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THE PAYMENT OF MINING ROYALTIES TO
ABORIGINES IN THE NORTHERN TERRITORY:

J.C. Altman

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THE PAYMENT OF MINING ROYALTIES TO ABORIGINES
IN THE NORTHERN TERRITORY:
COMPENSATION OR REVENUE?

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ABSTRACT

This paper examines some of the consequences for Aborigines of the ill-defined nature and intended function of mining royalties in the Aboriginal Land Rights (Northern Territory) Act, 1976-82. It is contended here that mining royalties are paid to Aborigines either as compensation or revenue, or as some combination of compensation and revenue. Initially, an attempt is made to define the terms royalties, compensation and revenue. Next the history of the payment of mining royalties to Aborigines in the Northern Territory is briefly examined. This history is divided into two distinct periods: pre-land rights or 1952-1976 and post-land rights or 1977-1983. In discussion, four broad problem areas that have resulted from the undefined nature of royalties are examined.

Major planks of the Federal Labor Government's Aboriginal Affairs policy include the payment of royalties to Aborigines and an Aboriginal right to veto mining on their land. Currently, the N.T. legislation is being reviewed by Mr Justice Toohey and an Aboriginal Land Inquiry is underway in Western Australia. The paper concludes that as long as the intended functions of Aboriginal royalty rights remain undefined in policy, potential shortcomings exist in the granting of these rights to Aborigines. Now may be a most appropriate time to address this issue.

THE PAYMENT OF MINING ROYALTIES TO ABORIGINES IN THE NORTHERN TERRITORY.

COMPENSATION OR REVENUE?(1)

In this paper, I set out to examine what appears to be a significant ambiguity in the payment of mining royalties to Aborigines in the Northern Territory. From the outset, let me state that mining royalties are not, and never have been, paid directly to Aborigines. Rather, they have been paid to the Commonwealth (and more recently to the Northern Territory Government) and have been subsequently paid to Aboriginal organisations from Consolidated Revenue. This may appear to be a technicality only, but as I will demonstrate later, in recent times, this arrangement has had negative ramifications for Aborigines. The ambiguity that I refer to exists in the fact that the nature of mining royalties paid to Aborigines has never been clearly stated in Government policy. In general, policy has stated how these moneys could or should be spent by Aborigines, but not that they are. I identify three possibilities: either mining royalties are paid to Aborigines as compensation or as a form of revenue; or as some combination of compensation and revenue.

I start by attempting to clarify the meaning of three terms: royalties, compensation and revenue. I then turn to examine the history of the payment of mining royalties to Aborigines in official Government policy. This history can be divided into two distinct periods: pre-land rights or the period 1952-1976 and post-land rights or 1977 to the present. In the overall period 1952-83, Aborigines have received mining royalties from only four agreements made with the mining companies GEMCO, NABALCO, ERA and QML respectively.(2) The greatest emphasis here will be placed on

these mining agreements. I contend that current ambiguities in the legislation have been inherited from the pre-land rights days, and that these ambiguities have actual and potential negative ramifications for N.T. Aborigines.

Some definitions

The term royalty has two meanings according to the Concise Oxford Dictionary: 1) a royalty right granted by an individual or corporation; and 2) a lessee's payment to a land owner for the privilege of working a mine. In Australian mining law (see Lang and Crommelin, 1979) elements of both meanings are incorporated. Ownership of all minerals are vested in the Crown in the right of the Commonwealth or in the right of the States or Northern Territory. Royalties are taxes on mining and are levied in three ways in Australia: as some proportion of mining revenue, that is, ad valorem; as a specific charge per ton, that is output-based; or as some proportion of a mining companies' pre-tax profits. Royalties are a mechanism to tax some proportion of a mining company's mineral rent. Royalty rates are stated in Federal or State mining legislation and are termed statutory royalties. It is to these payments that I limit my discussion. A range of other payments that have been variably termed up-front or front-end payments, land rents, agreement moneys and negotiated royalties have been made to Aborigines. In some agreements, Aborigines are paid a negotiated royalty (a share of mineral rent) on the basis of acreage used in the mining operation; in other agreements, royalties are calculated on the basis of profits and output. These other payments have tended to complicate an understanding of the purpose of paying statutory

royalty equivalents to Aborigines.

