

# Utilizing Aboriginal Land in the Northern Territory for Economic and Human Development

Don Fuller, Susan Bandias, and Darius Pfitzner

## Introduction

The Northern Territory Land Rights legislation sought to translate into legislation the concepts of consultation, authority and decision making occurring in traditional land tenure systems (Finlayson 1999 cited in Rowse 2002:111). Given the complexity of such systems and the wide diversity between different Aboriginal groups, this has proved to be a particularly difficult undertaking. The principal representative mechanism in Woodward's recommendation to establish the Northern and Central Land Councils was that the traditional owners of any portion of land would be represented by a wider regional land council. This land council would be obliged to ask their consent before approving any use of the land proposed by a non-owner. In addition, the Land Council was obliged to ensure that any Aboriginal community or group affected by the proposed change in land use be consulted. This requirement for wide consultation while admirable in intent, has led to intractable conflict and debate in many situations, concerning the proposed utilisation of land by even the traditional owners of such land.

Through the application of the *Aboriginal Land Rights (NT) Act 1976* (ALRA, N.T. 1976), Aboriginal people currently own around fifty per cent of the Northern Territory, or 669,000 km<sup>2</sup>. Indigenous aspirations for ownership of land have often been characterized as a desire for recognition of prior ownership and to reassert cultural and traditional ties to the land. However, it is also seen as providing important prospects for the development of economic enterprises, leading to a decrease in welfare dependency, as well as leading to improvements in important areas such as health and housing (Fuller and Parker 2002). The degree of dependence upon public sector expenditure in the form of welfare payments is very high in Indigenous communities. A number of commentators have drawn attention to the major negative economic and social consequences of such high welfare dependence for Aboriginal people (Pearson 2000, Fuller et al. 2007, Beadman 2004, 2009, 2010).

Pearson (2000) for example, has pointed to the manner in which welfare payments have placed many Indigenous Australians in a poverty trap such that "passive welfare" has undermined culturally acceptable norms of behaviour and traditional values and relationships within Indigenous communities. Pearson defines passive welfare as transfers from Federal and State budgets to individuals and families, *without reciprocation*.

*When you look at the culture of Aboriginal binge drinking you can see how passive welfare has corrupted Aboriginal values of responsibility and sharing,*

*and changed them into exploitation and manipulation. The obligation to share has become the obligation to buy grog when your cheque arrives, and the obligation of non-drinkers to surrender their money to the drinkers. Our traditional value of responsibility has become the responsibility of non-drinkers to feed the drinkers and their children when the money is gone. (Pearson 2000)*

Pearson (2000) argues that passive welfare has several aspects which constitute a “passive welfare paradigm”. First, passive welfare is not based on reciprocity and there is an absence of mechanisms designed to promote rational and constructive behaviour by either the recipient or the providers. Second, welfare is intimately involved with methods of governance. The welfare mode involves established governing institutions both making decisions, and taking action, on behalf of Indigenous Australians. Thirdly, welfare leads to a particular mentality where people are prepared to accept the economic relationships and methods of governance.

Raising the living standards of Indigenous Australians, especially in Northern Territory remote communities, is one of the major challenges facing Australia today (Briant 2004:5). There are a large number of people living in communities typified by conditions of poverty, poor health, high crime, alcoholism and other forms of substance abuse. Many have been caught in a destructive cycle of welfare dependency, incarceration and youth suicide, all of which have exacted severe suffering on Aboriginal people and their communities. As anthropologist Peter Sutton has noted, there is little logic in remaining outside contemporary social and economic systems for Indigenous Australians (cited in Beadman 2001:11). This does not mean however, that Indigenous Australians need to relinquish their valued cultural traditions. What is needed is a *shared responsibility* in development. The individual and institutional actors of mainstream economic development need to be brought to bear in a manner which assists both Indigenous and Non-Indigenous people. Such institutional and market based economic actors have shown themselves to be remarkable adaptable to a range of social and cultural backgrounds.

It has been argued for some time that there will be an increased call for Indigenous people to use their land in a manner which increases Indigenous economic and social well-being and also the well-being of the wider Australian community (Jones 1998). Most Indigenous communities have clearly indicated that they agree with such a process, provided certain important cultural and spiritual concerns are safeguarded. However, it needs to be recognized that land is only one of the factors of production necessary for successful economic development. There will also be an important need to provide capital and infrastructure and to undertake the necessary investment in education and skills development – including the development of entrepreneurial and business skills (Fuller and Parker 2002).

