

## **Case study for the Global Compact Learning Forum**

**BHP Billiton South Africa**

**Standards as a Human Rights tool**

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# **CASE STUDY ON BHP BILLITON**

## **STANDARDS AS A HUMAN RIGHTS TOOL**

1. Overview
  - 1.1 Abstract
  - 1.2. Company Profile
  - 1.3 BHP Billiton Charter
  - 1.4 HSEC Policy
  - 1.5 Management Standards
  
2. Bayside Aluminium, Richards Bay
  - 2.1 Context
  - 2.2 Problem Statement
  - 2.3 The Case Study
  - 2.4 Integrating Human Rights
  
3. Standards Application – Activities and Operations
  - 3.1 Health Issues
  - 3.2 Remunerations and Employment Equity
  - 3.3 Training and Development
  - 3.4 Employment
  - 3.5 Culture
  - 3.6 Community Development
  - 3.7 Indigenous People
  - 3.8 Concluding Remarks
  
4. Recommendations
  - 4.1 Standards
  - 4.2 Health Care
  - 4.3 Remuneration and Employment Equity
  - 4.4 Employment
  - 4.5 Culture
  - 4.6 Community Development
  - 4.7 Indigenous People
  
5. The Global Compact Performance Model

# CASE STUDY ON BHP BILLITON'S STANDARDS AS A HUMAN RIGHTS TOOL AT BAYSIDE ALLUMINIUM

## 1.1 Abstract

The Case Study is based on the premise that if Management Standards are in place, systems, activities and operations will follow and employees will understand their roles and responsibilities. The Case Study examines the Global Compact's Principle 1 (P1), namely, the measures that BHP Billiton South Africa's Bayside Aluminium Smelter has taken to support and respect human rights within their sphere of influence and Principle 2 (P2), to ensure that Bayside Aluminium is not complicit in any abuse of human rights. To give effect to P1 and P2, the Case Study considers the Health, Safety, Environment and Community (HSEC) Management Standards as a **measuring tool for human rights compliance assessment**. The Case Study examines BHP Standards and the human *rights fit* with activities and operations at Bayside Aluminium.

The concept of human rights has been the product of many debates that have raged over many years throughout the world. The search has been for moral standards or imperatives among states, across borders and between governments and its citizens. A broad consensus has emerged that seeks to frame human rights against a moral code which prescribes certain benefits and treatments simply because people are human, in spite of socio-economic, political and cultural differences. *The framework for human rights is set out in the universally politically agreed minimum standards for how people should be treated.* These minimum standards are found in the United Nations International Bill of Rights which constitutes the Universal Declaration of Human Rights (UDHR) and the its two associated Covenants namely, the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and political Rights (1966). The rights in the Universal Declaration of Human Rights and its related Covenants, along with the Vienna Declaration (1993) sets out that all human rights are universal, indivisible, interdependent and interrelated. The UN International Bill of Human Rights, i.e. UNHR and the two Covenants are listed at the end of the Case Study as Appendix 1.

Within the South African context, the UN International Bill of Human Rights forms the basis for the Bill of Rights which is enshrined in the Constitution. The entrenchment of human rights in the South African Constitution is not only inherent to all people and citizens alike, it is also justiciable. To this end, any complicity in human rights abuses (P2) may be taken up before the courts. The courts in turn could restrain a perpetrator from continuing the violation or could order the perpetrator to act in compliance with the law. Alternatively, offences relating to equality or discrimination may be referred to the National Director of Public Prosecutions for possible criminal action.

The South African Human Rights Commission, which is also entrenched in the Constitution, acts as a human rights watchdog and serves to promote, protect and ensure the fulfillment of human rights in South Africa as set out in the Bill of Rights. In addition, legislation was passed in terms of the Promotion of Access to Information Act (2000) and the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) to further entrench human rights in South Africa. The Constitution therefore, and the legislation that flows from it are in broad terms binding between state and citizen (vertical application) and between citizens (horizontal application). Similarly, corporate entities (juristic persons) are bound by both the spirit and letter of the Constitution.

The mining industry in South Africa in which BHP Billiton has interests, accounts for slightly more than 8 percent of GDP. This makes the industry a significant roleplayer in terms of economic growth in this country. If industry multiplier effects are added, the contribution to GDP increases to approximately 12 percent. Since transition to legitimate democratic status in 1994 the Chamber of Mines has committed the industry to the development of South Africa. South Africa in turn expects the mining industry to maintain and expand its corporate social responsibility in terms of socio-economic development and upliftment. The challenge to the mining industry to transform the sector is not only to achieve compliance with the Charter for the South African Mining Industry and the Balance Scorecard but also to contribute towards national building by investing in South Africa's young democracy and the future of its people.

David Wood and Mark in a recent article: "Beyond the triple bottom line" argue that "change in transformation and cooperation by the various sectors in society, including the business community, requires a positive attitude towards recognising the inherent rights (*i.e. defined by national and international legislation*) and dignity of people". It is against this background that BHP Billiton seeks "to support the fundamental human rights of employees, contractors and the communities" in which it operates and it is against this background that Principle 1 (P1) and Principle 2 (P2) is discussed in the Case Study.

## **.2 Company Profile**

BHP Billiton is a Dual Listed Company comprising BHP Billiton Limited and BHP Billiton Plc. The two entities continue to exist as separate companies but operate as a combined group known as BHP Billiton. The headquarters of BHP Billiton Limited and the global headquarters of the combined BHP Billiton Group are located in Melbourne, Australia. BHP Billiton Plc is located in London, UK. Both companies have identical Boards of Directors and are run by a unified management team. However, the laws in Australia and the UK require BHP Billiton Limited and BHP Billiton Plc to adopt a different approach to reporting results. The Annual Report 2003 deals with the affairs of the BHP Billiton Group

as a whole supplemented by the Health, Safety Environment and Community (HSEC) Report 2003.

BHP Billiton has seven (7) Customer Sector Groups operating around the world, namely, Petroleum (Algeria, Pakistan, Australia, Europe, North America and South America); Aluminium (South Africa, Mozambique, Australia, Brazil, and Suriname); Base Metals, (Australia, Canada, Chile and Peru); Carbon Steel Materials (South Africa, Australia and Brazil); Diamonds and Specialty Products, (South Africa, Australia, Belgium, North America and Canada); Energy Coal, (South Africa, Australia, Indonesia, US and Colombia) and Stainless Steel Materials (South Africa, Australia and Colombia). The Company has some 35 000 employees across the globe with an annual turnover of US\$17,5 billion, attributable profit of approximately US\$1.9 billion and an enterprise value of US \$35 billion as at June 2003..

For the financial year, BHP Billiton:

- maintained their inclusion in the UK FTSE4Good Index, after passing the strengthened criteria on human rights in the extractive sector.
- maintained position in the Dow Jones Sustainability Index
- ranked 'best in class' for its environmental and social performance out of 21 metals and mining companies covered by Storebrand in Norway
- received recognition from UK Financial Times top 500 Global Index companies in the Carbon Disclosure Project
- took part in the UK Corporate Responsibility Index and in the Business in the Environment (BiE) Index.

BHP Billiton defines their business conduct with a set of principles. Among the Policies, Standards and Guidelines set out in the *Guide to Business Conduct* are:

- Compliance with the Law,
- Competition Law,
- Health, Safety,
- Environment and Community,
- Equality in employment,
- Confidentiality,
- Intellectual Property,
- Personal Information and Privacy, (the right to privacy) Information Systems,
- Relationships with Government and Cultural Sensitivity.