Compensation is defined in the dictionary as things given as recompense; counterbalance; to make amends to persons by another thing. This term seems fairly straightforward, except that there has never been an attempt made to define what Aborigines are being compensated for by the payment of mining royalties. In the pre-land rights days, Aborigines were not even paid for surface disturbance, for it was the Commonwealth that 'owned' Aboriginal reserves. When after the Woodward (1973, 1974) reports people began to recognize Aboriginal ownership of land, it was accepted that a proportion of royalties should be paid to compensate owners for surface and environmental damage resulting from mining. But in general, it was envisaged (see Fox et al, 1977) that the compensation was for social, cultural and economic upheavals that were an unquestioned consequence of the establishment of mining towns near remote Aboriginal populations. In so far as royalty payments (or a part of them) are compensation, it is not at all clear why they are pegged to a statutory payment, which is a revenue-raising mechanism (see further discussion below).

Revenue is defined as income, especially of a large amount, from any source. This term is defined here to differentiate it from compensation. Theoretically, if royalties are paid as compensation for damages, Aborigines should accrue zero net benefits. On the other hand, if royalties are revenue, then Aborigines should be better off after receipt of such payments.

Pre-land rights policy, 1952-1976

From the time the Commonwealth took over the administration of the N.T. in 1911, to 1952, there was no mining on Aboriginal reserves permitted. People holding miners' rights were specifically excluded from access to reserves under the Aboriginals Ordinance, 1918; and doubly excluded when the Mining Ordinance, 1939, was passed. The only major exception to the veto of mining on Aboriginal reserves occurred in 1935 when the Warramunga Aboriginal reserve near Tennant Creek was revoked.

In 1952 and 1953, amendments to the Mining and Aboriginals Ordinances allowed mining on reserves. These changes occurred for a number of reasons. Firstly, the Department of Supply wanted to mine bauxite deposits discovered on the northern Wessel Island in 1949. But this island was part of the Arnhem Land Aboriginal reserve declared under the Crown Land Ordinance, 1931. Secondly, there was a general shift in government policy towards Aborigines from protection and preservation to assimilation. The Department of Territories felt that Aborigines should make the reserves a source of income. One way to do this was to allow mining. It was also felt that the existence of mining towns in remote areas would hasten Aboriginal assimilation into the wider Euro-Australian society.

It was at this time that Hasluck, the then Minister for Territories, proposed the establishment of the Aboriginals (Benefits from Mining) Trust Fund. The Commonwealth would forego its royalty rights in favour of Aborigines. The Northern Territory (Administration) Act was amended by the addition of S.21 which created the Trust Fund. Some inconsistencies

emerged at this early stage. Firstly, while it was felt that local Aborigines residing near mines should be compensated for loss of hunting grounds, there was no provision in the legislation to earmark a proportion of royalties for local use. Secondly, the royalty rate was fixed at a double rate of 2 1/2% ad valorem. This higher rate was intended to discourage marginal operations on Aboriginal reserves. In other words, while the possibility of mining on reserves existed after 1952, reserves were not wide open to miners.

The operation of the legislation did not become evident until the late 1960s. By that time two very different mining agreements had been completed. The first was for manganese mining on Groote Eylandt. This agreement differed from the scenario envisaged in the legislation, for two agreements were signed: between the mining company, GEMCO and the Church Missionary Society (C.M.S.) and between GEMCO and the Commonwealth. The first agreement was for transfer of prospecting rights from the C.M.S. to B.H.P. and the mining company agreed to pay a 1 1/4% (approximately) ad valorem royalty to secure this right. The second agreement was under the N.T. Mining Ordinance and involved a payment (under S.50B) of an ad valorem royalty of 2 1/2%. The former payment was non-statutory and went directly to Groote Eylandt Aborigines; the latter went to the Aborigines Benefits Trust Fund (ABTF).

