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Tools for the Disempowered? Indigenous Leverage Over Mining Companies

KATHERINE ANNE TREBECK

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Rather than passively accepting development, some Indigenous communities have forced their demands into corporate decision-making. Accordingly, recognising and responding to community expectations becomes a matter of prudent strategy and ‘enlightened self-interest’. This paper examines the case of Century Zinc Mine in Queensland’s Gulf of Carpentaria where the miner undertook negotiations and reached agreement with local Indigenous communities. It was later held to account by communities concerned about insufficient implementation of this agreement. Discussion then explores the campaign against Jabiluka uranium mine in Australia’s Northern Territory, especially why multinational miner Rio Tinto deferred to local community wishes surrounding development. These experiences show that Indigenous communities are most effective in bringing leverage over mining companies when they impact upon profit or future profit (often related to reputation with specific audiences). The parameters and consequent limitations of a company’s responsiveness to community demands reinforce fundamental roles for the state as ultimate regulator and provider.

Introduction

This article discusses selected instances in which manipulation of corporate operating environments compelled corporate responsiveness to the demands of Indigenous communities. Continuing O’Faircheallaigh’s discussion (see March 2006 issue) to incorporate an exploration of corporate social responsiveness, it augments O’Faircheallaigh’s assessment of Indigenous ability to shape the nature of mining by examining two examples. It considers Indigenous communities’ lack of influence within the current parliamentary system and political climate in Australia which, as evidenced in the examples explored below, ostensibly privilege mining over the wishes of local Indigenous communities. This apparent lack of political weight might, at first glance, suggest that Indigenous communities are relegated to a position whereby development is imposed by an alliance between corporate interests—in this case, miners—and the state. Instead, rather than passively accepting development on

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or near their land, some communities have been able to force their demands into corporate decision-making to the extent that recognising and responding to community expectations becomes a matter of prudent strategy in the company's self-interest.

The structure of this paper will, first, outline some disadvantages faced by many Indigenous Australians that appear to render them relatively powerless, while simultaneously anxious to obtain outcomes from those entities somehow relevant to a community and potentially cooperative. An understanding of corporate social responsibility (CSR) is suggested that reflects the response of miners to the demands of local communities evident in the case studies. The state's role vis-à-vis Indigenous citizens and its role in relations between Indigenous communities and mining companies is briefly explored. Discussion then turns to instances in which communities have confronted mining companies and impelled them to address community demands. Drawing on doctoral research conducted between 2002 and 2005, this paper considers the case of Century Zinc Mine in Queensland's Gulf of Carpentaria, where the mining company undertook negotiations and reached an agreement with local Indigenous communities, and was later held to account by communities concerned about insufficient implementation of this agreement. It then examines the campaign against Jabiluka uranium mine in Australia's Northern Territory, and why multinational Rio Tinto deferred to local community wishes regarding development. By way of conclusion, lessons from the case studies for the extent and determinants of corporate responsiveness are highlighted, setting out their implications for stakeholders, those entities that are not recognised as stakeholders and the state.

A note on the methodology used to research the case studies is appropriate; information from many sources was used, including almost 120 interviews conducted with all levels of company personnel (and former employees when relevant), members of the Indigenous communities that confronted the mining companies, industry observers, regulators (including legislators), civil servants, stockmarket participants, academics, and environmental campaigners and community activists and their advisors. Such breadth was required because some elements of the 'responsiveness story' rely on individual memory and perception. In addition, 'triangulation' was used to verify the data and to enrich and cross-check versions of events. For example, the views from a wide a range of informants were analysed, and interview data corroborated when possible from documentary evidence, including company reports, various media and government reports, inquiries and Hansard.

Why Might Indigenous Communities Seek Responses From Miners?

Despite decades of state involvement in remote Indigenous communities, poor socioeconomic conditions remain. A diversity of factors—historical, political, cultural and structural—potentially explain why many Indigenous communities are disadvantaged (e.g. Altman 2001a). Pearson (as quoted in Rintoul 2003) blames 'passivity and disempowerment of our welfare-based condition, together with racism and the legacy of our colonial dispossession, [as] the fundamental causes of dysfunction in Indigenous society'. Also, Indigenous people are more dispersed than other Australians; many live in remote regions offering few employment opportunities. Poor education, housing, health and income status reinforce Indigenous disadvantage.

Consequently, Indigenous Australians are significantly more likely to be impoverished than non-Indigenous Australians (Hunter 1999). Unemployment is 3.2 times higher for Indigenous peoples than for non-Indigenous Australians, and school retention (into Year 12) of Indigenous students is half that of non-Indigenous students. Indigenous life expectancy is 17 years below that for the total Australian population, and the Indigenous infant mortality rate is two to three times greater than that of the total Australian population (Steering Committee for the Review of Commonwealth Service Provision 2005, 5, 16).

Such circumstances indicate that although Indigenous people might, in theory, be able to access representative parliamentary structures on the same basis as non-Indigenous Australians, this has not ensured that they enjoy the same standard of living or outcomes from education or health services as non-Indigenous Australians (Robinson and Sidoti 2000, 28–35; Stokes 2002, 209; Westbury 2003). Officially, they have the same opportunities as other Australians to access formal structures of democracy, and there are several Indigenous parliamentarians at all levels of Australian government. To a large extent, however, the small number of Indigenous voters and their geographic dispersal means that often they exert little electoral ‘muscle’ and, consequently, have few options for political action, except via the ‘language and discourse of white liberal democracy’ (Stokes 2002, 202; also Zappala and Sawyer 2001, 290; Tatz 2001; Haveman 2001).

Effective exclusion from formal structures of democracy is worsened by experiences of maltreatment and betrayal by government (Hunter 2000, 34). Resulting disenchantment has been deepened by concerted government efforts to facilitate mining, often regardless of the articulated concerns of local Indigenous communities. This is seen in the Century and Jabiluka cases, and infamous incidents at Mapoon in 1963 when Queensland authorities forced Indigenous people from their homes after the discovery of bauxite nearby. Such actions over-ride the wishes of local communities and undermine Indigenous influence in decisions that impact them.

