



# TAKING STOCK: BHP'S POOR ESG PRACTICES

## A VIRTUAL HANDBILL FOR INVESTORS

As civil society organizations and trade unions working directly with workers and local communities affected by BHP's operations globally, we would like to call attention to the suffering of these populations in relation to the company's handling of Covid-19, as well as its poor environmental, social and governance (ESG) practices dating from before the pandemic. BHP is certainly not the only major multinational being called out for its inadequate handling of the pandemic, but as the **largest** mining company in the world by **market capitalization**, and a company that **claims** to operate with integrity and responsibility, it should be held to a high standard.

This brief outlines what is happening on the ground at several BHP assets, highlighting social and environmental risks that the company, and therefore its investors, face. We are putting specific questions to the company ahead of its AGMs, and **we are asking BHP investors to take these issues up in their engagement of the company.**

**IndustriALL calls on BHP** to undertake meaningful dialogue with unions and to take a less hostile stance toward labour; BHP is the only major mining company that has yet to establish a global dialogue with IndustriALL. The company must also uphold its commitments to respect human rights, including ensuring worker safety and health, at all of its assets, and take responsibility at the global level for how its workers are treated locally.

**London Mining Network (LMN) calls on BHP** to ensure that:

- ▶ communities affected by BHP operations are able to exercise their right to Free, Prior, Informed Consent
- ▶ reporting to communities of social, environmental and other relevant information occurs in a timely manner and meets the communities' information needs
- ▶ the company honours its Code of Business Conduct with regard to communities within or near its operating sites
- ▶ the company uses its influence to insist that its joint ventures fully comply with legal decisions

- ▶ the company acts in a financially responsible manner by providing for the cost of its activities right through to the cessation of those activities; and that costs of rehabilitation are fully recognized in mining companies' provisions in their balance sheets

### Mishandling of Covid-19

IndustriALL has learned from unions in Latin America, Australia and Canada that BHP maintains what can only be called a **double standard** between its response to the pandemic in the global north versus the global south. In Australia and Canada, the company seems to be implementing adequate occupational health and safety measures in relation to Covid-19. For example, there have been no reported cases of the disease among the company's workers in Queensland (with credit due to government protocols resulting from trade union engagement and lobbying).

In contrast, in Peru, BHP claims there have been no deaths at its assets, while affiliates report three Covid-19 deaths at Antamina mine, one-third owned by BHP.

Workers at BHP's Spence mine in Chile had to implement a 24-hour work stoppage in March to force the company to take adequate protection measures against Covid-19. As of late August, affiliates in Peru, Chile and Colombia all reported rising numbers of infections at BHP's operated and non-operated mines, with IndustriALL affiliate Sintracarbón reporting over **300 cases of Covid-19** among workers at the Carbones de Cerrejón mine in Colombia alone, and four suspected Covid-19 deaths there (three direct employees, the other a contractor from CHM Minería). As of July, in Chile BHP had the **second highest number of cases** in the mining industry after Codelco, the state-owned copper mining company. BHP appears to have ramped up production in South America even while cases rise, raising questions about whether it puts profits above worker safety. In addition, in Chile the company is shedding workers with any pre-existing disorder, including those contracted at work.



Striking workers at Cerrejón, Colombia

In July, the Cerrejón mine in Colombia, jointly owned by BHP, Anglo American and Glencore, unilaterally and without any explanation demanded a change in work shift.



Human rights are universal, and the current public health crisis demands an equal and equivalent response from multinationals in all of their operations. Regardless of whether states uphold their duty to protect human rights, widely accepted [international standards](#) of business and human rights establish that companies are responsible for respecting those rights wherever they operate. In addition, this apparent double standard could pose an operational risk to the company, as sound governance calls for maintaining the same health and safety standards at all of its assets. Affiliates have pointed out that if BHP seems to have dealt properly with Covid-19 in industrialized countries, it should be carrying out the same practices in lower-income countries. **How does the company explain taking a different approach in different countries?**



With Covid-19, the company did not respect the national emergency, which resulted in widespread contagion. Management has often violated the collective agreement in the past, and we see the same with the pandemic. The consequences are also serious for the communities bordering the company, since they do not take care of people.