The Guide addresses accountability issues with regard to Responsibilities of All Employees, Managers and Supervisors and the Board of Executives. The Guide describes the Global Ethics Panel, and Business Reporting Requirements. The Guide applies to all employees and provides directions and advice on conducting business internationally, interacting with government, communities and business partners, business integrity and general workplace behaviour.

For the year ending July 2002-June 2003, the HSEC Report was prepared in accordance with the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines. For the reporting period, BHP Billiton's community contributions supporting community programmes and capacity building amounted to US\$42 million, or 1.4 percent of pre-tax profit, which exceeded the target of 1 percent. In addition, US\$12.5 billion was contributed to regional economies from expenditure associated with sustaining operations. BHP Billiton sets out its commitment to implementing the World Bank Guidelines on Involuntary Resettlement and the US-UK Voluntary Principles on Security and Human Rights within its Management Standards. In June 2003, BHP Billiton reaffirmed its commitment to the United National Global Compact and associated principles.

**1.3 BHP Billiton Charter:** Central to the Company is the *BHP Billiton Charter* which serves to create an alignment throughout the organization through a set of clearly defined **values** applicable to each employee throughout the Group. BHP Billiton stresses its overriding commitment to health, safety, environmental responsibility and community development as a **value driver** and a major challenge for the company whose core business is the extraction of natural resources. However, these organisational values are not framed in a human rights discourse or contextualised in a human rights framework.

**1.4 Health, Safety Environment and Community Policy (HSEC):** The HSEC Policy sets out BHP Billiton's commitment to sustainable development as integral to the way in which they do business, to continual improvement in performance, to efficient use of natural resources and to their aspiration to zero harm to people and the environment. In addition, the HSEC Policy, which defines its basis as **value driven**, sets out BHP Billiton's commitment to:

- support the fundamental human rights of employees, contractors and the communities in which we operate
- respect the traditional rights of indigenous people
- care for the environment and values cultural heritage

**1.5 Management Standards:** The HSEC Policy and BHP Billiton Charter are implemented via detailed HSEC Management Standards and Protocols, the requirements of which must be met at all operations on an annual review basis. The Management Standards were revised during the year, resulting in a consolidated set of 15 Standards. The HSEC Managements Standards form the basis for the development and application of HSEC management systems at all levels of the BHP Billiton Group. The **objectives of the Standards** are to:

- Support the implementation of the Charter and the HSEC Policy across the Group (*i.e. national and international standards including UDHR*)
- Provide a risk-based HSEC management system framework, broadly consistent with international standards, such as ISO 14001, OHSAS 18001 and SA 8000 (*i.e. labour rights and environmental processes*)
- Set out the expectations of the Group for the progressive development and implementation of more specific HSEC management systems at all levels of the Group

- Provide consistent auditable criteria against which HSEC management systems across the Group can be measured
- Provide a basis from which to drive continuous improvement

The Standards are set out as follows:

Standard 1	Leadership and Accountability
Standard 2	Legal Requirements and Document Control
Standard 3	Risk and Change Management
Standard 4	Planning, Goals and Targets
Standard 5	Awareness, Competence and Behaviour
Standard 6	Health and Hygiene
Standard 7	Communication, Consultation and Participation
<b>Standard 8</b>	<b>Business Conduct, Human Rights and Indigenous Affairs</b>
Standard 9	Design, construction and commissioning
Standard 10	Operations and Maintenance
Standard 11	Suppliers, Contractors and Partners
Standard 12	Product Stewardship
Standard 13	Incident Reporting and Investigation
Standard 14	Crisis and Emergency Management
Standard 15	Monitoring, Audit and Review

- In terms of **scope**, the Standards are intended to cover all operational aspects and activities that have the potential to affect, positively or negatively, the health and safety of people, the environment or the community. (NB: The *scope* of the Standards is not defined within a human rights framework in terms of the UDHR. Rather, the scope incorporates the rights that relate only to Business Practices.)
- In terms of status, the Charter, HSEC Policy and HSEC Management Standards are **mandatory** to all BHP Billiton sites and operations.
- Each Standard has a **set of performance requirements** which is measured via an auditing process. The performance requirements for *Standard 8: Business Conduct, Human Rights and Indigenous Affairs* are set out as follows:

#### **Intent**

Activities and operation are conducted in an ethical manner that supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage.

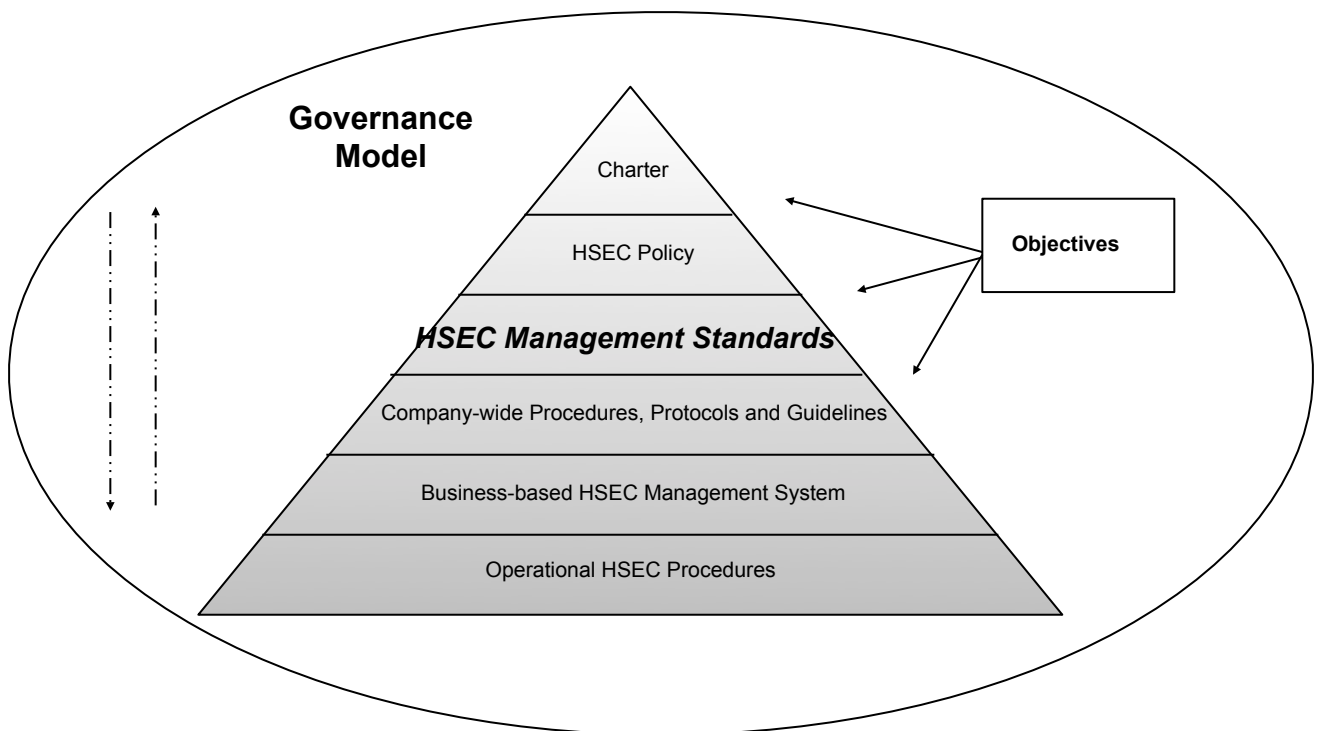
#### **Performance Requirements**

- .1 Systems are in place to ensure that employees and contractors are familiar with and abide by the requirements of the BHP Billiton Guide to Business Conduct
- .2 Systems are in place to ensure that employees and contractors are familiar with and abide by the Articles of the United National Universal Declaration of Human Rights
- .3 Local and indigenous communities, and their traditional and cultural heritage values potentially affected by BHP Billiton operations, are identified, and strategies are developed to address their concerns and aspirations
- .4 Systems are in place to work with local communities through project development, operational and closure phases, to identify needs and prioritise support for sustainable community development initiatives

- .5 Where plant and equipment is installed as part of community development programmes, consideration is given to the provision of appropriate technology and training in its use, and the local capacity for ongoing care and maintenance

As seen from the Performance Requirements, the criteria for performance are based on process rather than an implementation approach to measure human rights impact and evaluate complicity. This in effect differs from the *intent* of the Standard which is to ensure that the activities and operations support a human rights framework, i.e. “supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage”.