In addition, substitution—the risk of citizenship entitlements being deliberately reduced—is faced by some Indigenous communities where mining takes place (Altman and Pollack 1998, 8; Banerjee 2001, 48; Rowse 2002, 102; O’Faircheallaigh 2004). Disadvantaged Indigenous communities, experiencing inadequate government delivery or the potential reduction of government provision, understandably turn to nearby mining companies for tangible benefit (McMahon and Strongman 1999; also Behrendt 2001; United Nations Environment Programme 2001–02, 10; International Institute for Environment and Development 2002, 9–20).

Corporate Social Responsibility as Responsiveness

In contrast to the lack of leverage that these circumstances and processes might indicate, the following case studies examine scenarios in which Indigenous communities nearby existing or proposed mines have manipulated the developers’ operating context so that corporate profitability and viable operation necessitate responsiveness to community expectations. Willingness of companies to recognise Indigenous communities as ‘stakeholders’ and to address their demands is encapsulated in a pragmatic understanding of corporate social responsibility (CSR). This pragmatism, based on perceptions of how to secure corporate self-interest, differs from theories of CSR premised on a notion of companies as citizens, undertaking social activities because it is ‘the right thing to do’, rather than to increase

shareholder value. This concept, often categorised as ‘corporate citizenship’,¹ implies re-appraisal of corporate goals (Moon 1995; Birch 1998; 2000; Hinkley 1999). Birch (2001) describes corporate citizenship as *more than* grafting a social purpose onto an existing corporate entity, necessitating instead ‘systemic, holistic, cultural change’.

As seen in the case studies, CSR as responsiveness is different, less demanding, with the company still existing essentially for making profit, but with a broadened sense of what is required to achieve profitability given a changed operating context. Evolving social expectations of companies, and more potent expressions of these by ‘stakeholders’ with the capacity to impinge on operations elicit more socially-orientated action from companies. This has been described as a ‘new operating paradigm’ for business (Warhurst 2001, 57; see also Tichy et al. 1997, 4; Bakan 2004, 26). Profit-making has wider prerequisites which require that key audiences are satisfied with a company’s behaviour if shareholder interests are to be served; implicitly a longer-term notion of shareholder value (Kapelus 2002; Parker 2002, 58; Harper 2003; Mays 2003, 13; Trebeck 2005).

Corporate social responsibility in this sense, therefore, describes those activities, other than the commercial outputs of the company, and beyond legally required behaviour, that address social and environmental concerns in order to ensure corporate viability. These activities are conducted in *response* to community demands, rather than stemming from a sense of moral responsibility sometimes implied by conceptions of CSR that might be more accurately described as ‘corporate citizenship’. McWilliams and Siegel (2001a) explain that given characteristics of a particular company and the demand for CSR from that company, there is an ‘ideal’ level of CSR delivery, ascertained through cost–benefit analysis.² As seen below, this implicit cost–benefit calculation is evident in the contrasting approaches to mining at Jabiluka taken by North Limited and Rio Tinto, respectively.

Stakeholders

Not every community, community group or social interest will command corporate attention. Those entities whose demands companies might respond to are the company’s ‘stakeholders’; that is, anyone or any organisation affected by or able to affect a particular company. Stakeholder leverage is contingent both on company characteristics and stakeholder characteristics. There are three types of stakeholders with leverage over corporate behaviour—those possessing formal leverage (such as shareholders, managers and directors); those using economic influence to shape a company’s cost and revenue conditions (such as customers, creditors and employees); and those able to influence companies through political leverage that affects the social and political environment in which a company operates (such as NGOs, activists, communities and governments) (Wartick and Wood 1998, cited in King

¹Citizenship entails membership of a political community, and submitting to the authority of that community in the faith that all other members of that community will also submit to an equal extent and, therefore, all will benefit (Bendell 2000, 250). See Phillips (2001) for a discussion of the inappropriateness of ‘citizenship’ to describe companies.

²Managers will determine the level of CSR at which the increased benefit to their company of CSR is equal to the higher cost of delivering CSR. Alternatively, Waldman et al. (2004) suggest that CSR is used by managers for strategic ends—either their own benefit (agency theory) or to enhance a company’s value (theory of the firm perspective).

2000). It is this final form of leverage, political leverage, that most pertains to the definition of CSR as responsiveness, although all three interact and reinforce each other. Leverage over companies is, therefore, a function of the resources that stakeholders bring to or withhold from a company.

Stakeholder theory implies that managers need to secure the support of those stakeholders who can impact upon their business. A theory of the firm perspective incorporates this relationship; understanding CSR as a response to stakeholder demands to ensure firm survival (see, for example, Hemingway and MacLagan 2004). When relevant, stakeholders make themselves visible in the corporate purview they are more likely to secure responsiveness to expectations. Particularly instrumental is how company managers perceive stakeholder power to impact upon the company; the legitimacy of the group or its claim; and the urgency of the demands (Agle et al. 1999; also Mitchell et al. 1997; Wartick and Wood 1998, 111–112, quoted in King 2000).³ When an entity's demand is both urgent and deemed legitimate, the stakeholder can access corporate decision-making channels. Mitchell and colleagues (1997) suggest that when power is added, companies take action to address stakeholder demands. Zandvliet (2004) agrees explaining that if a stakeholder is relatively 'difficult', it captures more CSR initiatives.⁴ This accords with managerial theories of stakeholder relations (see, for example, Wilmshurst 2004) that relate a company's responsiveness to stakeholder capacity to impact upon the company's operations.⁵

The case studies show how specific Indigenous communities were able to position themselves as legitimate, powerful and making demands that require urgent corporate attention using a variety of tools; that is, legislation, delay tactics, mobilising of supporters themselves with some leverage, causing harm to corporate reputation and physical actions. Capacity of respective communities to solicit corporate response in this way reflects recent changes to the legal context faced by Indigenous Australians. Legal recognition of (some) Indigenous land rights in legislation and common law are prominent factors that compel acknowledgement of Indigenous people as stakeholders in mining, sometimes even delivering the capacity to prevent mining outright (see Cousins and Nieuwenhuysen, 1984, 5; Altman and Pollack 1998, 1; Hill 1999; Trigger and Robinson 2001, 226). The *Mabo* High Court decision recognising native title rights in Torres Strait, and associated clarifying legislation and court determinations, were especially instrumental in facilitating Indigenous capacity to demand attention from mining companies (e.g. Altman 2001b; Stokes 2002, 205; Langton et al. 2004, 20). Any acclaim for advances in Indigenous leverage from a legal perspective, however, needs to be tempered by instances in which government and administrators encroached on previous gains by limiting native title rights or underfunding Indigenous representative organisations, for example. The net result is, therefore, not as beneficial to Indigenous empowerment as first thought (see O'Faircheallaigh 2006).

