Uranium Mining and Indigenous Peoples: The Role of SIA

Geordan Graetz[1]

Abstract

As nuclear energy production increases, so too must the supply of nuclear fuel. Uranium is the principal fuel used for nuclear electricity generation, but there are a number of impediments to its successful extraction. These include government regulation, bans on uranium mining and exploration, and environmental, waste management and nuclear proliferation concerns. While substantial bodies of literature on these issues, as well as mechanisms to reduce and monitor environmental impacts, exist, less is known about the affects of community opposition to uranium developments, particularly from indigenous peoples. This is an area of study that is important to uranium companies, as increasingly developments are contingent on the obtainment of a social licence to operate.

The paper will provide a brief overview of the uranium industry's engagement with indigenous peoples in Australia, which has principally been characterised by conflict and failed developments. Subsequently, it will argue that by placing greater emphasis on social risk and social impact assessment, thereby responding to the needs and concerns of local populations, uranium companies may be able to negotiate increased access to land and thus gain greater access to uranium deposits. It is also apparent that respect for human rights is crucial to the success of uranium developments and one means of incorporating human rights into the decision-making of uranium companies it to undertake human rights impact assessments. The paper concludes with an examination of developments in this area.

Introduction

As global demand for energy increases, commentators and nuclear energy industry insiders have spoken of a possible nuclear renaissance. While such a renaissance can be questioned, it is clear from current projections that nuclear power will be a feature of future energy supply services and, as a consequence, production of uranium will need to grow to meet increased demand for nuclear fuel. However, there are a number of impediments to the expansion of the uranium industry, not least of which is indigenous opposition to uranium developments. This paper briefly explores the nuclear renaissance debate and subsequently examines the Australian uranium industry and its engagement with indigenous peoples through the prism of impact assessment. The paper argues that social impact assessment, as it is currently practised, is inadequate to respond to the complexity of indigenous perceptions and experiences of uranium mining and suggests that a different approach is needed. Such an approach would combine insights from social risk, business risk and rights disciplines.

---

[1] Doctoral Candidate, Centre for Social Responsibility in Mining, The University of Queensland, Sustainable Minerals Institute. E-mail: g.graetz@uq.edu.au

A Nuclear Renaissance?

In the wake of the 2011 tsunami that precipitated the meltdown at Tokyo Electric Power Company's Fukushima nuclear power plants, the long-standing debate on the future of the nuclear industry has gained vigour, with critics warning against greater uptake of nuclear power (Lovins 2011). While the Fukushima Dai-ichi nuclear accident has brought questions about the technology's safeness to the forefront of the debate, industry participants remain optimistic about the role that it can play both in meeting rising global demand for energy and responding to the challenges of climate change and energy security (World Nuclear Association 2012, Jamard n.d.). However, observers have questioned this optimism (Findlay 2011).

Notwithstanding the concerns that have been expressed since the Fukushima Dai-ichi nuclear accident, there are more than 60 reactors in various stages of construction worldwide (Biello 2011). China is overseeing the bulk of this development, with 26 reactors currently under construction. Moreover, India plans to increase its share of nuclear power to 25 per cent of its electricity market from the current level of three per cent by 2050 (Srivastava 2011). Russia and South Korea also have sizeable expansion plans.

It is established that these expansion plans will rely almost exclusively on a stable and growing supply of nuclear fuel. In 2010, mined uranium (63,285 tonnes) met only 78 per cent of reactor fuel needs, with the remaining 22 per cent drawn from nuclear weapons and commercial stockpiles, recycled plutonium and uranium from reprocessed used fuel (World Nuclear Association 2011). Due to the depletion of these stockpiles, the International Atomic Energy Agency forecasts that uranium production will need to rise to 75,000 tonnes per year by 2020 (Nicolet and Underhill n.d.).