Diagrammatically, the Standards as a **tool of measurement** may be presented as follows:



All the elements within the triangle are driven by BHP Billiton’s values and objectives to form a **governance model** that is driven from **above**, ie the Charter and informed from “**below**” via impact and assessment, thus the two-way directional arrow. The Standards form the basis for the development and application of the HSEC management systems and procedures. **As a tool, the Standards provide auditable criteria to measure compliance, progressive development, and “change in transformation”**. With particular reference to *Standard 8: Business Conduct, Human Rights and Indigenous Affairs* the standard sets out the **criteria** for support and respect for human rights and provides a measurement by which to ensure that the activities and operations at the Bayside Aluminium Smelter are conducted in an ethical manner, that it

respects the traditional rights of indigenous peoples and values their cultural heritage.

The **auditable criteria** for *Standard 8: Business Conduct, Human Rights and Indigenous Affairs* are set out as follows:

**Performance Requirement 1: Protocol Questions**

- Determine whether the BHP *Billiton Guide to Business Contact* has been communicated to employees and contractors, through presentations and group discussions
- Determine whether systems are in place to communicate the content of the Guide to new employees and contractors
- Verify that personnel are aware of the need for, and relevance of the Guide and the consequences of non-compliance

**Performance Requirement 2: Protocol Questions**

- Determine whether the site has a copy of the United Nations Universal Declaration of Human Rights (UDHR) and has identified *which Articles are relevant to the Business, contractors, and business partners*, eg. Safe and healthy working conditions; Freedom of association; Fair remuneration; Non-discrimination in personnel practices; No forces or child labour; No forcible displacement of individuals, groups or communities; Respect for existing international guidelines and standards for use of security
- Verify that the relevant Declaration Articles have been communicated to employees, contractors and business partners, and that they abide by the principles of the Declaration
- Determine whether regular reviews take place to assess performance against the relevant Articles of the United Nations Universal Declaration of Human Rights. Verify that systems are in place to respond to and manage non-conformances.
- Determine whether compensation or benefits have been paid to local land owners and the methods used to determine the values. Determine the extent of local land owner involvement in the process
- Determine whether the site has a copy of the World Bank Guide on Involuntary Resettlement
- Verify that, where a resettlement program has been carried out after June 2003, the site has prepared a resettlement plan in accordance with the World Bank Operational Directive on Involuntary Settlement. Determine the extent to which people affected by involuntary resettlement programs after June 2003 have been consulted and involved in resettlement planning and how compensation issues have been addressed.
- Determine whether the site has a copy of the Voluntary Principles on Human Rights and Security, and verify that relevant employees and contractors (including security personnel) have been trained in, and abide by, their responsibilities under the Principles.

## **2. BAYSIDE ALUMINIUM, RICHARDS BAY**

**2.1 Context:** Alusaf (Aluminum South Africa) was completed in the early 1970s and was initially a border industry created by the old apartheid government to propagate the separate development policy. The shareholders at the time were Gencor, Industrial Development Corporation (IDC) and Eskom (Electricity Supply Commission), all three government subsidised companies. The 1990 political and economic changes in the country led to the lifting of trade protection and the drying up of government subsidies. Criticism leveled at Alusaf at the time was that it was inefficient and badly managed which resulted in financial losses to the company. To address these issues, two initiatives were implemented, namely, 1) the Bayside Reconstruction Programme which led to the restructuring and redesigning of the organisation and 2) the building of Hillside Aluminium Smelter next door to Bayside. Hillside was designed to be a highly technical, low cost/high production smelter. Major costs were to be shared with Bayside. Following the restructuring process, Gencor subsequently bought out the other shareholders, namely IDC and Eskom. The two smelters, Bayside Aluminium and Hillside Aluminium are situated in close proximity to each other and share a number of management and work related practices.

In 1998 Gencor bought out Billiton from the Royal Dutch Shell Company. This followed the demerging of Billiton and Gencor. Precious metals gold and platinum fell under Gencor and non-precious metals fell under Billiton. Billiton thereafter listed on the London Stock Exchange with 3 divisions: Aluminium, Samancor (manganese chrome) and Ingwe (coal). In September 2001 Billiton merged with BHP (Broken Hills Properties) Ltd in Australia to become the largest diversified resources company with seven customer sector groups

The historical overview of Bayside Aluminium provides an insight into the many socio-economic and political changes that have taken place at the smelter over the past 33 years of its existence. At the same time, Bayside has developed into a mature organisation, which has shaped company policy and systems to fit its needs. Bayside has some 980 employees. Of these, approximately 300 employees have 30 years service with the Company. Most long-service employees are unskilled workers who provide the manual labour to operate the old technology used at the plant.

**2.2 Problem Statement:** Is there a *human rights fit* between HSEC Standards and between the systems that stem from the Standards and the activities and operations at Bayside Aluminium? Are these activities and operations conducted in a manner that respects, protects, fulfills and supports fundamental human rights, the traditional rights of indigenous peoples and values their cultural heritage?

**2.3 The Case Study** reviews the recently completed HSEC Managements Standards Audit covering the period 1 July 2002 to 30 June 2003. The Lead Assessor was Derek Rex, Health, Safety and Environment Manager. He was assisted in this process by the Team Line Managers outside the sector group as well as the HSE Team and Lead Auditors. The Audit covered all four occupational categories of Bayside ranging from managers to superintendents, specialists and administration staff/artisans/operators. (The previous Audit was completed in September 2001).

In order to facilitate the process across the Company, BHP Billiton has developed a **HSEC Human Rights Self-Assessment Toolkit** which provides a framework that facilitates assessment of an operation's exposure to human rights related risks and identification of areas where mitigation measures are required. The Toolkit assesses BHP Billiton impact on human rights in **nine aspects of operations** at Bayside Aluminium. The human rights listed against the operations do not cover all the rights set out in the Universal Declaration of Human Rights or in the International Bill of Rights **but rather reflect core labour rights and displacements**.

