DNPM (current ANM), shortly after the Fundão dam rupture. The entity had a contribution of R\$ 9 million in addition to its budget, allowing hiring specialized technical support, to uphold the staff of the entity, to perform on-site inspections, as a matter of urgency, in 224 tailings dams located in Minas Gerais, most of them in the Quadrilátero Ferrífero region.
3. Suspension, by the DNPM, of the analysis and approvals of all requests for the granting of tailings dam mining inserted in the National Dam Safety Policy – PNSB projected by the construction method of upstream elevation with the tailings itself.
4. A work plan was signed between DNPM, CPRM and SGM for the development of specialized knowledge and supervision of projects with mining tailings dams, effective until December 31, 2017. Within the scope of the mentioned plan, the following were accomplished:
 - Training course on engineering aspects, construction methods, Instrumentation/listening, risk management and standard supervision, in December 2016;
 - Update of National Dam Safety Information System (SNISB);
 - Data entry of 800 mining tailing dams in the system managed by the National Water Agency – ANA;
 - Mining Dam Safety Inspection Course held in September 2017.
5. Publication, under the National Dam Safety Police, of Ordinance DNPM nº 70.389, of May 17, 2017, creating strict rules for the monitoring of mining tailings dams. Through the Ordinance, the National Mining



PONTO DE CONTATO NACIONAL

Dam Register and the Integrated Mining Dam Safety Management System (SIGBM) were created.

At SIGBM, the information is periodically provided by the entrepreneur, legally responsible for the security of these structures, providing data to ANM in real time.

The Ordinance also determined the qualification of the technical managers, the minimum content and the level of detail of the Dam Safety Plan, the Regular and Special Safety Inspections, the Dam Safety Periodic Review and the Emergency Action Plan for Mining Dams.

6. At the end of 2017, the Mining Dam Safety Technologies and Equipment Seminar, organized by DNPM and MME. The purpose of this second event was to promote discussion between mining companies operating tailings dams and companies producing equipment and Technologies in the design, construction, operation and monitoring of tailings dam.
7. Creation of the National Mining Agency, through MP 791, which implied the modernization, transparency and improvement of the routines of the entity responsible for mineral management, especially during inspection. processes.

2019

8. Creation of the Ministerial Council for the Supervision of Disaster Responses, which recommend, through the Resolution nº 1 of January 28, 2019, actions and measures to respond to the rupture of Córrego da Mina do Feijão dam, in the municipality of Brumadinho, State of Minas Gerais, in addition to measures and actions for inspection and updating of Dam Safety Plans of the inspection agencies, with a view to safeguarding the integrity of the workers;
9. Issue of MME Ordinance nº 66, of January 25, 2019, which determines the verification of the circumstances that resulted in the rupture of the B1 dam of Complexo da Mina do Feijão, in the municipality of Brumadinho, State of Minas Gerais and the mitigation of harmful effects caused by the rupture of this dam.



PONTO DE CONTATO NACIONAL

10. Publication of Ordinance of the Secretary SGM/MME (Ordinance nº 22 of February 1, 2019). It establishes the opening of administrative proceedings with the purpose of collecting all information, data, documents, manifestations and decisions under the SGM-MME related to the breach of dam B1 of the Complexo da Mina do Feijão, for the adoption of the necessary measures regarding the prevention, control and mitigation of the consequences of damage caused by the rupture of the respective Dam;
11. Intense activity by the ANM in the field to investigate and control of remaining structures and other mining dams, with a new national priority classification, especially those of high risk and/or high potential damage;
12. Discussions with the Chief of Staff at the Presidency regarding the revision of Law nº12.334/10, which establishes the National Dam Safety Policy (PNSB).
13. Publication of the Resolution nº 4, of February 15, 2019, which establishes precautionary regulatory measures aimed at ensuring the stability of mining dams. The regulation establishes the prohibition of the construction of dams by the method called “upstream”, and establishes a schedule for decommissioning these structures.



PONTO DE CONTATO NACIONAL

ANNEX III

Information on the parties involved

NCPs involved in the instance:

NCP Brazil, Responsible for the instance.

Renato Baumann

Brazilian National Contact Point

Ministry of Economy

CAMEX Executive-Secretariat

Esplanada dos Ministérios, Bloco J; CEP: 70.053-900

Email: pcn.ocde@economia.gov.br

NCP Australia

Victoria Anderson

Australian National Contact Point

c/- Foreign Investment Division

The Treasury

Langton Crescent

CANBERRA ACT 2600

Email: ancp@treasury.gov.au

NCP UNITED KINGDOM

Allen Anie

UK National Contact Point

Department for International Trade

3 Whitehall Place

London SW1A 2AW



PONTO DE CONTATO NACIONAL

United Kingdom

Email: uk.ncp@trade.gsi.gov.uk and allen.anie@trade.gsi.gov.uk

Complainants

BWI

Albert Emilio Yuson, General Secretary

Building and Wood Workers' International (BWI)

54 route des Acacias, CH-1227 Carouge GE Switzerland

Email: ambet.yuson@bwint.org

Tel.: +41 22 827 37 77 Fax: + 41 22 827 37 70

<http://www.bwint.org>

IndustriALL Global Union

General Secretary

54 bis, route des Acacias, Case Postale 1515

CH-1227 Geneva Switzerland

Phone: +41 22 308 5050

Email: vsanches@industriALL-union.org

SITICOP

José Antônio da Cruz, President

Street Bueno Brandão 475 – Santa Tereza – Belo Horizonte-MG – Brazil

Phone: +55 31 32177200

siticopmg@gmail.com

www.siticopmg.org.br



PONTO DE CONTATO NACIONAL

CNQ-CUT

Lucineide Varjão, President

Rua Major Diogo, 634 – 1º andar – Bela Vista – São Paulo-SP

CEP: 01324-000

Phone: +55 11 3255 9859

lu@cng.org.br

www.cng.org.br

Companies

BHP and BHP Billiton Brasil

BHP Billiton Brazil has a 50% equity interest in Samarco and is a member of the BHP Group, a global resources company. BHP has a corporate structure comprising BHP Group Limited. The Group's global headquarters are in Melbourne, Australia. BHP Group Limited is headquartered in London, United Kingdom.

Contact

BHP Billiton Brasil

Av. das Américas, 3434

CEP: 22640-102

Telefone: +55 21 3431 1600

Vale S.A.



PONTO DE CONTATO NACIONAL

Vale S.A. is a multinational mining enterprise. The company owns 50% of Samarco, the world's largest producer of iron ore and nickel. It also produces manganese, copper, bauxite, potassium, kaolin, alumina and aluminum. In the electricity sector, it participates in consortia in nine hydroelectric plants in Brazil, Canada and Indonesia.

Contact

Ed. Torre Oscar Niemeyer, Praia de Botafogo, nº 198, 9º andar,
Botafogo- Rio de Janeiro – RJ – Brazil

CEP: 22.350-145

<http://www.vale.com/brasil/PT/Paginas/default.aspx>