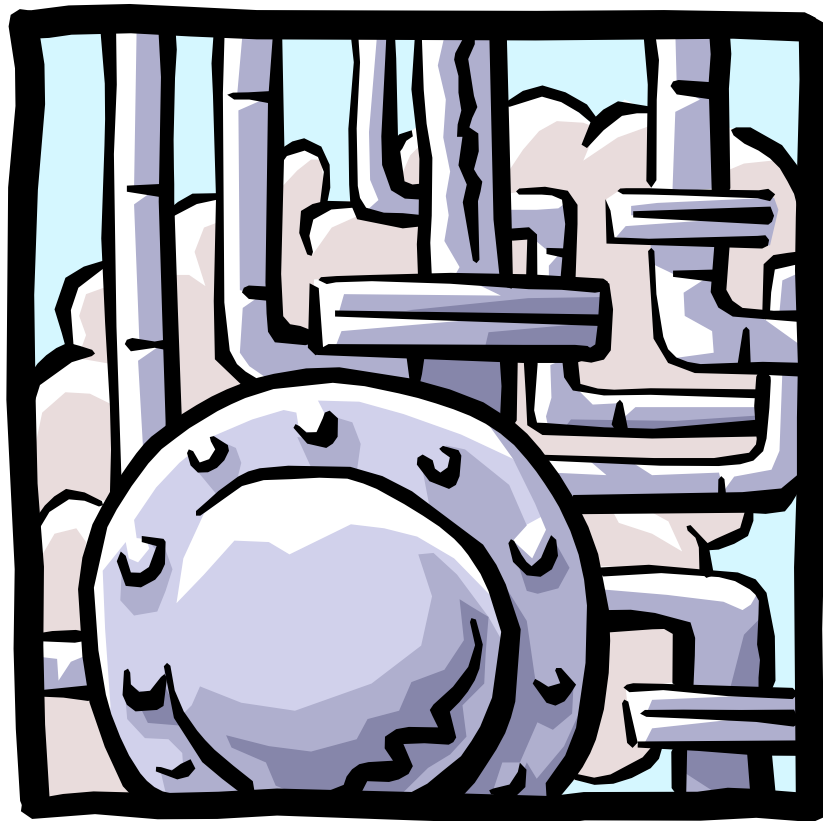


ECCR

The Ecumenical Council
For Corporate Responsibility



BHP Billiton:

The End of the Pipe - Policies into Practice?

September 2004

Produced with the assistance and co-operation of the
Bench Marks Foundation for Southern Africa and the
Christian Centre for Socially Responsible Investment (Australia)

Acknowledgements:

ECCR is grateful to:

The Society of St. Columban, for providing financial assistance, which has enabled the research and publication of this document.

The Ethical Investment Research Service (EIRIS) for allowing us the use of their research information.

About ECCR:

The Ecumenical Council for Corporate Responsibility (ECCR) seeks to promote corporate responsibility in the Church and in companies, in response to the Church's mission to work for justice within economic structures and responsible stewardship of the earth's resources.

Our membership spans all of the denominations of the UK churches. We also have links with churches and religious investor networks in North and South America, Southern and West Africa and Asia.

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i. INTRODUCTION

This document seeks to measure the extent to which BHP Billiton, one of the world's largest mining and resource companies, has adopted policies and practices that enable it to act in an environmentally and socially responsible manner.

The following analysis is based on research carried out by The Ecumenical Council for Corporate Responsibility (ECCR) over the summer of 2004. It is based on a wide range of publicly available material produced by the company, the international press, industry and non-governmental organisation (NGO) sources as well as information that has been researched and provided by our global network partners, The Bench Marks Foundation for Southern Africa (BeFSA) and the Christian Centre for Socially Responsible Investment (Australia).

By publishing this information ECCR hopes primarily to better inform religious and other investors about the companies in which they invest. We hope that this information will help inform their investment and engagement strategies.

We also hope that this information will help inform communities and other stakeholders who are impacted by BHP Billiton operations.

Bench Marks

ECCR has based this report on the framework of the *Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance 2003 Edition*.¹ This document was drawn up by faith communities around the world as a tool for measuring corporate behaviour, setting down Criteria and Bench Marks which they believe should be fundamental to a responsible company's behaviour.

Where a particular criterion or bench mark from the *Principles for Global Corporate Responsibility* has been used in this report, this can be identified by its *Bench Marks* indicator which appears in parentheses.

More information on the *Principles for Global Corporate Responsibility* can be found in Appendix A.

Using this report

ECCR hopes that this report will be a practical tool that will help investors in their investment and engagement strategies. To this effect, at the beginning of each section we have included a boxed list of questions, which we feel arise from our research. We hope that investors with concerns on a particular issue will be able to use, or adapt those questions, either in their engagement with mining companies directly, or with their fund managers or pension fund trustees.

Before ECCR published this report, we shared its contents with BHP Billiton and invited the company to comment on our analysis. The company chose to accept our invitation and provided us with additional information on all of the points that ECCR has highlighted in section ii. (Summary of initial findings). This information generally consists of further information on the company's approach to the issues we have raised as well as some specific information on some of the case studies that are highlighted throughout the report.

¹ The full text of the Bench Marks document is available at www.bench-marks.org

Much of this information will, we believe, be of additional value to anyone with an interest in BHP Billiton and so it has been included as Appendix D: beginning on page 77.

In the interests of balance, it is important to note that the company has specifically disagreed with four statements expressed by ECCR or others as part of this report. Where this is the case we have indicated as such in boxed parentheses at the relevant part of the text.

Although the company has responded to the key issues highlighted by this report, it states that it has not sought to address every question posed at the beginning of each section. The company has indicated that it is, however willing to address these on a case-by-case basis with ECCR and other stakeholders.

ECCR hopes that it will be able to take forward some of these discussions in the coming months and would be interested to hear from other stakeholders involved in similar processes.

An ongoing project:

ECCR has been particularly fortunate that our partner organisations BeFSA and CCSRI have been in a position to provide us with first hand site-level information for use in this report.

BeFSA in particular hopes to be able carry out more research of this type over the coming year by visiting more of the communities affected by BHP Billiton operations. We intend to be able to provide a further report based on this information in 2005.

ii. SUMMARY OF INITIAL FINDINGS

Our research has shown that at the corporate level there seems to be a high level of awareness within BHP Billiton that it should act in an environmentally and socially responsible manner. The last few years have seen the development of a number of statements, guidelines and standards on a range of issues to guide practice at site level.

We felt that in general, with a few exceptions outlined below, the company has developed a relatively advanced set of policies, which give consideration to many of the issues that our partners have raised in the Bench Marks document.

For example, we were pleased to find that the company's health, safety, environmental and community reporting is relatively advanced, involving both an overall annual health safety environment and community report and a high level of site level reporting. (The company states that 73% of its sites produce their own report.)

Whilst ECCR certainly welcomes this, we feel that there are still a number of areas which the company does not seem to have addressed and about which we would like to see more information. These include policy and practice on developing renewable energy sources, biodiversity policy, policies and procedures on training of workers, transparency on lobbying and information on what the company is doing to support transparency initiatives such as the Extractive Industries Transparency Initiative. More information on these issues is given throughout the main report and has been summarised in section ii.i below.

We are also strongly aware that the development of policy is not necessarily the same as implementing it. Our experience has shown that this can be a lengthy and difficult process.

We have received a number of reports, particularly from our Southern African partner, BeFSA, which indicate that BHP Billiton is no exception to this.

Furthermore, the company is involved in a number of controversial projects, which civil society groups have criticised. We believe that in such instances it is particularly important that the company ensures, and proves to stakeholders, that it is acting in an appropriate and responsible way. Failure to do so, we believe could represent a reputational risk for the company, either now or in the future.

ii.i POLICY CONCERNS

Despite the fact that many of BHP Billiton's policies reflect the concerns expressed in the *Bench Marks*, we felt that there were a number of areas that the company had either not considered or did not report on. Given that a number of these areas also linked to criticisms made of the company by civil society groups, we feel that more information is needed to enable socially responsible investors to make informed decisions.

Environmental management (Section 2)

The company's environmental management policies are relatively strong in terms of measuring levels of 'end of pipe' type impacts and in reporting on these. However, there appears to be less clarity around managing other aspects of environmental impact. These include apparent lack of policy on biodiversity, measuring cumulative impacts of BHP Billiton and other operations in a given area and the apparent lack of a programme to make greater use of renewable energy within the company's operations.

The company has stated that it is conducting a study to look at the wider biodiversity impact of its operations. ECCR would like to see the results of this so far and to learn of any group wide policies or procedures to minimise impact on biodiversity.

Many of the company's activities (such as smelting) are high users of energy. The company has, to its credit, implemented energy conservation programmes at a majority of its sites, and claims that its smelters are amongst the most energy efficient in the world.

ECCR applauds these efforts but would also advocate greater use of renewable sources of energy where possible. Publicly available documents would indicate that the company has expressed interest in sourcing energy – and in some case generating its own energy from hydroelectric sources. However, several of the proposed projects have been criticised for their potential environmental impact and displacement of thousands of people.

ECCR would like to know whether the company currently sources any of its energy from other renewable sources and whether serious consideration has been given to extending the use of such sources.

Upholding National Regulations (Section 1)

The company has a policy that it will uphold national regulations in the countries in which it operates. However, on at least two occasions, in Indonesia and Mozambique, the company has successfully negotiated exemptions to some of those regulations.

ECCR feels that this is a matter of significant potential concern, particularly as upholding national laws is one of the company's key policy commitments. We would like to see further information on the circumstances in which the company feels it necessary to seek exemptions from national legislation.

Transparency in government payments (Section 3)

The company has made various statements supportive of the UK government's Extractive Industry Transparency Initiative (EITI), which aims to promote greater transparency about the payments made to government by resource companies. However, despite this it is not clear what the company is doing to implement the recommendations of the EITI.

ECCR recognises that full transparency is likely to be problematic for the company in countries where the government is hostile to this. However, we feel that the company should provide information on what it is doing to promote transparency and should at least provide such information in countries such as Indonesia and Trinidad and Tobago where governments have signed up to the principles of the EITI.

Working with suppliers and business partners (Sections 8 and 9)

The company does state that an assessment of suppliers and business partners is carried out to establish the levels of social or environmental risk attached to them, before entering into any contract, and that suppliers are informed of specific BHP Billiton requirements in this regard. It is not clear whether these requirements are likely to be consistent across the company, nor whether any specific requirements are made of business partners where BHP Billiton does not have a majority holding.

It is also unclear whether the company has any formal mechanism for regular monitoring of suppliers and business partners to ensure that they are acting in a socially and environmentally responsible manner, nor, if such mechanisms do exist, what procedures are recommended in response to persistent non-compliance with them.

ECCR would encourage greater transparency on these issues and is particularly interested to learn more about how the company works to maintain high standards on the part of business partners where BHP Billiton does not have operational control or a clear majority shareholding in a project.

Lobbying (Section 10)

There have been several reported instances where the mining industry in general has been accused of lobbying governments to develop legislation that is not in the wider public interest, or which brings a disproportionate benefit to the corporate sector. Cases include recent changes made to aboriginal land rights in South Australia and changes made to the Colombian mining code.

There have also been instances, such as the case of Gag Island in Indonesia, where BHP Billiton has been seen to be successful in persuading governments to grant exemptions to national legislation. In the latter case, when the nature of lobbying was uncovered, through Australian Parliamentary questions, it resulted in controversy and in our opinion could have represented a reputational risk for the company.

ECCR feels that it is important that a company's lobbying practices do not work to undermine the goals of its social responsibility policies and practices. In this respect we feel that the company should be more transparent with regard to its direct lobbying actions and those undertaken by industry associations on its behalf.

Core impacts on and relationships with communities (Sections 4 and 5)

It would appear from our research that the company's actions towards communities in which it operates is very much mixed. A major component of the company's strategy in this respect appears to be its charitable 'community investment' programmes which have funded many projects aimed at improving the health, well-being and environment of the communities in which BHP Billiton operates.

Most of the company's sites produce their own community reports. This, together with the fact that the company has clearly entered into lengthy and formal consultation processes with communities, including indigenous communities in Canada and Australia is welcome. However, the picture in some of the other areas in which the company operates is potentially less positive.

For example, ECCR has seen reports that subsidiaries in Colombia, Peru, and Botswana have failed to adequately consult communities and, in some cases, according to community group reports, refused to hold discussions with them.

ECCR has traditionally been more interested in the core impacts of a company upon the communities in which it operates than any special community programmes that a company might develop. Whilst the latter are important and can be extremely valuable, we feel it is a company's primary responsibility to act in a manner which is respectful of those communities and does not bring negative consequences for them. In this respect, meaningful consultation, reporting and good social and environmental policies are key.

ECCR would like to hear the company response to criticisms such as those cited above and seeks assurance that all sites have effective mechanisms to consult and meet the needs of local communities.

We are particularly concerned about vulnerable, indigenous groups such as the Gana and Gwi Bushmen of Botswana where there may be particular problems arising from lack of community experience in dealing with corporations or governments, or language differences that do not necessarily apply to the Australian and Canadian groups with whom the company has more experience consulting.

ii.ii PARTICULAR PROBLEMS WITHIN THE SOUTH AFRICAN CONTEXT

The Bench Marks Foundation for Southern Africa (BEFSA) has provided us with a significant amount of information regarding the company's operations in South Africa. BHP Billiton's heritage means that South Africa is an important country and is host to a large proportion of its sites. However, the many challenges faced by South Africa also represent a major challenge for BHP Billiton and it is important that the company is both willing and able to face up to those challenges.

BeFSA's initial research, which has included consultations with unions and community groups has indicated that there are several issues that represent potential problems and where the company appears to be having problems marrying policies with practice. These include:

- According to unionists, the fact that the company does not have a major corporate centre in South Africa, means that sites within South Africa are effectively independent entities and that there is an effective dislocation between overall corporate policy and what happens at site level. Unionists state that managers at South African plants say they do not have sufficient power to make changes to policies or working practices and as such have reported considerable difficulties in effecting changes to working practices based on health, safety or other concerns. **(Section 7)**
- Apparent problems implementing the company's statements with regard to the treatment of workers with HIV/AIDS. Although the company states in its corporate responsibility report that it provides workers and their families with payments that enable them to receive HIV/AIDS treatment, unionists report that the situation on the ground is not this simple. They feel that there is no overall strategy to deal with HIV/AIDS issues and that many of the projects that the company mentions in its reports employ varied approaches. They also claim that many of the company's schemes do not address the needs of workers' families or the wider community. **(Section 7)** [In its response to this report the company has disputed the views expressed in this statement.]
- Many workers feel that although the company has policies and procedures to implement South African Transformation legislation, this has not been reinforced by a programme to shift attitudes, behaviour or abilities at site level. As such, policy implementation has been undermined and many black workers feel that there has been insufficient change in terms of structure or personnel since the end of the 1980s. **(Section 6)** [In its response to this report the company has disputed the views expressed in this statement.]

- Some communities have experienced particular problems with the way in which the company has gone about closing the mines on which they depend. Company policies state that sites should have a plant closure plan, which is regularly reviewed and discussed with communities well in advance of closure. However, reports regarding the closure of the Reitstpruit in the Mpumalanga province indicate that this has not always happened successfully. **(Section 4)**
- Unionists have expressed concerns that retrenchments at the Ingwe collieries, the subsequent restructuring and need for remaining workers to work harder and faster than before is causing stress and exhaustion to the remaining workers and that this is a potential health and safety issue. (Similar issues have been raised by Australian unions.) **(Section 6)**
- That the company could encourage a better work life balance in South Africa by providing more accommodation suitable for families. **(Section 6)**

ECCR is particularly interested to hear the company's response in these areas.

The company has provided more information on each of the issues outlined in this report. This can be found, in its entirety in Appendix D: beginning on page 77.

1. RESOURCE EXTRACTION

Questions

1. Under what circumstances will the company seek an exemption from national laws or for existing laws to be overturned in the interests of the company? How does the company justify taking such actions in the light of policy statements which emphasise the importance of upholding national laws?
2. What specific mechanisms does the company employ when deciding whether to accept military protection of any sort, particularly in regions where military forces have been linked to human rights abuses?
3. What specific mechanisms and procedures does the company follow to ensure that any agent charged with providing security, does not engage in human rights abuses?
4. What mechanisms does the company have to ensure that management standards with regard to site closures are followed and that communities and workers are informed and properly consulted about closures?
5. Does the company have a policy that activities undertaken minimise the negative impacts of site closure, address the needs of the wider community as well as employees?
6. Does the company have guidelines for sites to enable them to measure their health, safety, environment and community impacts?
7. Does the company employ specific procedures at all sites to ensure that appropriate levels of compensation are made to all relevant levels of government and communities?