Overview of the Australian Uranium Industry and Impediments to Uranium Extraction

Australia is estimated to have 40 per cent of the world's recoverable uranium, and supplies approximately 19 per cent of the global market. Three mines are currently operating: Olympic Dam, Ranger and Beverley; with several new mines to soon commence operations. Uranium mining and exploration activity is permitted in the Northern Territory, South Australia and Western Australia, while exploration alone is permitted in Queensland and New South Wales. While the industry is relatively small when compared with other commodity sectors, notably, coal and iron ore, in 2009, Australia's uranium exports—9,700 tonnes of uranium oxide concentrate—had a value of AUD$1.1 billion (World Nuclear Association 2011). This is expected to rise to 14,000 tonnes ($1.7 billion) by 2014, and the industry forecasts that, if barriers to its expansion were removed, exports could reach 37,000 tonnes per year by 2030, contributing an additional $17.4 billion to Australia's gross domestic product (Deloitte Insight Economics 2008).

Despite this positive forecast, the industry has had a troubled history. Significantly, government regulation and political impediments have hindered growth in the sector. Regulatory impediments include international and national supervisory agency requirements, environmental governance regimes, general mining laws and

regulation, and the outcomes of statutory social and/or environmental impact assessment, which have regulatory consequences. Political impediments primarily stem from the machinations of electoral politics, as evinced by the Northern Territory government's decision to withdraw its support for the Angela/Pamela joint venture project in order to maintain its parliamentary majority and the South Australian government's 2011 ban on mining in the State's uranium-rich Arkaroola region. Other political impediments include party platform positions, such as the Australian Labor Party's former 'Three Mines Policy' and, until recently, its ban on the sale of uranium to India; jurisdictional bans on uranium mining and exploration activity; civil society and activist opposition; and opposition by indigenous peoples to uranium developments on their lands.

This last point is emerging as a crucial barrier to the extraction of uranium, as the majority of uranium developments in Australia occur on or adjacent to the lands of indigenous peoples, and this trend is repeated across other uranium producing countries. Indigenous rights to control access to these lands and to receive benefits in return for access are increasingly being recognised in law; however, in the past, the industry has been accused of rights violations (Katona 2001).

The Uranium Industry and Indigenous Peoples

The relationship between uranium companies and Australia's indigenous peoples has been plagued by conflict and mistrust. The social and environmental legacy of the Ranger mine in the Northern Territory, which stems, in part, from the Traditional Owners' experiences of negative social impacts and violations of rights over several decades, has tainted indigenous perceptions of the industry across Australia (Graetz and Manning 2011). The industry's reputation was further diminished as a result the findings of the Commonwealth government's Ranger Uranium Environmental Inquiry, which recommended that the Ranger development be allowed to proceed despite opposition by the *Mirarr* Traditional Owners and the provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Fox 1977).

Indigenous opposition to uranium developments in South Australia, the Northern Territory and Western Australia has precipitated business risks for companies, including the mothballing of Cameco and Paladin's Angela/Pamela project and the development of the RioTinto-controlled Jabiluka deposit. Moreover, with evolving indigenous rights instruments, the need for companies to gain permission to access indigenous lands in the form of a social licence to operate has taken on increased legal and moral importance. In addition, the *Native Title Act 1993* and the aforementioned *Land Rights Act* contain a number of regulatory provisions to which companies must adhere. The recently ratified United Nations Declaration on the Rights of Indigenous Peoples, which contains provisions pertaining to free, prior and informed consent, will further influence companies' engagement policies with indigenous peoples in the future.

Despite past experiences, in recent years the relationship between industry members and indigenous communities has improved. Representatives of the *Martu* and *Adnyamathanha* communities in Western Australia and South Australia respectively have expressed confidence in the companies that have approached them with plans to develop deposits on their lands (Graetz and Manning 2011). Furthermore, the

industry's peak body, the Australian Uranium Association, has opened up an avenue for dialogue between industry members and indigenous leaders (Australian Uranium Association 2009) and has established a scholarship fund to support indigenous students who are undertaking mine-related courses at tertiary level (Australian Uranium Association n.d.). These small steps forward demonstrate industry's growing recognition that there are good business case arguments for changing current practice, and that business risks can be reduced, and opportunities enhanced, if companies attend to the social risk concerns of their indigenous stakeholders.