In 1968, the Commonwealth and NABALCO signed an agreement for the company to mine bauxite and produce alumina at Gove. This agreement was signed irrespective of strong local (Aboriginal) opposition. In 1968, Yirrkala Aborigines challenged the right of the Commonwealth and NABALCO to

mine on Aboriginal land. In the now famous case Milirrpum and others versus NABALCO and the Commonwealth heard in the N.T. Supreme Court, Mr Justice Blackburn ruled against the plaintiffs. Mining was to proceed and in 1972 bauxite exports began. There are two key features of the NABALCO Agreement. Firstly, a special mining ordinance was passed in the N.T. Legislative Assembly for this development. The royalty rate was not 2 1/2% ad valorem but a lower rate based on output produced and the company's profitability. Secondly, there were no payments earmarked in the agreement for local Aborigines, counter to a recommendation made in 1963 by a House of Representatives Select Committee convened to hear the grievances of Yirrkala Aborigines (House of Representatives, 1963).

In 1966, manganese mining began at Groote Eylandt, and royalties began to flow into the ABTF. Between 1966 and 1969, an Inter-departmental Committee attempted to formulate a policy for the ABTF's functioning. The Committee recommended that a proportion of ABTF royalty income should be paid to communities 'affected' by mining operations. In 1970, the ABTF started operations but no proportion of funds was paid to Groote Eylandt people. After the Supreme Court hearing concluded in 1971, and mining had begun at Gove, a Cabinet decision earmarked 10% of all NABALCO statutory royalties for Yirrkala Aborigines. In 1972, these payments began to flow via the ABTF to the Yirrkala Dhanbul Association. In 1973, to maintain consistency in policy, 10% of GEMCO statutory royalties were paid to the Groote Eylandt Aboriginal Trust (GEAT) on top of the 1 1/4% ad valorem paid directly by the company.

In the pre-land rights era, the rule-of-thumb was that 10 per cent of statutory royalties were paid to communities adjacent to mining projects, partly at least, as compensation. There were a number of inconsistencies in this policy. Firstly, the amounts these communities received varied significantly. Groote Eylandt Aborigines received a 1 1/4% negotiated payment plus a 1/4% statutory royalty (10% of 2 1/2%). Yirrkala Aborigines received 10% of a royalty well below 2 1/2% ad valorem (see Altman 1983:10-26). Secondly, access to the 'special' royalty did not exclude communities from applying to the ABTF for grants or loans. The 90% paid to the ABTF by the Commonwealth must be regarded as revenue.

Post-land rights policy, 1977-83

In 1972, there was a change in Government, and official policy towards Aborigines changed from assimilation and integration to self-determination. The Whitlam Labor Government was committed to Aboriginal Land Rights. In 1973 and 1974 Mr Justice Woodward headed the Aboriginal Land Rights Commission.

In his reports, Mr Justice Woodward (1973,1974) recommended that Aborigines be granted inalienable communal title, in perpetuity, to unalienated Crown Land in the N.T. While the Commission was empowered in its Terms of Reference to grant full mineral rights to Aborigines, Woodward did not make such a recommendation. However, he was well aware of the potential negative social impact of resource development projects on geographically, culturally and economically remote Aboriginal communities. Furthermore, he recognized that for Aboriginal Land Rights to be

meaningful, Aborigines must be empowered to limit access to Aboriginal land. Hence Woodward recommended (1974:127) that while mineral rights should remain with the Crown, Aborigines must have a right to veto mineral exploration and mining developments on Aboriginal Land. However, this Aboriginal power of veto could be overridden if the national interest required this.

Woodward also recommended that Aborigines in the N.T. continue to receive mining royalties, although he never clarified to what extent these payments were compensatory (for environmental, social and 'cultural' damages) in contrast to being land and mineral rentals. This lack of clarification was greatly influenced by the historical precedent.

Woodward recommended an ad hoc formula, which was to be discretionary, whereby statutory royalties would be shared by all N.T. Aborigines. He suggested that 30% be earmarked for communities affected by mining operations (both as compensation and as a share of mineral rent), 40% be paid to Land Councils to administer (and claim) Aboriginal land, and 30% be distributed Territory-wide. The rationale for this formula was not explicitly stated in the reports, but is implicit in the stated aims of providing Aboriginal Land Rights (Woodward 1974:2).