1.1 UPHOLDING NATIONAL LEGISLATION

1.1.1 The company ensures that its policies in regard to resource extraction do not infringe the human rights of local populations and do not contravene local laws and regulations. (1.5.C.1)

BHP Billiton's policy is to uphold national laws wherever it operates. However, the company has negotiated exemptions at at least two of its sites.

The company negotiated that the Mozal smelter in Mozambique be situated in an Export Processing Zone, which allows certain deviations from national legislation, including labour laws.

According to unionists, this enabled the company to negotiate a 'no strike' clause as part of the conditions for recognising trade unions, and subsequently terminated the employment of striking workers after forcibly removing them from the site.^{2,3} This occurred despite the right to strike being assured under the Mozambiquan constitution and laws existing which forbid lockouts and retribution against strikers.⁴

² International Confederation of Free Trade Unions: Annual Survey of Violations of Trade Union Rights (2002)

³ ECCR correspondence with International Metalworkers Federation

⁴ International Confederation of Free Trade Unions: Report for the WTO General Council Review of Trade Policies of Mozambique (Geneva, 24 and 26 January, 2001) accessed at: <http://www.icftu.org/displaydocument.asp?Index=991212150&Language=EN>

The company has also successfully sought to build a nickel mine on Indonesia's Gag Island. In 1999, three years after BHP Billiton had secured exploration rights, the Indonesian Government designated the Island's forests protected areas, which preclude mining. According to Indonesian NGOs, the company's lobbying for the protective status to be overturned included threatening legal action.⁵ See also: 10.3.5

1.2 HUMAN RIGHTS

1.2.1 The company, in its endeavours to ensure the human rights of the peoples who live where it is extracting natural resources, has policies that specifically ensure the human rights of communities within the terms of the Universal Declaration of Human Rights and its two covenants and the International Labour Organisation's standards. (1.5.B.1)

The company's Health, Safety, Environment and Community (HSEC) standards specifically state that systems must be in place to ensure that employees and contractors are aware of and abide by the UNDHR. The company states that where governments have implemented ILO conventions it will also uphold them.

1.2.2 In instances where the extraction of resources either, violates human rights or where the extraction can only be carried forward with the aid of military intervention in zones of conflict, the company does not proceed with the work programme. (1.5.C.4)

The company has a number of operations, which have been linked to human rights violations. These include the El Cerrejon mine in Colombia, a country which is involved in a long running civil war and in which the company has accepted military security.

1.2.3 The company has in place policies that prohibit it from accepting protection from governmental military forces or from local militias. (1.5.B.6)

In its guide to business conduct the company does not rule out accepting protection from military forces, and the company has done so, at least with regard to operations in Colombia. The company states that such protection will not generally be accepted unless it faces exceptional circumstances, where the safety of employees is at risk.

The Voluntary Principles on Security and Human Rights do allow companies to use military forces for protection.

The company has, according to unionists, used paramilitary forces in Colombia.⁶ According to community groups, the company has used police and the Colombian army to provide security for its El Cerrejon Norte mine and to forcibly remove people from the village of Tabaco on the outskirts of the mine. The Colombian military and paramilitaries have both been linked to human rights abuses being carried out throughout the country, particularly in mining areas where there tends to be a much higher than average homicide rate and where 'disappearances', particularly of unionists is relatively high.^{7, 8}

See also: Section 4 - case study on communities surrounding the El Cerrejon mine.

⁵ 'Leave protected forests alone. Ghanaian, Indonesian, Australian environment groups tell BHP Billiton' Indonesian Forum for environment press release 22nd February 2003

⁶ Republican News 17th July 2004 'Speaking out under threat of death: Colombian unions take multinationals to court over killings' accessed at: <http://republican-news.org/archive/2003/July17/18worl.html>

⁷ Friends of the Earth 'Human rights and mining in Colombia' accessed at: <http://www.foei.org/cyberaction/colombiamining.php>

⁸ ECCR communication with Colombian unionists

1.2.4 The company, as a minimum, adheres to the Voluntary Principles on Security and Human Rights to ensure respect for human rights and fundamental freedoms in their security operations. (1.5.B.5)

The company states that it has adopted these principles.

1.3 SUSTAINABILITY

1.3.1 The company only proceeds to extract natural resources in situations where their renewal is guaranteed or where, in the case of non-renewable resources, it has made provision for the creation of sustainable alternatives. (1.5.C.2)

The company ensures that when extracting non-renewable resources it creates and puts in place alternative and sustainable benefits for the future of the community in which it is operating. (1.5.B.2)

The resources that the company extracts are by nature non renewable.

In recent years the company has been seen to be working with local communities to identify and support sustainable community development initiatives that will provide benefits after BHP Billiton's operations have ceased. The company admits that it has not always been as successful as it might have liked in this regard, but says that it has learned from these experiences.

See also: Section 4 - Local communities.

1.3.2 A company which is engaged in resource extraction, on discovering previously unknown vulnerabilities or non-sustainable situations immediately seeks to withdraw in such a way as to ensure that these works are not proceeded with by other agencies or companies. (1.5.C.7)

BHP Billiton companies carry out risk assessments as part of the project approval process and periodically throughout the lifetime of the project. It is unclear what sort of risks would lead to the withdrawal from a project.

The company withdrew its participation in the controversial Ok Tedi mine in Papua New Guinea citing concerns over the environmental and social impact of the operations. The mine remains open due to other shareholders' (which includes the PNG government) unwillingness to prematurely end its life.

See also: Section 4 - case study on the Ok Tedi mine.

1.3.3 The company has in place performance standards for the monitoring of the extraction of natural and especially non-renewable resources. (1.5.B.4)

Reserves of oil and gas and mineral deposits are estimated on a yearly basis in the company's annual report. It is unclear whether there are any specific performance standards for this process.

1.4 COMPENSATION AND ROYALTIES

1.4.1 The company has a strategy whereby proper compensation for the extraction of resources is made to all the relevant national, local and indigenous communities for the acquisition of their assets. (1.5.C.3)

Royalties are paid to governments as part of the licences acquired which enable companies to legally carry out mining/ extractive activities.

It is clear that in some instances the companies have made compensation payments to indigenous communities for extracting resources from lands to which they have title. However it is unclear whether all sites have a mechanism to ensure that compensation is paid to all relevant communities.

1.4.2 The company publicly discloses all royalties, taxes, fees, payments and any other revenue paid to state or parastatal partners as derived from project partnerships. (1.5.C.5)

The company states that it is 'aware' of initiatives to encourage better disclosure of government payments, and that it is working with others, particularly governments which have agreed to participate in the Extractive Industries Transparency Initiative, to look at the practicability of this. At present the company only discloses aggregate figures for government royalties, which do not allow country-by-country interpretation. See also: Section 3.6

1.5 CONSULTATION AND CONSENT

1.5.1 The company has a consultation and appraisal process in place that involves all local communities where new developments of resource extraction are contemplated. (1.5.C.8)

The company's HSEC management standards state that all sites should have systems in place to identify and work with stakeholders to address their concerns and expectations. However, there are a number of instances where communities have complained that they have not been properly consulted. These include the Tintaya copper mine in Peru (although the company is now involved in a dialogue process with the community here), proposed diamond exploration in the Central Kalahari Game Reserve and communities surrounding the El Cerrejon mine in Colombia. See also: case studies in Sections 4 and 5.

The company states that concerns and complaints related to the HSEC aspects of the business are recorded, acknowledged, investigated and outcomes reported back to relevant stakeholders.

2. ECOSYSTEMS

Questions

1. Does the company have any specific group-wide minimum standards for environmental performance, or are standards for each site set on a by case-by-case basis?
2. What have been the results so far of the company's study on the biodiversity impacts of its operations?
3. What is the company doing to develop specific group-wide policies, procedures or guidelines regarding minimising the biodiversity impacts of its operations?
4. Has the company given consideration to greater use of renewable energy in its operations, particularly that from solar, wind or biomass sources?
5. Is the company prepared to make significant changes to the sourcing, use and generation of energy in the absence of significant regulatory change?
6. What proportion of BHP Billiton sites have undertaken specific employee awareness programmes to give workers a better understanding of environmental management systems that are being rolled out across the company?
7. Does the company specifically consider the cumulative impact of its operations, together with other nearby facilities in its environmental impact assessments? If so what is done to address these?

2.1 ENVIRONMENTAL POLICY

2.1.1 A company-wide environmental code has been adopted and implemented. (1.1.C.1)

The company states that it aims to progressively reduce the potential that its activities have to harm the environment and it is working to ensure that environmental resources are used responsibly at all of its operations.

According to company management standards, operations should:

- Identify initiatives to use raw materials and natural resources efficiently and to reduce the environmental impact of operations.
- Monitor performance.
- Publicly reporting on this.

The company's Health, Safety, Environment and Community policies and standards are reviewed at least every three years.

2.1.2 Natural resources, which become an asset to the company, are stated as a debit to the community, which the company addresses in a mutually agreed negotiation with the community. (1.1.B.1)

Although the company has various statements regarding community consultation it does not appear that natural resources are specifically stated as debits to the community.

2.1.3 The company has a policy, which includes performance standards relating to:

- **protection of the biosphere;**
- **sustainable use of natural resources;**
- **reduction and disposal of wastes;**
- **reduction of anthropogenic greenhouse gas emissions;**
- **the development of renewable and alternative energy sources in place of reliance on fossil fuels;**
- **energy conservation;**
- **risk reduction;**
- **safe products and services;**
- **environmental restoration;**
- **informing the workers involved and the public.**

The company has adopted and implemented at least one or more of the recognized environmental monitoring programmes. (1.1.B.3)

The company makes aspirational statements about all of these except for the development of renewable and alternative energy sources. There do not appear to be specific group-wide performance standards for these although standards for management systems do exist.

a) Use of natural resources and disposal of wastes.

The HSEC Management Standards state that sites should identify initiatives to make effective use of raw materials and natural resources. Specifically, sites over a certain capacity/ resource usage (for example freshwater consumption of more than 500 megalitres and emissions greater than 100,000 tonnes per CO₂ equivalent per annum) are expected to develop their own plans and targets for reducing environmental impacts.

b) Reduction of greenhouse gases

There is a company-wide target to reduce the greenhouse gas intensity⁹ of emissions, per unit of production, by at least 5% over the period 2002-7. This includes emissions from purchased electricity. The company states that it is likely to meet this. Methods used to reach the target include:

- The development of site-level greenhouse gas/ energy conservation plans. All sites with emissions greater than 100,000 tonnes per year of CO₂ equivalent have these in place.
- Using carbon pricing sensitivity analysis in the investment decision-making process for projects that would emit more than 100,000 tonnes of CO₂ equivalent per year.

⁹ Greenhouse gas intensity, according to the company's Climate Change Position Statement, refers to emissions produced per unit of output. The rationale behind using this measure as opposed to absolute values is that it allows sites that have 'significant growth objectives' to expand production (and hence greenhouse gas emissions). Providing that these sites prove that they are being more efficient in terms of what they produce they still can meet their greenhouse gas intensity targets, even though they are producing more emissions.

- Funding research into the geological sequestration of CO₂¹⁰ the use of coal bed methane¹¹ and low emission coal technologies.

The company has developed a climate change position statement in which it claims that its aluminium smelters and petroleum businesses are amongst the most energy efficient in the world.¹²

According to the 2004 HSEC report, the company also estimates the levels of greenhouse gas emissions which are emitted as a result of customers using BHP Billiton products. The company states that it is aware that there are limitations as to the accuracy of these estimations, but they remain useful for internal purposes, particularly for prioritising areas to reduce emissions over the product lifecycle.

c) Biodiversity

The company has initiated a study of biodiversity issues that arise from its activities. It has pledged not to develop mines in World Heritage sites and states that it is reviewing the situation with World Conservation Union sites as it has several sites adjacent to these. In addition, a number of community initiatives are aimed at addressing biodiversity impacts and post mining land rehabilitation.

However, there does not appear to be a group-wide policy currently in place aimed at minimising the biodiversity impact of operations.¹³ The company has stated that the majority of sites include biodiversity considerations in their environmental management systems. However, it is not clear the extent to which this has been rolled out and whether or not these specifically align themselves with local or national conservation objectives.¹⁴

The company has successfully sought permission to mine on Indonesia's Gag Island, the forests of which have been designated a protected area. See also: Section 10.3.5.

d) Renewable energy

The company is a producer of fossil fuels (coal, gas and petroleum) and also a heavy user of energy products in many of its operations, for example smelting. The company's position statement on energy states that it is working to reduce the greenhouse gas intensity of those fuels that it produces. The main methods suggested for this is through greater use of gas and 'clean' coal.

It is unclear whether the company has considered procuring any of its energy or producing it from renewable sources such as wind or solar energy. The company has, however, shown considerable interest in hydroelectric energy and has formed part of consortiums to

¹⁰ This refers to the capture and storage of greenhouse gases within a geological environment, for example, injecting captured CO₂ into rocks or solutions.

¹¹ Coal bed methane is gas extracted from coal seams which could potentially be used commercially in power stations to generate electricity. BHP is hoping to develop mechanisms whereby CO₂ could be re-injected into the space created when coal bed methane is extracted.

¹² The Clean Development Mechanism is a tool being developed under the Kyoto Protocol, using energy markets to lower the cost of reducing greenhouse gas emissions. The mechanism would allow developed countries to receive emissions credits for financing projects that reduce emissions in developing countries. The CDM executive board are still finalising the procedures by which this would work.

¹³ EIRIS

¹⁴ EIRIS

apply to build hydroelectric dams across various Amazon tributaries. This has been criticised by groups which state that the dams would flood hundreds of kilometers of land, rich in biodiversity, displacing thousands of people and endangering rare river dolphins, turtles and fish species.¹⁵

The company's statement on energy markets in the context of sustainable development implies that the energy market policy will be heavily determined by the decisions of government and the relevant policy framework. This implies that the company is unlikely to make significant changes to its energy sourcing policies without regulatory change.

e) Informing workers and consumers

Top-level information about the company's environmental policy is provided for workers in the company's guide to business conduct. Beyond this, the company's strategy for informing workers about environmental risks and management varies from site to site.

The 2002 HSEC report gives an example of how BHP Billiton Iron Ore undertook an employee awareness programme as part of its implementation strategy for its environmental management system. This included 'branding' the strategy and producing promotional materials, and organising training sessions. According to the report 80% of the workforce took part in the training. It is not clear to what extent similar programmes take place elsewhere.

The company states that it provides information sheets giving health, safety and other information for all its products. Some of these are available on the main BHP Billiton website.

2.1.4 Environmental performance standards are set and applied on a comparable basis throughout the company's operations. (1.1.B.4)

The company's management standards state principles and processes that all operations are expected to adhere to. However, it is not clear whether absolute operational standards exist across the company.

2.2 STRUCTURES TO IMPLEMENT ENVIRONMENTAL POLICY

2.2.1 An active environmental committee has been established by and reports to the Board of Directors. (1.1.C.2)

The company has established a Health, Safety Environment and Community (HSEC) committee. This produces guidance on HSEC management systems, acts as an advisor for serious environmental incidents and some of its members have participated in site reviews and audits. Members of the HSEC committee include two executive directors and one non-executive director.

According to the 2003 HSEC report each site is also required to establish committees representing both worker and management interests on HSEC issues.

In addition, an HSEC forum exists which involves corporate representatives from each business unit. This forum sets the direction on HSEC issues and identifies priority issues across the company.

¹⁵ ECCR communication with International Rivers Network

2.2.2 The company has in place appropriate management systems to implement its policies. (1.1.C.3)

The company states that all required sites have specific environmental management plans with targets for energy conservation and greenhouse gas emissions, 98% have plans for land management and water use and 97% have plans for waste management.

The company states that it has a consistent approach to health, safety, environment and community wherever it operates, that this is 'broadly consistent' with internationally recognised standards such as ISO 14001, OHSAS 18000 and SA 8000.

According to the 2003 and 2004 HSEC reports, all required BHP Billiton sites were ISO 14001 accredited or were recommended for accreditation. The company does not require exploration and development projects, sites being divested, closed sites or offices to achieve ISO 14001 accreditation.

2.2.3 The company has a designated person to provide assurance of compliance with its environmental policies. (1.1.C.9)

It is unclear whether or not this is the case.

2.2.4 Employee remuneration/compensation packages, especially those of senior executives, are linked to corporate environmental performance. (1.1.B.9)

The 2003 HSEC report states that executive remuneration is linked to the non-financial aspects of company performance. These include, health, safety, environment and community targets. It is unclear the extent to which these form a major consideration within deciding upon remuneration packages.

The company's Health, Safety, Environment and Community (HSEC) Management Standards state that measurable HSEC activities are to be included within performance plans and appraisals of all employees.

2.3 ENVIRONMENTAL MONITORING

2.3.1 Environmental assessments are completed by the company in which the unused, unexploited natural resources are stated as assets of the community. (1.1.C.4)

The company does conduct environmental assessments of existing and proposed operations. However, it does not appear that unexploited natural resources are identified as being assets of the community.