These are

- Country
- Community
- Land Acquisition
- Indigenous and Minority Groups
- Environment
- Security
- Employees
- Contractors and Suppliers
- Systems

The HSEC Human Rights Self-Assessment Toolkit is based on the human rights set out in the Universal Declaration of Human Rights (UDHR); which are divided into minor and more serious human rights for the purposes of the operation's self-assessment. *It is important to note while the Human Rights Self-Assessment Toolkit is based on the UDHR (1848), in terms of the Vienna Declaration (1993) and as indicated above, there is no hierarchy of rights in the International Bill of Human Rights. All rights are equally important, indivisible, interdependent and interrelated.*

These are:

Minor human right incidents include:

- Restricted access to basic necessities (*right to food, water, shelter, clothing, medical care*)
- Restricted access to natural resources (land, air, water – *environmental rights*)
- Inadequate legal protections (*right to a fair trial and equality before the law*)
- Interference with family life (home, correspondence, reputation – *right to privacy*) (*right to privacy also applies in the working place and for customers – not specified*)
- Interference with cultural life (customs, marriage, ceremonies – *cultural rights*)
- Interference with religion (teaching, practice and worship – *freedom of religion*)

- Interference with association or peaceful assembly (*right to collective bargaining - not specified or included*)
- Unsafe working conditions (*right to collective bargaining – not specified or included*)
- Decreased standards of living (cost, health, housing) (*right to health care and right to housing*)
- Limited access to primary education (right to education includes vocational training – not specified)

**More serious human rights incidents include**

- Arbitrary deprivation of life or disappearances
- Physical and emotional violence or intimidation
- Forced, slave, bonded or child labour
- Severe or prolonged punishments
- Arbitrary arrests
- Arbitrary deprivation of property
- Widespread religious discrimination
- Widespread ethical, racial or sexual discrimination (gender discrimination not specified)

The level or risk is ranked from 1 to 10. 1, the lowest level of risk, occurs when there is no history of human rights infringement incidents; within BHP Billiton’s ‘sphere of influence’ (including by government bodies; partners, agents or joint ventures) or the operation has no negative impact on the community. That is, when the operation has not:

- Restricted access to basic necessities (food, water, shelter, clothing, medical care), education or natural resources (land, air, water)
- Interfered with family, cultural, or religious life, association or assembly
- Discriminated against sex, race, ethnicity, or religion; arbitrarily deprived life, liberty or property; used force, slave, bonded or child labour, physical violence, disappearances, intimidation; or severe punishments.

**The level of risk generally increases from:**

- Isolated (1 or 2) to numerous (3 or more) human rights incidents;
- Minor to more serious human rights. Level 5 (out of 10) risks and above need to be mitigated as a matter of priority
- The operation failing to implement procedures to monitor human rights
- The local community protesting against the operation
- The international community implicating BHP Billiton for human rights incidence; and
- The international community taking active measures against BHP Billiton for human rights incidents, such as commencing litigation or striking BHP from ethical investment portfolios

The HSEC Human Rights Self-Assessment Toolkit therefore provides the *basis for the protocols* to be developed against each standard. The HSEC Management Standard 8 and is set out as follows:

**HSEC Management Standard 8**

<b>STANDARD 8</b>	<b>BUSINESS CONDUCT, HUMAN RIGHTS AND INDIGENOUS AFFAIRS</b>
Activities and operations are conducted in an ethical manner that supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage	

<p><b>PERFORMANCE REQUIREMENT 1</b></p> <p>Systems are in place to ensure that employees and contractors are familiar with and abide by the requirements of the BHP Billiton Guide to Business Conduct</p> <p>Determine whether the BHP Guide to Business conduct has been communicated to employees and contractors, through presentations and group discussions</p> <p>Determine whether systems are in place to communicate the content of the Guide to new employees and contractors</p> <p>Verify that personnel are aware of the need for, and relevance of the Guide and the consequences of non-compliance</p>
<p><b>PERFORMANCE FINDINGS 1</b></p> <p>No Findings recorded</p>
<p><b>RECOMMENDATIONS</b></p> <p>No Recommendations recorded</p>
<p><b>CORRECTIVE ACTION</b></p> <p>No Corrective Action recorded</p>

**COMMENT 1: The performance requirements relate to processes only. No impact assessment or human rights indicators are recorded.**

**COMMENT 2: The Findings, Recommendations and Corrective Action are not adequately recorded for analysis, decision/action or review.**

<p><b>STANDARD 8 BUSINESS CONDUCT, HUMAN RIGHTS AND INDIGENOUS AFFAIRS</b></p> <p>Activities and operations are conducted in an ethical manner that supports fundamental human rights, respects the traditional rights of indigenous peoples and values their cultural heritage</p>
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<b>PERFORMANCE REQUIREMENT 2</b>	
(1) Determine whether the site has a copy of the United Nations Universal Declaration of Human Rights, and has identified which Articles are relevant to the business, contractors and business partners, eg. safe and healthy working conditions; freedom of association; fair remuneration; non-discrimination in personnel practices; no forced or child labour; no forcible displacement of individuals, groups or communities; respect for existing international guidelines and standards for the use of security forces	
(2) Verify that the relevant Declaration Articles have been communicated to employees, contractors and business partners, and that they abide by the Principles of the Declaration	
(3) Determine whether regular reviews take place to assess performance against the relevant Articles of the United Nations Universal Declaration of Human Rights. Verify that systems are in place to respond to and manage non-conformances	
(4) Determine whether compensation or benefits have been paid to local land owners and the methods used to determine the values. Determine the extent of local land owner involvement in the process.	
(5) Determine whether the site has a copy of the World Bank Guidelines on Involuntary Resettlement.	
(6) Verify that, where a resettlement program has been carried out after June 2003, the site has prepared a resettlement place in accordance with the World Bank Operational Directive on Involuntary Settlement. Determine the extent to which people affected by involuntary resettlement programs after June 2003 have been consulted and involved in resettlement planning and how compensation issues have been addressed.	
(7) Determine whether the site has a copy of the Voluntary Principles on Human Rights and Security, and verify that relevant employees and contractors (including security personnel) have been trained in, and abide by, their responsibilities under the Principles	
<b>PERFORMANCE FINDINGS 2</b>	<b>LOW PRIORITY (in terms of risk analysis)</b>
8.2 No copy of UN Declaration on Site (how can human rights be implemented if there is no information – if the first performance finding is negative does this stop further measurement (i.e. requirements 2-7)	
<b>RECOMMENDATION</b>	
Get copy of Declaration on site and perform a gap analysis in order to mitigate possible shortcomings	
<b>CORRECTIVE ACTION</b>	
Get copy of Declaration on site and perform a gap analysis in order to mitigate possible shortcomings	
Responsible: (person identified)	
Due date: 01/06/04	

**COMMENT 1: The rights enumerated above do not cover all the rights set out in the Universal Declaration of Human Rights or in the International Bill of Rights but rather reflect core labour rights and displacements and conduct of security forces – as referred to in paragraph 2.3 above.)**

**COMMENT 2: If there is no information on human rights and the first performance findings is negative, it raises the question as to how further measurement is determined in terms of requirement 2.2 and 2.3 above.**

The summary of *Significant Findings for Business Conduct, Human Rights and Indigenous Affairs* for the 2001 Audit is recorded as follows:

**Standard 11: Business Conduct, Human Rights and Indigenous Affairs**

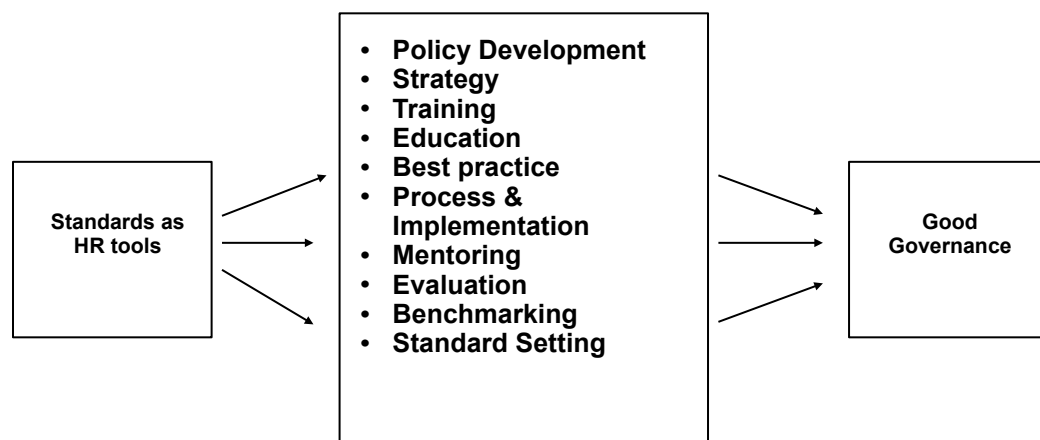
11.3 Through active participation in Zululand Chamber of Business Foundation (ZCBF) and its various committees, the site works very well with local

communities to identify needs and prioritise support for sustainable development initiatives. [Note: Standard 11 in the 2001 audit is now Standard 8 in the 2003 audit]

The 2001 and 2003 audited Findings for Business Conduct, Human Rights and Indigenous Affairs demonstrates a huge gap in organisational management with respect to human rights as set out in the UDHR. In addition, no impact assessment or human rights indicators are recorded or as in Performance Findings 8.2 where no basic human rights information is available on site.

