

*“Australia’s Decision”:  
Uranium Mining and Aboriginal Communities Then and Now*

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**Abstract:** Since the 1970s, a progressive acknowledgement of Indigenous peoples’ rights has developed in Australia, focusing on land rights as a key to empowerment. This has come to redefine the uneasy relations between Indigenous communities, governments and energy resource developers, the latter having more often than not encroached on Aboriginal land and ignored Aboriginal concerns for the sake of direct economic rewards. A case in point is that of uranium mining which, well after the Second World War, was still used for military purposes within Australia, leaving many Aboriginal communities to struggle with devastating environmental and health consequences. Looking at Australia’s 1977 decision to proceed with uranium mining for peaceful purposes at Ranger (Northern Territory), and comparing it with the more recent government approval of the Olympic Dam (South Australia) expansion project, this article will attempt to assess how Indigenous issues have been taken into account in uranium mining development projects then and now. It will focus more particularly on the agreements arrived at between the governments, the mining companies and the Aboriginal communities themselves, the outcomes of these agreements, as well as the different factors that may have had an impact on how Indigenous issues have been taken into account within uranium mining development projects throughout the years.

**Keywords:** Aboriginal peoples; uranium; land rights; Ranger; Olympic Dam

### **Introduction**

[T]he government has decided that further mining and export of Australian uranium should go ahead. In making this decision, the Government gave the closest attention to the welfare and future needs of the people of Australia, especially in the region directly concerned with mining, and the people of the world, whose energy requirements continue to grow. (Commonwealth of Australia, “What the Government has Decided” 1)

When uranium mining was announced to the public as “Australia’s decision” in 1977 after intense debate around the Ranger development project in the Northern Territory, Australia had already stopped using the substance for military applications. The Rum Jungle deposit, also located in the Northern Territory, no longer provided the British with uranium for its nuclear weapons program, and British nuclear tests at Maralinga, in

South Australia, had also come to an end following the 1963 treaty on the testing of nuclear weapons in the atmosphere (Falk and Barrett, "The Australian Setting" 8). Therefore, the uranium coming from Ranger was going to be used overseas for peaceful purposes as a source of energy since, as Minister for National Resources and Overseas Trade Doug Anthony argued at the time, "[n]uclear energy is the only viable alternative most countries have available to meet their essential needs for electrical energy in the wake of the oil crisis" (Commonwealth of Australia, "Statement by the Rt Hon. J.D. Anthony" 3).

Considering its important reserves of oil, gas, and – most of all – coal, Australia was not planning on having its own nuclear power stations, but there was still significant concern over security issues and possible environmental damage linked to uranium mining. The uranium mining process at Rum Jungle had released substantial quantities of heavy metals, including radon – there had not even been a dam at the early stages of the operation to contain the tailings – and the Australian Atomic Energy Commission predicted that the environment would be contaminated over an area of at least one hundred square kilometres for at least one hundred years (Falk and Barrett, "The Australian Setting" 8-10). Though Anthony acknowledged that such operations had been carried out "with inadequate concern for the environment" and "reflected environmental attitudes of 25 years ago which Australians would not tolerate today" (4), the Government had yet to prove that it could provide effective safeguards to ensure that these issues would be addressed.

In the opposition that mounted against uranium mining at the end of the 1970s, Indigenous hostility was particularly tangible. This could reasonably be explained by the presence of Aboriginal communities around the areas where uranium had been discovered. In other words, the people living in the region directly affected by mining whose "welfare and future needs" the Government seemed concerned about were first and foremost Indigenous peoples. One reason for these communities' aversion to uranium mining was that they wished to preserve their traditional connection to the land, which provided both food and sites of spiritual importance, all likely to be disturbed by any kind of mining. But Indigenous peoples were also worried about the impact that the influx of non-Indigenous peoples would have on their communities in the regions where development was to take place.

However, Indigenous opposition did not appear to affect Australia's decision to proceed with uranium mining, despite the fact that this occurred at a time when Australian Aborigines and Torres Strait Islanders were beginning to be given a level of belated consideration, especially through the granting of land rights. Since then, there has been an increased recognition of Indigenous peoples in Australia. The current Labor government headed by Julia Gillard is even committed to holding a referendum on the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. In these contexts, although uranium mining went ahead then just as it is going ahead now, Indigenous concerns could not and cannot altogether be set aside either by the federal and state governments or by the mining industry.

Examining two different examples of uranium mining developments, this article will attempt to determine how such concerns about uranium mining have been addressed over the years. It will study the Ranger mine project and compare the agreement arrived

at through negotiations between the governments, mining companies and Aboriginal communities with the decisions reached in the context of the recently approved Olympic Dam expansion project, in South Australia. It will then try to assess the impact of uranium mining on these communities, before looking into the different factors that have contributed to changing the way Indigenous interests in relation to uranium mining have been accommodated or not for the past thirty years.