According to the HSEC Management Standards, HSEC performance should be regularly monitored, recorded, analysed and systems should be in place to manage non-performance.

During 2004 a centralised database was set up to record and enable monitoring of all site-level HSEC information.

2.3.2 Environmental assessments are made periodically and include, but are not limited to:

- **environmental impact;**
- **physical infrastructure impact;**
- **social infrastructure impact;**
- **cumulative (synergistic) impacts. (1.1.B.2)**

Each site should conduct an annual self-assessment, whilst audits are conducted at least every three years to establish the extent of compliance with the Management Standards. These are supplemented by audits. See also: 2.3.3.

It is not clear what company policy is with regard to contributing to or conducting assessments looking at the cumulative environmental impacts of BHP Billiton operations together with other projects.

Groups campaigning against the company's proposed involvement in building the Estreito dam across the Tocantis River (an Amazon tributary) have complained that no impact assessment has been carried out on the possible combined impact of that and existing or planned dams in the area. See also: 2.1.3.d).

The Independent Environmental Monitoring Agency, which assesses the impact of the Ekati diamond mine in Canada, encourages the company to work with others to carry out such assessments. Such recommendations were made in response to community concerns about the cumulative impact of mining on fish and water quality.¹⁶

2.3.3 On-going environmental performance evaluation is conducted and the results are periodically audited by an independent auditor. The results of the audit are reported to the stakeholders. (1.1.B.8)

According to the HSEC Management Standards, sites should conduct HSEC inspections and audits at frequencies determined by the level of risk faced in a particular operation.

As well as annual self-assessments and management reviews, sites undergo formal audits carried out every three years, perhaps more frequently. Auditing teams should include auditors who are independent of the part of the organisation being audited.

According to the 2004 HSEC report, 79 sites have been audited since September 2001. 208 BHP Billiton staff and 16 external auditors were involved in these. The audit process is due to be reviewed and revised by 2006.

The company as a whole reports on its environmental impact in the annual Health, Safety, Environment and Community report. Most BHP Billiton sites also produce reports.

¹⁶ Independent Environmental Agency - Plain English Annual Report 2002-3

2.4 ENVIRONMENTAL REPORTING

2.4.1 The company provides to the public regular reports on its environmental performance and future plans. These are based on a pattern of environmental auditing and reporting according to, at a minimum, internationally recognized standards and include data for each facility. (1.1.C.5)

The main vehicle for company reporting is the annual Health, Safety, Environment and Community report. Many BHP Billiton sites also produce their own site-specific versions of these.

The main HSEC report contains:

- Top-level information on the extent to which the company is meeting targets for environmental management and performance.
- A quantitative summary of overall environmental performance in terms of land and other resources used, emissions and waste disposal.
- Information about the company's approach to environmental management and examples of specific projects to reduce environmental impact.
- Overviews of the environmental incidents that led to the company receiving fines. Further information on this, including the number of environmental incidents and their severity category as well as the number of environmental infringements that did not result in a fine, can be found on the company website.

The company's 2003 and 2004 HSEC reports were prepared in accordance with the Global Reporting Initiative 2002 Sustainability Reporting Guidelines. They also break down different aspects of policy and show how these are applicable to the principles of the United Nations Global Compact.

The main sections of the 2003 and 2004 HSEC reports were assessed by external companies, Environmental Resources Management and Corporate Sustainable Solutions, respectively. Verification statements make clear that both companies reviewed the process of data collection and analysis used, as well as reviewing the actual data received from ten BHP Billiton sites.

The company states that it is also involved in the Mining Certification Evaluation project to attempt to assess whether an independent certification process of environmental and social performance can be applied to the mining sector.

2.4.2 The company holds public consultations and seeks collaboration from interested individuals and groups to review both its past performance and its future plans, including the location of new facilities. (1.1.C.6)

The company HSEC Management Standards state that systems should be in place to identify stakeholders and to address their concerns and expectations. According to this, sites should work with communities during project development, operational and closure periods.

See also: Section 4 – Local Communities.

2.4.3 The company discloses for each of its operations the same or better categories and levels of information as are required in their 'home' country. (1.1.B.6)

The company management systems state that all sites should produce HSEC reports. Many do, and these are available through the main BHP Billiton website or the website of the relevant subsidiary.

The quality and usefulness of these reports does, however, appear to vary according to site. Some, such as those for the Hillside Aluminum plant and the Samancor ferrometals plants in South Africa give comparable information to those of the overall HSEC report; whilst others such as the GEMCO report do not appear to give full environmental impact information.

2.4.4 The company is in full compliance with all international, national, and sub-national environmental regulations and breaches are recorded. (1.1.B.5)

The company managements systems state that there should be systems to identify and document all applicable laws for health, safety, environmental and community issues.

The company also states that where local environmental regulations are lacking, the company will act according to relevant 'international standards', taking into account social and cultural sensitivities.

The company discloses the overall number of environmental 'incidents' and fines in its HSEC report.

Although the company states that it observes laws in all the countries in which it operates, it has sought exceptions from these on a number of occasions – for example in setting up plants in Export Processing Zones and with regard to mining on Gag Island, Indonesia.

See also: Sections - 1.1.1 and 10.3.5.

2.5 REMEDIATION

2.5.1 Where environmental damage does occur, every effort is made by the company to reduce its impact immediately, to provide technical data to those working on the containment and repair, to restore the damaged ecosystem and to ensure appropriate measures are taken to redress injuries to persons caused by environmental hazards created by the company. (1.1.C.7)

According to the company HSEC Management Standards, systems should be in place to ensure timely reporting, investigation, mitigation and appropriate communication of all HSEC incidents. Investigations should look into the underlying causes of the incidents and the failure of controls designed to prevent them. Information gathered should be used to identify lessons and monitor trends

The 2002 HSEC report gives a short case study about actions taken after untreated waste process water had to be released to the main drain at the Port Kemba Steelworks in New South Wales in October 2001. Actions included working with the local environmental protection agency, review of the causes of the incident and carrying out a study of the fish population in nearby waterways.

2.6 PRODUCT LIFE-CYCLE

2.6.1 The company has policies, practices and procedures to prevent pollution, reduce resource and energy use in each stage of the product or service life-cycle. (1.1.C.8)

The company produces useful products which fulfil community needs and which avoid built-in obsolescence. It employs process technology that reduces life-style impacts (1.1.B.10)

The HSEC Management Standards state that new and existing products and services should be assessed for their ability to provide benefits or cause adverse impacts over their life-cycle. According to the 2004 HSEC report this has been carried out for all of the company's major mineral products, except petroleum products and diamonds. Health, safety and environmental information on many BHP Billiton products is available on-line. The company also states that it is keen to work with consumers to reduce the environmental impact of products, particularly coal.

The company states that it is working with industry bodies such as the International Zinc and Copper Associations to look at product life-cycle considerations. This includes a 'Green Lead' project that aims to reduce harm caused by lead exposure by identifying potential impacts throughout the life-cycle of the product and developing protocols to minimise these.

The company also states that it is trying to promote a selenium-free manganese product and has instigated a study to look at the overall environmental impacts of its nickel and chrome products.

2.7 OCCUPATIONAL HEALTH

2.7.1 The company has established a regular procedure to monitor the environmental impact of the production process on the health and safety of workers. (1.1.C.10)

See also: Section 7 – Health and Safety.

Company HSEC Management Standards state that occupational health and hygiene assessments and medical surveillance should be carried out on all employees, at a rate consistent with the exposure risks they face. The relevance and incidence of occupational disease should be recorded and reviewed.

According to the 2003 HSEC report, this policy has been implemented in a majority of sites. The surveys identified that hazardous substances and exposure to these are significant issues. It was estimated that 16% of employees would potentially be exposed to substances above occupational exposure limits, were it not for the use of protective clothing etc. According to the 2004 HSEC report, the company has since introduced company-wide exposure standards, which it claims, are more stringent than those required by local legislation in several areas. Targets in relation to these are to be revised in 2005.

The company states that it has also developed risk control protocols; establishing minimum performance requirements for other areas that have been associated with fatalities in the past.

ECCR has received reports from former workers from Samancor's ferro-manganese plant in Meyerton in South Africa, expressing concern about the effects of manganese exposure. These reports link exposure to almost 100 deaths since 2001 and has accused the company of failing to address these concerns. The former workers are demanding that the company pays for independent medical examination, medication and compensation for those affected.¹⁷

The company previously denied that the former workers were suffering from manganese-related poisoning.

¹⁷ BeFSA, Memorandum to Samancor from the Samancor Retrenched Workers Crisis Committee, September 2004.

3. NATIONAL COMMUNITIES

Questions:

1. Would the company consider making details of its human rights self assessment toolkit, particularly the processes used to identify human rights issues, publicly available?
2. What processes and criteria does the company employ when deciding whether or not to invest in countries where human rights violations have been identified?
3. Are the human rights implications of working in countries that have been identified as having human rights abuses reviewed at a senior level on an annual basis?
4. What is BHP Billiton's internal process for reviewing ongoing human rights issues;
 - a) in its capacity as an employer,
 - b) towards the local community,
 - c) with respect to wider human rights issues (i.e., issues that do not arise as part of BHP Billiton's duty as an employer or operator) in countries that are identified as having particular human rights problems?
5. Is a senior person at each site responsible for ensuring that human rights obligations are complied with?
6. What mechanisms does the company employ to promote human rights in situations outside of the company's direct control?
7. What process/ criteria does the company employ to assess the human rights policies/ procedures of companies in whom or with whom the company is considering investing?
8. What is BHP Billiton's policy for dealing with human rights abuses, which have arisen as part of projects in which BHP Billiton is a minority shareholder. E.g. the involuntary relocations carried out at Tabaco and in Peru?
9. What is the company doing to implement the guidelines of the Extractive Industries Transparency Initiative, particularly, but not exclusively in relation to Trinidad & Tobago and Indonesia where governments have signed up to the principles of the EITI?

3.1 HUMAN RIGHTS POLICY

3.1.1 The company adopts a comprehensive and verifiable human rights policy which includes an explicit commitment to secure the principles and values contained in the Universal Declaration of Human Rights and its two covenants and the International Labour Organisation standards. (1.2.C.1)

The company states that its HSEC policy broadly aligns with the Universal Declaration on Human Rights. The company HSEC Management Standards state that systems should be in place at all sites to ensure that employees and contractors are familiar with and abide by this and the company's guide to Business Conduct. It is, however, unclear what specific mechanisms are used to ensure this.

The company has indicated to EIRIS that it is committed to respecting all of the standards laid down in the ILO's Core conventions.

2003 HSEC report states that where governments implement other international covenants it will comply with these.

The Policy Guide states that the company seeks to support the fundamental human rights of the communities in which it operates. The Human Rights Toolkit has been designed to take into account both employee and community aspects of human rights. See also: 3.3.4.

3.1.2 The company adopts a security policy that protects human rights and is consistent with international standards of law enforcement. (UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials) (1.2.B.3)

The company has adopted the UK-US Voluntary Principles on Security and Human Rights. It has also indicated that its own guidelines accord with the UN Code of Conduct for Law Enforcement Officials.¹⁸

3.1.3 The company by policy and by practice does not commit or engage in activity which leads to the abuse and violation of internationally recognized human rights standards, nor does it assist in abuses and violations committed by others, be they government authorities, paramilitary organisations, armed gangs or other non-state actors. (1.2.B.2)

The company HSEC report states that HSEC assessments are used in the process for reviewing and approving projects. According to this managers should use specific assessment criteria as part of this process, although it is not clear what these specifically include.

However criticisms have been made of the company with regard to;

- Carrying out involuntary relocations. See also: 4.2
- Relationships with unions. See also: 6.2

¹⁸ EIRIS

3.2 REPORTING

3.2.1 The company discloses labour and human rights tribunal cases and lawsuits settled or decided against the company, in addition to any pending lawsuits that might have a significant material effect on the company. (1.2.B.8)

The company disclosed three human rights issues in the 2003 HSEC report; issues in the Espinar region of Peru where the company is currently undergoing dialogue with local communities. The company states that it has also identified issues in South Africa relating to squatters dwelling on a mine property and a case of voluntary relocation of a person living on a closed mine site.

The company discloses pending or ongoing lawsuits, which may result in environmental or other liabilities as an explanatory note to its financial reporting.

3.3 STRUCTURES TO IMPLEMENT HUMAN RIGHTS POLICY

3.3.1 An active human rights committee, with a designated responsible person, has been established by and reports to the Board of Directors and publicly discloses any significant material effect on the company. (1.2.C.6)

The company does not have a specific human rights committee. It does have a Health, Safety and Environment Committee, whose remit includes human rights issues.

The Vice President Sustainable Development and Community Relations, who reports directly to the Chief Executive Officer, has been designated responsible for human rights policy and management systems.¹⁹

3.3.2 A senior executive in each operation is responsible for all matters of human rights and reports to the appropriate management committee and the committee of the Board of Directors established for human rights matters. (1.2.B.1)

This cannot be determined from the material surveyed.

3.3.3 The company links executive compensation to social as well as financial performance, including the company's efforts to secure basic human rights within its operations. (1.2.C.2)

The company states that non-financial considerations, including the meeting of HSEC targets are taken into account in remuneration packages. It is unclear the extent to which this specifically includes human rights considerations.

3.3.4 The company, in consultation with the stakeholders, uses a checklist, which guides its approach to human rights. (1.2.B.4)

The company states that it tracks the human rights of employees, contractors, suppliers and communities in which they operate. This includes issues such as freedom of association, exclusion of child labour and the prohibition of forced labour.

¹⁹ EIRIS

The company recently developed a 'self-assessment Human Rights Toolkit', which was distributed to all sites.²⁰ This is designed to enable managers to analyse potential exposure to human rights issues in nine areas. These are country, community, land acquisition, indigenous and minority groups, environment, security, employees, contractors and supplier, and systems. According to the 2004 HSEC report 44% of sites have completed this self-assessment.

The company has indicated to EIRIS that self-assessment based on use of the Toolkit will form part of the HSEC audit process.²¹

It does not appear that this Toolkit is publicly available.

3.4 MONITORING

3.4.1 All contraventions of human rights are reviewed and recorded, and corrective action is taken. (1.2.B.10)

The Human Rights Toolkit mentioned above is designed to review human rights incidents.

3.4.2 Operations in countries, which consistently violate the Universal Declaration of Human Rights, are reviewed annually by the Board of Directors. (1.2.B.9)

The company has operations in six countries that are classed by EIRIS as being associated with human rights risks. Algeria, Colombia and Pakistan are classified as being 'category A' countries – associated with serious issues, whilst Indonesia, Peru and Venezuela are categorised as being 'Category B' countries, where human rights problems exist but in a less severe form.²²

The company HSEC Management Standards state that HSEC risks are recorded and maintained in a risk register. These are reviewed and updated annually. It is not clear the extent this specifically includes human rights considerations.

3.5 ENSURING HUMAN RIGHTS WHILST WORKING WITH OTHERS

3.5.1 The company carefully considers the international human rights implications of entering into business relationships, either as a direct partner or through a third-party venture in which it holds an interest, with the parties or entities of any state recognized or known for its widespread violations of international human rights standards. (1.2.C.3)

It is unclear what specific processes or criteria the company employs when making investment decisions in countries where human rights violations have been identified.

²⁰ EIRIS

²¹ EIRIS

²² EIRIS

3.5.2 In instances where legislation or the actual practices of any public institution violate fundamental human rights, the company does everything in its power to secure those fundamental rights in its own operations. The company also seeks to exercise its corporate influence to contribute to the establishment of such fundamental rights. (1.2.C.4)

In its policy guide, the company states that 'within its sphere of influence' it will seek to eliminate situations where human rights transgressions are identified. It is unclear what this means in practice.

3.5.3 The company has a policy that, when there is a movement from within the country calling for withdrawal, in instances where there are gross and systematic violations of human rights, it will withdraw from that country. (1.2.C.5)

The company HSEC management standards state that HSEC risk management processes are applied to existing operations as well as new projects and project closures. It is unclear the extent to which human rights specific considerations will influence this process or whether there is any specific policy on withdrawal from a project on the grounds of human rights.

3.6 PAYMENT OF TAXES AND ROYALTIES

3.6.1 The company pays appropriate taxes and uses no covert means (such as inflated internal or transfer prices) for removing profits from a host jurisdiction. (1.2.C.7)

ECCR has not seen any evidence which would indicate that this is not the case.

3.6.2 Transparency

The company states in its October 2002 submission to the World Bank's extractive industry review that it is aware of the 'Publish What You Pay' initiative, and that it will work with others in the industry to explore models for enabling governments to be held accountable for use of revenue payments.

