

# AUSTRALIAN GRADUATE SCHOOL OF MANAGEMENT

## Business Ethics

### The Environment: BHP and Ok Tedi

BHP is one of the world's largest mining companies. With its partners, the Papua New Guinea Government and the Canadian Inmet Mining Corporation, it formed Ok Tedi Mining Limited (OTML), in which it was the majority shareholder. The development of the Ok Tedi mine was fraught with problems from the beginning of construction in the early 1980s. These have ranged from difficulties with venture partners to strikes to droughts and landslides.

The Ok Tedi mine is situated on immense ore deposits of copper and gold on Mount Fuliban in the Star Mountains near the boarder with Irian Jaya. This area is geologically unstable and subject to powerful erosion. It is drenched by 10 metres of rainfall a year, and the run off carries sediment from slippage and erosion into the Ok Tedi River. The Ok Tedi flows into the Fly River which empties into the Gulf of Papua. Processing at the mine involves crushing rock to release the valuable minerals, and discarding the residue or tailings, which are usually retained in a specially constructed dam. During construction of a tailings dam for the Ok Tedi mine in 1983–4, slippage caused the foundations to collapse and an investment of \$70 million to be washed into the river system.

In 1989, the Papua New Guinea Government gave permission to the miners to commence mining without a tailings dam. This set the scene for all the subsequent problems for BHP and the Ok Tedi peoples. According to the company, construction of a tailings retention dam was simply not possible. It stated:

Since (1984), some 120 independent studies on waste retention schemes had been undertaken to find a way to store waste material. With high rainfall and communities living alongside the river, we are primarily concerned about a structure which could eventually collapse causing catastrophic damage and endangering people's lives, not only during the life of the mine but for many year afterwards.<sup>1</sup>

While a safe tailings dam could not be constructed then, BHP insisted that it would continue searching for a way to manage the problem — including construction of a dam. In the meantime, tailings were released into the Ok Tedi and Fly Rivers. The PNG Government set limits to the amounts of discharge. About 40 environmental research and monitoring officers were employed by OTML. Their reports were filed with the PNG Government and were audited by independent scientists. Despite these measures, local landowners, with the support of Australian groups like Community Aid Abroad, called the OTML operations at Ok Tedi “a disaster” and lobbied for the Australian Government to introduce a code of conduct for Australian mining companies operating abroad.<sup>2</sup>

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<sup>1</sup> *BHP and Ok Tedi: The Facts*, BHP publicity, 28.9.95, p 3.

<sup>2</sup> Rowan Callick, “Australia: It took the ‘Goodies’ to make a real disaster”, *Australian Financial Review*, 2 November, 1995.

In May 1994, the landowners launched a \$4 billion action against BHP in the Victorian Supreme Court. Two billion dollars were sought for exemplary damages and the building of a tailings dam, and another two billion in compensation. An injunction against further mining until a dam was constructed was also sought. The reaction of the PNG Government was immediately hostile. In repeated statements Prime Minister Wingti warned of the damage that such actions could do to overseas investment confidence in his country. He stressed the importance of dealing with such legal issues inside PNG, not through foreign courts. "The Ok Tedi matter is a matter taking place in PNG and we are going to make it so we handle this within our own country under our own laws".<sup>3</sup> This determination to deal with such actions within his own country led Wingti to consult with BHP over the preparation of legislation to secure this. By the time the legislation was introduced into parliament in December 1995, it had caused a public relations nightmare for BHP and produced its own legal difficulties discussed below.

In order to make any judgement about the issues involved here, it is necessary to place OTML's mining in context. Each year (drought years excluded) rainfall washes over 90 million tonnes of sediment into the Fly River. To this mining added another 40 million tonnes. This was mainly deposited over a 20-kilometre stretch of the 1000-kilometre Fly River. The company, however, asserted that when mining was completed, this build up of sediment would be washed to the sea by the large volumes of water from the catchment. BHP claimed that the main problem was the amount of sediment, not the toxicity of mine tailings, and produced evidence that copper levels in fish in the Fly were lower than in metropolitan Sydney.

The Ok Tedi mine was the largest enterprise in PNG, contributed about 20% of the country's export income and provided employment for thousands of local people. Benefits from the Ok Tedi mine included the investment of \$300 million in infrastructure, such as roads, power, water, communications, schools and medical facilities; the education and training of over 1500 workers; a decline in infant mortality rates from around 33% to less than 3%; generally improved health with a dramatic decline in malaria infections and an increase in the average life span from 30 to 50 years; and greatly expanded educational opportunities for children. Apart from direct compensation for the Western Province peoples, a trust fund was established for community development in areas such as school buildings and small business assistance. This trust fund was expected to total \$80 million over the projected life of the mine.

BHP summed up its position in these terms.

BHP is proud of what has been achieved at Ok Tedi but recognises the difficulties that the mine created due to its environmental impact and its effects on the lifestyles of some of the people living along the river. The Company would very much like to find a better solution to the problem it confronts. Closing the mine is not an option — it was too important to the economic and social welfare of Papua New Guinea and is not advocated by any but a small number of people in the region.<sup>4</sup>

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<sup>3</sup> Cameron Forbes and Matthew Stevens, "BHP considers PNG mining solutions", *The Australian*, 24 May 1994.