Alongside 'hard regulation' of legislation and regulation, 'soft regulation', involving community complaint and activism, also compels miners to engage more

³'Legitimacy' denotes that a stakeholder's activities are sought and appropriate according to social norms and the 'urgency' of a stakeholder encompasses their importance and the unacceptability of delayed operations (Agle et al. 1999).

⁴Zandvliet found that companies respond more immediately to threats, sabotage and blockages, as opposed to written or verbal complaints.

⁵Alternatively, normative prescriptions of stakeholder relations emphasise the rights of all stakeholders.

positively with Indigenous communities. Many Indigenous communities have increased their activism, asserting demands and inevitably coming into conflict with mining companies. Globalisation has helped empower Indigenous communities in these efforts by facilitating communication of a company's relations with local Indigenous communities, possibly to the company's reputational detriment. Further contributing to the visibility and legitimacy of Indigenous interests, the international community has increased its appreciation of Indigenous cultures and sensitivity to infringements of Indigenous lifestyles.⁶ The Australian public's appreciation of Indigenous rights has also risen (see, for example, Sandman 1998; Labonne 1999; Wilson 1999; Solomon 2000; Tatz 2001; Brereton 2002), and the mining industry, and individual companies, are the subject of a number of dedicated monitoring groups.⁷

In addition to these developments external to the company, industry and company characteristics (size, geographical coverage, internal personalities and so on) and sociocultural context (including social and political systems) shape how and how much companies engage in social activities in response to demands from stakeholders. O'Faircheallaigh (2006) points to intra-company differences in approaching Indigenous relations, which stem from 'internal culture; the political inclinations of individual executives; the nature of advice provided by legal advisors; and the geographical, economic and social context of individual mining operations'. Mining companies have distinct motivations for introducing CSR into their strategies, most obviously because they are beholden to geology and are unable to relocate easily, making them particularly susceptible to 'social licence to operate' pressures. For Indigenous communities with an interest in land that miners require, this presents an opportunity to make certain demands. Insufficient community support can inflict costs, and being unwelcome in a local community can hamper operations through project delays, legal battles over compensation or land access, and restricted future exploration or operational flexibility (see, for example, Howitt 1998; Thompson 1999; Banerjee 2001, 47; Humphreys 2002).

The extent of exposure to influential stakeholders such as local communities is, therefore, an important determinant of social responsiveness (e.g. Brammer 2005; Trebeck 2005). This is reflected in the greater number of large firms with policies regarding community involvement, compared to smaller firms (North 2003, 21; Glass 2001, 9). The examples outlined below illustrate empirically the functioning

⁶Many international declarations and conventions include recognition of the rights of Indigenous people. For example, Agenda 21; the *Rio Declaration on Environment and Development*; the *International Convention on the Elimination of All Forms of Racial Discrimination*; the *Universal Declaration of Human Rights*; the International Labour Organisation Convention 169; the *UN Draft Declaration on the Rights of Indigenous Peoples*; the Beijing Platform for Action; the *International Covenant on Civil and Political Rights*; and the *International Covenant on Economic, Social and Cultural Rights*. The UN's *Draft Declaration on Rights of Indigenous Peoples* asserts that 'Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands'.

⁷In 1998, for example, the Australian Asian-Pacific Mining Network released a paper prepared by Australian NGOs advocating principles for conduct of the minerals industry (Australian Non-Government Organisations 1998). Oxfam Community Aid Abroad's Mining Ombudsman publicises unsatisfactory social and environmental activities of mining companies overseas. See, for example, <www.minesandcommunities.org/Aboutus/partizans.htm>; <<http://dte.gn.apc.org/camp.htm#Rio>>; <www.mpi.org.au> and <www.corpwatch.org>.

of these variables, demonstrating that corporate responsiveness accords with McWilliams and Siegel's cost–benefit model (2001a) and also stakeholder theories.

The State

Clearly the state influences demands for corporate responsiveness, the leverage with which communities make these demands and the extent and character of corporate response. As highlighted above, circumstances that spur Indigenous communities to seek outcomes from mining companies are sometimes the result of inadequate government delivery. In addition, not only have governments aligned themselves with corporate interests, regardless of whether or how local communities might wish the project to proceed (as evidenced in the following case studies), but certain corporate interests also wield some influence over the state. For example, the mining sector lobbied strongly for amendments to *Native Title Act*, claiming that if mining was impeded, Australia would lose employment, taxation revenue and export earnings (Stokes quoted in Lavelle 2001).

Alternatively, communities disempowered by state support for mining, perhaps ironically, are often able to utilise legislation or government regulation as tools to assert their demands regarding the nature of a mine's development. This illustrates the multifarious presence of the state itself and also the complexity of Indigenous circumstances and Indigenous leverage over corporate entities. These processes are explored empirically in the case studies.

Century Mine

Introduction

In September 1990 discovery of a significant zinc deposit near Lawn Hill in the Gulf of Carpentaria in Queensland was announced. The Century Mine (Century) was opened officially in April 2000. This section explores how the company (then CRA, Rio Tinto's predecessor in Australia) and local Indigenous communities were brought to the negotiating table. The apparent 'business case' for negotiating, as perceived by the company, is outlined, in particular the leverage that certain elements of local Indigenous communities exerted over the prospective miner. This is followed by discussion of subsequent company efforts to build community relationships, and the consequences of perceived insufficient fulfilment of agreement obligations and expectations; that is, when members of local Indigenous communities occupied areas of the mine site.

Pre-agreement: Why Negotiate?