The 30% paid to communities in areas affected was partly intended as compensation for damages. As noted elsewhere (Altman 1983), ad valorem royalties are hardly a rational basis for compensating Aborigines and Lloyd (1983) has argued that a damages tax would be a more appropriate mechanism for this policy aim. However, the nature of damages experienced by

Aborigines as a result of large-scale resource development projects are primarily social and cultural, and are impossible to quantify. For this reason, some proportion of royalty payments has been utilized as a poor proxy for damages taxes - although royalties are very indirectly linked to the level of damages incurred.

An unspecified proportion of this 30% was also intended as a share of mineral rent, to go presumably to Aboriginal traditional owners, or occupiers, of land. This payment to Aborigines has been opposed by the mining lobby (AMIC, 1982), economists (Lloyd, 1983) and the N.T. Government. The common basis of this opposition is that Woodward left mineral rights vested with the Crown. If the Crown owned the minerals, then mineral rent should be paid to it, not to Aborigines.(3) Here it appears that Woodward was influenced both by historical precedent and the peculiarity of the Aboriginal case. Aborigines in remote Australia are not only socio-economically depressed by Euro-Australian standards, but also form a distinct cultural and racial group. Since 1972, with a Federal Government policy of self-determination, the differences in Aboriginal values from the Euro-Australian norm have been recognized in official policy. Woodward (1974:2) recognized that Aborigines were economically depressed. Given the policy of self-determination, and a Government commitment to Aboriginal economic advancement, there was a need for funds that were autonomous of annual budget appropriation and Government control. A convenient mode of transferring such funds was for the Commonwealth to continue to forego its right to mineral rent in favour of N.T. Aborigines.

It is worth making two further observations here. Firstly, mineral resources are non-renewable and finite. Because Aboriginal groups are currently economically depressed, they are not in a position to exploit such resources on Aboriginal land. However, in many cases, the mineral resources base is the only marketable value of Aboriginal land. To allow mining companies to expropriate such resources from Aboriginal land, without providing Aborigines with some share of the mineral rent, appears somewhat exploitative. Secondly, for a variety of reasons including low educational status (in Euro-Australian terms) and differing cultural values, Aborigines reap extremely limited spinoff benefits from regional resource development projects. The general lack of Aboriginal employment in the mining sector is well documented over a decade (Rogers, 1973; Altman and Nieuwenhuysen, 1979; Cousins and Nieuwenhuysen, in press).

40% of royalties were to be paid to Aboriginal Land Councils to provide them with a source of revenue that is independent of annual budget appropriations. However, not only does this make Land Councils dependent for finance on the mining sector, but in any case their budgets must be approved by the Minister for Aboriginal Affairs. I have joined a number of others (like Coombs, 1980 and Rowland, 1980) in suggesting that this may not be an appropriate way to expend mineral rent (Altman, 1983).

Finally, 30% of mining royalties were to be distributed to N.T. Aborigines via the Aborigines Benefit Trust Account (or ABTA). The aim of this distribution of mineral rent was to ameliorate any wealth differentials that may occur within Aboriginal society between people in areas affected by resource development projects and people in areas

unaffected. Furthermore, because Aboriginal land was to be inalienable, it could not be sold and has limited 'market value'. Mineral rent was about the only way available to Aborigines to raise capital from Aboriginal land. This capital had to be redistributed to people who owned land that had no mineral wealth.

Woodward's recommendations were accepted in principle by the Whitlam Government, but prior to the Aboriginal Land Rights Legislation being passed, there was a change in Government. In the Liberal-Country Party Aboriginal Land Rights (Northern Territory) Act, 1976 (referred to henceforth as the Act), there were some deviations from Woodward's recommendations. Firstly, while Woodward suggested that Land Councils should divide royalties according to the 30/40/30 formula, the Act created a Government instrumentality, the Aborigines Benefit Trust Account (ABTA) to perform this function. Secondly, a spatial definition of area affected was not incorporated in the Act. Finally, 30% of royalties was not earmarked specifically for N.T.-wide distribution.