<sup>4</sup> BHP and Ok Tedi, p 8.

The company declared at the time that “BHP is committed to carrying out all aspects of its operations in a responsible manner and adopts the same high standards in all countries and communities in which it operates”. It believed that “the issues relating to the environmental effects of the (Ok Tedi) mine should be addressed within the cultural and political institutions of Papua New Guinea”.<sup>5</sup>

Subsequently, the company offered a \$110 million supplementary package to those affected by mining. The terms of this offer excluded other general claims upon OTML, but still allowed specific claims such as damage to gardens. The package had to be ratified by legislation in the PNG Parliament, but its effect would have been to prevent a class action then under way in the Victorian Supreme Court. This action, brought by Papua New Guinean landowners in 1995, claimed \$4bn in compensation from BHP for loss of traditional lifestyle. As BHP lawyers were involved in the drafting of the legislation, the Supreme Court found that BHP was in contempt. That finding was overturned by the appeal court on a technicality.

In June 1996, BHP agreed to a \$400-million out-of-court settlement for the land holders, which included \$110 million in compensation, \$40 million to relocate 10 villages, and \$7.6 million in legal expenses. BHP also agreed to sell ten per cent of OTML to the PNG Government for the benefit of local communities. BHP did not undertake to build a tailings dam, but did promise to look at all feasible options for tailings containment.

In the years following the settlement with traditional land holders, things seem to have gone more smoothly for BHP. In May 1997, BHP and its partners signed an agreement with land holders on the east bank of the lower Ok Tedi River. This area was designated to store tailings during a two-year trial of river dredging. Part of the annual payments to the owners will be held in trust until the Ok Tedi mine closes this century. Dredging is the speediest option to implement, but the trial will tell whether it is an effective measure in dealing with the tailings problem.<sup>6</sup>

### *Asking ethical questions about BHP and Ok Tedi*

What is the ethical issue here?

Is it the despoliation of the environment? If so, then why is mining in PNG an ethical issue when mining in Australia is not?

Are tailings deposits in the Fly River unethical per se? If so, how should this ethical obstacle be explained? Under what circumstances could the obstacle be overcome or is it absolute. If it is absolute, how could this be explained?

Does the issue arise because local residents had their lifestyle changed or stopped? In their statement to the Supreme Court, Slater and Gordon, solicitors for the local landowners seeking compensation, said “The villagers’ subsistence lifestyle of thousands of years has been wiped out in the past decade by an environmental catastrophe”.

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<sup>5</sup> Ibid. p 1.

<sup>6</sup> Barry Fitzgerald, “BHP in deal on Ok Tedi compo”, *The Age*, 8 May 1997

Why is this a problem if the nation as a whole benefits from the mining? Is it because these particular stakeholders were insufficiently compensated?

Simon Longstaff of the St. James Ethics Centre has suggested that the ethical question is one of a foreign firm driving the government of a developing nation along the path to profits. In other words, there is a power inequality between BHP and the Government of PNG, and this power differential raises an ethical difficulty.<sup>7</sup> Do you agree?

Geoffrey Barker of the *Australian Financial Review*, a journalist who takes an interest in ethics, identifies three ethical questions related to the Ok Tedi affair:

- Ought companies to be able to do abroad what they cannot do at home? Ought there be universal standards for environmental protection?
- Ought global consistency be demanded of firms like BHP?
- What is the proper relationship between multinational firms and the governments of poor countries desperate for development and foreign exchange?

More precisely, how closely ought firms to be involved in drafting the regulatory frameworks in which they are to operate?

Governments have responsibilities to the nation-state as a whole, but also to all of its people. They have responsibilities to sustain the economy and attract productive investment, but they must also protect the environmental heritage. As a partner in OTML the PNG Government was in a difficult position to discharge its responsibilities. Was there an ethical problem for the PNG government or the other OTML partners in joining in a venture together?

If local villagers are to suffer losses for wider national gains, ought they be consulted by incoming firms? This raises fundamental issues of autonomy and justice: how much notice should firms take of villagers' desires to preserve traditional lifestyles if national governments are eager for development?

On what basis ought compensation be paid for environmental and other losses? Consider the second and third of Barker's questions. Say the PNG Government and BHP were at arm's-length during all negotiations about the mine. And suppose that BHP had consulted local villagers and obtained their consent to mining on terms identical to those which apply now. Would the Ok Tedi operation then be ethically trouble free? If you believe not, then consider this: what amount of compensation would remove ethical obstacles to the mine?

Is the more important issue here whether the standards of BHP in PNG differ from those in Australia, or is it the impact of mining on the Ok Tedi eco-system? Both issues are important, of course, but the question of standards would not arise unless there was a major impact of mining there.

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<sup>7</sup> Cited in Geoffrey Barker, "Dead fish, ethics and Ok Tedi", *Australian Financial Review*, 9 October, 1995, p 15. Barker also cites BHP's then head of minerals, Jerry Ellis, who rejects the proposition that his company has bullied rather than courted the PNG Government. "When you are in competition, you do everything you possibly can to win people's hearts and minds, not to bully them. As soon as you become a bully, they look elsewhere."