During negotiations for the mine's development (and until 1997), Century was wholly owned by CRA.⁸ Although the company began discussions with Indigenous people in the nearby community of Doomadgee soon after the ore body was announced, in the mid-1990s CRA/Rio Tinto substantially changed its approach to land access and community affairs. This change of strategy was premised on

⁸London-based Rio Tinto Zinc (RTZ), merged with Australian-based CRA in 1995 to create the dual-listed company Rio Tinto Limited in Australia and Rio Tinto plc in the United Kingdom, hereafter referred to as 'Rio Tinto'.

a growing appreciation of the value of sound community relations (Trebeck 2005, 139–78). In May 1996 the company's Board decided that without support from local Indigenous communities it would consider 'ceasing expenditure on the [Century] project' (Button 1996). The possibility of touted enabling legislation being blocked in the Australian Senate and falling public support for Century's development reinforced the strategy of negotiation (Blowes 2004; Williams 1999). Rio Tinto's difficulties in progressing Hamersley Iron's Marandoo mine in Western Australia, when local Indigenous communities used legislation to delay construction, further drove this approach. Significant motivation for achieving community agreement also emanated from individuals at the mine site, who recognised that Indigenous people had an interest in the mine's development, informed, in part, by their own experience at Hamersley Iron, and especially the delay of Marandoo mine, which was brought about by insufficient community support for development and consequent community intransigence (Williams 2003; Confidential communications with Century and Pasminco managers).

As in the Jabiluka case study, the Queensland government (under both Labor then National Party rule) was keen to support Century's development, given its contribution to employment, regional development and State revenue (see, for example, Queensland Premier, quoted in Trigger 1997, 118). In the early 1990s, the Goss Labor government offered subsidies for infrastructure development and promised to remove 'green and black tape' so the mine could go ahead (Jameison cited in Brown 1993). In July 1996 the incoming Borbidge National Party government declared that it would enact 'enabling' legislation so land could be compulsorily acquired for the mine and pipeline. Moreover, threatened reduction of government service provision is illustrated by Premier Borbidge's warning (quoted in Nebauer 1996) that if Century were halted by 'Aboriginal intransigence' this would endanger essential services. These threats eventually led to some in local communities regarding Century as crucial to avoid cuts to welfare funding and other services (Chairman of the elected Doomadgee Aboriginal Council quoted in Trigger 1997, 114).⁹ Respective Commonwealth governments and Oppositions also endorsed the mine, with the Commonwealth government similarly offering enabling legislation to override National Native Title Tribunal decisions on 'national interest' grounds.¹⁰ It seems that Murrandoo Yanner¹¹ recognised that government would not deliver outcomes sought by local Indigenous communities and this shaped his tactics to confront the miner directly.

Native title legislation was, however, still evolving and unclear. Rio Tinto also felt that a potential change of government or government policy undermined the reliability of legal sanction. Moreover, 'radical and aggressive community opposition' to the mine meant that even if Century obtained a legal licence, development would remain vulnerable to community opposition; that is, threats to blow up the pipeline or power lines had been made by community members hostile to the mine's development (Williams 2003). Accordingly, an alternative means of securing tenure was sought through negotiations with local communities.

⁹For example, when Clarence Waldron first heard about the mine, he thought it would 'be like Jesus Christ, that all [their] sorrows would be gone' (Waldron 2003).

¹⁰As provided for in 26 (2D) of the *Native Title Act*. This would protect CRA from Native Title claims made after July 3, 1996 (Nebauer 1996).

¹¹A local Indigenous man who led opposition to Century in an effort to obtain benefit from negotiations.

Community Leverage

Indigenous communities in the Gulf of Carpentaria are internally complex and heterogeneous, but share a history of dispossession. They suffer poor health, and have one of the lowest life expectancies in Australia.¹² Until mining began, most employment was through the Community Development Employment Projects scheme (Martin 1998; Williams 1999). Many Indigenous people in the Gulf expressed anxiety about the adverse impact of the mine on the environment, heritage and lifestyles (Brown 1993; Blowes and Trigger 1998; Trigger 1998, 157; Harwood 2001, 76).¹³ Potency of opposition is illustrated by a warning from Yanner (quoted during Radio 4QR News 1996): '[i]f they thought Bougainville was bad, wait 'til they see Lawn Hill'.¹⁴

Despite the difference in resources and finances available to the company compared to communities, and even though they lacked statutory veto power, local communities were able to exert some leverage. Using native title processes and other methods of obstruction and leverage, communities postponed Century's development—mining proceeded only after a 2-year delay. The drawn-out and highly publicised negotiations attracted national and international media coverage which attributed delay to the 'intransigence' of Indigenous communities (e.g. Nebauer 1996). As Yanner (quoted in ABC Radio National 1996) declared at the time: 'We don't want to do this current format [sic] and of course we are prepared to see it wait a lot of years or forever [until] hell freezes over if that's what it takes'.

Utility of time as a tactic in attaining corporate response is evident in claims that delay placed the project in doubt, reducing its net return and therefore its value to the company. In April 1996 workers at the site were laid off, and Rio Tinto warned that delays could threaten contracts with a smelter in the Netherlands (Davis cited in Tait 1996). In mid-1996 Rio Tinto shares reached an 11-week low, which stockbrokers attributed to 'issues over the development of its planned Century zinc mine in Queensland [remaining] unresolved' (*Reuters* July 5 1996). Any delay is expensive for companies, and the longer a project is put off, placating those obstructing it becomes increasingly urgent from the company's perspective.

Other aspects of the campaign by Indigenous people against Century included use of international platforms and shareholder protest. Activism took place at Rio Tinto's annual general meeting (AGM) in London and 'speaking tours' were conducted in England and the Netherlands where Wadjurlabinna, a senior Gangalidda woman, expressed her opposition to Century's development. In 1993 she attended CRA's Melbourne AGM. Friends of the Earth disseminated leaflets to shareholders outlining Indigenous objections to the proposed mine. When CRA Chairman John Uhrig took

¹²For example, Mornington Island and Doomadgee have very low environmental health infrastructure, and lack sufficient housing and water supplies (Martin 1998; Koch 2002).

¹³Wadjurlabinna, for example, highlights that for people in the Gulf of Carpentaria, the land 'is their very identity and being' and seeing it mined causes great trauma (Wadjurlabinna 2003). The coordinator of the Carpentaria Land Council foresaw adverse social impacts arising from the mine—conflicts based on race with miners and prostitution in return for alcohol (quoted in Trigger 1998, 158).