In both the 2003 and 2004 HSEC report the company makes statements confirming support for the UK Government's Extractive Industries Transparency Initiative. The company states that it will work with host governments that agree to participate in the publication of payment information. The company has not, however, provided individual figures for operations, instead amalgamating taxes paid with royalties on a regional basis. This makes it very difficult to see what the actual figures are.

The company has not specifically listed the EITI as being one of the voluntary initiatives that it is involved with or implementing.

BHP Billiton is not listed by the 'Publish What You Pay' coalition of NGOs as working to implement the agreed actions of the EITI. The company has operations in Trinidad & Tobago and Indonesia, whose governments have signed up to the EITI. It is unclear what the company is doing to ensure transparency in these or other areas.

4. LOCAL COMMUNITIES

Questions

1. What particular mechanisms does the company employ when consulting with particularly disadvantaged communities such as the Gana and Gwi Bushmen in Botswana?
2. What measures does the company take in terms of modifying its own operational plans in order to avoid carrying out forced relocations of communities?
3. How does the company assess risk attached to actions of previous owners of sites when purchasing them?
4. What proportion of BHP Billiton sites produce their own HSEC reports and in local languages?
5. Given that the company has not always been successful in managing the closure of mines so as to provide sustainable alternatives for communities, what lessons have been learned, and are there now any guidelines in place to avoid the worst of these instances happening again?

4.1 POLICY

4.1.1 The company develops a policy statement that measures its social, environmental and economic impact on local communities affected by its operations. (1.3.C.1)

The company states that sites should monitor negative impacts and the extent to which communities are dependent on their activities. In order to do this social impact assessments are carried out in relation to planned and existing operations.²³

4.1.2 The company aspires to integrating the interests of all stakeholders with that of its own business goals. (1.3.C.8)

The company, in consultation with the local community, establishes a policy that incorporates into its business plan the best interests of the community, both now and into the future. (1.3.C.2)

The company makes various aspirational statements to that effect and states that sites should have systems in place to identify and work with stakeholders and to develop strategies that address their concerns. According to the 2004 HSEC report, 77 BHP Billiton sites have a formal stakeholder consultation process in place.

The company states that it seeks to promote community development, which incorporates positive impacts such as employment, training and business spin-offs.

Some sites have additional programmes to address the needs of indigenous communities. See also: Section 5.

²³ EIRIS

It would appear that in the past, such mechanisms have not always been successful as various local communities have had disputes with BHP Billiton or subsidiary companies. These include:

- Communities surrounding the Ok Tedi mine in Papua New Guinea
- Local Communities in Peru
- Communities surrounding the El Cerrejon mine in Colombia

See also: Case studies later on in this section.

It would appear, however, that many of these disputes started prior to the development of the company-wide management standards, which give principles for community consultation etc. It is unclear whether the company has carried out formal assessments to see what impact the implementation of the standards has had in this respect.

4.1.3 Respect is shown by the company for the local community, especially with regard to water, land, air, food, energy, religion, gender and culture. (1.3.C.4)

The company makes aspirational statements in these respects, particularly with regard to indigenous communities. See also: Section 5.

The company has undertaken some relatively high profile activities, which have demonstrated cultural sensitivity - for example, in relocating archaeologically significant aboriginal stone arrangements, that might have been endangered by mining in the Area C deposit in the Central Pilbara, Western Australia. According to the 2003 HSEC report, this was carried out, in co-operation, and with the permission of the Aboriginal custodians.

However, several of the company's past and present activities have curtailed or impacted on traditional community activities. These include

- Pollution of the Ok Tedi and Fly rivers in Papua New Guinea, which thousands of people relied upon for food.
- Mining activities driving away many of the animals that members of the Tamaquitos village in Colombia hunted to supplement their diets.
- According to studies conducted by a Peruvian NGO, waterways surrounding the Tintaya copper mine have a high concentration of toxic metals, which has meant that traditional sources of drinking water are now no longer usable and leakages from the site's processing plant have affected pasture land.²⁴
- Impacting caribou migration patterns and increased levels of contaminants found in fish found downstream of the Ekati Mine in Canada.²⁵

²⁴ Oxfam Community Aid Abroad, Mining Ombudsman Annual Report 2001.

²⁵ Independent Monitoring Agency Plain English Annual Report 2002-3

Case Study: Papua New Guinea The Ok Tedi Mine

BHP Billiton, which was the majority party in the mine has now pulled out of this operation due to the environmental degradation that it caused. BHP Billiton had originally wanted to close the mine early. However, partners in the Ok Tedi mining company refused to contemplate this.

The company's shareholding and benefits from the mine have been transferred to a community trust fund which will be used to support sustainable, income-generating projects in Western Province and rural Papua New Guinea. The fund was set up on the condition that the company be exempt from any future legal proceedings in respect of environmental damage. The latter part of this has been criticised by campaigning groups who claim that the company has a moral responsibility to compensate communities for the problems they have faced.

The environmental devastation was caused after a failure in the mine's original tailings removal system resulted in the mine tailings being dumped into the Ok Tedi and Fly rivers. The severe pollution that resulted, meant that fishing grounds were destroyed and agricultural land bordering the river could no longer be farmed. Some estimates put the Fly river system as being a food-source for up to 40,000 people.

As a result of this pollution and the community upheaval it caused, the company has faced a series of court cases and claims for compensation by landowners and others.

Although an agreement was made with communities to clean up the damage in 1996, together with an AU\$ 150 million settlement, another complaint was made against Ok Tedi Mining Limited in 2000 by landowners, which claimed that this had not been properly implemented. This second case was overturned by the Australian courts in early 2001.

The company states that it has learned from the problems at Ok Tedi and has since committed not to become involved in new investments where tailings are dumped directly into rivers.

In its submission to the World Bank extractive industry review, the company commended a variation of this model used to ensure that local communities obtain more sustainable benefits from projects after they have closed.

Source: Mineral Policy Institute (Australia), Reuters news report June 27th 2001, OK Tedi Mining Media Release 16th January 2004. BHP Billiton website information on the Ok Tedi Sustainable Development Programme

4.1.4 Employees are encouraged to participate in local community activities and organisations. (1.3.C.5)

The company states that it has been piloting an employee matched giving programme in the UK, South Africa and Europe to encourage employees to volunteer, fundraise or donate to not-for-profit organisations.

The company also has a target of contributing the equivalent of 1% of pre-tax profit (in cash and staff time) to community programmes, most of which the company states are operated locally. According to the 2003 HSEC report, in 2002-3 the figure equated to about 1.4%. Such programmes clearly form a major component of the company's community relations strategy.

4.2 COMMUNITY CONSULTATION

4.2.1 The company recognizes various stakeholder groups and establishes an inclusive and exhaustive consultation process with them. (1.3.C.9)

The company establishes a transparent process to gain the informed consent of the community prior to establishing its operations in that community. (1.3.B.2)

The HSEC Management Standards state that there should be mechanisms to 'work with communities' through project development as well as operational and closure phases. This should 'identify needs and prioritise support for sustainable community development initiatives.'

The policy does not seem to indicate that informed consent of a community, other than that of the relevant level of government, is required.

Involuntary Relocations

The company does carry out involuntary relocations of communities/ individuals from time to time and has taken legal actions in order to expropriate land.

Case Study: Colombia

Communities surrounding El Cerrejon Norte mine

Expropriation of Tabaco

In the period 2001-2 the village of Tabaco in the Colombian province of La Guajira was expropriated in order to allow construction of the El Cerrejon mine.

At the time, the mining company Carbones del Cerrejon (now the Cerrejon Coal Company, which operated the mine, was 50% owned by Intercor, with BHP Billiton a minority shareholder. Prior to the expropriation Intercor had attempted to relocate the community but this failed as there was no agreement between that company and the villagers as to what constituted adequate financial compensation.

Since February 2002, Anglo-American, Glencore and BHP-Billiton have had joint ownership, each holding a thirty-three and a third per cent share in the company.

The relocation of Tabaco was not carried out in accordance with World Bank guidelines on involuntary resettlements. The first stage, in 2001 was carried out by armed police and the Colombian army and resulted in several houses being demolished. By January 2002 the village had been totally destroyed. Residents particularly complained that the village cemetery was bulldozed without them having a chance to remove the remains of those who were buried there.

BHP Billiton admits that there were problems and states that lessons have been learned from these. The company should now follow World Bank guidelines for future resettlements. These will be incorporated into the HSEC Management Standards at their next formal review.

In 2002 El Cerrejon mine was ordered by the local ombudsman to assist with the relocation of the village at a new location. Although plans are underway to do this, there have been problems regarding title of the land offered by the company/municipality, which have meant that this has been delayed. The community has identified the piece of land they would like which is currently owned by the company.

Evictions in Sarahita

Reports have been made that in April 2004 police and mine staff carried out forced evictions and the destruction of eleven homes in the community of Sarahita, situated close to Tabaco. According to these reports, those evicted were not offered alternative accommodation.

In response to these claims representatives from Anglo American stated that the incident concerned 25 people who had reoccupied the area after they had originally been moved. In the 2004 HSEC report, BHP Billiton stated that the 'community' was in fact a collection of temporary, illegal settlements rather than an established residential area.

Impacts on the Wayuu community

The Wayuu Indigenous community living in Tamaquitos on the edge of the El Cerrejon, has, according to the Mines and Communities Network, also been adversely affected by the mine. Many of its residents worked as labourers on farms surrounding the mine, but have become unemployed, as farmland had been taken over for mining purposes.

According to campaigners, the mine has bought all the land surrounding the community and controls access to it via road, leaving the community effectively isolated.

There have also been complaints that animals, which the Wayuu community had previously hunted to supplement their diet, have been driven away by the mining.

The community has been asking for compensation from the company and relocation to an area where they will be able to support themselves but according to community organisations the company has refused to negotiate with them.

Source: Mines and Communities Network

Consultation

According to the 2004 HSEC report 77 BHP Billiton sites have a formal stakeholder consultation process. However, the level and type of measures undertaken to inform communities, prior to commencing operations seems to vary according to the communities involved. BHP Billiton's subsidiary QNI for example, undertook a community consultation project for the extension of the Yabulu refinery. This involved the production of newsletters and feedback forms to be delivered to local residents, advertisements in the local press and the organisation of meetings for local government, focus groups for local people and setting up local information centres.

However, in some instances such as the proposed diamond exploration on the Kalahari game reserve, the company has been accused of failing to provide enough information to the Gana and Gwi Bushmen, who would potentially be impacted by exploration and mining. See also: Section 5 – case study on the Gana and Gwi Bushmen.

Such allegations, may indicate that the company needs to think about its strategies for consulting particularly disadvantaged communities.

4.2.2 The company establishes a consultative structure, including a senior director and representatives of stakeholders identified by local communities, society and its own workforce, which meets on a regular basis to discuss the company's business goals in relation to community needs, including social and environmental concerns. (1.3.B.3)

Company policy states that all sites should prepare a community relations plan, which identifies key stakeholders. Sites are required to develop engagement mechanisms with communities, with the plans detailing the frequencies and mechanisms by which this occurs. Some sites have formal consultative committees with representatives from local communities, although it is not clear that this is done as a matter of policy at all sites.

For example, the company states that although it sought official permission to build a new tailings plant at the Tintaya copper mine, it was only when the dam was almost fully constructed that it became apparent that communities had not been fully consulted. Many people living downstream from the dam were concerned about potential seepage from the facility on to farmland. The company has since undertaken extra measures to prevent problems. In addition the mine developed a framework confirming the company's environmental and social commitments.

An example of where a formal consultation does exist is the Environmental Review Committee relating to the Minerva gas development (situated offshore of Port Campbell, Victoria in Australia). This includes community representatives from groups including government, schools, environmental organisations and the aboriginal community. Committee members are involved in the project's environmental audits, having received formal auditor training from the company.

The company's HSEC Management Standards also state that concerns, complaints and external communications related to HSEC should be recorded in a register. These should then be investigated, with outcomes being reported back to relevant stakeholders.

4.3 MONITORING

4.3.1 The company evaluates all of its operations in the light of community sustainability. (1.3.C.3)

It is clear that the company does consider community sustainability issues when it is assessing the impact of its operations. However, the nature of mining activities and the location in which they sometimes takes place, means that the long-term future of mining communities (often formed, purely to service the mine itself) may well not be a sustainable one post mine closure. See also: Section 4.5 - case study on the closure of the Reitspruit mine.

There is evidence that certain parts of the company have reviewed their impact, and developed systems to see that the local economy benefits from their core operations (as opposed to community development initiatives). However it is not clear whether all sites must undertake such projects.

For example, when the decision was taken to expand of the Mozal aluminium smelter, a programme was set up to increase the use of local contractors and suppliers, particularly those representing small and medium sized businesses. This was the result of a review showing that the local economy had not proportionally benefited from the original project.

4.3.2 The company develops specific indicators (such as on local employment, natural resources, health, infrastructure, preservation of cultural values) to measure how it contributes to community sustainability and reports publicly. (1.3.B.4)

The company does not appear to have developed specific company-wide community indicators such as those above, although some of these issues are reported upon in the overall HSEC report or reports produced by individual sites.

4.4 REPORTING

4.4.1 The company reports in oral and written form, on its community impact in a manner that is accessible to local communities in the local language. (1.3.B.5)

According to the 2003 HSEC report 97% of sites produced reports giving details of their HSEC performance. Most of these are produced in English, but some are also produced in local languages.

Some sites/subsidiary companies have their own websites, through which they explain more about what the site does and the impacts that it has on the local community and environment. The HSEC report for 2003 states that other means of communication with local communities vary from site to site. Methods include open days and community liaison committees.

4.4.2 The company communicates to its shareholders and the public any environmental liabilities by reflecting these liabilities in its financial statements and balance sheet reporting. (1.3.B.6)

The company does include environmental liabilities, relating to litigation and the maintenance/ remediation of closed sites in its financial statements. Information explaining the background to those liabilities is also included.

4.4.3 The company makes available its returned, second-hand, and reject goods and outlet samples through local independent distributors. (1.3.B.7)

Although the company does not appear to have a particular policy on this, HSEC reports indicate that some sites, such as the La Granja copper project in Peru have donated surplus furniture and equipment to community projects and institutions.

4.5 SITE CLOSURE

The company has recently closed, or is due to close, a number of operations. These have included, copper facilities in Arizona, demolition of steelworks in Newcastle, New South Wales, and closure of a number of mines in South Africa.

4.5.1 The company seeks to develop long-term business relationships in local communities and does not terminate its operations without assessing the long-term environmental, social, cultural and economic sustainability impacts on the local community. (1.3.C.6)

The company states that it does monitor the extent to which communities are dependent on BHP Billiton activities and also that it tries to implement programmes that enable the community to operate sustainably after the life of the site in question. However, ECCR has received varying reports regarding the effectiveness of these.

**Case Study: South Africa
Closure of the Reitspruit Mine**

ECCR has received reports describing controversy over the closure of the Reitspruit mine in South Africa's Mpumalanga province. The mine was jointly owned by BHP Billiton and Xtrata.

According to unionists, the mine failed to inform communities of closure or negotiate a plan to lessen the impact of this far enough in advance. Eventually a trust was set up for the displaced workers. This included an initiative to retrain workers so that they could set up fruit and vegetable growing businesses. However, this scheme folded within two years as it became evident that there were insufficient markets for these products.

Reitspruit workers have also, reportedly faced difficulties as a result of no longer receiving housing subsidies from the company after the mine closed. According to unionists, the company wants to sell the homes to former workers, but as many are now unemployed, they do not have enough financial security to buy them. Unionists have suggested that the company should either give the houses to the workers or find mechanisms which ensure that they can be sold at a price that the former workers can afford.

The way in which initiatives were developed were criticised, not only for lack of consultation, but for failing to take into account the needs of the broader community which was heavily dependent on the mine. For example, after the closure of the mine the community's only bank also closed meaning that residents have to make an 120km round trip to the nearest bank.

The way in which the mine closure was handled, reportedly caused considerable tensions within the community.

Source: South African National Union of Mineworkers

In 2003 the company stopped production at its Pering Mine, near Reivilo in South Africa. During the mine's life the company helped employees buy property, partially funded a sport centre and other facilities including educational facilities.

Surveys, conducted by the company at the time that the decision was taken to close the mine, showed that the mine was the only multiplier industry, that there were few job opportunities otherwise, and that the town was only 'marginally sustainable'. The company states that it has learned lessons for the future. These include earlier consultation with the various stakeholders at a higher level, and a closure plan being in existence throughout the operations to ensure that sustainable projects ensue (the latter has been formulated into the HSEC Management Standards).

4.5.2 The company has a plant closure policy, which provides transitional arrangements for employees. (1.3.B.8)

The company HSEC Management Standards state that closure, decommissioning, remediation and rehabilitation plans should be established, costed, documented and annually reviewed and that the company should work with local communities throughout the closure period to identify needs and identify priorities for sustainable development projects.