*Representative from FNTMMSP Mining Federation, Peru, speaking about Antamina, a BHP joint venture in Peru*

### Death shift

In July, the Cerrejón mine in Colombia, jointly owned by BHP, Anglo American and Glencore, unilaterally and without any explanation demanded a change in work shift from the 2x1-2x3 system that had been in place for nearly thirty years to 7x3-7x4. This schedule requires workers to labour an additional 72 days a year for no extra pay, it will increase worker fatigue and imperil worker health and safety, as well as seriously complicating workers' family lives by extending the period they are away from home and are unable to carry out family responsibilities. The new shift, which workers call the "shift of death", will also allow the company to shed 2,500 direct and indirect jobs in times of extreme precariousness due to Covid-19. It is against national law for companies to unilaterally impose such changes in matters that have been the subject of mutual agreement.

The company made this unexpected and unwelcome announcement on the second day of what were clearly going to be difficult collective bargaining negotiations, given that the company was trying to renege on acquired rights. This move set the tone for the rest of the negotiations; by the end of August the two sides had failed to reach agreement and the workers went on strike. IndustriALL has called on BHP, Anglo American and Glencore to intervene and help resolve the strike. Cerrejón has rejected the Ministry of Labour's roadmap for face-to-face negotiations to break the deadlock.

It appears that Cerrejón is seeking concessions on the collective agreement in order to finance the compensation costs associated with shedding jobs, and in the process is withholding the information needed for meaningful negotiations.

Cerrejón claims it needs to make tough decisions in order to ensure the survival of the business. If that is the case, surely now more than ever the company should abide by good industrial relations and engage in meaningful dialogue and negotiation.



Cerrejón sends a negative message to the country and the region with its absence from this meeting. We had hoped you would be here, because we must face problems and look for possible solutions. We hope that the company will participate in the next public hearing or at the technical table. I think we need everyone's effort to advance in this negotiation.

*Deputy of the House of Representatives (Colombia), María Cristina Soto de Gómez*

Why is BHP imposing an inhumane new shift without consulting those whom it affects most? How does it respond to the allegation that this move brings risk to the company itself by imperiling the welfare of its own workforce, and that it is attempting to undermine the union at a time when genuine social dialogue is vital to tackling the crisis? BHP has announced its decision to divest from thermal coal. Is it now trying to push down labour costs at Cerrejón just to secure a better exit deal?



Residents of Tabaco stand in the ruins of their house after their forced eviction by Cerrejón Coal, August 2001



The Bruno Stream above the point where Cerrejón Coal has diverted it



The Cerrejón Coal mine



Pollution from the Samarco tailings dam collapse flows into the Atlantic Ocean

### Cerrejón Coal, Colombia (BHP: 33.3%): **continued non-compliance with court orders**

19 years on and the village of Tabaco, forcibly evicted in August 2001, has still not been reconstructed despite a court order in 2002 and an agreement signed between the company and the community in 2008. The Constitutional Court ordered Cerrejón to adopt measures to protect the rights to health and a healthy environment of the Wayuu Indigenous Reservation of Provincial through sentence T 614 of 2019. The company and the defendant Government Institutions have still not complied with the court order to provide accurate information and undertake a full and proper consultation with the communities impacted by the mine. Concern with the diversion of the Arroyo Bruno continues. The Delegate Auditor for Environmental Affairs of Colombia recognizes that Cerrejón is not giving “strict compliance with what is required in Sentence SU 698/17.”

BHP has announced its intention to sell its share in Cerrejón. It cannot be allowed to ‘cut and run’ from the mine - it must fulfil its responsibility to repair and compensate for the social and environmental devastation caused and accept the responsibility of managing the clean-up over the coming decades.

### Samarco, Brazil: **inefficient implementation and lack of transparency**

Close to five years after the November 2015 Fundão Dam collapse, only 43 of the 355 planned new dwellings are under construction in the settlements that were destroyed, and none has been completed. The inefficiency of the Renova Foundation (set up as the entity responsible for arranging the reparation of damages caused by the collapse of the dam) has also meant that the process of compensating communities is slow, leading to increased vulnerability of households.

Mining waste released by the breach of the Fundão dam continues to be a cause for concern. BHP claims that results from water and sediment quality, aquatic habitat and fish surveys demonstrate that the river ecology downstream of the Candonga reservoir and along the coast has recovered from any tailings-related impacts. It is unclear what the evidence is for this assertion. Scientific studies of long-term impacts of the flow of mining waste sediment down the Rio Doce to the estuary and the coast are still in progress.