## **1. Uranium Mining and Aboriginal Communities: Two Case Studies**

### **1.1. The Ranger (Northern Territory) Project**

At the beginning of the 1970s, substantial discoveries of uranium were made in the Northern Territory at Nabarlek, Ranger, Koongarra and then Jabiluka, all located in the Alligator Rivers Region, an area populated mainly by Aboriginal peoples. As Peko Mines Ltd and Electrolytic Zinc Company of Australasia Ltd envisaged a joint venture with the Commonwealth Government to develop uranium mining at Ranger, concerns about Aboriginal land rights as well as a choice to wait until uranium prices increased led the Labor government of the time to hold back its decision. Added environmental concerns resulted in the Cabinet's appointing a commission in 1975 to inquire into the project and report to the public and the Parliament (Falk and Barrett, "The Australian Setting" 11). In 1976, the Commission, headed by Justice Russell Fox, announced that it would issue two separate reports, one addressing the international issues and the question of whether or not it was advisable for Australia to export uranium, and the other focusing on the local issues, and more particularly the possible outcomes of uranium mining on the Aboriginal communities living in the Alligator Rivers Region (12).

When the first report of the Ranger Uranium Environmental Inquiry was published in October 1976, it seemed to give the go-ahead to uranium mining, stating that "the hazards of mining and milling uranium, if those activities are properly regulated and controlled, are not such as to justify a decision not to develop Australian uranium mines" (185). This was good news for Ranger Uranium Mines Pty Ltd (RUM), the managing company for the project, which was planning on producing between 3,000 and 6,000 tonnes of yellowcake annually at Ranger (9). However, the Commission's dwellings on the environmental dangers of nuclear energy, the weaknesses of international safeguards or the possibilities of nuclear theft and sabotage were somewhat chilling. It also insisted that any decision about uranium mining in the Northern Territory should be postponed until the second report of the Commission was presented (185).

This second report, which dealt with the short and long-term consequences of uranium mining on the local environment – including the people who lived in this environment – was longer than the first. It confirmed that such mining would have a negative impact on Aboriginal communities. In fact, some sacred Aboriginal sites had already been endangered by the exploration phase. Moreover, the authors pointed out that drawing from previous experience, it was likely that the contact with a rapidly developing non-Indigenous community would lead to the breakdown of traditional cultures. The report was also somewhat pessimistic concerning the possibility of employment of Aboriginal people at the mine or Aboriginal use of the schools that would be built in the regional centre planned for the non-Indigenous community, going on to predict an increase in health hazards among Indigenous peoples, notably due to the escalating consumption of

alcohol that would result from the substance being more readily available (225-233). The commissioners were also clearly aware that the Aboriginal communities in the Alligator Rivers Region were strongly opposed to uranium mining, and consultations with these communities had led to a realization of their plight, accurately described in the Report:

The Aboriginals in the Region are a depressed group whose standards of living are far below those acceptable to the wider society. They are a community whose lives have been, and are still being, disrupted by the intrusions of an alien people. They feel the pressures of the white man's activities in relation to their land. In the face of mining exploration, and the threat of much further development, they feel helpless and lost. Their culture and their traditional social organisation do not enable them to cope with the many problems to which this development gives rise. (47)

Yet the commissioners had to take into account another reality, namely that “[t]here can be no compromise with the Aboriginal position; either it is treated as conclusive, or it is set aside” (9). Eventually, their verdict was clear: “We have given complete attention to all that has been put before us by them or on their behalf. In the end, we form the conclusion that their opposition should not be allowed to prevail” (9). But the Ranger Inquiry nevertheless provided recommendations that were subsequently endorsed by the federal Government and led to the agreements which came to define the relation between the Aboriginal communities of the Alligator Rivers Region, the federal Government and the mining industry.

These agreements took into account the changes brought about by the 1976 Aboriginal Land Rights (Northern Territory) Act, which enabled Indigenous communities living in the Northern Territory to claim rights to land if they could prove traditional connection with it. Under this Act, minerals on Aboriginal lands remained the property of the Crown, but Aboriginal consent was normally required before exploration and mining could begin, and agreements could be negotiated between Aboriginal peoples and mining companies. The agreement on the Ranger project signed with the Northern Land Council, who represented the traditional owners of the land, provided for royalty and other payments to the Indigenous peoples affected by mining – in 1981, there were 920 Aboriginal people living in the Alligator Rivers Region (Cousins and Nieuwenhuysen 94). It also ensured that there would be some monitoring of the health and environmental impacts of the project, that Aboriginal sacred sites would be protected, and that liquor distribution would be controlled. Concerning the relations with the mining company and the non-Indigenous community, there would be an Aboriginal Liaison Committee, an Aboriginal Liaison Officer, training of non-Aboriginal employees in Aboriginal culture, and employment and training of Aboriginal people by the company (96-97). Apart from the Ranger agreement, the Government also accepted the recommendation from the Ranger Inquiry to establish a major national park – Kakadu National Park – in the Alligator Rivers Region. While Aboriginal ownership of the area would be recognized, it would be leased back and managed by the Australian National Parks and Wildlife Service under terms and conditions agreed with the Northern Land Council. This was meant to give more control to the Aboriginal communities of the Region over non-Aboriginal use of the land than they would have had otherwise (Lawrence 90).

Thus, because it involved a long-term and comprehensive land use management program in the Alligator Rivers Region which included the local Indigenous population to an unprecedented extent, and because of the terms of the agreement arrived at – which were probably the most favourable to any Indigenous community up to that date – the Ranger project can be considered as a milestone in the history of the relations between Aboriginal peoples and the mining industry. It remains to be seen whether, thirty years later, new mining projects envisage such relations in the same way.