It would seem that experience in ensuring the security of the local economy is mixed and reports such as that on the Reitspruit mine indicate that there may be some problems with regard to implementing company consultation policies in some instances. In some respects this is almost inevitable, given the nature and location of some of the sites involved. In this sense, communities, which have often sprung up purely to service the mine, are particularly vulnerable in the closure period. See also: case study on Reitspruit mine above.

5. INDIGENOUS COMMUNITIES

Questions

1. What policies and practices does the company employ to accommodate the cultural, spiritual and social needs of employees who are members of indigenous communities?
2. Given that the company has admitted in at least one instance that its strategies to increase indigenous peoples' employment rates are not working to the extent that it would like, what is the company doing to improve these?
3. Is it company policy to seek specific approval from indigenous leaders before operating on or near their traditional lands as well as seeking approval from national or regional governments?
4. What proportion of sites that impact on indigenous communities conduct training to enable employees to gain a better understanding of indigenous cultures? What proportions of staff at those sites undertake such training?
5. What is the company's response to allegations that it has failed or refused to negotiate with communities such as the Wayuu of Tamaquitos, the Gana and Gwi Bushmen and until relatively recently communities surrounding the Tintaya mine in Peru?
6. What special mechanisms/ modifications to usual practices does the company employ for effectively consulting with indigenous groups that are not experienced in communicating with companies, particularly those which use their own languages and which do not easily communicate in 'official' languages?

5.1 GENERAL POLICY

5.1.1 The company seeks to develop long-term business relationships in indigenous communities and does not terminate its operations without assessing the long-term environmental, social, cultural and economic sustainability impacts on the indigenous community. (1.4.C.1)

Company policy states that the social well being of any community in which it operates should be preserved or enhanced by their presence. Sites should monitor negative impacts and consider the extent to which communities are dependent on their activities.

Many of the sites which impact on indigenous communities do have policies aimed at developing business relationships with indigenous groups. See also: Section 5.2.

The company does have policies around minimising the impact of site closures on local communities, although ECCR has received reports that these have not always been as successful as the company would have liked – see for example Section 4 – case study on the Reitspruit mine. It is not clear whether special consideration is given to indigenous communities in this regard.

5.1.2 The company, through its programmes, policies, practices, and communications implement the principles expressed in the International Conventions on Human Rights, Agenda 21 and the International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries, Convention 169. (1.4.B.1)

The company expressly supports the UN Declaration on Human Rights. It makes no specific mention of Agenda 21 or ILO convention 169. However, it does have various policies and programmes aimed at promoting sustainability and respecting the rights of indigenous communities.

Company policy on indigenous communities states that they have the right to keep their culture, identity, traditions and customs. Sites should aim to work co-operatively with communities so as to cause them as little disruption as possible.

5.1.3 The company, as a matter of policy, refrains from litigation that obstructs the implementation of the recognized rights of indigenous peoples and respect of local customs and traditions. (1.4.B.3)

This cannot be determined from the material surveyed.

5.1.4 The company, as a matter of policy, refrains from using any imagery, which is offensive to the indigenous community in product marketing, advertising, endorsements, sponsorships and promotions. (1.4.B.4)

The company does use images of indigenous peoples and land, mostly to illustrate the work carried out by its community programmes. It is unclear whether the company has any specific policy to ensure that these are not considered offensive to the people concerned.

5.2 FACILITATING EMPLOYMENT BENEFITS FOR INDIGENOUS COMMUNITIES.

5.2.1 The company's employment policies and practices fully accommodate the cultural, spiritual and social needs of employees who are members of indigenous communities. (1.4.C.6)

It is not clear what specific company policy is in this respect.

Reports from Mining Watch indicated that in the early days of the Ekati mine project, indigenous employment at the site fluctuated considerably. Reasons given by ex or current employees for this included low wages, little room for professional advancement, no native food and concern about environmental hazards. The local employment officer agreed that there were obstacles to indigenous employment, which included lack of job readiness on the parts of some indigenous employees as well as inadequate training and development programmes to counteract this. Drug and alcohol problems and lack of capacity and infrastructure to support business development were also cited as issues in this respect.²⁶

It is clear however that the Ekati mine has resulted in wider benefits to the local economy. For example a mining association of Canada presentation stated that in 2001 supplies totalling \$106m Canadian were sourced from aboriginal businesses.

²⁶ Mining Watch Canada 'Aboriginal People and Mining in Canada. Six Case Studies', September 1999 - accessed at http://www.miningwatch.ca/issues/aboriginal_gathering/Case_Studies.html#anchor74966

5.2.2 The company provides employment and training opportunities for, and actively recruits from, indigenous communities for all levels of employment. (1.4.C.8)

It would appear that policy on indigenous employments varies with needs from site to site. According to the 2003 HSEC report, a number of sites have specific targets for indigenous employments, whilst others have initiated special initiatives to increase indigenous employment.

In 2000 the company's Iron Ore Unit launched an 'investment in aboriginal relations' strategy, which apparently has seen indigenous employment increase from 3 to 5% of the workforce. The programme includes educational and work support programmes to encourage indigenous employment.

The unit is expanding the programme to contractors and is setting a minimum requirement of 5% indigenous employment for all service, construction and mining contracts as they become due. Systems are being set up to monitor this.

New Mexico Coal in the US has a legal obligation to fill positions at the Navajo mine with Navajo people, providing suitable candidates can be found. The company voluntarily follows a similar policy at San Juan Coal company and New Mexico Coal Support Services.

At the Ekati diamond mine in the Northwest Territories of Canada 58% of the workforce are from the local area (target 62%) and 28% are Northern Aboriginal (target 31%) Ekati also has a workplace literacy programme to support indigenous employees, and has implemented a scholarship programme to support indigenous students to continue in formal education. However, the company has admitted that most of the jobs within the mine require skills that many aboriginal applicants in the area do not have.²⁷ See also 5.2.1.

In the Hunter Valley area of Australia the company is one of a number of employers that is part of the Myan Indigenous Employment Network. This seeks greater co-ordination on aboriginal employment issues across the region and aims to increase the level of aboriginal employment within mainstream industries.

5.2.3 The company provides opportunities for all its employees to obtain an understanding of indigenous culture, treaties, history and current issues. (1.4.C.9)

The company HSEC Management Standards state that employees who interact with people from different cultures, including indigenous cultures should be given cross-cultural training. It is unclear to what extent this policy has been implemented.

5.3 CONSULTATION AND DIALOGUE WITH INDIGENOUS COMMUNITIES.

5.3.1 The company seeks and receive approval from the legitimate local indigenous leadership prior to beginning any business activities. 1.4.C.3.

See also: 5.3.2 for more information on agreements reached with indigenous groups in Australia and Canada.

²⁷ Letter from Cliff Robertson, Human Resources Manager, BHP Billiton Diamonds Inc. to L Foley Deputy Minister Education, Culture and Employment, Government of the Canadian Northwest Territories dated July 28th 2003.

The company Management Standards state that the company should consult with and identify the needs of indigenous communities. The company has reached several agreements with indigenous groups prior to starting mining – these include cases in Australia where aboriginal groups hold land title and with the Dene people upon whose land the Ekati diamond mine is situated. However it does not appear that the company seeks specific approval from indigenous leaders in all cases. Some cases where permission does not appear to have been sought include:

In Botswana, campaigning groups claim that Kalahari Diamonds Limited, in which BHP Billiton has an equity share, has failed to properly consult the indigenous Gana and Gwi bushmen over plans to explore for diamonds on their traditional land.²⁸ The company disputes this claim. See also: Case study on the Bushmen below.

The Wayuu Indigenous community living in Tamaquitos on the edge of the El Cerrejon Norte mine, has been adversely affected by its operations, according to the Mines and Communities Network. According to community organisations, the company has refused to negotiate with them and has pressured the national directorate for indigenous affairs so that the Tamaquitos are not recognized as an indigenous community.^{29,30} See also: case study on communities surrounding the El Cerrejon mine.

Again, according to reports from Oxfam Community Aid Abroad (OCAA), until around 2001, managers from the company's Tintaya copper mine in Peru refused to respond to indigenous community complaints or requests for compensation regarding mining impacts on their land. However, partly as a result of interventions made by OCAA, the company is now engaged in dialogue with communities through a 'round table' process. The process has seen some of the community's grievances addressed, although there are many still outstanding.³¹

The company has also had disagreements with the Chippewa people over the company's plans to build the Crandon Mine in Wisconsin. After a lengthy dispute, the company decided not to go ahead with the development and to sell the land to indigenous groups instead.

²⁸ Survival International

²⁹ Friends of the Earth Australia press release 'Environment & Human Rights groups condemn BHP Billiton in Colombia' - June 25, 2004. Available at http://www.foe.org.au/mr_25_06_04.htm

³⁰ Mines and Communities 'Urgent Action - Emergency at Indigenous Community of Tamaquitos, Colombia' April 2004 available at: <http://www.minesandcommunities.org/Action/action59.htm>

³¹ See Oxfam Community Aid Abroad's Mining Ombudsman Annual Reports 2001-3. These are available at <Http://www.oxfam.org.au/campaigns/mining/index.html>

Case study: Botswana Exploration over the traditional lands of the Gana and Gwi Bushmen

The company's subsidiary Kalahari Diamonds Limited (KDL) has been criticised by the campaigning group Survival International over lack of community liaison activity with regard to diamond exploration on the Kalahari Game Reserve.

BHP Billiton holds a 20% stake in KDL which has won a large number of licences to carry out exploration for diamonds across Botswana, and which include areas of the Kalahari Game reserve, parts of which form the traditional homelands of the Gana and Gwi Bushmen.

The main problem, according to Survival is that despite BHP Billiton having conducted a consultation exercise with NGOs working on behalf of the Bushmen, neither the people on the reserve, nor the vast majority of those living in the camps outside it have any idea about the proposed corporate activity in the area, and even less about what impact it might have on their everyday lives, particularly if diamonds are found.

The Bushmen's case is complicated by the fact that for several years the Botswanan government has been trying to move them off their traditional lands in the reserve. Many locally claim that this has to be connected to the possible presence of diamonds, although this has been denied, by both the government and KDL, which states that removal of communities will not be necessary, even if mining does take place.

According to Survival, problems with consultation are due partly, to the difference between the sort of indigenous community consultations in Australia and North America, where BHP Billiton has experience and those required to meaningfully consult with people like the Bushmen.

The Bushmen have no real resources. Many Bushmen do not speak Setswana, and even fewer can read. Meaningful consultation in these circumstances is much harder, more time consuming and would have to be done verbally in the Gana and Gwi languages.

Survival feels that, given the relative lack of capacity of indigenous peoples like the Gana and Gwi Bushmen to engage with companies compared to the relatively well organised North American and Australian indigenous peoples, the company needs to modify its usual policies for consultation. In particular the company needs to do more to proactively consult with individuals rather than NGOs, and to do this verbally and in the languages of those concerned.

Source: Survival International

5.3.2 The company, together with the legitimate representatives of the indigenous community jointly establishes clear decision-making processes and structures with a recognized programme that monitors their implementation. (1.4.B.6)

The company develops a transparent process for the inclusion of indigenous peoples as full participants in business decisions. (1.4.C.7)

It seems that company policy towards indigenous peoples varies from site to site, according to circumstances.

The company's Management Standards state that operations should actively identify local and indigenous communities and their cultural heritage values that would be potentially impacted by BHP Billiton operations, and that the company should develop strategies to address concerns and aspirations. It is clear that the company has made formal agreements with indigenous peoples in some instances, such as those with the Australian aboriginal communities described below. However, potential problems, such as those arising from the cases of the Gana and Gwi Bushmen and the Wayuu people, indicate that this is not always the case.

Agreements that the company has signed with communities include the 'Area C' agreements for iron ore mining across the Pilbara region of Australia and the Curtin Springs Indigenous Land Use Agreement. The company has also signed four different agreements with indigenous communities surrounding the Ekati mine. Some of these have provisions such as minimising environmental impact, compensation payments and indigenous employment provisions.³²

It is not always clear, however, that mechanisms exist to monitor whether the company fulfils obligations under agreements with communities or regulatory bodies. Although this has occurred on at least one occasion with regard to communities impacted by Ekati mine in the Northwest Territories of Canada.

**Case study: Canada
Consultation and communication with communities
affected by the Ekati Diamond Mine**

According to Ekati's 2003 HSEC report, the company signed agreements with four different indigenous communities around use of the mine site. Each of these specify schedules for carrying out consultative meetings with communities throughout the life of the mine. Some of the agreements such as the 'impact and benefit agreement' signed with the Lutsel K'e Dene First Nation contain employment or purchasing targets.

An additional environmental agreement was made with the Canadian authorities and as part of this an independent environmental monitoring agency was set up, to monitor the extent to which the company is implementing the agreed objectives. The agency is mostly funded by BHP Billiton Diamonds, however, it is governed by the interests of seven different members – four of whom are indigenous communities impacted by the mine. Other members are the company and national and regional governments.

Each member is able to appoint a director to the agency board. The agency makes independent assessments of the actual or potential impacts of the company's activities, the results of which are publicly available. This process has resulted in several criticisms being made of the company, together with suggested changes, several of which have been implemented.

Source: Ekati website, Independent Monitoring Agency, Minewatch

³² Ref: see footnote 33

5.3.3 The company negotiates a just and equitable economic settlement with the indigenous community(ies) involved, including adequate compensation where applicable. (1.4.C.5)

It is clear that in some areas the company has come to formal arrangements with indigenous communities regarding company responsibilities and to ensure that communities should receive benefits from BHP Billiton Operations. See also: 5.3.2.³³

5.3.4 The company communicate its business plans in a way that the local indigenous community can understand and seeks to be actively involved in the development of indigenous businesses. (1.4.C.2)

It would appear that the company's activities in this regard vary from site to site.

The company has apparently instigated a relatively successful consultation process with the communities affected by the Ekati diamond mine and parts of the company, such as the Iron Ore division have a number of other initiatives, including working with majority indigenous owned mining services companies.

However, community reports from Peru, Colombia and Botswana indicate that community consultation has been less successful elsewhere. See also: Section 4 - Case studies

5.3.5 The company, with the co-operation of the indigenous peoples concerned, performs a holistic comprehensive study of its potential environmental, physical, social, economic, cultural and spiritual impact on the community and modifies its business plan to ameliorate potential harm. (1.4.C.4)

The company has reached agreements with several indigenous communities across Australia. As part of the agreements that allowed development of Mining Area C in the Pilbara region, the company negotiated with traditional owners to excavate and relocate stone arrangements that were found to have had cultural and archaeological significance. This decision was made because of fears that if they were left in place, they might at some time in the future be disturbed by mining in the surrounding areas.

However accusations have been made by campaigning groups that the company has failed to sufficiently consult indigenous communities, or do enough to prevent physical, cultural, environmental harm to them as a consequence of BHP Billiton activity. For example, campaigners working on behalf of the former residents of the village of Tabaco in Colombia, complain that the BHP Billiton subsidiary Carbones del Cerrejon (now the Cerrejon Coal Company) bulldozed the village cemetery without giving villagers the opportunity to relocate or perform rituals for their ancestors that were buried there. See also: Section 4 – case study on communities surrounding the El Cerrejon mine).

³³ Mining Watch Canada 'Aboriginal People Mining in Canada: Six Case Studies' September 1999 - accessed at [Http://www.miningwatch.ca/issues/aboriginal_gatgheringCase_Studies.html#anchor74966](http://www.miningwatch.ca/issues/aboriginal_gatgheringCase_Studies.html#anchor74966)

6. EMPLOYMENT CONDITIONS

Questions

1. How is the company working to bring site-level practice and attitudes into line with legal requirements and company policy since the transformation legislation in South Africa?
2. What is the company doing to better enable black South Africans to effectively take on more technical and managerial positions?
3. What is the company's reaction to allegations that it is effectively trying to de-unionise its workforce?
4. Are reports that unionised workers are paid less than their non-unionised counterparts at the Port Hedland iron ore facility, for carrying out the same work, true? If this is the case, does the company employ this practice elsewhere?
5. Does the company have a mechanism in place, which ensures that workers receive equal pay for work of equal value?
6. What is company policy with regard to informing and making provision for workers and communities about site closures, particularly in isolated areas where BHP Billiton's operations are the main source of economic activity?
7. Has the company considered converting some of its single-sex hostels into family living units, which would enable workers to spend more time with their families and better meet their family obligations?
8. Does the company have a formalised process for ensuring that employees, contractors and suppliers are paid a 'sustainable living wage' in the country in which they operate?
9. Has the company or any of its subsidiaries made any compulsory redundancies since the adoption of its 'no compulsory redundancy' policy?
10. What proportion of BHP Billiton employees undertake training and development courses provided by the company? Will the company report on this?
11. Does the company provide workers from sites that have closed the option of relocating and taking up employment within the company elsewhere?
12. Does the company have a procedure to assess the impact of job losses on the workers that remain working for the company?