As a major funder of the Renova foundation BHP must be called to account for the lack of outcomes and poor impact the Renova foundation has had. Furthermore BHP must be compelled to provide scientifically robust evidence to support its claims that the river ecology has recovered from any tailings-related impacts.

### Escondida and Cerro Colorado, Chile: **water mismanagement**

Communities in Chile continue to raise the alarm about poor water management, lack of environmental assessment information provided by BHP and irreversible damage to local ecosystems forcing families to move to urban areas. BHP is being sanctioned by the Chilean government for extracting ten times as much water from the Monturaqui-Negrillar Tilopozo aquifer as was permitted over a 15-year period.

How will BHP make good the long-term damage that it has done to local aquifers on which Indigenous communities rely and which are the foundation of healthy ecosystems?



The Bruno Stream below the point where Cerrejón Coal has diverted it

## Antamina, Peru: need for independent verification of water use

Unlike BHP's operations in Brazil, Chile and Colombia, Antamina is considered an example of good water management by the water authorities in Peru. However, Ruth Preciado, an engineer specialising in water management at the Catholic Pontifical University of Peru, notes the calculations of water usage from mining will always remain low and undervalued because the water that is lost in open-pit pumping is not included, nor is the drainage that companies carry out to dry the area and avoid infiltration into their projects. The state has no equipment to measure the volumes of water used by mining companies. It is the companies themselves that send an affidavit report on the amount of water consumed in a year.

With limited independent monitoring of water use it is difficult to understand the impact of the mine on the local hydrological cycle more generally, including the amount of water that is no longer available to replenish streams in the dry season or to recharge the aquifers. How can BHP assure investors that the information provided is reliable if there is no independent verification of the data?



The new course of the Bruno Stream, diverted by Cerrejón Coal

## Resolution Copper, USA: planned violation of Indigenous sacred site

In the United States, in the face of decades of Indigenous opposition, BHP owns 45% of Resolution Copper, which is proposing a large copper mine near Superior, Arizona. The proposed mine would destroy Oak Flat, an area sacred to Indigenous Peoples and including a public campground and thousands of additional acres of public land. Besides the destruction of public land, the mine would dump nearly 1.4 billion tons of toxic mining waste into an unlined tailings dump. This project would use significant amounts of water, enough to supply a city of 180,000 people, for 40 years. Local farmers in particular would be affected by its water extraction. The mine's proponents say that their proposed mining methods are the only feasible methods for this deposit, without being willing to demonstrate why this is so.

In the light of Rio Tinto's recent Juukan Gorge incident, BHP should abandon this project.



## County of Apuela, Intag, Ecuador: failure to respect local communities' objections

In September 2019, a regional assembly of 1,500 people in the county of Apuela, Intag, Ecuador [unanimously rejected mining in the area](#). In December 2019 BHP attempted to hold a closed-door meeting in the community of Cazarpamba. Some concerned residents of nearby communities found out about it and attended. On seeing the visitors, [the BHP representatives promptly packed up and left](#). Communities raised concerns about lack of consultation and transparency during the meeting. At a regional assembly on 18 January 2020, representatives from the six communities in BHP's Santa Teresa 2 concession drafted a [formal document of resolutions](#). This declares the Intag zone free of mining, demands the immediate exit of mining companies and their representatives, and requests support for development of local economies such as ecotourism and sustainable agriculture in place of mining.

BHP must be transparent about the tactics used to enter and conduct activities in areas which are strongly resistant to mining and act in accordance with its code of conduct, which states that it is respectful of both people and the law. When local communities declare their opposition to a mining project, BHP should not pursue it.



Villagers of Tabaco resist forced eviction by Cerrejón Coal, 9 August 2001

## Demonstrating financial responsibility

Financially responsible companies provide for the cost of their activities right through to the cessation of those activities. The costs of rehabilitation need to be fully recognised in mining companies' provisions in their balance sheets. Good practice would be for mining companies to post full security with governments to cover the eventual cost of reclamation at the start of projects, to hold sufficient financial assurance against likely environmental damage and third-party losses, and to publish reclamation plans and estimates in a manner accessible to all stakeholders.

In the interests of transparency and accountability BHP should each year publish site reclamation plans, reclamation cost estimates, and related security, for each of its mines and in aggregate. It should also make publicly available on an annual basis proof of security provided for unexpected environmental harm events for each of its mines.