Permanent Forum on Indigenous Issues

Twelfth session

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Item 8 of the provisional agenda*

Future Work

Study on the impact of the mining boom upon indigenous communities in Australia

Note by the secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its eleventh session (see E/2012/43, para. 106), Megan Davis a member of the Forum, undertook a study on the impact of the mining boom on indigenous communities in Australia, which is hereby submitted to the Forum at its twelfth session.

* E/C.19/2013/1.
1. Introduction

1. A mining boom is distinguished by a “significant increase in mining investment or mining output”.¹ Like many States, over the years, Australia has experienced a series of mining booms; the current one being a mineral and energy boom.² Mining booms are often accompanied by the phenomenon of ‘the paradox of plenty’ or ‘the resource curse’ which means that mineral rich States often suffer a decline in the rule of law, public institutions and regions with extreme poverty.³ While Australia has not “endured the failings associated with countries caught up by the resource curse” there exist some mining regions “where Aboriginal populations are significant majorities, for which the socioeconomic data show extreme poverty”.⁴

2. In Australia over twenty per cent of the land mass is held by indigenous peoples in a variety of statutory land tenure systems.⁵ Therefore it is not surprising that over sixty per cent of mining projects in Australia are in close proximity to indigenous communities.⁶ The majority of

² Ibid, p. 64.
⁴ Ibid.
these projects occur in the Pilbara region in Western Australia.\textsuperscript{7} The current mining boom in Australia has had a significant impact on indigenous communities. This study will provide an overview of the positive and negative aspects of the Australian mining boom on indigenous communities drawing upon the extensive literature that has been generated since the current mining boom began. Some of the beneficial impacts of the mining boom include but are not limited to, indigenous agreement-making, economic development and capacity building, indigenous employment and improved infrastructure. The noted adverse effects include cultural and community well-being as well as environmental damage and damage to sacred sites, increased cost of living including indigenous peoples’ access to affordable housing and health services.

3. In providing a study of the impact of the mining boom on indigenous communities in Australia, it should be noted, however, that there is a lack of reliable demographic data on the impact of mining on indigenous communities.\textsuperscript{8} In addition, tools to measure quality of life or well-being lack a ‘cross-cultural fit’ or indigenous input and therefore the available data is limited in providing an accurate picture of the impact of the mining boom\textsuperscript{9}; this challenge—measuring indigenous well-being—is one that has been raised by the United Nations Permanent

\textsuperscript{7} John Taylor and Benedict Scambary, “Indigenous Peoples and the Pilbara Mining Boom: A Baseline for Regional Participation” (Research Monograph No 25, Centre for Aboriginal Economic Policy Research, Australian National University, 2005).


\textsuperscript{9} Ibid, p. 58.
Forum on Indigenous Issues (Permanent Forum).\textsuperscript{10} This paper will begin by considering the relevant international law pertaining to the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and then will survey the positive and negative impacts of:

1) Agreement-making 2) Employment 3) Social impact including factors such as housing, health and well-being.

II. Relevant international law

4. The following is a summary of the relevant provisions of the UN Declaration:

**Equal protection under the law, and the elimination and prevention of discrimination,**

**Article 8 of the UN Declaration:**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:
   
   (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
   
   (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
   
   (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

5. **Right to be involved in the decision-making process and measures that affect personal rights to land, Article 3 of the **UN Declaration**:  

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

6. **Recognition of the importance of cultural and spiritual values that exist in the relationship with land, Article 25 of UN Declaration**:  

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

7. **Recognition of right to ownership and access to land based on traditional ownership**:  

**Article 26 of UN Declaration**:  

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

8. Right to use, manage and conserve resources of land, or input into the decisions of where State/government retains ownership of minerals or sub-surface resources, Article 29 of UN Declaration:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

9. Right to develop, determine and develop priorities and strategies in relation to use and development of their land, Article 33 UN Declaration:

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.
10. **Rights against removal from land Article 10, UN Declaration:**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

11. **Right to compensation Article 28, UN Declaration:**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**III. Impacts of the mining boom**

**Agreement-making**

12. Much of Australia’s mining activity occurs on indigenous lands. It then follows that benefits of the mining boom are available to those indigenous communities who live in close proximity to mining and those indigenous groups whose territories is in close proximity to mines. Agreement-making between mining companies and indigenous communities is a feature of the current mining boom. Indeed this mining boom can be characterized as featuring emerging best practice in relation to agreement-making whereby mining companies are taking a more long term approach that involves consideration of indigenous peoples’ well-being and
socio-economic disadvantage. This means that agreements cover not only distribution of revenue but address poverty, education and training, health and culture.