### **1.2. The Olympic Dam (South Australia) Expansion Project**

An important discovery of copper at Olympic Dam, in South Australia, was made in 1976, following an aggressive exploration program led by Western Mining Corporation Ltd (WMC). The company, who soon realised they had found one of the most significant bodies of ore ever uncovered in Australia, could have started mining within five years had the copper not been mixed with uranium (Upton 4-5). Indeed, this was precisely the time when uranium development was being discussed in Australia as the Ranger Inquiry was in full swing, and it took some time for WMC to gain the approval of the South Australian Government and arrive at the original agreement which was passed in 1982 under the name of the Roxby Downs (Indenture Ratification) Act. Among other things, this agreement covered the details of the construction and development of Olympic Dam by WMC and its partner BP, the royalties paid to South Australia, and the joint venturers' plans regarding the protection and management of the environment throughout the life of the mine. The Government of South Australia, for its part, was to provide the infrastructure for government and community facilities, schools, police and medical services in the new town of Roxby Downs (a former pastoral station), close to Olympic Dam, where the mine's workers would live. It would also carry half the cost of the new road going from Pilba to Olympic Dam (158).

Contrary to the Ranger project, which was strongly opposed by Indigenous communities who feared that their traditional ways of life would be further eroded by the influx of non-Indigenous newcomers, the Olympic Dam project did not meet with the same level of opposition. The Indigenous communities in the area were much more scattered, and had traditionally been much more nomadic than at Ranger, where the Oenpelli community – a former mission run by the Anglican church – concentrated nearly 50% of the total Indigenous population of the Alligator Rivers Region (Cousins and Nieuwenhuysen 94-95). Though the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act had been passed by South Australia in 1981, giving the Aboriginal peoples of the north-west of the state some control over their lands, land rights were not really questioned around Olympic Dam at the time, and the impact of uranium mining on Indigenous communities does not seem to have appeared as an important issue either to the South Australian government or to the mining company itself. Conceivably it was considered that the Ranger Inquiry had sufficiently addressed this question to inform subsequent mining ventures, so that another inquiry was not needed. In any case, the impact upon the environment was probably of more concern in the case of Olympic Dam than the effects upon the Indigenous communities living in the area. Protests against uranium mining organised by a group called Campaign Against Nuclear Energy (CANE) took place in 1983 and 1984 (Upton 162-163), but this did not prevent the mine from officially opening in 1988.

From an initial production of 45,000 tonnes of copper and 1,700 tonnes of uranium oxide (165), Western Mining and BP managed to expand but became seriously hampered as copper prices dropped at the beginning of the new millennium to unprecedented levels. Moreover, the effects of the 1986 Chernobyl disaster on the nuclear industry, although they had abated had remained of concern. In 2005, BHP Billiton, a much larger company, took over the operations at Olympic Dam just as copper and uranium prices soared again, conceiving of the gigantic development project which constitutes the focus of this study. This project seeks to take advantage of the size of the Olympic Dam mineral resource, which the new owners are still absorbing: Olympic Dam is actually more than four times larger than the first estimate announced by Western Mining in 1982, making it the second-largest mineral resource in the world, and the largest uranium deposit (11). What is even more impressive than the size of the Olympic Dam deposit is that of the expansion plan, which involves digging an open pit whose footprint over the years will grow to be 4.1 km long, 3.5 km wide, and 1 km deep. The new mine will also require more than five times the amount of water it presently uses per day, and the electricity demand is likely to increase to 4,400 GWh annually (the existing operation currently consumes about 870 GWh annually, which already represents 10% of South Australia's baseload demand). Therefore, what BHP Billiton's project will change is not simply the size of the mine but everything around it within a vast area: it will require a new desalination plant to be built along the coast of South Australia to supply fresh water to Olympic Dam via a 320 km pipeline. It will also require the construction of a new airport, a new gas pipe, new electricity lines, new train lines, and even a new village to accommodate the workforce, which is expected to double (BHP Billiton, *Executive Summary* 20-34).

One factor which BHP Billiton had to take into account when devising this project was that through the 1993 Native Title Act, Indigenous communities now had the possibility to claim native title over land which they could prove a traditional connection with. Unlike the Land Rights (Northern Territory) Act 1976, which applies only to communities living in the Northern Territory, the Native Title Act applies to all Aboriginal and Torres Strait Islander peoples living in Australia. Though native title does not give any rights of veto to Indigenous communities concerning mining on their lands, it does give them the right to enter into Indigenous Land Use Agreements (ILUAs) with mining companies in order for them to receive a share of the economic benefits and have their say about the important cultural, social and environmental issues that arise from mining. When BHP Billiton announced its expansion project, the Barnjarla, Kokatha and Kuyani peoples had already lodged native title claims in the Olympic Dam region. Other groups also had claims in regions affected by the project (e.g. where some sections of the gas pipeline were to be constructed). As a consequence, BHP Billiton had to enter into negotiations with those groups to arrive at new agreements concerning the Olympic Dam expansion project.