Current Practice: Social Impact Assessment

Current best practice in indigenous community engagement mandates the use of social impact assessment (SIA); however a number of commentators recently have pointed to the theoretical and practical deficiencies in SIA that hinder the achievement of successful development outcomes. Esteves *et al*. (2012) argue that SIA is still a 'poor cousin' to environmental impact assessment, and that SIA practitioners have 'insufficient influence in shaping project/development alternatives.' Perhaps this relates to limited thinking about the ways in which SIAs can be utilised to deliver benefits to those who have a stake in the outcome of a proposed development (Vanclay and Esteves 2012, Harvey 2012). Harvey (2012) also highlights the inability of current SIA processes to take into account free, prior and informed consent requirements. With regard to indigenous peoples, O'Faircheallaigh (2012) contends that, due to a 'history of dispossession and economic and political marginalization,' as well as past negative experiences of SIA, indigenous communities are wary of 'state-initiated or state-controlled regulatory processes including impact assessment.' Indeed, in the case of the Ranger and Olympic Dam developments, inadequate attention to the rights of the affected indigenous peoples and their social risk concerns resulted in reports of negative social impacts, as well as reputational damage to the developers and regulatory agencies (Katona 2001, The Flinders News 2009). Finally, Vanclay and Esteves (2012) argue that limitations in the current practise of SIA are evinced by 'stakeholder dissatisfaction' with SIA reports, the inability of SIAs to predict all likely impacts, the presence of residual impacts and operational stoppage time and reputational damage as a consequence of poorly executed SIAs.

In response to the failure of current SIA protocols to 'address the totality of potential consequences, especially political, cultural, and economic rights', a sub-literature on human rights impact assessment (HRIA) has emerged (Maassarani *et al*. 2007). HRIA 'incorporates the human rights rubric into the decision-making process attendant (sic) under-regulated operations of corporations', thus improving decision-making by 'assuring informed participation and empowering stakeholders' (Maassarani *et al*. 2007). An 'HRIA regime extends many of the main principles and methodologies animating SIA,' and therefore serves as a more 'comprehensive tool for improving corporate human rights compliance and decision-making, which simultaneously reinforces and fortifies the human rights system' (Maassarani *et al*. 2007).

However, being relatively new, there are concerns about HRIA's methodological rigour (MacNaughton and Hunt 2012). While HRIA is a step in the right direction, the proponents of stand-alone HRIA fail to address the broader themes of social and business risks, and their interconnections. Moreover, HRIA does not go far enough to

address collectively exercised indigenous rights and issues associated with complex negotiations between indigenous peoples and uranium companies. These complexities stem from, *inter alia*, past experiences, the nature of the commodity being mined, and perceptions of social risk associated with participation in the nuclear fuel cycle.

Conclusion: A New Approach

In light of the constraints associated with SIA and HRIA, this paper proposes the development of a new approach, which would better incorporate insights from social risk and business risk disciplines, and their interconnections, as well as theoretical and practical knowledge about indigenous rights. Indigenous people are increasingly cognisant of their rights, and the promulgation of indigenous rights instruments over the last 20 years has enhanced their bargaining position vis-à-vis uranium companies. If companies fail positively to respond to this new rights paradigm, they are unlikely to gain or maintain the important social licence to operate.

The approach suggested here would supplement the SIA/HRIA process, and, importantly, would result in a new stakeholder engagement process being embedded into corporate decision-making and government policy-making apparatuses. However, social risk is relatively under-theorised, especially as it pertains to the extractive industries, thereby necessitating more empirical and theoretical work to demonstrate its appropriateness as a prism through which to engage with indigenous peoples confronted with uranium developments. The recent thawing in relations between indigenous peoples and the Australian uranium industry arguably is attributable to the recognition of both indigenous rights and the business risk consequences of not getting engagement right. The importance of this nexus cannot be understated, especially as demand for uranium increases to fuel the next generation of nuclear power plants.

Bibliography

Australian Uranium Association, 2009. 17 February 2009 – Indigenous leaders, uranium industry establish dialogue. *Media Releases*, 17 February. Available from: http://www.aua.org.au/Content/170209MRLSIndigenousDialogueGroupEstablished.aspx [Accessed 8 January 2011].