Other influential researchers have been more pessimistic about the possibilities of Aboriginal Australians utilizing their land assets to enter the mainstream market economy. While Fuller et al (2005, 2007), Pearson (2006) and Beadman (2009, 2010) see the use of Aboriginal assets as central to the development of employment and economic enterprises and a private

economy, Altman (2003:1) for example, has asked what economic development actually means in the context of remote Aboriginal communities, in the absence of significant market or private sector economies? Altman (2004:520) argues that first and foremost the perceived problem with Aboriginal economic development is the absence of a private market in which economic transactions can occur. However, both Beadman (2009:10) and Fuller et al. (2002, 2005), argue that such a situation would change quickly if the substantial assets of Aboriginal land could be made available to the wider economy via leasing arrangements and if available employment and training and small enterprise opportunities could be established and taken up by Aboriginal people. To take up such opportunities, pricing signals need to be effective within the labour market which requires a reduction in welfare payments to encourage employment.

Sen (2000:130) points to the importance of the market for determining employment incentives, and ‘the effects that a system of public support may have in discouraging initiative and distorting individual efforts’. According to Sen (2000:130), both the need for fiscal prudence and the importance of incentives – deserve serious attention.

Any pure transfer – the redistribution of income or the free provision of a public service – can potentially have an effect on the incentive system of an economy. For example, it has been argued particularly strongly that generous unemployment insurance can weaken the resolve of the jobless to find employment, and that it has actually done so in Europe.

Given the importance of equity arguments with regard to government welfare arrangements, there will be a difficult tension between fiscal prudence and economic ‘efficiency’ requirements compared with equity considerations, particularly where there is a relatively large amount of expenditure involved. This is certainly the case with Indigenous people in Australia.

Sen (2000:130) argues that ‘Even for free medical care and health services, or free educational facilities, questions can be raised regarding (1) the extent of the need for these services by the recipients and (2) the extent to which the person could have afforded to pay for these services himself (and might have done so in the absence of free public provisioning). Sen further suggests that those who see entitlement to such services as health and education as an inalienable right of citizens would tend to see such questions as wrongheaded and even perhaps as a distressing denial of the normative principles of a contemporary “society”. While such a position may be defensible up to a point, given the limitation of economic resources, there are serious choices involved, which cannot be dismissed on the grounds of some pre-economic “social” principle. The incentive issue has to be addressed because the extent of social support that a society is able to provide must depend on costs and incentives.

In circumstances where employment opportunities are made available and pricing signals act to encourage rather than discourage labour market participation, Beadman (2010) and Fuller et al, (2007) contend that a significant private sector market would take hold in regional

communities. While Altman (1996) argues that such regions often have little economic worth, this according to Fuller et al. (2005, 2007) is not likely to be the case, as exemplified by relatively remote regions within remote Queensland and Western Australia. Within such regions the industries of mining and tourism are currently contributing large amounts to the wealth of such regional communities and Australia as a whole. In addition, as recognised by Altman (2004), emerging industries in the environmental areas, such as the use of land for the purposes of carbon sinks and fire management in order to reduce greenhouse gas emissions are likely to become increasingly important.

Many remote Indigenous communities are deficient in terms of available small enterprises to service their needs. Beadman (2010) refers to this as the ‘enterprise gap’. This is defined as the difference between the number of enterprises a relatively developed community supports compared with those presently operating in an Indigenous community of the same size. While there may be different stages of development, in different communities, the concept of the ‘enterprise gap’ assists identify the enterprise and employment potential of a community. Potential barriers to enterprise development can then be examined. Previous research has identified a number of recurring themes with respect to Indigenous aspirations to commence micro and small enterprises within their communities (Fuller and Parker 2002, Fuller, Howard and Buultjens 2005). These include an interest in consumer goods and services e.g. bakeries, laundromats, furniture retailing, meatworks, community gardens, tourist accommodation and broader industries including environment management, tourism and forestry. Given the data available on township populations and an evaluation of per capita incomes, it is also possible to estimate the potential expenditure on consumer goods and service businesses that could be sustained in each town.

Any economic development strategy concerned with creating employment opportunities within growth towns should also examine those associated with the public sector and associated government expenditure from recurrent funding and direct grants. Opportunities are available in areas additional to the relatively large number of jobs available in education, health, defence and emergency services, police, justice and local government. Governments also need to provide proactive assistance in supporting new private sector business start-ups and assisting attract outside interest and investment in business development. Employment opportunities also exist in larger scale industry developments in proximity to growth towns within the areas of Mining, Forestry, Fishing and Pastoral development – for example. These areas have the potential to create a relatively large number, as well as a wide range, of employment opportunities within growth towns of the Northern Territory.

Altman (2004) argues that Aboriginal people choose to live in remote communities mainly for non market reasons and because of continuing links with country. However many Aboriginal people live within communities that have been established for historical purposes, either by Church or government, often distant from ancestral lands. To deny Aboriginal people access to economic and human development options available to other Australians, would appear to abdicate an important responsibility, - that of preparing and assisting people

cope and adjust to the inevitability of economic and social change. To refuse to recognise the inevitability of such change further disenfranchises Aboriginal people from economic partnerships fundamental to change and leads to increased social dislocation and marginalisation. In addition, substantial national budgetary pressures are likely to place increased pressure on Aboriginal people to contribute productively to the economy through the productive utilisation of land as well as labour in such regions.