Consultations began in 2005, leading to the Olympic Dam Agreement which was signed at the beginning of 2008. This agreement includes a Heritage Management Protocol meant to protect Aboriginal cultural heritage and manage the impacts of the project on sites of importance to the Aboriginal peoples of the region. It also provides for payments to be made over the remaining life of Olympic Dam for the benefit of those communities, the payments being administered by a trust on their behalf. It seeks to facilitate relations between Indigenous peoples, BHP Billiton and its employees by

employing a liaison officer and providing for cross-cultural awareness training for non-Indigenous workers. Finally, it aims at facilitating opportunities to employ Indigenous peoples directly or through Indigenous companies and contractors. In exchange for these commitments on the part of the company, the Kokatha, Barngarla and Kuyani peoples have given their assent to the expansion project and to Olympic Dam's operations over its remaining life (BHP Billiton, *Main Report* 559).

Following this agreement, BHP Billiton released an Environmental Impact Statement in May 2009, describing the project and its possible environmental, social, cultural and economic consequences. It invited the government and the public to react to the statement and then responded to their concerns in its Supplementary Environmental Impact Statement released in May 2011. Having considered those two statements, the Commonwealth and South Australia governments gave the green light to the \$30 billion project and signed the new Indenture Agreement (Nash 12-13), which was subsequently passed by South Australia's Parliament in November 2011, despite strong opposition by the Greens (Martin).

Just as the Ranger project carried tremendous expectations regarding the economic benefits it would bring – some even predicted that the Northern Territory would become self-sufficient to the extent that no taxes would be required, and that it would be a “leading business and retirement haven” (Turnbull 1) – the Olympic Dam project is generally presented as the cornerstone of a new economic boom which will trigger strong local growth and narrow the gap between South Australia and the two leading mining states, Western Australia and Queensland (“Olympic Dam will start economic boom”). But while the Ranger project almost seemed like an experiment in how to manage the different issues arising from uranium mining, Aboriginal rights and the creation of a national park, the gigantic Olympic Dam project deals with these issues in a much more pragmatic way. Hence, the outcomes of the Ranger agreement from the point of view of Indigenous communities may be quite different from those that are likely to result from the Olympic Dam agreement.

## **2. The Outcomes of Agreements between Governments, Mining Companies and Aboriginal Communities.**

### **2.1. Outcomes of the Ranger agreement**

Just as there had been a considerable amount of investigation into the possible impacts of mining on the Aboriginal communities living in the Alligator Rivers Region, great emphasis was placed on monitoring, especially in the first few years after the Ranger agreement. While the Office of the Supervising Scientist concentrated on the environmental consequences of the project, the Uranium Impact Steering Committee enquired about its impact on Aboriginal peoples. It reported to the Northern Land Council (the body representing the traditional landowners living at the top end of the Northern Territory), which then reported to the Minister of Aboriginal Affairs, first quarterly, then six-monthly (*Consolidated Report* 5-10). One of its first reports confirmed that the anxieties expressed in the Ranger Inquiry still needed to be stressed, and that Aboriginal communities remained particularly worried about the contamination that uranium mining could bring to their land, as well as the effects that a large number of non-Indigenous people coming to work in the area could have on their communities (*Report* 1982: 58). The 1984 consolidated report of the Committee recognized that some of the adverse consequences that the Ranger Inquiry had envisaged did not materialize:

for example, the new mining town did not especially produce more racial tensions, and the miners did not necessarily prey on Aboriginal women or engage in a sly-grog trade. However, the report stated that, as predicted by the Ranger Inquiry, mining did disturb sacred sites and changed the traditional culture without leading to more Aboriginal apprenticeship or employment or, generally-speaking, better living conditions (242-243).

One element of the Ranger agreement which had a great impact on Aboriginal communities was the payment of royalty monies to the Gagudju Association, a 300-member organisation established by the Northern Land Council to manage such monies. From the outset, it was clear that the royalties were meant to offset some of the adverse impacts of uranium mining on Aboriginal communities but were also to become an important element in the overall strategy of self-determination that the 1976 Land Rights (Northern Territory) Act had given impulse to. As the Ranger Inquiry stated:

We deem it to be a matter of the highest national interest that those many Aboriginal people who currently live less than what they themselves regard as dignified and purposeful lives should be given every possible encouragement and assistance to improve their position. It now seems accepted, and the Land Rights Act is a manifestation of the policy, that self-determination is a path to that end, and that relationship to land is central to the attainment of the necessary confidence, and purpose, and self-esteem. It is our assessment that the planning of the Region with which we are concerned provides a great opportunity, perhaps the first on such a scale which has offered, to advance the welfare of the Aboriginal people and to demonstrate to them that the new attitude is real and meaningful (*Second Report* 323).

Indeed, when looking at how the Gagudju Association decided to use the royalty payments, it seems that such payments have helped in the attempt to achieve the overall goal of self-determination.

While some communities have used mining royalties almost exclusively as cash payments to members, only 13% of the royalties received by the Gagudju Association were distributed in this way, representing about \$1000 per member per year between 1979 and 1985. Children's payments were lodged in trust funds until they reached the age of 18 (O'Faircheallaigh 171). The remainder of the royalties was used to improve services in the community and to make investments in order to secure a long-term source of revenue after the closing of the mine. In terms of services, the Association focused on providing more housing as well as maintenance of housing. It also put money into health and education, supplying new medical services as well as a new school with teaching staff, a new school bus, and schoolbooks. It improved transportation by building and maintaining roads and access to outstations and buying vehicles and helicopters for use during the wet season. Finally, it offered employment opportunities and training for members. Arguably, all these services should have been provided by the Northern Territory Government which, as the mining industry started to sign agreements with Indigenous communities and royalty money began to flow, tended to neglect its own responsibilities. The 1997 report of the Senate Select Committee on Uranium Mining and Milling rightly pointed out that "[h]ousing, sewerage, education and health are not seen to have improved in the two decades of mining. This failure to improve living conditions and related social amenities stems largely from an abdication