The breakdown of payments in the Act can be interpreted in a number of ways. The Central Land Council for example regards all royalties paid to Aborigines as compensation; in much the same way as under the N.S.W. Aboriginal Land Rights Act, 1983 Aborigines are paid 7.5% of the State's land tax. In my work, I have differentiated the 30% paid to areas affected from the 70% paid to wider Aboriginal interests (Altman 1983). The former has both compensatory and revenue-like payments incorporated in it. However in the Act there is no differentiation between these two components. In contrast, in the Pitjantjatjara Land Rights Act, 1981

statutory royalties (or mineral rent) are explicitly differentiated from compensation payments. The former are covered in S.22 of this act and are divided according to a non-discretionary formula with one third going to Anangu Pitjantjatjaraku, one third to the (State) Minister of Aboriginal Affairs (to be applied to the health, welfare and advancement of Aboriginal inhabitants of South Australia generally) and one third to the General Revenue of South Australia. Under S.24 a negotiated payment can be made by a mining company to compensate for disturbance to the land, the Pitjantjatjara people and their way of life (my underlining).

Prior to the Land Rights legislation, royalties were paid to the Commonwealth and were then transferred to Aboriginal interests (the ABTF). Today, a more complex administrative arrangement operates. Under S.63 of the Act, the Commonwealth is required to pay royalty equivalents to the ABTA and the Consolidated Revenue Fund is appropriated accordingly. Royalties from post-land rights uranium mining are still paid to the Commonwealth which retains ownership of these minerals, but royalties from other mining (including from Gove and Groote) are made to the N.T. Department of Mines and Energy. This change came about after the passing of the Northern Territory (Self-Government) Act, 1978 and the signing of the Memorandum of Understanding in respect of financial arrangements between the Commonwealth and a Self Governing Northern Territory (Commonwealth of Australia, 1978).

This change is far from cosmetic only. Firstly, prior to the passage of the Land Rights legislation, the Commonwealth only surrendered its right to royalties won on Aboriginal reserves. After 1978, the Commonwealth

accepted a liability to compensate the N.T. Government for royalties it would have won on Aboriginal land under all the agreements signed to date. Furthermore, with all but uranium mines, it is the N.T. that is receiving mining royalties. The ABTA is paid moneys from CRF that in fact come from tax revenues and are public moneys. This has wider ramifications which will be discussed further below.

Another change introduced after the passage of the Land Rights act was a mining withholding tax which the Commonwealth levies on royalty-equivalent payments made by the ABTA. These changes were introduced by the Income Tax Assessment Amendment Act, 1979 and the Income Tax (Mining Withholding Tax) Act, 1979. This tax adds to the compensation/revenue dilemma. Firstly, in so far as royalty-type payments are intended as compensation under the Act (30%), income tax should not be levied. This is particularly the case as under S.35 of the Act, affected communities money must be paid to incorporated bodies. Woodward's intention was that these moneys should be used for community benefit by community associations. By and large, the bulk of royalties are used in such a manner, and therefore they should not be assessed as personal income. Secondly, it seems rather inefficient to make payments out of CRF to Aborigines and then to recoup 6.0% (6.4% to November 1982) via the Commissioner of Taxation. Finally, there was no mention of taxation of royalties under the Act. Especially in so far as royalties are used to finance budgets of Land Councils (statutory bodies) this taxation appears inequitable. It is surprising that the Commonwealth does not tax the royalty receipts of the N.T. Department of Mines and Energy on similar

grounds.

The two mining agreements signed since the passage of the Act have analogies with the two pre-land rights agreements. In the Ranger Agreement signed between the Northern Land Council (NLC) and the Commonwealth in 1978, a statutory royalty of $4\frac{1}{4}\%$ was payable. Up front payments and an annual 'rental' payment were also included in the financial clauses of the agreement. The Commonwealth was involved in the signing of this agreement as the major participant in the Ranger project, but it was in an obvious conflict of interest situation - for on one hand it was a participant in the project while on the other hand, it was charged with protecting the interests of Aborigines (under S.40 of the Act). In 1978, after prolonged negotiations, $4\frac{1}{4}\%$ was agreed upon as the royalty rate, because this was the maximum the market could bear. In 1980, when the Commonwealth sold its share in the venture to ERA, the company agreed to pay a higher royalty of $5\frac{1}{2}\%$. However only $4\frac{1}{4}\%$ of this is paid via the Department of Trade and Resources to the ABTA. The other $1\frac{1}{4}\%$ is paid to the N.T. Department of Mines and Energy. This agreement is analogous in some ways to the NABALCO Ordinance, except that some fixed payments are made to locally affected people.