¹⁴The revolution in Bougainville in Papua New Guinea dramatically impacted upon the CRA-controlled Panguna Bougainville Copper mine (Bougainville Copper Limited (BCL)), and is an often-cited catalyst for CRA and Rio Tinto's strategy to forge better community relations. The BCL mine was closed in 1989 when sabotage and violence against facilities and employees rendered it too dangerous to continue mining.

questions, Wadjurlabinna asked, 'Ladies and gentlemen, did you know that you are all shareholders in a form of genocide of my people?'¹⁵ Newspaper headlines proclaimed the event as 'Taking on the Mighty Giants' and described Uhrig as having to 'weather a storm' of attack from activists and 'bristling' at the accusation of genocide (e.g. Dunstan 1993). Despite publicity that such acts of protest capture, causing discomfort for company management in a forum intended to showcase company performance, CRA's understanding that Wadjurlabinna did not represent local interests ultimately weakened her impact, and company negotiators instead sought to involve representative organisations and spokespeople (Grimmond 2004; Singer 2004).

In contrast, by avoiding meetings or not completing heritage clearances, Murradoo Yanner, in his capacity as Gangalidda Traditional Owner and Chairman of the Carpentaria Land Council, was able to delay mining, consequently gaining leverage with which to demand specific corporate behaviour and action. Intensifying pressure on the company Yanner (*The Age* 16 February 1995) warned that he would appeal to the United Nations regarding the National Native Title Tribunal's initial rejection of a native title application over land needed for Century's development. Yanner, moreover, tactically pitched his behaviour to different audiences—antagonistically opposing the mine publicly, then negotiating when appropriate.

Support for those confronting the mine from environmental and church organisations was also important in elevating demands of Century. Allegations of environmental damage garnered sympathy among conservationists, and community action over Century was also supported by the Construction, Forestry, Mining and Energy Union because, as Yanner recognised (quoted in Priest 1996), local communities had 'something in common with the union: they hate CRA's guts and so do we'. Wider public attention that the negotiations received further served to enhance the communities' position, and bolstering them with a sense of public sympathy (Blowes 2004).

Within the context of Rio Tinto's evolving community strategy and the absence of a secure government licence, the culmination of actions and pressures from local communities underpinned the company's strategy of negotiating with local interests to progress Century's development. Using native title provisions, delay tactics and use of public forums, a bargaining position was created by Indigenous interests through which they became visible to company decision-makers. Delays that impinge on commercial standing and threats to the company's reputation demonstrated that when Indigenous communities comprehend and penetrate contexts in which companies operate, they can make their expectations known and obtain corporate response.

An original offer of \$70,000 cash was increased to an eventual \$60 million agreement package. The Gulf Communities Agreement (GCA), which was signed by Indigenous communities, Century and the Queensland government, enabled Century to be constructed. It recognises native title groups (Waanyi, Gangalidda, Lardil, Kaiadilt and Yangal people), as Traditional Owners of the land on which the mine, pipeline and port exist and commits Pasminco (which purchased Century from Rio Tinto soon after the GCA was concluded) to spend \$60 million on

¹⁵Wadjurlabinna spoke about the importance of Indigenous connection to land, warning that the mine would lead to drunkenness, despair and children going hungry (Wadjurlabinna 2003; see also Wadjurlabinna quoted in Brown 1993 and Button 1996).

various programs, directed towards ‘local Aboriginal people’,¹⁶ and the Queensland government to spend \$30 million over the period of Century’s operation.

Change of Century’s Ownership

In 1997 Rio Tinto sold Century to Pasminco, denying that the reason for the sale was delayed negotiations over Century’s development (Clifford quoted in O’Meara and Pheasant 1997). As Cook (1997) highlights, however:

The revised time frame for the mine development process following the need to negotiate with the traditional land owners would have been factored into [Rio Tinto’s] feasibility analysis, probably resulting in a slight reduction in the forecast rate of return.

This illustrates how community intransigence can impact upon share value, and how communities can obtain corporate response as companies act to minimise this risk.

Century’s new owner, Pasminco, inherited the Gulf Communities Agreement and its approach to Indigenous relations stemmed, in part, from consequent contractual obligations. Pasminco implemented certain elements of the GCA as required—by 2002 it had spent over \$12 million on GCA commitments, and a further \$6 million on GCA implementation, more than was mandated at this point in the 20-year Agreement (Pasminco Ltd, the State of Queensland and Gulf Communities Development Company Ltd 2002). At one level, the results of Century’s CSR effort seem positive. A former General Manager believes that ‘by and large the Indigenous community is proud of the GCA’ (Rose 2003b). Queensland government research (Hall and Driver 2002, 2) concluded that most people in the Gulf region felt that the overall performance of Century has been ‘very positive’. A 5-year review of the GCA found that associated initiatives were ‘making a moderate contribution’ vis-à-vis community participation in the mine, promotion of economic self-sufficiency, and protection of sites of significance (Pasminco Ltd, the State of Queensland and Gulf Communities Development Company Ltd 2002).

As key individuals who drove Century’s strategy of community negotiations departed, however, any residual recognition of the importance of community engagement was overwhelmed by financial problems. In March 2004 Pasminco’s administrators lodged a prospectus to raise new equity and restructure Pasminco. A new company, Zinifex, acquired all Pasminco shares and interests. Much corporate memory of the fraught negotiation period was lost with this change of ownership and preceding difficulties. Tellingly, in early 2002, the size of Pasminco’s corporate office was cut to reduce costs and the Manager of the Gulf Communities Agreement Unit was retrenched (although later re-engaged as a consultant).

As Pasminco’s financial concerns worsened, it seemed that only the bare minimum, as contractually necessary, was deployed in fulfilling GCA obligations. Many community engagement initiatives originated at the mine site, despite the scant support from Pasminco. It has been suggested that company headquarters lost recognition of the importance of a ‘social licence to operate’, underpinned by the Gulf Communities Agreement (Williams 2003; Confidential communications

¹⁶Defined as members of native title groups (regardless of where they live), and others living in the Gulf of Carpentaria communities, including those without native title claims.

with Pasminco manager and government representative).¹⁷ Apparent lack of focus on community relations at Century led to a dramatic expression of community dissatisfaction—a ‘sit-in’ at the mine site in 2002.