- Overall, the Standards, through their application and implementation, allow for constructive engagement at all levels within the organisation which in turn leads to good business practice and good governance.
- However, the Standards would be significantly improved as a human right tool if *human right performance requirements were included as a measurement against each Standard, and across Standards. This in turn would result in a great human right fit between Standards and Activities and Operations.*

Diagrammatically, the impact of the Standards as a tool for measuring the impact of human rights at BHP Billiton's Bayside Aluminium Smelter could be represented as follows:



BHP Billiton's Standards is used a tool to assess the application of HSEC management systems at Bayside, including all operational aspects and activities that have the potential to affect, positively or negatively, the safety of people, the environment or the community. In its broadest application, the Standards and the Audit allows for constant review and improvement both in terms of Standards Review as well as Systems Implementation and Operations. In this way, corrective measures are highlighted and implemented and measured against the next auditing process. The Standards also allows for noteworthy achievements

at the Bayside as well as for organizational fit between policy and application. In addition, once Standards are in place, according to policy, the Company has to report on its findings to shareholders. It is also balanced against the Company scorecard. *However, in its current state, the Standards fall short in determining a human rights fit between Standards and Activities and Operations.* Given the gaps on human rights issues in Standard 8, and while some human rights issues are addressed, though not framed in a human rights discourse, there is a weak human rights fit between Standards and Operations and Activities. Coupled with this is the absence of human rights indicators, monitoring and evaluation.

## **2.4 Integrating Human Rights**

As with Standard 8 Standard 6 is the only other standard that is content rather than process oriented. In addition, it is part of human rights framework in the format of the right to a safe and healthy working environment (this by definition includes hygiene) The Standards as process standards should and could all be used to further the values expressed in standard 6 and standard 8. However the Performance Requirements would have to be developed within a human rights framework and discourse and should include the development of human rights indicators, monitoring and evaluation of standards on a human rights grid. The following suggestions may be considered:

### **Standard 1 Leadership and Accountability**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Human Rights Training and Diversity Training should be compulsory for senior/executive management*

### **Standard 2 Legal Requirements and Document Control**

- *It is noteworthy that where local legislation does not have an adequate level of HSEC performance, BHP Billiton has exceeded requirements in putting protective/human rights measures in place, especially around the right to health care with particular reference to HIV/AIDS.*
- *Documents should include Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Employees should be given a copy of the South African Bill of Rights*

### **Standard 3 Risk and Change Management**

- *Risk management processes could be identified as country and regional/provincial specific such as health-HIV/AIDS, unemployment and black*

*economic empowerment. In this respect, Bayside Aluminium Smelter should contextualize and profile the province and their working environment*

**Standard 4 Planning, Goals and Targets**

- *Planning goals and targets should include human rights benchmarking*

**Standard 5 Awareness, Competence and Behaviour**

- *Awareness and behaviour should include a rights based discourse which includes diversity training*

**Standard 6 Health and Hygiene**

- *Health and hygiene risk assessment should include HIV/AIDS/disease prevalence, management and treatment, future planning, benchmarking, indicators and monitoring and review*

**Standard 7 Communication, Consultation and Participation**

- *HSEC initiatives and programmes should include Bill of Rights and “know your rights” campaign which could be linked to “Zero Harm” Campaign*
- *All key documents should be communicated to employees in a manner that includes open consultation and participation on a regular basis*

**Standard 8 Business Conduct, Human Rights and Indigenous Affairs**

- *HSEC activities should include human rights monitoring and evaluation across the 15 standards. This could be a matrix or theme approach such as Health-HIV/AIDS, Environment or Diversity Training and should include the development of indicators, monitoring and evaluation across standards*
- *Human rights must be framed in a rights based discourse set against the UDHR*
- *Performance requirements should Include development of human rights indicators, monitoring and evaluation standards on construction and commissioning on an annual basis*

**Standard 9 Design, construction and commissioning**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should Include development of human rights indicators, monitoring and evaluation standards on construction and commissioning on an annual basis*

**Standard 10 Operations and Maintenance**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should Include development of human rights indicators, monitoring and evaluation standards on operation and maintenance on an annual basis*

#### **Standard 11 Suppliers, Contractors and Partners**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should include development of human rights indicators, monitoring and evaluation standards of suppliers, contractors and partners on an annual basis*

#### **Standard 12 Product Stewardship**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should Include development of human rights indicators, monitoring and evaluation standards on product stewardship on an annual basis*

#### **Standard 13 Incident Reporting and Investigation**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should include development of human rights indicators, monitoring and evaluation standards on incident reporting and investigation on an annual basis*

#### **Standard 14 Crisis and Emergency Management**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should include development of human rights indicators, monitoring and evaluation standards on crisis and emergency management on an annual basis*

#### **Standard 15 Monitoring, Audit and Review**

- *Performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights*
- *Performance requirements should include development of human rights indicators, monitoring and evaluation standards on an annual basis*

### **3. Standards Application – Activities and Operations**

In addition to the Standards review, a number of interviews were conducted at the Bayside Aluminium Smelter, in order to supplement the Case Study in terms of a *human rights fit*. To a degree, the interviews provide a means of testing for human rights indicators at the Operations level. The issues of *Health, Remuneration and Employment Equity, Training and Development, Employment, Culture, Community Development, and Indigenous People* are examined to analyze for human rights indicators at the Operational level in the Plant.

#### **3.1 Health Issues right to health)**

Bayside Aluminium is situated in the province with the highest HIV/AIDS infection rate in the country. Bayside has an HIV/AIDS Policy in place as well as policy document on Sexual Harassment (*non-discrimination*) Procedures and Ill-Health Procedures (*right to a safe and healthy working environment*). In addition, various systems have been put in place to address employees' health issues. Currently, a "Voluntary (*right to privacy related*) Counseling and Testing Programme" is in place which has had a positive response from employees. At the time of interview, Bayside was conducting a voluntary HIV/AIDS "Spit and Go" programme with an uptake of more than 90% of the workforce. The results will determine appropriate action to be taken by Management with regard to levels of infection. The Employee Wellness Procedure (EWP) policy document is currently in draft form with a view to implementation in 2004. The objectives of EWP is that it seeks to establish a holistic, integrated employee wellness programme that will support the attainment of knowledge on preventing and managing chronic illnesses and diseases, especially, but not exclusively HIV/AIDS. The programme also serves to encourage employees to adopt and maintain a healthy life style in order to minimize their risk of exposure to contracting life threatening diseases (*right to health*).

While Bayside Aluminium has made significant strides to address the HIV/AIDS through various programmes, on a risk level, trade union representatives (relevant stakeholder) indicated that the Plant was not doing enough for their employees on the HIV/AIDS issue. However, they could not indicate what measures should be put in place. The trade union representative indicated that the EWP programme will go a long way to addressing employees concerns.