The agreement signed in 1979 between the NLC and Queensland Mines for uranium mining at Nabarlek has analogies with the GEMCO agreement. QML agreed to pay a royalty of $3\frac{3}{4}\%$, $2\frac{1}{2}\%$ of which goes to the ABTA via the Department of Finance, and $1\frac{1}{4}\%$ to the N.T. Department of Mines and Energy. On top of this, the company agreed to pay a negotiated royalty (in annual agreement payments calculated on an area used basis) to traditional

owners of the mine site, and traditional owners of land affected by the project. These negotiated payments are at a rate of at least 2% ad valorem.

Discussion

Since the royalty-related function of the Aboriginal Land Rights (Northern Territory) Act, 1976 became operational in July 1978, four problem areas have evolved. I contend that these problems are related to the undefined nature of royalties.

1. It was never clarified in the Land Rights legislation who should receive the 30% of statutory royalties payable to communities in areas affected. Woodward explicitly stated (1974:114) that such moneys must be spent on community projects and not by individuals. Hence under S.35(2) of the Act, these payments are made to incorporated bodies. These bodies, or royalty associations, are empowered by their constitutions to distribute moneys to individuals. This is counter to Woodward 's intention. Furthermore, while Woodward made it clear that residence in an area affected was sufficient reason to partake in the benefits of area affected moneys, Aborigines have emphasised traditional ownership (of area affected) as an important criterion. Traditional owners need not reside in areas affected, according to Aborigines, to receive mining moneys. Finally, the area affected by a mining operation has never been defined in legislation. Woodward suggested a non-discretionary spatial determination of 60 kilometres radius from a mine site. Such a rule-of-thumb was never included in

the Act, and would have proven unworkable. For discretion in definition of areas affected seems justified, given the variability in minerals and mining methods. However, this discretion is problematic when membership of royalty association has to be determined.

Furthermore, no attempt has been made to correlate the extent of environmental damages or social disruptions with returns to the arbitrary geographic regions defined as areas affected. Currently for example people affected by the Nabarlek operation receive payments that approximate an ad valorem royalty rate of 2.75%; people at Groote receive 2.0% ad valorem and people who benefit under the Ranger Agreement (who are members of the Gagudju Association) receive 1.275%. People in the Gove region receive a poor royalty deal - between 12c-15c for every ton of bauxite (15c) or alumina (12c) produced.(4) These variable payments result in marked variation in the per capita income of royalty associations and this is a potential source of acrimony between them.

Part of the reason for the variability in royalty rates is that Woodward recommended that Aborigines could negotiate royalty payments above the statutory rate (2 1/2% for minerals, 10% for oil and gas) which is to be a minimum benchmark. This possibility was linked to the Aboriginal right of veto - if Aborigines vetoed a mining proposal, companies could negotiate with them to remove the veto. To date, there has been no exploration or mining that has required Aboriginal consent owing to prior interest provisions in the legislation. However, Aboriginal consent to agreements has been required. Both the

Australian Mining Industry Council (see A.M.I.C. 1982) and the Chamber of Mines of Western Australia(5) oppose such negotiated payments. They argue that a) statutory royalties only should be paid for mining on Aboriginal land, b) as all minerals are owned by the Crown there should be no additional royalties imposed for mining Aboriginal land and c) that there should be no compensation for social disruption to the way of life of local Aboriginal communities near resource development projects. The mining lobby's line of argument runs counter to the Federal Labor Government's principle that royalties should be paid for any mining on Aboriginal land. The A.M.I.C. feels that there is an upward trend in negotiated royalties that is unrelated to the viability of mines. If such a trend is discernible it is quite marginal. The negotiated royalty paid at Groote in 1963 is $1\frac{1}{4}\%$ ad valorem. Since then, negotiated royalties have been 1.75% (Ranger, 1978), 2% (QML, 1979), $1\frac{1}{2}\%$ (Mereenie, 1981 and Palm Valley, 1982) and 2% (Pancontinental, 1982). Individual mining companies appear willing to make substantial payments directly to Aboriginal groups adjacent to mining projects. This is counter to Woodward's intent that all mining payments, except statutory land rentals, be divided according to the 30/40/30 formula.