The Sit-in

In 2002 Murrandoo Yanner spelt out a number of complaints about Century, principally surrounding the lack of money that had flowed to Waanyi groups (organisations designed to channel funds to communities failed to meet eligibility criteria). Discontent with Century’s approach to community relations was reflected in Yanner’s assertion (quoted in Meade 2002) that Pasminco had ‘broken their promises’ to Indigenous people. In particular, communities sought engagement with the company beyond its employment of local people, but felt these expectations were not addressed.

In early November 2002 a community meeting concluded that demands of Century had ‘fallen on deaf ears’, galvanising consensus that if their expectations were to be met, direct confrontation was necessary (Cairns 2003). Over 60 people entered the mine’s product handling room, later moving to the canteen. There were initial concerns that this action would stop production. The protest, however, did not impede operations, but if it had escalated (e.g. if protestors had entered the mine pit), company policy would have required that operations be halted.

Pasminco executives and Queensland’s Minister for State Development held talks with the protestors. The Queensland government, Pasminco and the Waanyi Nation Aboriginal Corporation (on behalf of protestors) eventually signed an agreement that summarised negotiation outcomes, including recognition of the Waanyi Nation Aboriginal Corporation as an ‘Eligible Body’ to receive Agreement funds, extension of a review of the GCA and resolution of management of cultural objects.

The sit-in demonstrated that local communities had the potential to impede operations. Subsequent changes suggest this has been heeded by some within Century. It has been observed, for example, that before the sit-in communities seldom received answers to their inquiries, whereas after the sit-in Century actively sought community engagement. Significantly, following the sit-in Century did not reduce its GCA-related effort, community relations initiatives nor Indigenous training programs, despite Pasminco’s financial difficulties compelling cost-cutting in other areas. The GCA Unit has been separated from the Human Resources division, a location that, arguably, indicated devaluing of the GCA. As the General Manager declared (Rose 2003a), since the ‘sit-in . . . we have reassessed our resourcing in the [GCA] area. Given the importance of the GCA and its complexity, we now believe that a dedicated GCA Manager is necessary.’

These changes reflect the company’s recognition of the repercussions of not being proactive in community relations. The onus was clearly on communities to take action to ensure the company met their demands, as opposed to the company spontaneously respecting and addressing community expectations. The sit-in showed that even for companies like Pasminco, facing financial difficulties, communities can force their concerns further up the corporate agenda, and even exploit perilous financial circumstances to heighten the urgency of responding to community demands.

¹⁷It should be noted that soon after acquiring Pasminco, Zinifex published on its web site a community relations statement, including recognition of the important value of external relations and declaration that Zinifex ‘is committed to fulfilling the intent and specifics of the GCA’ (Zinifex Limited 2004).

Local communities now see such tactics as successful—many have warned that if Century fails to meet community expectations there will be another sit-in. The incident, however, also demonstrated that invariably those with the most leverage, able to bring most acute pressure to bear, are those to whom a company responds.

The Anti-Jabiluka Campaign

Introduction

Energy Resources of Australia (ERA) owns both Ranger mine and the Jabiluka lease, 22 kilometres from one another inside (but excised from) the World Heritage-listed Kakadu National Park in Australia's Northern Territory (NT). The case of the Jabiluka uranium prospect provides an insight into how local and non-geographical communities can apparently stop development, where blockades were established, economic parameters impacted upon, and national and international audiences mobilised. It represented the confluence of three issues sharing Jabiluka as their focal point: Indigenous heritage concerns, National Park environmental issues, and opposition to uranium mining. Various elements of the campaign combined to force a large company to acknowledge and respond to the demands of a small Indigenous community.

State Context

Two related aspects of the role played by the state impacted upon the sovereignty of the Mirrar People, Jabiluka's Traditional Owners.¹⁸ First, possible substitution of mining benefits for government service provision; and, second, persistent advocacy by government for Jabiluka's development, against the expressed wishes of those local people most affected.

Several analysts have suggested that Indigenous people living in Kakadu National Park have missed out on government funding because they are perceived as having access to 'wealth' from mining royalties (see Supervising Scientist 1997, 12; Altman and Levitus 1999; Maher 2004; O'Faircheallaigh 2004). Although this perception is inaccurate, it has allegedly undermined government services. The Gundjehmi Aboriginal Corporation (Gundjehmi Aboriginal Corporation 1999, 10), for example, claims that because of substitution ERA is 'literally the government in the Jabiru region. . .Electricity, communications, retail outlets, roads, housing, social club and airports are all owned by ERA. Territory and Commonwealth governments do not fund basic services because of the "wealth" generated by mining'. Altman and Levitus (1999) have, moreover, found that the activities of the Gagadju Aboriginal Corporation—such as health, housing and education—have been the site of substitution in government funding. Aboriginal and Torres Strait Islander Commission (ATSIC) and others (Katona 1998; Aboriginal and Torres Strait Islander Commission 2000; Tilmouth cited in Miller 2000) further reported that some local Indigenous people believe they must accept mining royalties in order to meet everyday needs.

Second, as in the Century case, the state played a role of advocacy, seeking to advance development, regardless of strident opposition articulated by local communities and amongst the wider Australian public (discussed shortly). In 1996 the incoming Howard government withdrew Labor's Three Mines uranium policy that

¹⁸The Mirrar People and Yvonne Margarula (Senior Traditional Owner of the Mirrar Gundjehmi Clan).

had prevented Jabiluka's development. Government support for the mine is premised on 'national interest' arguments. For example, Prime Minister Howard (cited in Wright 1998) declared that those opposing development of Jabiluka were against the creation of one thousand jobs, \$12 billion in revenue and \$200 million for local Indigenous people from mining royalties. Northern Territory (NT) governments, under both the Country Liberal Party (CLP) and the Labor Party, similarly supported Jabiluka's development, especially as Ranger's imminent closure will mean a loss of jobs and State revenue.