13. Generally the mining industry has been required by law to engage with indigenous peoples and enter into agreements with indigenous communities by virtue of existing legal frameworks such as the *Native Title Act 1993 (Cth)* and the *Aboriginal Land Rights Act (Northern Territory) 1975 (Cth)*. It is important to note that agreement-making activity and consequently the proceeds of any agreement will flow to property rights holders such as native title holders and not to indigenous communities simply because they live near a mine. Indeed it is accepted that few communities in Australia will benefit from mining revenues.11

14. The assumption underlying the discussion [of the mining boom] is that indigenous communities have the capacity to win significant revenues from mining on their traditional lands. In the Northern Territory and in the Cape York, Pilbara and Kimberley regions, this assumption increasingly holds true. However, as demonstrated by recent research on financial and others provisions of agreements between indigenous groups and mining companies, many indigenous groups and their communities in Australia, still have little capacity to insist on substantial payments. For these groups, the issue of whether mineral revenues represent a curse or an opportunity is, as yet, moot.

15. Evidence shows that the quality of mining agreements and their benefits are difficult to ascertain because of the confidentiality of such agreements: “the current evidence on the measurable outcomes of agreements is insufficient for the purpose of drawing any definitive

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conclusions. This is a result of the lack of transparency in many, if not most, of the agreements negotiated by resource extraction companies with indigenous groups, and also in the other areas”.12 It may be the case that “the mere act of concluding agreements has not necessarily assured meaningful or equitable outcomes for a significant proportion of indigenous communities”.13 In addition, the effectiveness of an agreement may depend on the administering indigenous organization and the skills and resources they have. So while the right to negotiate under the Native Title Act does provide opportunities for indigenous communities, “low levels of employment, educational attainment and work readiness” in remote areas limit the capacity of the mining boom to transform communities.14 In addition, Langton & Mazel contend that governments in Australia have exacerbated these obstacles for indigenous communities through inequitable taxation arrangements and by failing to redistribute the wealth generated in those regions. For example, the Western Australian government and the Commonwealth governments aggravate poverty and disadvantage by refusing to allocate shares of state-collected royalties to indigenous communities.15

16. In any event, it has been rights holders, in particular native title holders who have led the way in increased activity in agreement-making between mining industries and native title holders: “formal recognition of indigenous rights encouraged the minerals industry to take a new


13 Ibid, p. 28.


15 Ibid, p. 31.
approach, acknowledging the detrimental impacts of mining on Aboriginal communities and their entitlement to benefits as a result”\textsuperscript{16} One important benefit of this is that the proliferation in agreement-making has resulted in developing expertise, skill and experience in indigenous communities of negotiating agreements.

17. In regard to the way in which mining revenues are distributed to indigenous communities, O’Faircheallaigh identifies four main ways in which this occurs: 1) individual payments to individuals (in cash or in kind); 2) provision of services 3) investment in indigenous businesses and 4) investment in long term capital funds.\textsuperscript{17} Indeed trusts have been a significant development from the mining boom for a number of reasons including their ability to improve governance and financial managements. Still, there is a concern about the limitations of the use of trusts for royalties manifest in the tax implications for indigenous organizations. In addition, those communities benefitting from agreements and revenues, some have expressed concern that the benefits are tied to trusts for future use. Another issue raised in relation to the mining boom is ‘rent seeking’. Langton and Longbottom describe this as “behaviour that prioritises competition for access to existing resources, while ignoring or downplaying opportunities to generate new/additional resources”.\textsuperscript{18} There is a concern that beneficiaries may preference individual payments to the exclusion of a sustainable approach beyond the mining boom such as royalties for community benefit.