6.1 EQUALITY OF OPPORTUNITY

6.1.1 The company ensures that no person is subject to any discrimination in employment, including recruitment, hiring, remuneration, benefits, advancement, discipline, termination, or retirement, on the basis of gender, racial/ethnic origin, social or ethnic origin, culture, religion, age, disability, sexual orientation, nationality, or political opinion. (2.1.C.1)

Training, development, promotion and advancement opportunities within the company are available to all employees of the company regardless of status, whether full-time, part-time, short-term, or with any other contracts of employment. (2.1.C.6)

The company states that employment offers and other decisions should solely be made on the basis of merit. Company policy specifically prohibits discrimination on the grounds of race, colour, gender and religion.

The company states that it has identified a number of sites at which there are likely to be sensitivities around discrimination issues and it is working to resolve these.

6.1.2 The company has a policy, which prohibits health testing as a condition of employment including pregnancy testing. (2.1.C.4)

The company is involved in a number of occupational health initiatives which involve health screening and testing of workers for occupational and other diseases. The company prohibits discrimination on the grounds of pregnancy, family responsibilities or HIV status.

6.1.3 The company actively recruits and employs for all positions at all levels, including management, from the local population. (2.1.C.5)

In South Africa the company's policies are guided to a large extent by the government's employment equity act. All operations should have an employment equity policy in place, which aims to achieve representation at all levels, consistent with the demographic profile of South Africa. In South Africa there is a company-wide target of designated group representation of 40%. The company states that the actual figure is currently 26.45%

The company has established an Employment Equity Steering Group to support implementation of the requirements of the Employment Equity Act. The group is comprised of site Chief Operating Officers and meets every two months.³⁴

There are also targeted indigenous employment programmes in the Pilbara region of Australia, the Northwest Territories in Canada and in New Mexico.

³⁴ EIRIS

Case study: South Africa Employment Equity: a view from the unions

Despite company policies which aim to see employee representation at all levels reflecting South Africa's overall demographic profile, unionists have claimed that in reality, little has changed for black workers since the 1980s.

Unionists feel that many white managers have not been helped to adjust their working practices to a reformed South Africa. They also state that there is a lack of programmes to assist black employees in improving their skills. It is claimed that BHP Billiton's current staff grading system effectively discriminates against black employees, even though this is not company intent.

For example, they state that in the company's Western and Eastern Chrome plants, there are few black managers or technical staff. The mines also reimburse different levels of travel allowances for blue and white-collar workers and give different housing benefits. White collar workers receiving housing loans, whilst blue collar, usually black, workers have to negotiate with their own banks. Wages and other benefits such as medical benefits also change according to grade.

The unions would like to see change management programmes in place to help the company effectively implement transformation legislation. These would include the provision of basic adult education programmes as well as programmes for white managers to help them see equal opportunities as benefiting the company.

Source: BeFSA, South African National Union of Mineworkers

6.1.4 The company has in place programmes, policies and practices with specific goals and time lines to ensure equal pay for work of equal value. (2.1.C.11)

It is not clear what specific policies are in place to ensure this. However, reports from South African unionists, and in relation to Australian, would indicate that there might be a potential problem with this. See also: 6.2.1 and case study on employment equity in South Africa.

6.1.5 The company adheres to ILO conventions regarding basic employment practices, equality of opportunity, and the elimination of all forms of discrimination. (2.1.B.1)

The company has policies dealing with all the issues above and has indicated that it is committed to observing labour standards as laid down in the ILO Core Conventions.³⁵ It states that where governments have legislated to implement other ILO conventions it will observe these also.

³⁵ EIRIS

6.2 FREEDOM OF ASSOCIATION

6.2.1 Employees are free to organize and join workers' organizations without discrimination or interference and to engage freely in collective negotiations to regulate the terms and conditions of employment. No employee is discriminated against for engaging in union organizing and collective bargaining activities and other worker committees. (2.1.C.10)

The company states that all employees are able to choose whether or not they wish to join a trade union.

There appears to be some confusion over the company's approach to unionisation and particularly to collective bargaining. While the company states that it respects workers' rights to bargain collectively, it does not allow this on all sites.

In response to criticisms, the company states that all workers are made aware of particular site arrangements regarding collective bargaining before starting work. All BHP Billiton sites are also required to report the extent to which their workforce is covered by collective agreements. According to the 2003 HSEC report this roughly amounts to 60% of the total workforce

There have been several reports from unions that the company has taken actions to undermine workers organising through unions.

For example, several unions have complained that the company tries to get new employees to sign individual contracts rather than a collective agreement. They also state that moves to reduce the number of permanent staff, replacing them with contractors and part-time staff, has effectively weakened the bargaining power of the unions.³⁶

According to unionists at the company's Port Hedland iron ore facility for example, the company pays unionised and non-unionised workers different rates. Non-union workers can receive as much as AU\$20,000 more in basic pay as well as higher rate of bonus payments than unionised workers.³⁷ [In its response to this report the company disputes these statements.]

ECCR has also received reports from unionists in Mozambique that the company insisted on unions agreeing to a 'no strike' agreement as a condition of union recognition and that unionists have been dismissed as a result of pursuing strike action. See also: 1.1.1.

In Colombia unionists have linked mining companies, including BHP Billiton to both the Colombian army and paramilitaries, which have in turn been linked to attacks on trade unionists.³⁸

³⁶ ECCR correspondence with International Metalworkers Federation

³⁷ 'BHP's Little Red Hook' Australian Manufacturing Workers Union 11th May 2004

³⁸ ECCR interview with CUT

6.2.2 The company makes available to independent monitors the work records of employees when there is question of discrimination against labour organizing or other collective bargaining activities. (2.1.B.3)

This cannot be determined from the material surveyed.

6.2.3 The company adheres to the principles set out in the International Labour Organisation Conventions on Freedom of Association and Free Collective Bargaining. (2.1.B.2)

These are core ILO conventions and as such the company has stated that it is committed to upholding them.

However, there have been several allegations that the company's policy with regard to collective bargaining, employment on individual and temporary contracts, and actions such as the dismissal of unionists in the Mozal case, would not appear to be within the spirit of these conventions. See also: 6.2.1 and 1.1.1.

6.3 HEALTH AND SAFETY

6.3.1 All who work within and on the company's premises, whether permanent, temporary or contracted employees, including those engaged in day labour, receive equal protection, especially in provision of equipment and information concerning their health and safety at work. This information is provided in the languages of the workers. (2.1.C.7)

The company HSEC Management Standards state that health and safety inductions should be conducted for all employees, contractors and visitors as they start employment or a site visit.

6.4 WORKING HOURS AND REMUNERATION

6.4.1 The company uses an established process to calculate a sustainable living wage. The process to determine a sustainable living wage is used in each of the geographic areas where workers live. (2.1.C.13)

The company ensures that as a minimum, all employees are paid a wage, which, at least, provides sufficient purchasing power to enable employees to meet the basic needs of themselves and their families. (2.1.C.12)

The company 2003 HSEC report states that all employees earned more than the legal minimum wage in the country of their employment. It is unclear whether the company uses any formal process to establish whether this equates to a 'sustainable living wage'.

6.4.2 The company pays all legally mandated benefits as a minimum standard. (2.1.B.4)

The company does not make any formal disclosure on this, other than stating that the company will meet all national laws within the country in which it operates.

However, reports from Unionists in Southern Africa have shown that the company successfully managed to negotiate that the area around the Mozal aluminum smelter be designated an Export Processing Zone. As such many aspects of national legislation, including labour laws do not apply in that area. See also: 1.1.1.

6.4.3 The company does not require employees to work overtime on a regular basis and does not require young employees to work overtime. Employees may refuse overtime without any threat of penalty, punishment, demotion or dismissal. (2.1.B.5)

This cannot be determined from the material surveyed.

6.4.4 The company does not adopt the quota system for production or any forms of penalty. (2.1.B.8)

This cannot be determined from the material surveyed.

6.5 WORK LIFE BALANCE

6.5.1 The company supports and/or provides the essential social infrastructure of child care, elder care and community services which allow workers, especially women who have traditionally done this work as unpaid labour, to participate as employees. (2.1.C.9)

The company has indicated that sites should offer childcare facilities or subsidies, job share and career breaks.³⁹ According to the 2004 HSEC report, Australian sites have been working on initiatives to promote a better work/life balance. These include flexible working options and elder care information.

6.5.2 The company recognizes the responsibilities of all its workers to their families, and provides paid maternity, paternity, family and compassionate leave. (2.1.C.8)

It cannot be determined what specific policies exist for family leave.

ECCR has received reports that in some South African operations such as Ingwe Coal the single-sex hostels, which the company provides for workers to live in, make family living impossible. This means that families must be separated unless they can find alternative accommodation.

The company does offer workers a 'living out' allowance, which unionists say, many workers accept as it gives them extra cash in their pockets. However, according to unionists, this does not necessarily mean that suitable family accommodation can be found nor does it promote company accommodation that meets the needs of remaining workers.⁴⁰

Unions would like to see some of the hostels converted into family living units in order that workers can more easily spend time with their families.⁴¹

In the 2004 HSEC report, the company recognises that the practice of housing workers in single-sex, hostel style accommodation is being increasingly seen as unacceptable.

³⁹ EIRIS

⁴⁰ BeFSA

⁴¹ BeFSA

6.6 HEALTH AND WELL-BEING IN THE WORKPLACE

6.6.1 The company ensures that no employee is subject to any physical, sexual, psychological or verbal harassment or abuse. (2.1.C.3)

The company states that harassment of any sort is unacceptable.

6.6.2 The company accommodates the cultural, religious and social needs of employees. (2.1.C.2)

This cannot specifically be determined from the material surveyed

6.7 GRIEVANCE PROCEDURES

6.7.1 The company agrees to implement a grievance procedure which is easily understood by workers. (2.1.C.17)

The company implements a standard grievance procedure allowing for progressive steps and channels to resolve grievances, where in the case of a grievance not being resolved at company level, provision is made for the employee to follow the appropriate legal route. The company undertakes to inform workers of their rights and assists them in this regard. (2.1.C.16)

This cannot be determined from the material surveyed.

6.7.2 The company keeps a record of all grievances lodged, how they were resolved and actions pending against the company. (2.1.B.6)

This cannot be determined from the material surveyed.

6.8 RESTRUCTURING

6.8.1 In situations where corporate restructuring is taking place, the company provides the opportunity for redeployment and retraining of employees in order to offer sustainable patterns of employment. (2.1.C.15)

The nature of mining means that the nature, size and activities of a large integrated mining company such as BHP Billiton will change relatively frequently as the life of mines come to an end.

See also: Section 4 – Local Communities.

The company has a policy to consult with employees on major organisational changes.⁴²

However, ECCR has received reports that the way in which the company went about closure of the Reitspruit mine in South Africa's Mpumalanga province, led to tensions amongst employees and the local community.⁴³ See also: Section 4.5.

The company has also eliminated large numbers of jobs in continuing operations. For example, in South Africa Ingwe Collieries retrenched 400 workers, stating that this was because of fluctuations in the dollar-rand exchange rate, although unionists claimed this was actually in order to replace workers with machinery. Unions have also stated that after retrenchments occur, incentives are introduced for workers to work harder and faster. They believe this is causing burnout amongst workers and could potentially contribute to health and safety failures.⁴⁴

⁴² EIRIS

⁴³ BeFSA

⁴⁴ BeFSA

**6.8.2 Formal redundancy/layoff policies are only be adopted as a last resort.
(2.1.B.9)**

The company has indicated to EIRIS that it has a policy not to make compulsory redundancies.⁴⁵ It is unclear whether the 'retrenchments' cited above involved compulsory redundancies.

6.9 EMPLOYEE DEVELOPMENT

6.9.1 The company reports publicly on the frequency of training and education of workers on their rights and responsibilities in line with best practice and industry developments. It undertakes such training that is free and compensated. (2.1.B.7)

The company does not publish information on the extent of employee training and development.⁴⁶ It has however disclosed that over 25% of employees have an annual training and development review.

⁴⁵ EIRIS

⁴⁶ EIRIS

7. HEALTH AND SAFETY

Questions

1. What mechanisms are used by the company to ensure two-way communication with employees on health and safety issues? Are similar guidelines given to all of BHP Billiton sites in this respect?
2. What is the company's response to reports that management of South African sites do not have the authority to make changes on health and safety issues?
3. What proportion of sites in which BHP Billiton has an interest have elected worker health and safety representatives?
4. What facilities and assistance does the company provide to such representatives in order to enable them to effectively carry out their function?
5. Has the company investigated union claims in Australia and South Africa that retrenchments and tighter production schedules are resulting in health and safety lapses across the company?
6. What is company policy for compensation or redeployment of workers who are injured at work and unable to return to their original function?
7. Given that there appears to be some lack of clarity of what the company is able to offer Southern African employees and their families in terms of treatment for HIV/AIDS, could the company clarify its policies and procedures in this area?

7.1 HEALTH AND SAFETY POLICY

7.1.1 The company adopts specific policies to ensure that the workplace is free from toxic substances and all kinds of risks; is properly ventilated and appropriate, free, protective equipment and hygienic bathrooms and changing rooms for workers, especially for women and young workers are provided. (2.2.C.1)

See also: Section 2.7 on occupational health.

The company states that its overall approach to health and safety is a preventative one. Company Management Standards state that sites should conduct ongoing health, hygiene and safety assessments to assess risks. Sites should also have systems to identify and plan employee training needs with regard to health and safety.

After the merger in 2001, the company undertook a review of safety performance which identified nine areas in which more stringent controls were needed. Requirements designed to promote safety for each of these are now being implemented throughout the company, with completion expected in 2005.

The 2003 HSEC report particularly mentions the need to reduce potential exposure of workers to noise and dust and the need to reduce emissions of sulphuric acid and emissions from smelting processes that are known to induce asthma in employees.

The company has since introduced company-wide exposure standards, which it claims, are more stringent than those required by local legislation in several areas.

The 2003 HSEC report cites various initiatives that have taken place across the company to improve health and safety. These include supporting malaria control initiatives in Southern Mozambique and Brazil, a 'Zero Harm' initiative at the Mozal expansion project in response to unacceptably high levels of injuries and a programme to instill a health and safety culture at the Ohanet oil and gas development in Algeria.

According to the 2004 HSEC report, as a response to six separate workplace fatalities, the company shut down all of its Samancor Chrome operations in South Africa, so that it could effectively address safety concerns and engage with workers on these issues.

The company has designated the Chair of the Health and Safety Committee as responsible for overseeing health and safety.⁴⁷

The company also operates an awards scheme to encourage and reward employee participation in health and safety initiatives.

7.1.2 The company adheres to the relevant codes of the World Health Organization (e.g. The International Code of Marketing of Breast Milk Substitutes) and the relevant International Labour Organisation's recommendations on health and safety, on the health of young workers, the health of women workers, the use of chemicals, occupational diseases, compensation for occupational injury and other related issues. (2.2.B.1)

The company does not refer to any of these recommendations specifically. However, it has stated that where ILO conventions, other than the core labour conventions, are ratified by countries in which it operates, it will comply with these.

7.1.3 Where provided, the company ensures healthy food and decent accommodation for the workers. (2.2.B.6)

The company often does provide accommodation for workers, particularly those based in isolated sites. This includes hostels and some houses. The condition of these cannot be determined from the material surveyed.

See also: 6.5.2 for more information on worker accommodation in South Africa.

⁴⁷ EIRIS

7.2 WORKER PARTICIPATION IN HEALTH AND SAFETY ISSUES

7.2.1 The company ensures participation by workers from all levels of employment, in education, examination and the monitoring process on issues of occupational health and safety. (2.2.C.2)

The company's policy on this is unclear. The 2003 HSEC report states that the Energy Coal division has undertaken a 'peer review' process to see how new health and safety protocols are being implemented. Recommendations for improvements are passed to mine management, which would imply that 'lower' levels of workers are involved in it. The extent to which this happens elsewhere is unclear.

However, ECCR has received reports from unionists in South Africa that many workers feel that the company does not have sufficient structures to encourage two-way communications between workers and higher levels of management. This is considered particularly important by unionists in addressing the health and safety impacts of smelters and manganese plants.⁴⁸

South African unionists perceive that there is a big difference between the communication structures in Australia and those in South Africa. They believe that corporate headquarters are often de-linked from operations in South Africa, where plants often state that they do not have the power to deal with particular social responsibility issues. Unionists feel that the company should have one global policy in this respect.

7.2.2 The company ensures that workers can elect representatives through democratic processes to factory Health and Safety Committees. They have rights to have regular monitoring of the factory, to have full access to all the information related to the occupational health and safety issues, and they will not be penalized when they assume these duties. (2.2.B.3)

The company HSEC Management Standards state that employees and contractors should participate in the development, implementation, review and improvement of HSEC goals and targets, as well as the review and verification of HSEC initiatives. However, the company does not appear to disclose the extent to which this is implemented.