Duress was allegedly exerted on the Mirrar to obtain their consent for Jabiluka's development. According to Fagan (Fagan 2002), both Commonwealth and NT governments, 'in conjunction with multinational mining companies, have legislated, regulated, badgered and bullied to extract uranium from Mirrar land despite the opposition of the Traditional Owners' (see also Katona 2001, 201). In 1999, the Deputy Prime Minister (Fischer quoted in Saunders 1999) sought to downplay the importance of Kakadu's environmental value, stating that 'Kakadu [National Park] in many attributes is overrated'. It is, therefore, not surprising that local communities turned to extra-parliamentary means—tactical use of legislation, protest, physical blockades and shareholder activism—in order to influence decisions and entities affecting their lives.

Community Opposition

The Mirrar fear that mining would constitute a 'genocidal danger' to their traditions and culture, threatening the World Heritage importance of the National Park (Katona 2001, 200; Margarula quoted in Owen-Brown 2002). Opposition to Jabiluka also derives from experience of Ranger mine at which environmental and social impacts are considered adverse by some local Indigenous people.

A coalition between the Mirrar and environmental groups¹⁹ enabled concerns about Jabiluka to be brought to national and international attention. There were large protests in many Australian cities, along with anti-Jabiluka film screenings and public meetings. The Melbourne headquarters of ERA's owners, North Limited, were the site of a four-day blockade in 1999. Protests at company headquarters, postcard campaigns and public rallies did not, however, significantly damage North. They were, nonetheless, stressful for employees and consumed substantial management resources. For example, North's Corporate Affairs Manager deployed half his time on Jabiluka issues (Murrihy 2004).

A majority of the Australian Senate at the time, most environmental groups, many trade unions and community groups also expressed opposition to Jabiluka. In 1999 the Senate's 'Jabiluka Inquiry' recommended against mining at Jabiluka (Senate Environment Communications Information Technology and the Arts Committee 1999). The anti-Jabiluka campaign was further able to garner support in various international forums. This broadened the reputational threat for Jabiluka's owners, emphasising the importance of sound corporate community relations—poor performance is broadcast widely, hindering a company's development aspirations elsewhere. 'Globalisation' of opposition also augmented momentum of the anti-Jabiluka campaign. International networks with groups such as Friends of the Earth, the Wilderness Society, the Africa–Australia Exchange, and the Global Sisterhood Network boosted the domestic campaign.

¹⁹Especially the Wilderness Society, Friends of the Earth and the Australian Conservation Foundation.

Moreover, as it became clear that neither NT nor Commonwealth governments were going to assist the Mirrar in preventing development of Jabiluka, the Mirrar turned to the United Nations World Heritage processes to obtain regulations that would advance their objectives. For example, in June 1998 Yvonne Margarula went to the Paris UNESCO meeting, describing cultural destruction resulting from Ranger mine, and their fear of further loss of Indigenous identity if Jabiluka proceeded. In October 1998 the UNESCO World Heritage Mission visited Australia to determine the extent of alleged danger to the World Heritage Listing, reporting that there were 'significant ascertained and potential threats' to Kakadu's World Heritage values.

Despite this national and international activism, construction at Jabiluka commenced in June 1998. Protestors erected a blockade in response. Over 5,000 people from Australia and overseas took part, impeding construction and capturing national and international attention. As seen in the Century case, delaying operations enable communities to impact upon the economics of a project, elevating the urgency of their demands within corporate decision-making.

Another significant attempt at stopping Jabiluka that took place further up the 'supply chain' was shareholder activism against Jabiluka's various owners. The anti-Jabiluka campaign used company AGMs and, as seen above, company headquarters, as 'combat zones'. The North Ethical Shareholders group was formed after the Wilderness Society advertised seeking investors in North who were worried about Jabiluka for a range of reasons, including the mine's financial problems, Indigenous rights, environmental concerns, National Park and World Heritage issues, and nuclear worries. Over 100 shareholders requisitioned an extraordinary general meeting (EGM), held concurrently with North's 1999 AGM. Although relatively few votes actually cast supported the resolutions put by North Ethical Shareholders, the process generated public criticism of North. Following the EGM, North took some action in response to the activists' demands. It commissioned an independent study of stakeholder perceptions and appointed a Sustainable Development Manager.

In addition, although resource companies such as North do not sell directly to consumers and are somewhat immune to consumer pressure, many institutions investing in them are not and represent a further arena for anti-Jabiluka lobbying. Campaigners turned their attention to institutions such as NRMA, Catholic Church Life Insurance, James Cook University, the Australian National University and the Australian Olympic Foundation, which all held large parcels of North or ERA shares. By June 1999 over two million North shares (estimated to have been worth some \$7 million) were sold by various institutions that received anti-Jabiluka material from the Wilderness Society and the Mineral Policy Institute. During the time of the North shareholder campaign, North's share price fell by more than 65% (from over \$6 in 1997 to less than \$2 in 1999).

Milling Alternatives: Tangible Leverage

Jabiluka represents additional value to ERA compared to another company because ERA has potential access to Ranger mine to process Jabiluka ore, therefore obtaining considerable savings. Trucking Jabiluka ore to the existing Ranger mill was, however, refused by Traditional Owners. ERA was consequently compelled to consider constructing a mill at Jabiluka. As North's Chairman asserted (Deeley 1999), processing at Jabiluka 'would affect the economics of the project. . . [and] is a much more environmentally intrusive option'. The returns from the project diminished because the cost of

constructing a new mill at Jabiluka increased relative to uranium prices. In comparison to other elements of the anti-Jabiluka campaign, the effective veto over milling at Ranger had direct and tangible impact upon the company's intended development options, not only adding to the time before production could commence, but also significantly increasing production costs at a time when uranium prices were relatively low.

North's Reaction to the Anti-Jabiluka Campaign and Rio Tinto Ownership of Jabiluka

Although ERA acknowledged Traditional Owner opposition to Jabiluka mine (Dodd 1996; Shirvington 1999), the approach of both ERA and North to mining Jabiluka was legalistic, even confrontational. For example, in May 1997 ERA (Shirvington quoted in Iserles and Brown 1999) stated that it 'will push ahead with plans for Jabiluka whether or not it is ultimately opposed by the senior Indigenous Traditional Owners of the land'. In the face of delays imposed by local communities, North maintained that it had a right to mine, and attempted to demonstrate the benefits of mining to local Indigenous people, while seemingly enduring episodes of shareholder activism and investor withdrawal.