\textsuperscript{18} Ibid, p. 48.
18. These challenges aside, one of the most exciting developments of the current mining boom is the partnership approach between mining companies and indigenous communities that involves mining companies investing in community development and infrastructure. The motivation behind this is to ensure that communities have sustainable benefits from the mining boom and this is achieved through a partnership approach that emphasizes indigenous community self-determination. Indeed in many indigenous communities in mining regions it is mining companies that are providing infrastructure and services that state and federal governments are failing to deliver.

19. An example of the partnership agreement is Rio Tinto who will direct a 0.5 per cent share of revenue in the Pilbara region to indigenous communities; this is estimated to represent billions of dollars over forty years.19 Similarly, the Argyle Diamond Mine Indigenous Land Use Agreement is regarded as a “good practice model” for partnerships between mining companies and indigenous peoples.20 The structure of this agreement includes two trust accounts whereby 80 per cent of royalties go into a charitable trust for law and culture, education and training and community development partnerships which cannot be touched until the closure of the mine in 2018. A second 20 per cent discretionary trust is to be distributed between seven indigenous traditional owner groups for capacity building in health, education and business development.


This agreement is considered to “encourage individual enterprise and economic engagement rather than the common practice of accumulating and distributing payments”. In addition, employment of indigenous peoples has almost reached the 25 per cent workforce target set in 2005; and this is despite lack of work readiness and training.22

**Employment**

20. Employment opportunities flowing from the mining boom has benefitted those communities whose land is both in proximity to and impacted by mining activity. Emerging from the current mining boom is a body of good practice in relation to recruitment, employment and retention of indigenous peoples by mining companies.23 In Australia, there are many programs and partnerships aimed at employment of indigenous peoples including Rio Tinto, the Australian Employment Covenant, partnerships between the Federal and State Governments and the Queensland Resources Council (QRC) (in which BHP Billiton, Xstrata and MMG Century are participants) and indigenous programs such as the North West Queensland Indigenous Resources Industry Initiative (NWQIRII) and the Bowen Basin Indigenous Participation Partnership.

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21. In addition to employment within communities in close proximity to mining communities, regional and urban based indigenous peoples have also become fly in fly out employees (FIFO) of mines (although it has been observed mining employment is often located away from indigenous communities and individuals are reluctant to engage in ‘purposeful migration’ to pursue work).  

22. However indigenous organizations and mining companies have identified that employment in the mining industry can be hampered by low education levels and skills limiting the job readiness of local indigenous peoples: “low levels of employment, educational attainment and work readiness in remote and rural areas pose significant challenges for companies seeking to engage indigenous populations in the economy and ensure measurable improvements in indigenous well-being.” Poor indigenous employment/labour force participation is “less a measure of demand than it is a reflection of the fact that many indigenous peoples are poorly equipped to take advantage of skilled employment opportunities, even when they are available”.  


Australia such as the Argyle Diamond Mine Land Use Agreement, work readiness has been regarded as a challenge.\textsuperscript{27} Still, Argyle Diamond Mine found that 91 per cent of trainees who participated in the indigenous program and subsequently left Argyle were working in another job.\textsuperscript{28}

23. A less discussed impact on indigenous employment is the reduction in long-term jobs as mining operations become largely autonomous and remotely controlled; one estimate being a 30-40 per cent decrease in on-site employment in the future.\textsuperscript{29} Given that 50 per cent of indigenous employees constitute semi-skilled positions then this large-scale automation will have a significant impact upon indigenous employment.\textsuperscript{30} Finally, other factors that impact on

\begin{thebibliography}{99}
\bibitem{28} Survey of Aboriginal Former Employees and Trainees of Argyle Diamond Mine, Centre for Social Responsibility in Mining, Sustainable Minerals Institute (2007).
\bibitem{29} Karen McNab and Magaly Garcia-Vasquez, “Autonomous and remote operation technologies in Australian mining” (2011) Centre for Social Responsibility in Mining, Sustainable Minerals Institute, ii.
\end{thebibliography}
indigenous employment in the mines include but are not limited to: health and well-being, chronic illness, arrest and incarceration.31