2. The issue of distribution of royalty receipts and the potential for wealth inequalities in Aboriginal society resulting from mining has recently become important (see A.M.I.C., 1982 and Lloyd, 1983). It was Woodward's intent that such potential inequalities would be ameliorated by the 30/40/30 formula. However this redistributive system has never

functioned adequately for two reasons. Firstly, Land Councils' ministerially approved budgets have exceeded 40% of total annual royalty receipts. In 1979/80, 66% of royalty receipts were used by Land Councils, in 1980/81, 49%; in 1981/82 66% and in 1982/83 42%. This has occurred because an amendment to the Act in 1978 required Land Councils revenue shortfalls be met by supplementary funding (S.64(7)) that has come from the 30% of royalties intended for Territory Aborigines. Consequently then, from 1978/79 to 1981/82, only 10-14% of statutory royalties were distributed Territory-wide. In 1982/83, when Land Councils budgets appear to have stabilised, these payments under S.64(4) accounted for an inexplicably low 4% of annual royalty receipts. This is a far cry from the 30% Woodward recommended. Any redistributive role that the ABTA was to play with S.64(4) grants has not been fulfilled in the first five years of its granting operations.

Recently, there have been some suggestions by the Chairman of the Aboriginal Development Commission (Canberra Times, July 1983) that royalty payments to Territory Aborigines should be equitably distributed. It was not clear from this article what proportion of royalties was being referred to. It is my opinion that any equitable (per capita) sharing of royalties is counter to Woodward's intent, irrespective of how royalties are defined.

The total receipts of the ABTA are currently about \$13 million per annum. Assuming 40% continues to be spent by Land Councils, 60% or \$7.8million is available annually for further distribution. Currently, about \$3.9million is distributed to areas affected at an average per

capita rate of about \$1000 (although only some is distributed on a cash basis). \$3.9 million is available to the ABTA to distribute Territory-wide. Assuming moneys are distributed to areas unaffected by mining operations, about 26,500 Aborigines could share this money, at a per capita rate of about \$150 per annum. It seems that such redistribution would do little to better the economic status of Territory Aborigines. It may be far sounder economic policy to require ABTA funds to be concentrated and utilised for the collective benefit of Territory Aborigines, than to distribute them widely.

3. Since 1980, the N.T. Department of Community Development has been responsible for funding Aboriginal communities for town management and public utilities (or essential services). Under the Memorandum of Understanding (Commonwealth of Australia, 1978) the N.T. Government is obliged to maintain overall funding levels for these services at levels similar to Department of Aboriginal Affairs (DAA) pre-1980 levels. However as this condition applies to overall funding and not to particular communities, there appears to be discretion in this condition. Discussions I have had with officials in the Departments of Community Development and Mines and Energy left me with the distinct impression that they regard royalty payments as revenue. This can be most clearly seen with reference to Aboriginal communities in Kakadu National Park that have been funded to date primarily by the Gagudju Association. Despite requests from the association to the N.T. Government for essential service funding, no moneys have been received to date. It seems that if a 'welfare needs' principle is used by the

Government in funding Aboriginal communities, this will result in bias against any communities that receive mining royalties.

If mining royalties are viewed as just a source of revenue, both Commonwealth and N.T. Government may regard royalties as a substitute for their own spending and in the longer run they may well renege on their funding obligations to Aboriginal communities. Furthermore, mining companies may be quite justified in asking why a tax on their production should be used for the betterment of Aborigines. For perhaps, as the Western Australian Chamber of Mines argues, this is a Commonwealth responsibility which should be met from general tax revenue and not from taxes on the mining sector alone. Safeguards are needed to parry such criticism and to ensure the integrity of mining royalties as compensatory payments. In Canada, in the James Bay Agreement (see La Rusic et al., 1979) the level of government spending on Cree Indians is both fixed and indexed to the inflation rate. There may be a case, in the Australian context, for guaranteeing to maintain Government expenditure levels on Aboriginal welfare programs for a specified period (like 20 years) irrespective of communities receipt of statutory royalties (see Altman, 1983a:20).