of responsibility by the Northern Territory Government” (ch. 5, “Northern Territory,” 1). The fact, however, that the Gagudju Association started to take on this responsibility can be used as evidence that uranium mining can contribute to self-determination and self-government. In fact, this may sometimes lead to success where previous policies have failed. For example, while neither mining developments nor government-led programs have led to more employment among Indigenous communities, the Gagudju Association owns a contracting company employing several members of the community. It operates on a casual labour pool basis, letting employees decide how many hours they will work and which work pattern best suits their needs, thus breaking with “European-style” employment (Wilson ch. 5, “Northern Territory,” 1).

Investments by the Gagudju Association, for instance in the Cooina Lodge (Kakadu), the Yellow Waters river cruises or the Mobil station nearby, have also been successful, despite the lack of financial institutions available to the Association to assist them in making the right decisions – something that was mentioned by one of the first reports by the Uranium Impact Project Steering Committee as a major problem (*Report* 1982: 59). Although many difficulties have subsided, such as concerns about decision-making, the persistence of poor living conditions or low employment despite a number of Aboriginal people working for the newly-created Kakadu National Park, it can be said that overall the Ranger agreement has helped in empowering the Aboriginal peoples of the region through the royalties managed by the Gagudju Association.

## **2.2. Outcomes of the Olympic Dam Expansion Agreement**

Although it is likely that some years will be necessary before the outcomes of the agreement regarding the Olympic Dam expansion project can be assessed, certain assumptions can already be made drawing from previous agreements, from the contents of the new agreement, as well as from the nature of the project itself. While the commissioners of the Ranger Inquiry saw the Ranger project as “a great opportunity to advance the welfare of the Aboriginal people” so that “[i]n this way a foundation can be laid for enduring harmonious relations with them” (*Second Report* 323), neither the new agreement with BHP Billiton nor the previous agreement with Western Mining Corporation expressed such a goal. In fact, both of them were built on a history of poor relations with Indigenous communities. The 1999 agreement between WMC and four Indigenous groups (the Kokatha Peoples’ Committee, Barngarla Aboriginal Consultative Council, Wukuna Peoples’ Committee and Kuyani Association) seems to have arisen only as a result of the Government’s advice to negotiate with these groups following the High Court’s 1996 Wik decision that the rights of Indigenous peoples could coexist with the rights of pastoralists. It is noteworthy that the Arabunna people, who also had an interest in land in the area, refused to take part in the negotiations (Mazel). Similarly, while the new agreement complies with the requirements of the 1993 Land Rights Act, BHP Billiton was criticized for not taking Indigenous opposition to the expansion project into account and for the inadequacy of its consultation process (Kelly and Deane; BHP Billiton *Supplementary Environmental Impact Statement* 525-527). To such criticism, the company bluntly replied that “[t]he position of the Traditional Owners, as evidenced in the Olympic Dam Agreement, is not that the proposed expansion should be prevented from proceeding. Rather, the native title parties agreed to BHP Billiton continuing to expand the Olympic Dam operations” (*Supplementary Environmental Impact Statement* 527).

It is also unlikely that the new expansion project will address Indigenous concerns about the environment. First of all, in its Environmental Impact Statement, BHP Billiton recognizes that there have been breaches in environmental performance objectives in the past: a South Australian Parliamentary Committee had to inquire about seepage from the tailings storage facilities in 1995, contact with tailings liquor in the evaporation ponds has led to bird deaths, and interruptions of the smelter's acid plant has caused untreated sulphur dioxide to be released into the environment (*Main Report* 16-19). But environmental damage is likely to go beyond the Olympic Dam / Roxby Downs site: as a submission by the Conservation Council of South Australia points out, the new project will produce five times the current mine's greenhouse gas emissions, several times the amount of tailings, and increase its water usage fivefold (4). There are also concerns that the proposed desalination plant on the coast of South Australia might endanger a very rare population of giant cuttlefish, the Point Lowly Peninsula near Whyalla being the only known place in the world where they gather to breed. Finally, despite the protocol established to manage the impacts of the expanded operation on sites of cultural significance to Aboriginal peoples, BHP Billiton recognizes that "[t]he proposed expansion would involve extensive land disturbance within the SML [Special Mining Lease] and its surrounds over time. [...] As a result, the impact on some places identified as having ethnographic significance would be unavoidable" (*Main Report* 562).