Australian Uranium Association, n.d. Uranium industry supports young Indigenous men and women in tertiary education. *21u, Indigenous Scholarship Program*. Available from: http://www.aua.org.au/Content/Indigenousscholarship.aspx [Accessed 8 January 2011].

Biello, D., 2011. China's nuclear power plans unfazed by Fukushima disaster. *Environment 360*, 8 August. Available from: http://e360.yale.edu/feature/chinas_nuclear_power_plans_unfazed_by_fukushima_disaster/2432/ [Accessed 7 March 2012].

Deloitte Insight Economics, 2008. *Outlook for the Uranium Industry: Evaluating the economic impact of the Australian uranium industry to 2030*. Melbourne: Deloitte Insight Economics and the Australian Uranium Association.

Esteves, A.M. *et al*., 2012. Social Impact Assessment: The State of the Art. *Impact Assessment and Project Appraisal*, 30 (1), forthcoming.

Findlay, T., 2011. The Nuclear Energy Revival and Global Governance. In: M. Clarke *et al.*, eds. *Australia's Uranium Trade: The Domestic and Foreign Policy Challenges of a Contentious Export*. Surrey: Ashgate, 15-37.

Fox, R.W., 1977. *Ranger Uranium Environmental Inquiry: Second Report*. Canberra: Australian Government Publishing Service.

Graetz, G. and Manning, H., 2011. The Politics of Uranium Mining in Australia. In: M. Clarke *et al.*, eds. *Australia's Uranium Trade: The Domestic and Foreign Policy Challenges of a Contentious Export*. Surrey: Ashgate, 137-163.

Harvey, B., 2012. Foreword: SIA from a resource developer's perspective. In: F. Vanclay and A.M. Esteves, eds. *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*. Cheltenham: Edward Elgar, xxvii-xxxiii.

Jamard, M., n.d. Fukushima Response: Areva. World Nuclear Association. Available from: http://world-nuclear.org/fukushima/areva.html [Accessed 27 March 2012].

Katona, J., 2001. Mining uranium and indigenous Australians: The fight for Jabiluka. In: G. Evans *et al*., eds. *Moving Mountains: Communities Confront Mining and Globalisation*. Bondi Junction: Mineral Policy Institute, 195-206.

Lovins, A.B., 2011. Foreword. In: M. Schneider *et al*., *The World Nuclear Status Report 2010-2011: Nuclear Power in a Post-Fukushima World: 25 Years After the Chernobyl Accident*. Washington: Worldwatch Institute.

Maassarani, T.F. *et al*., 2007. Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment. *Cornell International Law Journal*, 40, 135-169.

MacNaughton, G. and Hunt, P., 2012. A human rights-based approach to social impact assessment. In F. Vanclay and A.M. Esteves, eds. *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*. Cheltenham: Edward Elgar, 355-368.

Nicolet, J. and Underhill, D., n.d. Global Trends in Uranium Production and Demand. *International Atomic Energy Agency Bulletin*. Available from: http://www.iaea.org/Publications/Magazines/Bulletin/Bull401/article4.html [Accessed 7 March 2012].

Srivastava, S., 2011. India's Rising Nuclear Safety Concerns. *Asia Sentinel*, 27 October.

The Flinders News, 2009. Uranium mine called 'World's worst practice'. *The Flinders News*, 21 August.

Vanclay, F. and Esteves, A.M., 2012. Current Issues and Trends in Social Impact Assessment. In: F. Vanclay and A.M. Esteves, eds. *New Directions in Social Impact Assessment: Conceptual and Methodological Advances*. Cheltenham: Edward Elgar, 3-19.

World Nuclear Association, 2011. Australia's Uranium | Uranium Mining in Australia. Available from: http://www.world-nuclear.org/info/inf48.html [Accessed 14 March 2011].

World Nuclear Association, 2012. After Fukushima: Nuclear power will continue to expand, 8 March. Available from: http://world-nuclear.org/uploadedFiles/org/PageMaker/Fukushima/WNA_Press_Release_08_March_12.pdf [Accessed 27 March 2012].