**Social impacts**

24. The social impacts of the mining boom have been extensively canvassed in the Australian media and in the literature. Mining has a “huge impact on the local social fabric”32 and indigenous communities in close proximity to mining operations can experience “constant life insecurity”.33 Even in the Pilbara which is the region indigenous peoples have been more engaged in the benefits of the current mining boom, “the corporate resolve to employ indigenous workers according to the provisions of land use and other agreements has done little to improve socioeconomic conditions for Aboriginal people in the Pilbara, despite today’s unprecedented mining ‘boom’”.34

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25. This insecurity or impact on the social fabric occurs for a number of reasons including: non-indigenous migration into indigenous communities and “transient workers with no meaningful commitment to place” \(^{35}\); better roads meaning increased traffic and increased tourism; community conflict because of perceived and real opportunities for income, jobs and education. In particular the mining boom has shed a light on the “lack of government investment in services, facilities and infrastructure” in mining regions as well as “the declining economic status of Aboriginal people”. \(^{36}\)

26. For example, the mining boom has led to housing shortages and increased rent and this puts added stress on an already difficult and strained housing stock for indigenous peoples. In addition FIFO practice has rendered social housing less accessible; one example being in the Pilbara where state housing was sold off by the state government to a private construction company for the purpose of creating FIFO camps. This can lead to increased homelessness for indigenous peoples. In addition, the strain of housing and homelessness leads to family disruption and breakdown and other abuses including violence and alcohol.

27. While it has been noted that mining companies have contributed to infrastructure and service delivery in indigenous communities, including provision of resources for health services, there have been many health concerns that have arisen in relation to the mining boom. As one report has highlighted, the life expectancy for indigenous men in the Pilbara is 52-55 years and

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\(^{35}\) Kerry Carrington, Russell Hogg and Alison McIntosh “The resource boom’s underbelly: Criminological impacts of mining development” (2011) 44 Australian & New Zealand Journal of Criminology 335, 340.

60-63 years for females and this raises questions about the physical limitations on full participation in the workforce: “If we add to this the fact of relatively high Indigenous morbidity rates commencing in young adulthood and rising throughout the prime working ages, then a pattern emerges of severe physical constraints on the ability of many in the community to engage in meaningful and sustained economic activity”.\textsuperscript{37} Therefore the current indigenous health crisis in Australia is already an obstacle to full participation in the labour market including the vastly under-resourced health infrastructure that some mining companies have targeted in their agreements with indigenous communities.

28. In addition, medical issues such as whooping cough or gastroenteritis have been known to spread more easily in FIFO camps. The impact of any medical crisis upon FIFO camps means that local health services are stretched even further. Furthermore, there are concerns about substance abuse including high levels of alcohol consumption and drugs as mining employees inundate towns. Corollary to this is the anti-social and violent behavior that occurs with, in particular, high consumption of alcohol. The high cost of living that frequently results in mining regions also means that there is a high cost of food that will impact upon indigenous families in relation to nutrition and the selection of fresh fruit and vegetables. Finally an issue raised by many indigenous peoples is the impact of the mining boom on their culture. One issue raised by elders is the diminution of leadership. Mining employment can impact on the maintenance of cultural knowledge.

IV. Conclusion

29. This study has provided a truncated overview of the impact of the current Australian mining boom upon indigenous peoples and their communities. The impact is multi-faceted; both

negative and positive. This activity occurs on mostly indigenous lands and the literature reveals that the failure to re-distribute the wealth from the mining boom to indigenous communities is ‘inequitable’. Moreover as the boom slows then this will also impact upon communities especially after mine closure. How indigenous peoples prepare for the future is important in order to have sustainability of benefits of the mining boom—employment, training, education, business investment, community development - far into the future. Given the mining boom has delivered income to indigenous communities beyond welfare, “communities may then find themselves in a precarious position in the future, when mine closures impact on income streams”. It has been argued that support from Native Title corporations, regional service providers and community councils need to play a critical role in “overcoming the inequitable distribution of benefits and consequences” of the mining boom; in addition, indigenous administrative governance and indigenous leadership needs to provide capacity building and leadership programmes to build capability.