In the end, two factors are bound to have an impact on the predicted outcomes of the new Olympic Dam agreement. The first one is the absence of a land management program specifically controlled by Indigenous peoples, such as one modelled on Kakadu National Park, which has been a source of investment as well as employment and empowerment of Aboriginal peoples in the Alligator Rivers Region of the Northern Territory. Without any court decision regarding Native Title in the Olympic Dam area, BHP Billiton has remained the primary decision-maker in matters related to land use. Arid Recovery, a conservation initiative launched by Western Mining and now supported by BHP Billiton, has been successful in reintroducing species of locally extinct mammals by creating a 123km<sup>2</sup> fenced reserve, but has failed to involve Indigenous communities in this project. Moreover, we now know that such communities tend to participate more in sectors related to the tourism as opposed to the mining industry, but the potential for tourism in the area has remained extremely low due to the remote location and harsh climate of Olympic Dam. The second factor which will probably limit Aboriginal empowerment is the fact that the royalties paid by BHP Billiton as part of the new agreement will be managed by a trust, following the previous agreement signed with Western Mining. In that agreement, although the claimants sought a form of monetary compensation that would include cash payments, the company refused to comply and allocated resources to a trust for community purposes (Mazel). The Olympic Dam Aboriginal Community Trust established under the new Olympic Dam agreement does take advice from a Trust Advisory Council comprising representatives of the Kokatha, Barnjarla and Kuyani groups, but the Australian Executor Trustees also take advice from BHP Billiton on how royalties should be spent. Recently, the trust has focused on education, and it also plans on supporting community health, Aboriginal culture, and Aboriginal Elders (*Roxby Downs Sun*). While there is no denying that these programs may bring benefits to the communities concerned, the trust itself is still based on an assumption that Indigenous communities cannot decide what is best for themselves. Therefore, although it is too early to analyse the outcomes of the

new agreement, it can already be stated that it will not work to empower Indigenous communities or pave the way for any form of self-determination or self-government.

### **3. Critical Elements of Change**

#### **3.1. Legislative framework**

The question of how Indigenous interests are taken into account in uranium mining projects is strongly related to the question of Indigenous land rights. While the Ranger project was concomitant to the passing of the 1976 Aboriginal Land Rights (Northern Territory) Act, the Olympic Dam expansion project was devised within the constraints of the 1993 Native Title Act since the 1976 Land Rights Act does not apply to South Australia. This, in itself, had an impact on negotiations between Indigenous communities and the mining industry. The 1976 Aboriginal Land Rights (Northern Territory) Act was the first land rights legislation in Australia, and enabled former Aboriginal reserves or unalienated Crown land to be transferred to Aboriginal ownership when traditional connection to the land was established. This, in turn, gave the right of traditional owners to be consulted about possible mining development projects and to withhold their consent to such projects (Stoll). Admittedly, such opposition could be overridden by the Government, and the Ranger project was written off as an exception in the legislation, but the Act enabled Indigenous peoples living in the Northern Territory to regain effective control over the land and arrive at compelling arrangements for sharing mining royalties, leading to the most significant royalty-equivalent benefits that have accrued to Indigenous peoples in Australia (Kauffman 14). The 1993 Native Title Act, for its part, came to recognize Indigenous land rights throughout Australia, but those rights – defined as “native title rights” – did not necessarily imply inalienable freehold – i.e. ownership – of the land. This Act also failed to give native title holders a right of veto over mining, but instead granted them a right to negotiate with mining companies and have the matter arbitrated by the Native Title Tribunal in case no agreement was arrived at (Kauffman 1-12).

Moreover, both the 1976 Aboriginal Land Rights (Northern Territory) Act and the 1993 Native Title Act were subsequently amended in an attempt, it seems, to facilitate mining. Under the 1976 Land Rights Act, Northern Territory Land Councils consulted traditional owners about the mining proposals and councillors could only sign off an agreement with a mining company once they had established that the decision was supported at the local level. But amendments passed in 2006 allow for different processes to be used to come to an agreement, all at the discretion of the Indigenous Affairs Minister (Green, “Aboriginal Land Rights” 90). Similarly, following the 1996 Wik decision, whereby the High Court of Australia determined that native title could coexist with pastoral leases, amendments to the Native Title Act were passed in 1998 to restrict native title claims. Although the United Nations Committee on the Elimination of Racial Discrimination found that these amendments breached Australia’s human rights obligations, ungrounded fears that the 1996 Wik decision would lead to most of Australia’s land falling under the control of Aboriginal peoples led the government of the time to uphold the amendments (Butt, Eagleson and Lane 108-113). It may not be entirely a coincidence that the governments who passed amendments to the 1976 Land Rights Act and the 1993 Native Title Act actively supported mining. As a consequence, land rights legislation currently appears weaker than it was in 1976, when it was first introduced in Australia.

Another aspect of legislation which tends to confirm the diminished importance of Indigenous rights is the existence of legal documents that override existing laws, such as the 1982 Roxby Downs (Indenture Ratification) Act, which was passed by the South Australian Government to allow for the first Olympic Dam project to take place. When reading the Government's assessment report of the new expansion project, it is indeed troubling to discover in the chapter focusing on Indigenous issues that under the 1982 Roxby Downs Indenture Act, issues arising within the special mining lease will be dealt with under the provisions of the 1979 Aboriginal Heritage Act, while the 1988 Aboriginal Heritage Act seems to apply everywhere else (366). Thus, BHP Billiton is legally entitled to ignore the provisions of the more recent Act designed to protect Aboriginal heritage, provide a framework for consultation, and ensure a level of recognition and protection of Aboriginal sites (Friends of the Earth Adelaide 7-8). Moreover, the Roxby Downs Indenture Act (which was amended several times to allow for expansion) overrides other important pieces of state legislation, such as the Environmental Protection Act 1993, the Freedom of Information Act 1991, the Natural Resources Act 2004, the Development Act 1993, and the Mining Act 1971 (Green, "Above the Law"). Yet it did not prevent the South Australian Government from recently voting the new amendments to this indenture Act that gave the green light to the new development project, amid criticism from the Greens who accused it of trashing state laws in order to support the mine.