#### **3.2 Remuneration and Employment Equity (equal remuneration and the right to work)**

Shireen Pillay, Specialist, Company Remuneration Policy, is responsible for medical aid, pension plans and benefit schemes. All information is disseminated to staff through the newsletters such as the Bayside News, news flashes and presentation, which takes place in both languages, ie English and Zulu. The Employment Equity Forum addresses the issue of legislative requirements for the

company, maternity benefit policy, pension fund and recruitments. All remuneration benefits for all categories of employees are considered to be equitable throughout the company (*equal remuneration and right to equality*). This was affirmed by the trade union representatives.

Members of staff as well as the trade unionists raised the issue of employment equity particularly at senior level. They argue that since the Employment Equity Act 55 of 1998 was promulgated, there have been no significant changes in the organisation, especially at management and senior management level. According to Ms Pillay, goals for Employment Equity have been reviewed and updated for implementation by June 2005. (The Equity Plan with targets is available on request).

Within the South African context, the level of risk relating to employment equity may be both complex and high and may influence employee perceptions of the company at large as not being willing to conform to the overall transformation process. An additional risk is that the trade unions may lead a challenge on the issue.

An understanding of the province is best expressed in the discussions on BHP Billiton recruitment policy. All candidates must have matric (Grade 12) plus mathematics and science as subjects passed. All candidates, for whatever position in the company, must pass a medical examination. Candidates applying for positions at the plant must undergo a number of tests, which includes psychological assessment; medical, stamina; hearing; eye sight and lung function. According to Ms Pillay, the reasons given for the rigorous testing is because potential employees need to operate heavy machinery in the Plant. On average, in an intake of 70 candidates, only three candidates qualified for employment. Most candidates failed the medical testing due to poor health and living standards. The net result, by default, is that the uptake of candidates is skewed in favour of people from the Indian and White communities.

Through Zululand Chamber of Business Forum (ZCBF), BHP Billiton, in partnership with other major industries in the region, has a number of school initiatives aimed at providing support structures to schools in the region with particular emphasis in the fields of maths, physical science and biology as well as physical school improvements. In addition, BHP Billiton is involved with a number of skills training projects in the Empangeni region.

### **3.3 Training and Development (right to education)**

Unemployment in the area is very high which is made up mostly of Zulu speaking people. As discussed above, the minimum requirements at the smelters today are matric (Grade 12) with mathematics and science and a valid driver's license. This effectively rules out the majority of the population in the area thus widening the employment and economic gap between "black and white" in South Africa. For the 300 unskilled employees as Bayside, there are a number of training

programmes to upgrade their skills so as to improve their technical qualifications and remuneration. (*Such initiatives are part of the right to education and also included in the right to work*). With respect to the above-mentioned possibility for in-direct discrimination, BHP Billiton could consider a community programme targeted at upgrading basic skills which, in the long term, could also benefit the company in terms of increasing the pool of potential employees (with particular reference to future candidates identified in 3.2 above).

Anneke Kleynhans, Specialist, Training and Development, has implemented the Adult Basic Education programme for employees. She is in the process of implementing a training programme, developed in Australia, on *Team Excellence*. The programme is currently being piloted at Bayside with the view to implementing it at other sites. The training programme is outcomes based and takes all employees through various learning units such as Team Alignment, Caring for People and the Environment, Caring for our Customers-Doing Things Right the first Time; Working in a Team; Being the Best - Continuous Improvement and Self Development. The training programme serves to ensure that all employees understand their contribution to the organization, to each other and to the environment – hence the “Zero Harm Campaign” against health, safety and the environment. The training programme is designed in such a way that employees are able to do cross-over learning in their mother-tongue, ie English, Afrikaans or Zulu. As noted in the 2001 Standards Audit, Bayside Aluminium Smelter has accomplished much in the implementation of skills development and Adult Basic Education (*relates to the right to education and training*). Human rights training, education and awareness could be an integral part of training programmes and in particular the “Zero Harm Campaign”.

#### **3.4 Employment (right to work, right to a safe and healthy working environment and freedom of association)**

Geraldine Fourie, Specialist-Employment Relations discussed wages and negotiations and industrial relations. There are two trade unions at Bayside which deals with issues at the national level and agenda rather than at plant level. Specific to the unions were issues such as work related health problems which renders employees unfit to work in a particular area in the plant. The position at Bayside is that if the Plant is not able to place employees in other positions, disability benefits will apply (*relates to the right to social security*). This was a specific recommendation raised in the 2001 Audit (9.2 and 20.1) Ms Fourie indicated that there were not sufficient positions in the Plant to accommodate everyone in such situations.

Another issue raised by the Unions was the possibility of retrenchments. Part of the merging process at Bayside during 1999 resulted in a number of retrenchments which created a great deal of uncertainty amongst employees. BHP Billiton sought to address the issue by implementing a *Business Ethics Policy* which seeks to ensure that all employees are aware of practices that are

regarded as unethical, to prevent such practices, to maintain unbiased judgment and independence of action in the execution of duties and to provide employees with a formal process to disclose gifts, potential or actual conflicts of interest, alternative employment and other outside activities (*right to a safe and healthy working environment*).

### **3.5 Culture (workplace culture and cultural rights)**

Bongiswe Mathenjwa, Numsa Union Representative, discussed a number of procedures including that of voluntary testing, safety, risk management, environment, health and safety. In all these areas, he indicated that Bayside did much to care for the well-being of its employees. Mr Mathenjwa indicated that the relationship between business and employees had changed over the past years in that the Unions no longer make demands on the Company but rather set out proposals and its own issues for discussion (i.e. example of benefits from freedom of association and transparency, which is one of the principles in the human rights agenda). He indicated that there were good medical aid benefits for people living with HIV/AIDS and those who declared their status. However, as indicated above he suggested that not enough was being done by the Company for employees with healthcare problems. Mr Mathenjwa's concern may suggest broader healthcare problems than may be the actual case at the Plant. As a risk factor, this may be something that should be further investigated as employees may not always wish to declare their health status for fear of lay-offs.

In his discussions, Mr Mathenjwa raised two further issues of concern for employees. The first issue of employment equity is addressed above. The second issue was the ongoing concern of employees (which according to him, included perceptions in the community) that the merger and downsizing of Bayside caused retrenchments and many people in the community lost their jobs. He expressed the sentiment that BHP Billiton was more concerned with "profits than people", even though he acknowledged the extensive community service that BHP Billiton has undertaken in the community. In addition, Mr Mathenjwa expressed the concern of the workers that Management did not care about their workers in the community and that they did not represent the Company or the Plant at the funerals of workers or their family members. Funerals play a significant role in African culture and have an impact on the social fabric of the community. This has been a particularly trying time for the community given the high incidence of HIV/Aids related deaths in the region (*cultural rights*).

The risk factor to the Plant is that it involves perceptions which have the potential to undermine the community work and social involvement of the Plant (*work place culture*). The matter was raised in a meeting with the CSI Manager and the General Manger. They indicated that it was difficult to deal with perceptions and issues of culture they considered to be groundless. (While it could be argued that is was not a very responsive answer – it is however, legitimate for the

Company to focus on its core priorities of business and profits. However community involvement initiatives could mitigate the specific risk. Similarly, the retrenchments of staff were a significant part of the restructuring that had to take place. They both stressed that the policy at Bayside is that everyone is treated equally and that no one religion or group of people is singled out for any favourable measures. However, with the high rate of unemployment in the province and in the country overall, retrenchments are a constant threat to employees' livelihood.