It is clear that some unionised plants do have safety representatives, although it is not clear whether these exist for all plants and whether they are assisted in this duty by the company through the provision of information, communication channels etc.

7.2.3 The company has clear communication policies on occupational health and safety, stress issues and all forms of harassment, through a variety of means, including a clear checklist and a worker-friendly handbook. (2.2.B.2)

The HSEC Management Standards state that sites must have systems in place to ensure that employees and contractors are aware of expected HSEC behaviour.

⁴⁸ BeFSA

According to this, all employees, contractors and visitors must undertake an induction relating to HSEC hazards, objectives and behaviour at the start of their visit/ employment.

In terms of communication, the company has a guide to business conduct, which gives guidance for the implementation of its policies. The company also produces a policy guide for employees '*Working responsibly at BHP Billiton: Our Health, Safety, Environment and Community Policy*'. This document highlights each component of BHP's policy and sets out the rationale behind each of these. Both of these documents deal with health and safety issues, however, this tends to be in terms of top-level issues and principles, rather than at an operational level.

The company cites one initiative at the Ohanet oil and gas development in Algeria as being a model for health and safety communication. In this instance the company used various methods of communication to educate workers about health and safety issues. These included the use of posters, holding meetings and workshops and making sure that these were all executed in different languages. It is unclear to what extent such initiatives take place in other parts of the company.

7.3 MONITORING

7.3.1 The company accepts independent monitoring by civil society groups and qualified inspectors and provide access for the inspection of plant facilities. The company agrees to take action to rectify any problems in a timely fashion. (2.2.B.4)

It is not clear whether the company accepts regular independent health and safety monitoring at any of its plants. Sites carry out such monitoring themselves on an annual basis, and an audit is carried out at least every three years using BHP Billiton personnel independent of the site concerned. According to the 2004 HSEC report, in at least one instance, at the Minerva gasfield development in Australia, some members of the local community have been invited to participate in such audits.

It is clear that some sites are externally monitored as part of the certification process for the annual health, safety, environment and community report. However, whether there is a regular external monitoring procedure beyond this is not clear.

The company reports some of the outcomes of self-assessment and audit. Figures are shown in terms of number of employees who would be potentially harmfully exposed to substances were it not for the use of personal protective equipment.

During 2004 a centralised database was set up to store and monitor all site-level health, safety, environment and community information.

7.3.2 All contraventions of health and safety laws are reviewed and recorded, and corrective action is taken. (1.2.B.11)

According to the company, HSEC management standards, all health, safety, environment or community 'incidents' should be reported and investigated. Systems should be in place to ensure that incident reviews should result in recommendations for corrective/ preventative actions and that these should be followed up to ensure that they are implemented.

The company is currently under investigation by the federal government of Western Australia with regard to safety at some of the company's operation in the Pilbara region, following a series of health and safety incidents including three deaths that took place in May 2004.⁴⁹

According to unionists, the company's movement towards de-unionising the workforce, linking payment to performance targets had all contributed to lowered health and safety standards across the company's operations.⁵⁰

7.3.3 The company ensures that workers can stop work if they find themselves at risk and that workers injured at work will be provided with suitable jobs after medical and psychological treatment. (2.2.B.5)

The company HSEC Management Standards state that employees and contractors have the 'right and responsibility' to stop work or refuse to work in unsafe conditions, and to bring those conditions to the attention of management.

The Standards also state that systems should be in place at sites for the rehabilitation of employees and contractors following work-related injury or illness. It is unclear if the company has systems to provide employees with alternative jobs, should work-related injury make it impossible to return to their original function.

7.4 HIV/AIDS

7.4.1 Where governments do not provide universal health coverage, the company provides adequate coverage for its employees and their dependents. This includes necessary essential medicines, including antiretrovirals for HIV / AIDS. (2.2.C.4)

In the 2004 HSEC report, the company states that it recognises that it has the responsibility to manage the impact of HIV/AIDS in order to care for its Southern African employees.

In South Africa and Mozambique the company states that it is involved in various initiatives to help treat or prevent the spread of HIV/AIDS. According to the 2003 HSEC report, the company contributes to each employee's salary to enable employees and their families to become members of a medical aid fund. These provide antiretroviral treatment.

The company also states that it supports a number of community initiatives on HIV/AIDS education and prevention. In particular it cites two community support centres in Zululand and Gauteng Provinces.

⁴⁹ 'Three deaths start BHP investigation' *The Australian* 24th May 2004

⁵⁰ 'BHP's Little Red Hook' Australian Manufacturing Workers Union 11th May 2004

However, ECCR has received reports that such schemes are not working as they should. In particular the South African National Union of Mineworkers has been critical, stating that there is no common strategy amongst BHP Billiton sites to combat HIV/AIDS and that there is a great deal of confusion about what the company is able to offer. They also state that many of the company's initiatives do not include the families of workers or local communities. If this is the case this is likely to reduce the efficacy of the HIV/AIDS programmes that the company does provide. Some operations such as the Ingwe collieries, where unions are asking for drug provision for workers as well as the employment of HIV/AIDS co-ordinators, do not have a formal HIV/AIDS policy.

7.4.2 The company provides on-going education on the prevention of HIV/AIDS, training to overcome the stigmatization of employees with HIV/AIDS, and provides support systems to employees and their families such as counselling. (2.2.B.7)

Company policy prohibits discrimination on the grounds of HIV/AIDS.

The 2003 HSEC report states that the company supports various HIV/AIDS educational and awareness programmes in some of the Southern African communities in which it operates. The 2004 HSEC report states that the company emphasises on-site HIV/AIDS education amongst its workforce, but does not state the proportion of Southern African sites that have implemented such programmes.

8. SUPPLIERS

Questions

1. Which social, ethical or environmental issues does the company find pose the greatest challenges for BHP Billiton suppliers and contractors?
2. It is clear that BHP Billiton requires contractors to implement BHP Billiton standards, however, the approach to suppliers is less clear. Does the company have a specific minimum set of standards that it requires suppliers to meet?
3. What specific assistance does the company offer to enable suppliers/contractors to meet BHP Billiton standards?
4. What is the company's approach to developing long-term relationships with suppliers?
5. Does the company have a mechanism that allows workers and unions within supplier companies to take part in monitoring working conditions and safety standards?
6. How frequently, and by what mechanisms, does the company monitor the extent to which suppliers and contractors are operating in an environmentally sound and socially responsible way?
7. What mechanisms does the company use to investigate possible violations of the standards required of suppliers?
8. Would the company consider reporting on the results of supplier monitoring?
9. Does the company develop a specific plan of action with suppliers to address areas where BHP Billiton standards have not been met?
10. Has the company considered terminating, or actually terminated any contracts with suppliers due to persistent failure to meet BHP Billiton standards?

8.1 SUPPLY CHAIN POLICY

8.1.1 The company has a strong code of conduct for vendors and suppliers which includes, but is not limited to, child labour, forced labour, harassment, nondiscrimination, healthy and safe workplace, freedom of association and right to bargain collectively, sustainable living wages and benefits, hours of work, the environment, supportive social and physical community infrastructure and monitoring mechanisms for compliance. (2.4.C.1)

The company HSEC management systems state that suppliers, contractors and partners should undergo risk based HSEC evaluation before BHP Billiton will enter into a contract with them.

Contractors are required to implement systems that are consistent with BHP Billiton's own standards. It is unclear whether similar demands are made of suppliers.

The HSEC management systems also state that suppliers and contractors should supply BHP Billiton with information about the hazards associated with their equipment, products and services.

8.1.2 The company adopts a policy to involve employees and workers in the supply chain in formulating, amending and implementing the company's code of conduct. (2.4.C.2)

This cannot be determined from the material surveyed.

8.2. STRUCTURES TO AID IMPLANTATION OF SUPPLY-CHAIN POLICY

8.2.1 The company clearly communicate to its suppliers, vendors and licensees the company's code of vendor/supplier conduct and its process of enforcement. Violations of the code are effectively addressed. Cancellation of contract is only used only as a last resort. (2.4.B.1)

The HSEC Management Standards require sites to establish lines of communication and responsibility with suppliers and contractors to ensure that the standards required by BHP Billiton are implemented. Contracts made with suppliers should stipulate the consequences of not meeting required standards.

According to the 2004 HSEC report the company is working to improve its management of contractors by placing greater responsibilities on site managers to oversee them. A mandatory checklist is being developed in this regard, with the intention that this will become part of the company Management Standards.

8.2.2 The company adopts a policy based on the equitable sharing of all costs relating to the compliance of ILO standards, national law and the company's code. (2.4.C.3)

The HSEC Management Standards state that 'consideration' should be given to creating opportunities for local suppliers and for providing the means to fulfil BHP Billiton standards. It is unclear what this means in practice.

8.2.3 The company adopts a fair pricing policy that enables the supplier to meet its obligations to labour, social and environmental standards. (2.4.C.4)

This cannot be determined from the material surveyed.

8.2.4 The company works with its suppliers to put in place on-going education and training programmes for workers and management on workers' rights and how to achieve and sustain compliance with labour, social and environmental standards. (2.4.C.5)

The company provides on-going, free and compensated education and training for workers. (2.4.B.10)

This cannot be determined from the material surveyed.

8.2.5 The company develops long-term business relations with its supplier in which job security of workers is considered. (2.4.B.2)

This cannot be determined from the material surveyed.

8.3. SUPPLY CHAIN MONITORING

8.3.1 The company has an effective internal compliance process of training, on-site inspections and audits of suppliers and vendors. (2.4.B.4)

The company Management Standards state that systems should be in place to monitor contractors and suppliers for compliance with the HSEC obligations contained within their contracts. The extent to which, or how frequently, such audits occur is not clear.

For contractors these standards should be BHP Billiton standards. It is not clear what standards the company asks suppliers to uphold.

8.3.2 The company accepts the role of workers and unions as monitors of workplace conditions. (2.4.B.5)

This cannot be determined from the material surveyed.

8.3.3 To supplement its internal monitoring of code compliance, the company accepts independent monitoring of its suppliers and/or vendors. Sources of independent monitoring include non-governmental organizations, local community groups, religious, human rights, children's rights and labour groups. (2.4.B.6)

This cannot be determined from the material surveyed.

8.4. REPORTING

8.4.1 The company provides regular reports to all stakeholders that are independently verified on a plan detailing how the company and the suppliers have shared responsibility for compliance. (2.4.B.7)

The company does not appear to disclose this information.

8.4.2 The company adopts a transparent policy and reports publicly to all stakeholders on its compliance programme, the findings, and what changes have been made at the factory level. (2.4.B.8)

The company does not appear to disclose this information.

8.5 ADDRESSING VIOLATIONS OF POLICY

8.5.1 The company, along with its vendors and suppliers, has a plan of action with specific time lines to address code violations. The company has guidelines to terminate its contract if identified code violations are not dealt with in a reasonable period of time. (2.4.B.3)

The company HSEC Management Standards state that consequences of non-compliance with standards required by BHP Billiton should be stipulated in their contract. It is unclear whether this is likely to contain or be supplemented by a plan of action to address any failures to meet those standards, or whether termination of contract is considered for persistent violation.

8.5.2 The company has clear guidelines for the investigation of possible code of conduct violations, which include a safe, confidential process of interviewing employees without penalizing them or jeopardizing their jobs or safety. (2.4.B.9)

This cannot be determined from the material surveyed.

9. JOINT VENTURES

Questions

1. Does the company include any specific minimum HSEC standards in contracts with business partners, particularly regarding joint venture projects where BHP Billiton does not have operational control?
2. How often, and by what mechanisms, does the company monitor joint venture operations, where BHP Billiton does not have operational control, to determine the extent to which high ethical, environmental and social standards are being implemented?
3. What mechanisms has the company used to address allegations of unethical behaviour on the part of business partners, particularly in instances where BHP Billiton does not have operational control of a project?

9.1 MONITORING ETHICAL BEHAVIOUR OF PARTNERS

9.1.1 The company recognizes that unethical behaviour by joint venture and other partners reflects on its own reputation and integrity, and the company has a mechanism to address such unethical behaviour. (2.9.C.1)

The company makes various policy statements that appear to recognise this.

Where BHP Billiton has operational control of a joint venture project, the company states that BHP Billiton standards will apply.

However, the situation regarding projects where BHP Billiton does not have operational control of a project is less clear. The company states that it will supply the operator with information on BHP Billiton standards so that comparable standards can be developed.

The company's HSEC management standards state that business partners should be evaluated for potential health, safety, environmental and community risks before contracts are drawn up and that systems should be in place to ensure that the obligations in this regard that are specified within contracts are monitored.

It is unclear whether any specific HSEC standards are necessarily included within contracts with joint venture partners, nor how often such monitoring is carried out.

9.1.2 The company has guidelines to assess and determine its course of action when a violation of ethical codes is perpetrated by a partner or subsidiary. These guidelines include, but are not limited to, challenging the partner or terminating the relationship. (2.9.B.1)

It is unclear what company policy is with regard to addressing such violations on the part of a partner, particularly those which have occurred as part of a project where BHP Billiton does not have operational control.

There have been a number of instances where BHP projects operated by business partners have been criticised for the impact that their activities have had on local communities. See for example the expropriation of the Colombian village of Tabaco.

See also: Section 4 – case study of communities surrounding the El Cerrejon mine.

10. ETHICAL INTEGRITY

Questions

1. What is company policy with regard to dealing with employees who have raised issues of concern outside the company?
2. Does the company have a formal review mechanism for ensuring that the positions put forward through lobbying are consistent with those espoused by its corporate responsibility policies and statements?
3. Does the company keep a central register of all lobbying activities carried out corporately and by its subsidiaries?
4. Would the company consider making details of its own direct lobbying activities and those carried out through industry associations publicly available, particularly in instances where lobbying is aimed at making changes to host government regulations?
5. Is or has BHP Billiton been a member of the Canadian Energy Research Institute (CERI) and has it contributed any funding to this organisation?
6. Has the company had significant involvement in the drafting of the Colombian mining code, either through CERI or other channels?
7. Has the company, or any industry group of which it is part, been involved in lobbying around changes made to the South Australian Pitjantjatjara Land Rights Act?
8. Does the company have a requirement that all employees receive training on ethical and environmental issues other than that carried out as part of their employment inductions?

10.1 COMMUNICATION OF ETHICAL ISSUES

10.1.1 The company provides training for its directors and employees regarding ethical issues, corporate social responsibility issues and codes of conduct. (2.6.C.1)

Although the company states that it has used various methods for providing employees with information on ethical issues, it would appear that the primary tool is the company's Guide to Business Conduct which is translated into eight different languages.⁵¹ This gives top-level information on;

⁵¹ EIRIS

- Company policies, standards and guidelines on a range of areas from complying with local legislation, to avoiding conflicts of interests and dealing with culturally sensitive issues.
- Corporate structures and lines of responsibility for dealing with company policies.
- Procedures for employees to address issues of concern.
- Procedures in cases of violation of the BHP Billiton codes of conduct.
- Reporting requirements.

Each section of the guide has a question and answer section, giving advice on how to proceed in a number of situations that employees might face in the course of their employment.

The company states that all managers have a responsibility for ensuring that employees have an understanding of company policies. According to the 2004 HSEC report, the company CEO requests annual confirmation that staff reporting to him have read and discussed the Guide to Business Conduct with the staff that they manage directly.

According to the 2004 HSEC report decisions about how to implement and communicate the contents of the guide are made at site-level. The company does provide managers with a range of materials, such as posters, power point presentations and wallet sized cards to assist with this. It is unclear however, what proportion of sites have undertaken a specific programme to increase employee awareness of the guide.

The 2004 HSEC report states that over the last three years, more than 40 of the company's community relations staff have participated in a programme run by Oxfam Community Aid Abroad and the University of Queensland. The programme aims to show employees first hand how large-scale infrastructure projects impact on communities.⁵²

The company also has a global ethics panel, consisting of representatives from different functional areas around the company as well as up to two people from outside BHP Billiton, which promotes ethical standards. The panel provides information to employees, works to see that experience is shared across the company.

10.2 WHISTLEBLOWING

10.2.1 The company has a mechanism to address ethical issues of concern raised by employees. (2.6.C.2)

The company has a business conduct and fraud helpline. The relevant contact details for these can be found in the Guide to Business Conduct. Reports can be made anonymously, although employees are encouraged to provide their contact details.

Serious breaches of the company charter and policies are to be reported to the global ethics panel and instances of fraud are to be reported to the group manager of audit services. The company reports on the use made of these facilities.

The company has developed internal performance requirements for business conduct. The company states that questions regarding these are included in audits.