### **3.2. Environmental Impact Studies and Monitoring**

For each of the two projects discussed here, one document was crucial in getting the project approved by the state and federal governments: the environmental impact statement. This document reveals how particular concerns – especially about Indigenous issues – were to be addressed. In the case of the Ranger project, the Prime Minister and Minister of State for Environment asked for an inquiry to be conducted under the Environmental Protection (Impact of Proposals) Act 1974. Although the Uranium Environmental Inquiry was required to discuss "all of the environmental aspects" of the Ranger proposal (*First Report* 1), the commissioners decided that in the light of the recent legislative developments concerning Indigenous land rights and given that the area around Ranger was populated by a substantial number of Aboriginal peoples, they had to inquire more specifically into the possible consequences of the project on Indigenous communities. Indeed, the second volume of the Report, which was published in 1977, focused on Indigenous issues, and the range of questions it covered as well as the number of recommendations it made is an indication of the importance given to Indigenous concerns at the time. Even though the commissioners explained how they had finally chosen to set aside Indigenous opposition to uranium mining, on several occasions the report shows how they struggled with this decision. In other words, the Ranger Inquiry did raise the question of whether Australia should go ahead with uranium mining and, if it chose to do so, what kind of options were available to offset the consequences of such mining on Indigenous communities.

In opposition to this, the Environmental Impact Statement produced by BHP Billiton does not really question whether Olympic Dam should expand, but aims at presenting the expansion project, its possible environmental consequences and the measures that have been devised to cope with such consequences. Though the Statement does mention that "BHP Billiton is seeking the approval of the Australian, South Australian and Northern Territory Governments" (*Executive Summary* 7), the fact that the document is

meant to serve as a basis for these governments' decisions means that the process is biased, since from the beginning BHP Billiton was bound to produce an environmental impact statement that would be supportive of its own expansion project. Thus, by presenting a seemingly exhaustive, 4,600 page environmental impact statement to the public, then answering submissions to this environmental impact statement with a supplementary environmental impact statement in which it simply dismisses all forms of criticism of its expansion project, BHP Billiton appears to have done no more than formally comply with the requirements set by the three governments. In its chapter on Aboriginal Cultural Heritage, it explains how it intends to manage sites of cultural significance to Aboriginal peoples and details the contents of the 2008 Olympic Dam agreement (*Main Report* ch. 18). But the Environmental Impact Statement does not present any detailed study of the communities living in the area under concern, nor does it aim to study the possible impacts of the project on such communities. Its assumptions that some of its proposed programs will help to develop Indigenous employment or forge good relations between Indigenous and non-Indigenous peoples may seem, in the light of the history of such relations at Olympic Dam, severely misplaced.

Finally, the Ranger Inquiry made no less than 24 recommendations about environmental research, monitoring and supervision (*Second Report* 331-332). Following these recommendations, there were effective monitoring and reports on the social impact of uranium mining on Aboriginal peoples living in the Northern Territory, at least at the beginning. Such reports were presented to the Australian Institute of Aboriginal Affairs and the Minister of Aboriginal Affairs by the Uranium Impact Project Steering Committee, which had been appointed by the Institute. Not only is there no such device provided for in the Olympic Dam expansion project but, as anti-nuclear activist Jim Green points out, "[u]nder [...] the Indenture Act, BHP Billiton has veto power over public release of information relating to activities undertaken within the 1.5 million hectares covered by the Indenture Act, and related matters such as government/company negotiations" ("Above the Law" 56). This means that no independent monitoring of the impacts of the Olympic Dam project can truly occur under the Roxby Downs Indenture Act. Hence, the difference in the initial provisions for monitoring between the Ranger Project and the Olympic Dam expansion project are an indicator of the importance that was given to Indigenous issues in each of these projects. It can be argued, however, that the early emphasis put on evaluating the social impact of uranium mining on Aboriginal communities in Ranger disappeared after the consolidated report of the Uranium Impact Project Steering Committee was published in 1985.

### **3.3. Political context and public attitudes**

The scope of the Ranger Inquiry and the monitoring program that was set up in the wake of the project's implementation can be partly explained by examining the political context of the time. Questions of self-determination and land rights for the Aboriginal and Torres Strait Islander peoples of Australia had become crucial, and it was quite impossible to set those issues aside when assessing the Ranger project. Moreover, the Australian Labor Party, which had come to power under Gough Whitlam in 1972, had reservations about uranium mining in Australia. Hence, when it asked for an Inquiry into the consequences of uranium mining at Ranger to be conducted in 1975, it was really hoping that this would help in devising long-term government policy regarding uranium mining in general, and issues related to uranium mining and Indigenous

communities in particular. Though the Fraser government which succeeded Whitlam's in 1975 was in favour of uranium mining and tried to speed up the evaluation and consultation process, it still endorsed almost all of the recommendations formulated by the Ranger Inquiry commissioners. Indeed, the uranium issue required handling with caution, as there was mounting opposition to uranium mining throughout the country. In a 1977 collection of papers entitled *Redlight for Yellowcake*, Jim Falk and Neil Barrett noted that such opposition no longer came from conservation organizations only, but that it included "all the major churches in Australia, at least three ALP state branches, key blue and white-collar unions and trade and labour councils, women's groups, the Doctors Reform Association, teachers' federations, several branches of the Liberal Party and the Young Liberals, and a large number of scientists" ("Recent International and Local Developments" 82). A year after Labor's Bob Hawke defeated Fraser in 1983, the ALP adopted its "3 mine policy", which restricted uranium mining in Australia to three mines maximum at one particular time (then Ranger, Nabarlek and Olympic Dam).