In 2000 Rio Tinto purchased North and thereby 68.4% ownership of ERA—primarily for North's iron ore operations. In contrast to North's substantial reliance on government sanction, Rio Tinto's policies, such as *The Way We Work* (2003), preclude mining without community consent. Rio Tinto's experiences elsewhere of mines being stopped because of poor community relations highlighted the prudence of taking the 'issue off the table in order to engage', and improving relationships over time, rather than 'waving a piece of paper [government sanction]' (Vickerman 2004). Rio Tinto also seemed to appreciate that conciliation with local stakeholders might facilitate other projects by enhancing Rio Tinto's reputation as amenable to local community concerns (e.g. Bachelard 2003). Negative perceptions of Jabiluka's development, therefore, had implications for Rio Tinto's global reputation. Such considerations suggest that Rio Tinto, being a large international company involved in various codes, partnerships and initiatives professing to advance 'sustainability', judged that it could not withstand the attacks on its reputation that North apparently could. In addition, in the context of ERA's poor profitability and 'given the controversial nature of uranium and the landowner issues, Rio could do without ERA' (stockbrokers quoted in Hextall 2002).²⁰

Remaining protest lessened somewhat as Rio Tinto engaged with Jabiluka's opponents, explaining that Traditional Owner acceptance was a criterion for development. In a response to questions from the Australian Conservation Foundation at Rio Tinto's 2002 AGM, Chairman Sir Robert Wilson (quoted in *Koori Mail* 1 May 2002) stated: '[w]e've said unequivocally already there will be no development at Jabiluka without the consent of the Traditional Owners.' Wilson later pledged that the site would be rehabilitated and the mine's entrance sealed (quoted in *Northern Star* 6 September 2002). The ensuing Jabiluka Long Term Care and Maintenance Agreement, signed in February 2005, gives Traditional Owners a veto over the Jabiluka mine—mining activity now requires written Mirrar consent.

²⁰This was especially the case because ERA's value was negligible relative to Rio Tinto's total market capitalisation. For example, in September 2002 Rio Tinto's stake in ERA was worth \$172 million, less than 1% of Rio Tinto's total net present value (Hextall 2002).

Factors that led to this acquiescence to community demands are those pertaining to the 'business case' for responsiveness—physically impeding access to the site or damage to corporate reputation amongst local and wider audiences, which inhibit developments elsewhere. Inability to mill Jabiluka ore at the existing Ranger mill, combined with low uranium prices, was particularly significant—lessening the trade-off between satisfying community demands and advancing commercial self-interest. Low prices made Rio Tinto's policies of securing community consent through relationship-building and responsiveness possible, even presenting an occasion, at little opportunity cost, to capture reputational benefits amongst key audiences, including the Mirrar—perhaps facilitating development in the future.

Discussion

The Century and Jabiluka experiences support O'Faircheallaigh's (2006) conclusion that in responding to Indigenous demands, 'the political capacity of Aboriginal groups and organisations has a major bearing on what companies are willing to pay, given a particular set of economic parameters'. Although every situation is different, the case studies show that Indigenous communities are most effective in bringing leverage over mining companies when they impact upon profit or future profit. In turn, any leverage communities can exert over a development is, in part, derived from available legislative tools—such as native title provisions, and even civil rights to organise and protest. Clearly, some Indigenous communities will have better legislative mechanisms available to them than others; for example, native title has been quashed for many communities in southern parts of Australia. In these circumstances, alternative tools assume greater relevance—political mobilisation, engagement of influential supporters, blockades and other means to inflict delay.

Furthermore, which and how companies respond to certain community demands is determined by a combination of financial, political and cultural characteristics. Explicitly, as outlined earlier, the extent of responsiveness is largely explained by perceptions of stakeholder power, legitimacy and urgency (Agle et al. 1999; see also Mitchell et al. 1997; Wartick and Wood 1998, 111–12, quoted in King 2000). For example, it was evident in the Century and Jabiluka case studies that Indigenous communities could use time to make their demands more potent—by delaying development through various means, they increased their power over the company and the urgency with which management needed to respond.

Recognition and responding to community expectations depends, in particular, on responsive employees, especially senior management, who are sensitive to community demands and appreciate and advocate the necessity of responsiveness. Any recognition of stakeholder demands is often shaped by the values and perceptions held by these individuals. These values and perceptions are themselves a reflection of experience of a crisis (activist attention or regulatory enforcement); notions of corporate performance (including competitive pressures and remuneration policies); moral beliefs; or a combination thereof (see, for example, Agle et al. 1999; Orlitzky and Swanson 2002; Parker 2002, 84). Orlitzky and Swanson (2002) model incorporation of social demands into corporate actions as dependent on how receptive executives are—how 'attuned' they are to stakeholder demands. In the case studies, key individuals (e.g. managers on the ground at Century who had experience of community intransigence elsewhere) were able to discern the dynamics of community pressure and make the case for responsiveness.

These parameters of a company's responsiveness to community demands reinforce fundamental roles for the state. Reliance on corporate responsiveness has many deficiencies, which highlight the state's importance as ultimate regulator and provider. Corporations lack the authority of government concerning morals, social issues or politics. Their mandate is, instead, to make profit. Corporate responsiveness moreover is not a given, and even the most sophisticated and comprehensive corporate responsiveness is not going to achieve widespread improvement in the structures of societies and economies. The state alone has the ability and mandate to coordinate, regulate, administer and deliver beyond the local level and the efforts of specific companies.

State regulations and intervention are also important in providing communities with leverage and companies with incentives for responsiveness. The case studies revealed how community confrontation is frequently underpinned by leverage derived through government legislation and common law; for example, threat of court action, heritage legislation and the *Mabo* decision. Although in both cases examined here, government sought to facilitate mining, undermine Indigenous land rights and encroach on citizen entitlements through substitution, in a perhaps idealistic scenario, government should simultaneously uphold and deliver citizenship rights and entitlements so communities are in a position to resist or refuse corporate advances, and are not forced to accept unwanted corporate presence in order to obtain an expected standard of living.

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