It could be argued that there is a lack of a forum – preferably a human rights forum to address issues of race and racism, gender, religion and employment equality and equity. . Again, such a forum could consider training in diversity, coupled with a mechanism to address the above-mentioned issues and to ensure redress

### **3.5 Community Development**

Bayside has a strong social investment portfolio which supports developmental programmes and addresses specific human rights issues such as the right to education and training, and the rights to health care, the right to work in terms of job creation and training and capacity building with particular focus on the rights of women and children, cultural rights which includes heritage and the right to a clean and healthy environment.

Approximately 80% of Bayside's corporate social investment is conducted through the Zululand Chamber of Business Foundation (ZCBF). The Zululand Chamber of Business Centre (ZCBF) in which the Foundation is housed, was originally the accommodation site of the builders and contractors of Hillside Aluminium. BHP Billiton purchased the site, which was effectively handed over to the ZCBF to house the NGOs in the area. Louis van Zyl is the Director of the Centre and manages Bayside's projects and community involvement. Bongani Mqaise. BHP Billiton's Corporate Social Involvement Manager works closely with the ZCBF to ensure alignment with BHP Billiton's Business Strategy. A number of the BHP Billiton's projects run by the ZCBF are done in partnership with other major companies in the area as well as local government. However, as in the case of BHP Billiton, the ZCBF does not work or operate within a rights based culture or environment.

As a risk factor, there is a degree of concern about ZCBF managing Bayside's projects and community involvement as the relationship with ZCBF essentially removes BHP Billiton from visible participation. Rather, the perception is that the benefactor is considered to be ZCBF. The roles of ZCBF and BHP Billiton are not clearly defined in the rural community. This relates to Mr Mr Mathenjwa comments about the Company not being represented in the Community as set out in item 3.4 above.

### **3.6 Indigenous People**

An issue of concern raised during the interviews was the issues of the removal of indigenous people from Bokhulu to Ntambanana in 1966-1967 to make way for the industrial growth in the area. Following a claim to the land by the indigenous people, the Department of Land Affairs allocated a site to them, which became known as the Mandlazini Agri Village. However, the people of the Mandlazini Agri Village still do not feel that they are adequately compensated for their ancestral land. In the interim, Bayside Aluminium has adopted the community as part of their Corporate Social Investment programme, along with a number of other industries in the area.

### **3.7 Concluding Remarks**

BHP Billiton has taken the first very important step in its commitment to the incorporation of human rights within the organisation. However, implementation of human rights becomes the challenge! The approach to integrate human rights into existing management tools is highly commendable and provides the basis from which to continue implementation, develop standards and conduct evaluation and review. However, the Management Standards, in its current form, does not convey a clear direction of how the company perceives human rights in terms of its interrelatedness and indivisibility, or the advantage of operating within a human rights framework and discourse.

Overall, the Bayside Aluminum Smelter has made a significantly aligned their business strategy with their workforce in order to establish institutional connectedness with the overall Charter, HSEC Policy and Management Standards. However, on a basic human rights level, the fundamental documentation, i.e. the UDHR was not on the premises. Arguably, a clear strategy on human rights is not evident within the organisation.

Yet, the Plant has achieved much by way of complying or conforming to human rights norms and standards. As one of the oldest of the three smelters with over 300 unskilled employees, Bayside Aluminium has a highly commendable programme in place to address Plant specific needs, especially in terms of the Adult Basic Education Training Programme and the Team Excellence Training (right to education and training). No specific issues were raised on the Environment (right to the environment), which is benchmarked at the best in the country. Other issues include the right to health care and privacy, particularly with regard to HIV/AIDS; the right to form trade unions and operate openly within the company; the right to a safe and healthy working conditions/rest, leisure and holidays; the right to social security, including social insurance.

Human rights, within the working environment can mean more and be more than a compliance tool. BHP Billiton has put in place good initiatives and best

practices have been achieved at a number of levels within the Plant, including, and most important, the right to life.

In addition, the right to health care, unemployment (*equal opportunities*,) and retrenchment (*right to work*) are significant areas of concern for employees. Bayside Aluminium remains focused on these areas to ensure that their employees' needs are addressed within the structures of the Plant, the Company as a whole and the community at large. Bayside Aluminium Smelter, through their Management Standards has set the foundations for the development of a human rights culture to take hold.

## **4. Recommendations (additional)**

### **4.1 Standards**

- It is critical to the successful outcomes of the Standards that the communication gap be addressed. One suggestion is that the champions assigned to the various Standards should “talk” to each other on a regular basis to develop a system or structure that is able to convey information to employees and to allow for responses and corrective measure “from the ground”.
- Champions need to promote a human rights culture across Standards, systems, activities and operations that serve to create an enabling environment. The *Zero Harm Campaign* currently underway addresses the issues of safety and the environment. It is a highly visible Campaign throughout the Plant. The Campaign could be extended to include and promote human rights issues. The implementation of the findings and recommendations of Standard 8.2 could be used as a basis for promoting human rights awareness within the Plant and subsequently throughout the Company.
- The benchmarking *between* Standards should include human rights compliance benchmarking and, the development of indicators, evaluation and review mechanisms. In addition, *Standard 15: Monitoring, Audit and Review* - the performance requirements should include human rights standards and assessment consistent with the South African Constitution, the Bill of Rights and the Universal Declaration of Human Rights.
- Audit results should be supplemented/corroborated by an external auditor. The Audit should include stakeholder input as well as local human rights knowledge to relate to the most important human rights issues faced in the community especially around socio-economic rights, ie, the right to housing, education, food, water, social security, health care, and the environment. Special emphasis should also be placed on the rights of the child and women, including gender.

### **4.2 Health Care**

- The Employee Wellness Procedure should be implemented as soon as possible and monitored against employee needs and concerns – especially around issues of HIV/AIDS.

### **4.3 Remuneration and Employment Equity**

- Bayside Aluminium must give effect to the Employment Equity Plans
- Diversity training programme should be instituted to address human rights issues with specific reference to race and racism, gender, employment

equity, norms, perceptions and cultural differences. Diversity training should be seen as a *tool* to achieving the common value system set out in the BHP Billiton Charter.

#### **4.4 Employment**

- Business Ethics Policy must be communicated to employees and monitored against issues of concern and perceptions. This should also be discussed as part of diversity training.

#### **4.5 Culture**

- As indicated above, diversity training provides a platform for people to share cultural backgrounds and differences. It also creates the opportunity for people to participate in the transformation process of the company and the community at large.

#### **4.6 Community Development**

- A more favourable relationship between the Zululand Chamber of Business Foundation and BHP Billiton should be found that allows BHP Billiton the role of the *lead agent* rather than the *support agent* to ZCBF. ZCBF is well placed to provide human rights training and development to the broader community as well as allow human rights to become an integral part of their projects, review and evaluation process and their discourse.

#### **4.6 Indigenous People**

- The Mandlanini Agri Village creates an opportunity for Bayside Aluminium to take the lead in bringing together other industries in Richards Bay to join forces and assist the people in community and sustainable development programmes.

## **5. The Global Compact Performance Model**

Bayside Aluminum Standards, Audits and business strategy along with the workforce create an institutional connectedness with the overall Charter, HSEC Policy and Management Standards. In the process, BHP Billiton has incorporated international human rights standards within their sphere of influence to ensure that the Company is not complicit in human rights abuses. As one of the oldest of the three smelters, Bayside Aluminium has addressed Plant specific needs, in terms of processes and operations as these relate *Standard 8: Business Conduct, Human Rights and Indigenous Affairs*. Bayside Aluminium operates within the broader structures and values of BHP Billiton.