⁵² EIRIS

10.2.2 The company ensures that employees who raise issues of concern do not suffer negative repercussions. (2.6.B.1)

It is company policy that employees raising concerns should not be subject to retribution or disciplinary action. Employees that believe they have suffered are advised to consult management or the business conduct helpline.

10.2.3 The company ensures that, should the mechanism fail and the employee raises the issue outside the company, there are no negative repercussions on their employment. (2.6.B.2)

This cannot be determined from the material surveyed.

10.3 LOBBYING

10.3.1 The company has in place a system of review that aligns and integrates its corporate social responsibility principles in relation to its lobbying activities at all levels. (2.6.C.3)

It is unclear whether the company has a formal process to review whether the positions advocated when lobbying are in alignment with those put forward in its charter, Guide to Business Conduct, HSEC Management Standards and other corporate responsibility statements.

Employees who provide information to government are, however, required to ensure that all information is accurate and complete and that they comply with relevant regulations on corporate participation in public affairs.

10.3.2 The company's policy and guidelines for external and public relations direct that, in its efforts to influence favourable terms of reference with sovereign and international authorities, the company will promote principles, legislation and rules that enhance the social, environmental and financial well-being of all communities and bio-regions where they have a presence and an impact. (2.6.C.5)

The company states that it does not contribute funds to political parties, politicians or candidates for public office. The company states that policy discussions with government officials and activities such as the provision of information or attendance at political events will be designed to keep the company out of party politics.

General guidelines are given about employee involvement in political activities and making donations. These are permitted, as long as employees are not construed as representing the company.

Company policy with regard to lobbying is less clear and there is no indication that guidelines exist as to the type of issue that can be legitimately lobbied for or against.

10.3.3 The company keeps a record of its lobbying activities and provides regular reports to all stakeholders. (2.6.B.3)

Although the company's HSEC Management Standards state that communication with governments, authorities and other organisations should be open, the company does not appear to report on these communications as a matter of course.

Some documents, such as the company's submission to the World Bank's recent extractive industry review and correspondence with the United Nations regarding the company's fulfillment of Global Compact principles, are made available on the company website. Also, in the 2004 HSEC report, the company does list the major industry associations that it is involved with. However, it does not appear to report publicly on all lobbying activity, whether carried out directly or through industry associations.

It is unclear whether the company records all lobbying activity centrally.

10.3.4 The company, when lobbying United Nations agencies or other institutions, includes in its delegation, groups representative of non-governmental organisations and relevant government ministries. (2.6.B.4)

This cannot be determined by the material surveyed.

10.3.5 The company is recognized by civil society organisations as a leader in securing legislation, rules and practices that enhance the social, environmental and financial well being of all communities and bio-regions where they have a presence and an impact. (2.6.B.5)

The company has been criticised on a number of occasions by NGOs for its lobbying activities. Specific cases of this include:

Lobbying to overturn protected forest legislation in Indonesia

The company, together with others has been criticised for successfully lobbying Indonesian officials to overturn laws that banned open cut mining in protected areas, including the forests of Gag Island, where BHP Billiton has mining leases.

In 2002, Australian Parliamentary questions revealed that the company had requested and received, lobbying assistance from the Australian Embassy in Jakarta in this regard. According to Alexander Downer, Australian Minister for Foreign Affairs, embassy officials had set up nine separate meetings where possibilities for overturning the regulations were discussed with Indonesian parliamentarians, and officials from the Departments for Economic Affairs, Mining, Forestry and Environment.⁵³ After fierce debate in the Indonesian parliament some of the companies concerned (including PT Gag Nickel, BHP Billiton's subsidiary) were allowed to resume mining development activities.⁵⁴

In the 2004 HSEC report the company states that it is seeking clarification of how the new regulations are likely to impact upon operations before recommencing them.

At the company's London AGM in 2003 the chairman of BHP Billiton claimed no knowledge of lobbying in relation to Gag Island.⁵⁵

⁵³ Parliamentary Transcript of questions for Australian Minister of Foreign Affairs Alexander Downer accessed on the website of the Indonesian Forum for the Environment at:

http://lama.walhi.or.id/English/Press%20Room/aust_ambassador_answers_qs.pdf

⁵⁴ Disputed mining bill endorsed *Jakarta Post* 16th July 2004 cited article reproduced at:

<http://www.minesandcommunities.org/Action/press385.htm>

⁵⁵ 'BHP Billiton Chairman Lost in Woods over Indonesian Protected Forests' Mineral Policy Institute 11th November 2003. Accessed at: <http://www.mpi.org.au/rrr/page.php?page=265>

Colombian Mining Code

Colombian community groups and unionists have criticised international mining companies present in the country over the influence that many of them have had in drawing up the country's most recent mining code. ECCR has not seen direct evidence that this involved BHP Billiton.

Amongst other things, the code increased the possible lengths of mining concessions, reduced the royalties that companies were required to pay from 10% to 0.4% and forbids local governments from levying taxes on mines.⁵⁶ The law also restructured and led to the subsequent dissolution of the state mining company Minercol. The latter is due to be replaced by a smaller organisation, which unionists believe will not be powerful enough to oversee, safeguard and control mining activity, distribution of mining royalties and assistance to small-scale miners or carry out research on the dangers posed by earth tremors, volcanic eruptions or landslides all of which had been functions carried out by Minercol.⁵⁷

The new mining code was developed partly through the Canadian International Development Agency and the Canadian Energy Research Institute, with the aim of enabling "energy and mining companies with an interest in Colombia [to] benefit from the development of a stable, consistent and familiar operating environment in this resource-rich developing economy".⁵⁸ CERI states on its website that it is largely funded by a large group of private sector oil, gas and mining companies but does not disclose all its funders. It is not possible to tell whether BHP Billiton or one of its subsidiaries is amongst them.

Australia

ECCR has received reports from Australian aboriginal groups which believe that mining companies lobbied heavily to secure changes to the South Australian Pitjantjatjara Land Rights Act, which would make it easier to mine on aboriginal lands.⁵⁹ [In its response to this report the company denies any lobbying on this issue.]

The Act was amended in the first half of 2004, with many communities complaining that there was insufficient consultation before the changes were made.

⁵⁶ Organización Nacional Indígena de Colombia 'The Mining Code of Colombia' Presented at a meeting on *Indigenous Peoples, Extractive Industries and the World Bank* Oxford, England 15 April 2003. Reproduced at: http://www.forestpeoples.gn.apc.org/Briefings/Private%20sector/eir_internat_wshop_colombia_case_eng_apr03.htm

⁵⁷ Colombian Trade Unionist organisations 'Colombia privatises the mineral industry with World Bank support' 29th October 2003 reproduced at: <http://www.minesandcommunities.org/Action/action48.htm>

⁵⁸ Canadian Energy Research Institute website: <http://www.ceri.ca/cida.htm>

⁵⁹ Christian Centre for Socially Responsible Investment 'Pay Dirt on the Pitjantjatjara Lands' May 24th 2004

11. FINANCIAL INTEGRITY

Question

1. What mechanisms are in place to ensure that the company's policy on bribery and facilitation payments is being implemented?

11.1 FINANCIAL REPORTING

11.1.1 All transactions on behalf of the company are appropriately described in the accounts of the company in accordance with established procedures and are subject to audit. (2.5.C.1)

The company's Guide to Business Conduct explicitly states that accurate records of all financial transactions must be maintained in accordance with generally accepted accounting principles. Actions that disguise the true financial nature of transactions are specifically prohibited.

11.1.2 As part of their reporting responsibilities, the company's auditors indicate the amount of any consultancy fees incurred, and/or commission payments made, in respect of any contract and the percentage which these fees bear to the total gross value of such contract. (2.5.B.1)

Absolute figures are given for fees paid to the auditors for both audit and non-audit related work in the notes to the financial statements of the Annual report. The figures given are broken down according to whether the work is audit related for information systems, taxation services or 'other'.

The company also has a policy governing the sourcing of non-audit related work by the audit company. This sets down the circumstances under which the audit company may or may not provide non-audit related work. Work of this type is only permitted where services are not perceived to be in conflict with their auditor independence.

11.1.3 The company's directors and senior management certify in writing the veracity of all financial statements, and fully disclose and publicly report the financial standing of the company in an understandable manner. (2.5.B.3)

As part of their responsibilities the Board prepares a set of financial statements, which are audited and set out in the company report.

There does not appear to be a formal statement to certify the veracity of these, however they are externally audited. On behalf of the Board, the chairman and chief executive sign a directors' statement, which draws attention to the contents of the financial statements.

11.2 AVOIDING CONFLICTS OF INTEREST

11.2.1 All employees are required to avoid conflicts of interest between their private financial activities and their part in the conduct of company business. (2.5.C.2)

This is one of the requirements in the company's Guide to Business Conduct.

11.2.2 The senior administrative officer of each significant unit of the company, as well as the company Chief Executive Officer, is required annually to sign a letter containing the following representations:

- that neither the company (unit) nor any of its authorized representatives has been party to the offering, paying or receiving of bribes**
 - that no payments have been made which knowingly violate the laws of the countries in which the company operates**
 - that no receipts or payments of monies or other assets derived from the company (unit) have been either unrecorded or falsified when described in the relevant books and records and no other improper accounting practice has been adopted in the period under review.**
- (2.5.B.2)**

It is not clear whether or not senior staff are required to make such formal declarations. However, the company does make clear that giving or receiving bribes is prohibited as is falsifying financial records and making unlawful payments.

The company's policy, as set out in the Guide to Business Conduct, opposes making facilitation payments, but does not prohibit them. The guide sets out some guidelines as to the circumstances where making facilitation payments might be acceptable.

See also: Section 1.4 for information on transparency in royalty and other payments to governments.

APPENDIX A: PRINCIPLES FOR GLOBAL CORPORATE RESPONSIBILITY: BENCH MARKS FOR MEASURING BUSINESS PERFORMANCE

The *Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance* 2003 Edition (Also known as *Principles or Bench Marks*)⁶⁰ was drawn up and evolved from the collaboration of faith communities around the world and is offered as a tool for measuring corporate behaviour.⁶¹ These faith communities evaluate companies, not only by what they produce and their impact on the environment, but also by how companies contribute to sustainable community and protect or undermine the dignity of the human person.

The *Bench Marks* promotes positive corporate social responsibility consistent with the responsibility to sustain the human community and all creation. The *Bench Marks* states comprehensive standards and expectations fundamental to a responsible company's action. The *Bench Marks* calls for:

- A new relationship between corporations, communities and ecosystems;
- Support for a sustainable system of production and a more equitable system for the distribution of the economic benefits of production and environmental services;
- Participation of stakeholders and those most affected by the activities of corporations in the decision-making processes of companies;
- Preservation and protection of the environment for present and future generations.
- Respect for the dignity of every person, for workers' right to organise a union and bargain collectively and for all core labour rights as defined by the International Labour Organisation;
- Strong codes of conduct for corporations and suppliers independently monitored by local non-governmental and community organisations;
- Affirmation of indigenous peoples' right to full participation in the business decisions which pertain to their ancestral lands and their way of life;
- Development of a human rights policy based on the Universal Declaration of Human Rights;
- Commitment to the principle that every worker has the right of access to health care, accessible and affordable medicines, including antiretrovirals for the treatment of AIDS.
- Corporate governance policies that balance the sometimes competing interests of managers, employees, shareholders and communities; and that are based on ethical values, including inclusiveness, integrity, honesty, justice and transparency.

⁶⁰ The full text of the *Bench Marks* document is available at www.bench-marks.org

⁶¹ The organisations involved in drawing up the text of the *Bench Marks 2003 Edition* are the Christian Centre for Socially responsible Investment (CCSRI) - based in Australia (see www.ccsri.org). The Hong Kong Christian Industrial Committee - based in Hong Kong, China (see www.cic.org.hk). KAIROS: Canadian Ecumenical Justice Initiatives (formerly Taskforce on the Churches and Corporate Responsibility) (see www.kairoscanada.org). The Interfaith Center for Corporate responsibility (ICCR) based in the United States of America (see www.iccr.org). The Bench Marks Foundation of Southern Africa for Corporate Responsibility (BeFSA CSR) based in South Africa. Censat Agua Viva, Friends of the Earth - based in Colombia (see www.censat.org) and the Ecumenical Council for Corporate Responsibility (ECCR) - based in the United Kingdom (see www.eccr.org.uk)

The full document considers the following levels of analysis:

- **PRINCIPLES:** this sets out a statement of business philosophy fundamental to a responsible company's actions.
- **CRITERIA:** These refer to particular company policies and practices that can be compared for consistency with the Principles.
- **BENCH MARKS:** These are suggested specific reference points of measurement to be used in assessing the company's performance in relation to the Criteria.

As in this report we are seeking to measure BHP Billiton's level of commitment to and implementation of responsible business practice, we have used and presented evidence only in relation to the latter two indicators.

This report does not use the exact format and numbering of the *Bench Marks* document. The *Bench Marks*, is an extremely comprehensive document, and not all sections within it are of equal pertinence to all companies. On this occasion ECCR has selected issues that we feel are most relevant to the mining industry and to BHP Billiton in particular. We have used specific Criteria and Bench Marks from the *Bench Marks* document that we believe are particularly important to aid interpretation of these.

APPENDIX B: METHODOLOGY AND PROCESS

A two-stage process has been used in the preparation of this report. The first stage involved ECCR researching BHP Billiton's activities and corporate policies and analysing these in relation to the *Bench Marks* framework. The second stage involved sending the conclusions drawn from the *Bench Marks* analysis to BHP Billiton and inviting the company to comment on ECCR's conclusions prior to publication.

We wrote to the company at an early stage in the process both to inform them about the project and to ask for any information that BHP Billiton felt should be included within our analysis. The company provided us with a range of materials that have been produced for investors and other stakeholders.

Our initial research was for the most part performed as an ordinary shareholder, and based on publicly available information about the company. It was hoped that by focusing on publicly available sources we would also be able to build up a picture of how transparent and effective BHP Billiton's reporting processes are in meeting the needs of investors and stakeholders.

Other sources of information that were examined included the media, industry journals and materials produced by other commentators including NGOs and community groups. ECCR also made use of additional research from Ethical Investment Research Service (EIRIS).

Whilst this did allow ECCR to build up much valuable information about the company and the challenges that it faces, there were many areas where more information would have been desirable and as such where it was difficult to make informed conclusions. An overview of these areas is presented in the 'Summary of Findings' section of this report, and are elaborated on in the boxes at the start of each main section.

Having received confirmation that BHP Billiton would be prepared to comment on our analysis, a draft of this report was then sent to the company. We highlighted the questions listed at the start of each section and requested that more information be given in order to enable investors to make informed judgements. At this stage it was made clear that any written response given by the company would be reproduced exactly as an annex to the final report.

We are pleased to report that the company did provide us with additional information and comment on the issues raised in Section ii of this report. Much of this will be helpful to investors and others interested in the company and we have reproduced in Appendix D.

APPENDIX C:
REFERENCES USED IN THE PREPARATION OF THIS REPORT.

Sources published by BHP Billiton

This list includes substantial, discrete and identifiable reports and statements published by BHP Billiton, either in print or on the company website (www.bhpbilliton.com). Other information on the main website as well as various sites' individual websites was used extensively in the preparation of this publication. For practical reasons, and due to the dynamic nature of this source individual sections of the website have not been listed.

Publication	Date
Annual Report	2002
Annual Report	2003
Annual Report	2004
BHP Billiton Climate Change Position Statement	October 2003
Billiton Annual Report	1999
Energy Coal Health Safety Environment and Community Report	2002/3
Energy Markets in the context of Sustainable Development: A BHP Billiton Perspective	no date given
GEMCO Health, Safety, Environment, Community and Quality Report	2003
Guide to Business Conduct	April 2004
Health Safety Environment and Community Report (full version)	2003
Health Safety Environment and Community Report (full version)	2004
Health Safety Environment and Community Report	2002.
Health, Safety, Environment and Community (HSEC) Management Standards (Issue no 2)	December 2002
Hillside Aluminium Sustainability Report	2001/2
Mozal Health, Safety Environment and Community Report	2003
SAMANCOR Chrome Ferrrometals and Ferroveld Health, Safety, Environment, Quality and Community Report	2002
SARAJI Mine HSEC Report	2003
Submission to the World Bank Extractive Industries Review	October 2002
Yabulu Expansion Project (newsletter) Issues 1-3	no date given

**APPENDIX D:
THE COMPANY'S RESPONSE**

The response of the Company, reproduced in facsimile as it was sent to ECCR by Ian Wood, Vice President, Sustainable Development and Community Relations, is to be found on the following pages (numbered 1-14).

In the course of preparing the report for publication adjustments to spacing and general layout have necessarily caused some of the page numbers referred to in the Company's response to have changed from the original draft.

Items referred to as being on page 52 will be found on page 50 and those on page 74 will be found on page 70.