Though there was still a high level of opposition to uranium mining when the Coalition came to power in 1996, the new government decided to abandon the 3 mine policy in order to develop the industry and increase exports. From that time on, it appears that economic considerations have prevailed over environmental concerns, as the ALP had also abandoned the policy when it defeated the Coalition in 2008 (although it was severely criticized for doing so). With both parties now agreeing to uranium mining in Australia and individual states also progressively lifting their bans on uranium mining (Western Australia did so in 2008 when the Liberal Party came to power in the state), only the Greens seem to speak for those who oppose mining. In an informal discussion with a young man from Victoria who had just arrived at Olympic Dam to find a job, I was told that "everyone" was quite excited about the new expansion project and all the economic opportunities that derived from it, that environmental standards and safety at the mine were now much better than in the past, and that the Greens just "didn't get it." Indeed, opposition may have been stifled by the fact that that the Environmental Impact Statement produced by BHP Billiton gilded all the positive outcomes of the mine and minimized the environmental impact or made it look as if a solution had been found for every single problem that might arise. The lack of independent information has accordingly contributed to a lack of mobilization against uranium mining. Activists Genevieve Rankin and Fran Gale also note that "[a]nti-terrorist laws which have been introduced since September 11<sup>th</sup> threaten the ability of activists to oppose pro-nuclear policies, as the laws now limit further the rights of groups to demonstrate their opposition to government policies" (156).

### **Conclusion**

This study, which has compared how Indigenous issues have been taken into account in the Ranger project and the more recent Olympic Dam expansion project, show that much more consideration about the impact of uranium mining on Indigenous communities was given thirty years ago than at the present time, and that the Ranger agreement signed with the Aboriginal peoples of the Alligator Rivers Region contributed to the more general goal of self-determination – something that the new Olympic Dam agreement does not even envisage. Although the two case studies presented here do not necessarily reflect the diversity of the range of agreements signed between mining companies and Indigenous communities in Australia, they nevertheless

seem to be quite representative of the evolution in relations between these communities on the one hand, and the governments and mining interests on the other.

Indeed, while there has been in general an increased recognition of Indigenous rights since the 1970s, the more recent high-profile attempts to foster reconciliation by former Prime Minister Kevin Rudd – who apologized to the Stolen Generation during his mandate – or by current Prime Minister Julia Gillard – who pledged to hold a referendum on the recognition of Indigenous peoples in the Australian Constitution – hardly compensate for the fact that Indigenous rights were severely curtailed between 1996 and 2008, when the Coalition government of John Howard was in power. While the 1970s emphasis on self-government was progressively erased from the agenda (the Northern Territory National Emergency Response scheme implemented by the Howard Government constituting the exact opposite of self-government), both sides of the political spectrum progressively became convinced of the tremendous economic opportunities that lay in the development of the mining industry in general, leading to firm support for the even more controversial uranium mining industry. By 2006, a report entitled *Australia's uranium: greenhouse friendly fuel for an energy hungry world* presented uranium as a solution to the need to reduce greenhouse gas emissions and loftily dismissed any opposition:

The Committee does not question the sincerity with which those people expressing 'moral outrage' at the very existence of the uranium industry hold their views. However, the Committee believes that these views are not informed by an accurate assessment of the benefits and risks associated with the industry and from the use of nuclear power. (foreword)

It also dismissed the impact that uranium mining could have on Aboriginal communities, affirming that it was "not convinced that social problems are peculiar to uranium mining, or to Jabiru, Ranger and ERA, but rather that the social problems and issues of service provision in Jabiru are common to large Aboriginal communities wherever they are located" even though it recommended, at the same time, that the social impacts of mining operations on Aboriginal communities be monitored (ch. 10). To government support of uranium mining against Indigenous rights, the tremendous power of uranium companies themselves can be added, companies who use a variety of tactics to overcome Indigenous opposition, to the point that Green talks about "radioactive racism" ("Aboriginal Land Rights" 8). Conversely, relative Indigenous powerlessness explains why Indigenous issues are swept aside in projects such as the Olympic Dam expansion plan. When Indigenous communities can benefit from a substantial amount of national or world attention – as was the case with the Jabiluka mine opposed by UNESCO – the outcomes are often quite different. They are also different when development projects take place in a region where a substantial share of the population is non-Indigenous – an example of this is the Angela Pamela uranium mine project near Alice Springs, which is strongly opposed by the local population and is now also rejected by the Northern Territory government.

To conclude, given the existing legislation, the current government support for the uranium mining industry, and the sheer pressure of economic interests, it is not likely that Indigenous issues will be adequately addressed in the near future – at least not as they were when Australia originally took the decision to proceed with uranium mining at Ranger – nor that agreements between Indigenous peoples, Governments and

uranium mining companies will be used as effective tools for the goal of self-determination, no matter how vital this goal is to the process of reconciliation.

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