**Vision and Leadership:** Bayside Aluminium Standards Audit establishes institutional connectedness with the overall Charter and HSEC Policy. This institutional connectedness is led by senior management through the implementation of the Standards, the Audit and the related activities and operations, and is broadly shared by employees, shareholders and the community at large. The overall vision and leadership is led by broad based business acumen and leadership principles which define the framework for governance and investor returns.

**Empowerment:** The Standards Audit allows both employees and the trade unions to actively engage in the process and to add value to the process. Empowerment is also addressed in terms of South African specific needs and criteria. Empowerment is also fast-tracked, where possible, to ensure that it reflects the composition of the environment.

**Resources:** Resources are made available at corporate level to achieve objectives.

**Policy and Strategy:** The Standards cover international standards including the Global Compact Reporting Framework and are integrated into core business strategy. Compliance is monitored via the Balanced Scorecard approach to ensure that policy and strategy is taken down to the floor level.

**Process and Innovation:** The Company's policy is that "innovation" is used as a business imperative to drive the process – innovative systems in turn are translated into practical application.

**Impact on People:** Processes and systems are in place to deal with issues that may arise as part of the formal structures of the Company. BHP Billiton has an independent Ethics Advice Panel to address individual complaints/community concerns. The Panel reports directly to Head Office. There is also an Independent Risk Management Committee which tracks issues that are recorded by the Ethics Advice Panel. The Ethics Advice Panel also takes up issues and

operates in a pro-active manner to deal with issues. In addition, there is an external “whistle blowers” system in place (via auditors) and an internal help line.

**Impact on Society:** The design, evaluation and review of the Standards have the potential to highlight both the positive and negative impact on society, including partnerships with government, non-governmental organisations and with the community.

**Value Chain:** The core business of Bayside Aluminium is mining smelting. The Standards address the Plant’s position to the downstream user ensures the appropriate use of the end product.

**Reporting:** BHP Billiton has received a number of top awards in most categories in terms of reporting procedures. HSEC reporting procedures are directly linked to comprehensive performance audits throughout the Company. Two reports are released together each year: Financial/Business and the HSEC Performance Reports with the one supporting and informing the other. Both reports fit into the total governance of the Company, namely systems, processes and performance targets. The reports are also aligned with the Global Reporting Initiative Framework and are externally verified.

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# Appendix 1

## International bill of Human Rights

The UN General assembly defined the human rights of UN Member States in the International Bill of Human Rights, which is comprised of:

- Universal Declaration of Human Rights (Universal Declaration):
- International Covenant on Economic, Social and Cultural Rights (Economic, Social, and Cultural Covenant); and
- International Covenant on Civil and Political Rights (Civil and Political Covenant) and its first Optional Protocol.

## International Covenant on Civil and Political Rights

The Covenant on Civil and Political Rights establishes an international minimum standard of conduct for all States parties to it, ensuring the rights of self-determination; legal redress; equality; life; liberty; freedom of movement; fair, public, and speedy trial of criminal charges; privacy; freedom of expression, thought, conscience, and religion; peaceful assembly; freedom of association (including trade union rights and political parties); family; and participation in public affairs; but forbidding torture; “cruel, inhuman or degrading treatment or punishment”; slavery; arbitrary arrest; double jeopardy; and imprisonment for debt.

## International Covenant on Economic, Social and Cultural Rights

The covenant of Economic, Social and Cultural Rights establishes international minimum standards for States which have ratified this text to take steps to respect, protect and fulfil economic, social and cultural rights. This Covenant requires States parties to devote the maximum of their available resources to the most efficient and rapid manner in order to ensure the full, and in some cases progressive, realization of the rights it recognizes. The rights ensure in the Covenant include: the rights to gain a living by work; to have safe and healthy working conditions; to enjoy trade union rights; to receive social security; to have protection for the family; to possess adequate housing and clothing; to be free from hunger; to receive health care; to obtain free public education; and to participate in cultural life, creative activity, and scientific research. The Covenant

also strictly prohibits discrimination with respect to economic, social and cultural rights and ensures the equal rights of men and women to the enjoyment of these rights.

A number of human rights are not of immediate concern for business and should remain the overriding obligation of the state structure. These rights are found in the International Covenant on Civil and Political Rights (ICCPR):

- Art 9 - 10: the rights to freedom and personal safety (arrest and detention)
- Art 11: prohibition against imprisonment for non-fulfilment of a contractual obligation
- Art 12: the right to liberty of movement and freedom to choose residence
- Art 13: the right to seek asylum
- Art 14 - 15: the right to a fair trial and prohibition against retroactive punishment
- Art 16: the right to recognition as a person before the law
- Art 20: prohibition against inciting war and against hate speech
- Art 26: equality before the law

However, business should be conversant in relation to the rights as the State's performance in these areas may have an impact on business opportunities and certainly has an impact on the public's perception of the legitimacy of the company to conduct business in a certain territory. In a few incidences selling goods and providing services to the violating government or, with the pace of privatisation may even directly involve the company, taking over the government function as such.

In regard to most rights business has an impact through its relation to stakeholders. From the ICESCR the 'active' rights mentioned are all of relevance to business:

- Art 2: non-discrimination in relation to all rights
- Art 6: the right to work
- Art 7: the right to a minimum wage/safe and healthy working conditions/ rest, leisure and holidays
- Art 8: the right to form trade unions and join the trade union, and the right to strike
- Art 9: the right to social security, including social insurance
- Art 10: the right to a family life
- Art 11: the right to adequate food/clothing/housing/fair distribution of food
- Art 12: the right to health
- Art 13-14: the right to education
- Art 15: the right to protection of moral and material interests from one's inventions, the protection of one's culture, and to enjoy scientific progress.

The remaining rights from the ICCPR are also relevant:

- Art 2: non-discrimination in relation to all rights
- Art 6: the right to life
- Art 7.: prohibition against inhumane/degrading treatment/consent to medical trials
- Art 8: prohibition against slave-, forced- or other compulsory labour
- Art 17: the right to privacy
- Art 18: freedom of thought, conscience and religion
- Art 19: the right to hold opinions and to freedom of expression
- Art 21: the right of peaceful assembly
- Art 22: freedom of association, including the right to form and join trade unions
- Art 23 - 24: the right to form a family and the rights of the child
- Art 25: the right to take part in the political life
- Art 27: minority rights to culture, religious practice and language<sup>1</sup>

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<sup>1</sup> Please note that the representation of the rights is shortened considerably trying to catch the essence of the articles in as few words as possible. For full representation please read the Covenants.

## Appendix 2

### BHP Billiton Bayside Aluminium Staffing Compliment as at October 2003.

	Male	Male	Male	Male	Female	Female	Female	Female	EE Actual
Occupational Categories	African	Coloured	Indian	White	African	Coloured	Indian	White	April 03
Legislations, senior officials & managers (BB 6+7)	1	0	1	5	0	0	0	1	
Actual as @ October 2003	0	0	1	6	0	0	0	1	2
Professionals (BB8)	4	0	2	13	0	1	0	2	
Actual as @ October 2003	3	0	3	20	0	1	0	3	10
Technicians & associate professionals (BB9)	33	2	15	75	10	1	7	7	
Actual as @ October 2003	28	1	13	86	5	1	4	12	64
Clerks (BB10)	8	0	0	11	4	0	3	17	
Actual as @ October 2003	6	0	0	5	2	0	0	10	18
Craft and related trades workers (Artisan)	33	2	10	107	0	0	0	0	
Actual as @ October 2003	27	1	4	111	1	0	0	0	33
Plant and machine operators & assemblers (operators)	394	5	25	46	24	0	3	15	
Actual as @ October 2003	470	1	7	29	4	0	0	0	482

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