4. Finally, there is the question of accountability. I have noted earlier that by an administrative change after the passage of the Northern Territory (Self-Government) Act, 1978 all royalty-equivalents paid to the ABTA come from CRF, and are therefore public moneys. The Minister for Aboriginal Affairs furthermore determines how 70% of these moneys are to be spent. The only autonomous funds are the payments (30% of

statutory royalties) made under S.35(2) of the Act to communities affected by resource development projects. I have already suggested that Land Councils should not necessarily be funded from mining royalties. It may also be of dubious value to fund Aboriginal economic development projects from royalties, rather than, for example, from DAA Grants-in-Aid. After all, the accountability is the same (being to the DAA) and the source of revenue is the same (being from CRF).

Royalty associations in the Top End do have a degree of autonomy from Ministerial control, but of late, they appear to have become accountable to the NLC, or possibly more accurately, the Bureau of the NLC. Given that the latter is staffed primarily by seconded or ex-DAA staff, one wonders to what extent informal networks are influencing the policies of the NLC. In fact the lack of discretion that royalty associations have is clearly demonstrated in the latest uranium mining agreement, the Pancontinental Agreement, where the objectives that royalty associations may pursue are stated in the agreement - and these objectives may only be pursued with NLC approval. Currently, there is pressure on the DAA and the NLC to make royalty associations more financially accountable. This requirement for general accountability seems somewhat unnecessary. After all, some associations, in particular the Gagudju Association, GEAT and the Dhanbul Association, are performing quite adequately. The problems the Kunwinjku Association has experienced will hardly be relieved by accountability, and those of the Gumaitj Association are still unclear. There seems to be some belief that accountable associations are the successful ones,

but past experience (with DAA funding) suggests no such correlation. If royalty associations do not spend moneys 'soundly', does this mean that they should cease to receive compensatory payments?

It seems to me in fact that the Commonwealth is under a moral obligation to make payments to areas affected by a mining operation at a rate of at least 30% of statutory royalties for each of the seven mining agreements signed to date in the Northern Territory. For while to date no mining agreement has required Aboriginal consent, Aborigines have signed agreements believing that as traditional owners of mine sites and/or of areas affected, they will receive 30% of mining royalties. In short, negotiators have estimated an income stream that Aborigines will receive if they initial agreements. The need to safeguard such mining agreements will become more important in the future, as Aboriginal consent to both exploration and mining will be required.

Conclusion

A fundamental weakness in the paying of mining royalty equivalents to Aborigines in the N.T. is that the nature of these payments has never been defined. One suspects that historical precedent (the 1952 legislative amendments) have constrained the discussion on the subject. Royalties were paid to Aborigines from any mining on Aboriginal reserves (now land) and the status quo has been adhered to since 1952.

At present (September 1983) The N.T. Land Rights legislation is being reviewed by Mr Justice Toohey, and an inquiry is underway in Western Australia regarding the introduction of land rights in that State. Furthermore, two of the five principles of the Federal Labor Government's Aboriginal Affairs policy are:

- A. Aborigines should be able to veto mining on their land
- B. Royalties should be paid for any mining.

These two principles will be incorporated in Commonwealth legislation for Australia-wide Aboriginal Land Rights to be introduced in 1984. Now may be a most appropriate time to examine the policy issues and potential problems involved in the granting of royalty rights to Aborigines.

Footnotes

1. A version of this paper was presented on 5 August 1983 to the Uranium Impact Study workshop held at the Australian Institute of Aboriginal Studies, Canberra. The paper has been revised and expanded on the basis of discussions at the workshop, particularly with Dr P.J. Lloyd; and after I undertook more research in this area while preparing a submission to the Government of Western Australia, Aboriginal Land Inquiry (Altman, 1983a).
2. The Groote Eylandt Mining Company Limited, North Australia Bauxite and Alumina Company Limited, Energy Resources of Australia Ltd and Queensland Mines Ltd.
3. The bestowal of royalty rights and a right to veto mineral exploration on Aboriginal Land in the N.T. has proved contentious. In a forthcoming paper, Dr Nicolas Peterson and myself support these provisions in the Aboriginal Land Rights legislation.
4. As a spectacular contrast, the Gagudju Association currently receives \$770 for every tonne of yellowcake mined at Ranger.
5. The Chamber of Mines of Western Australia (Incorporated): Aboriginal Matters (Press release, 13 December 1982).

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