## **Aboriginal Economic and Human Development**

Duncan (2003:309) argues that the “terrible state of Aboriginal community living standards, particularly in rural areas (as shows up in social indicators such as life expectancy, infant and maternal mortality, and the incidence of disease), is primarily the result of a lack of economic development in these communities.” He points out that this is a contested premise and that ‘developmentalism’ is almost used ‘as a term of abuse’ in some social science areas in Australia, in discussions relating to Indigenous issues. However, Duncan argues that the past emphasis on welfare policies has not led to any noticeable improvement in their well-being, even though an estimated 90 per cent of the income of Aboriginal communities in the Northern Territory comes from the Commonwealth and Territory Governments (Pritchard and Gibson 1996).

There is much evidence globally, according to Duncan, that substantial improvements in living standards for poor communities occurs, initially through improving infrastructure related to health. The next stage of human and economic development in less developed communities usually occurs through increased access to income-earning assets such as education and land and the opportunities to access other markets. The important question is how to set these processes in place and sustain them. It is important to recognise that the approach to improving Aboriginal economic and human development in Australia has been different to that adopted in developing countries. An important reason for this is that Aboriginal Australians make up only a small percentage of the total population of what is a relatively prosperous country. This may lead to the ‘easy way out’, which is to expend relatively large amounts of money in an attempt to solve the problems rather than recognise the more complex interrelationships discussed later in this paper, that are necessary to achieve development and growth. Associated with this approach to Aboriginal development, is a dependence on the redistribution of income through welfare arrangements. This approach it may be argued, is also grounded in relatively widely held Australian notions of democratic socialism, which give preference to government centred solutions compared to those which rely on individual effort and enterprise.

The theoretical understanding of the economic growth process and the implementation of economic development strategies have undergone substantial changes over the last fifty years (Duncan and Pollard 2002). Growth theorists such as Harrod (1939), Domar

(1946) and Solow (1956), argued that poverty in societies was due largely to a lack of financial and physical capital. While important, other variables were also later seen as essential. For example following Becker (1964), economic growth theory and development recognised the importance of human capital and the significance of education and health in the realisation of human development and growth.

In terms of the discipline of economics, 'development' has usually meant the capacity of an economic system to increase employment and the production of goods and services, over time at efficient levels of resource usage (World Bank Group 2004). A number of less developed nations achieved growth targets established by the United Nations during the 1960s and 70s. However, the living standards of most of the population remained unchanged. As a result, during the 1970s economic development was redefined by the need to directly impact particular issues such as the inequality of the income distribution, poverty and unemployment (Todaro and Smith 2009).

Within the context of Indigenous communities in Australia, it would also seem necessary to include the criteria of health and education. As Todaro (1994) argues, it is necessary to understand the underdevelopment in a consciously experienced state of deprivation. This experience is likely to become more intolerable as Indigenous people acquire more information about the economic benefits available to Non-Indigenous society but are unable to access the technical, educational and institutional means for reducing poverty, unemployment, disease and misery. Any reasonable measure of economic development then, needs to also include changes in social indicators such as nutritional levels, health status, literacy and numeracy levels and educational participation, as well as environmental indicators. In addition, questions of equity involving income distribution become important within Aboriginal communities. In the latter part of the twentieth century, the work of North (1990), Olson (1996) and De Soto (2000) focussed on the conditions necessary to create the required institutional frameworks that would allow human capital, when combined with financial and physical resources to lead to improved development outcomes. But as North and Olson point out, changing and creating primary economic and social institutions within a society is difficult, as such change requires fundamental shifts in the political balance of power within societies.

Altman (2003) argues that the Indigenous local and regional economies found in Australia are unusual in a First World context. He calls them 'hybrid economies', with customary (or Aboriginal), market (or private) and state (or public) sectors interacting in different ways. Altman argues that official statistics show that remote Aboriginal economies have been in apparent crisis, because in his view, a crucial element, the customary economy, has been overlooked. Altman bases this argument on research undertaken in central Arnhem Land with Kuninjku harvesters in 1979–1980. At that time with welfare just commencing, he found that the customary sector accounted for around 64 per cent of the goods and services of the economy and welfare payments were responsible for only 26 per cent.

In research undertaken with the same people at the same places in 2002–2003, it was further estimated that with full incorporation into income security (Community Development Employment Projects and Family Allowances) these proportions had changed and the customary sector had almost halved in terms of relative importance. At the same time, payments from the State, largely in the form of welfare payments had more than doubled. While Altman (2004) argues the customary sector remains important, in our view a clear outcome of the research is to highlight the relatively rapid rise in welfare payments and the decline of the customary sector. This is a finding which is supported by research being undertaken by Fuller and Bandias on the Tiwi Islands. There has been a sharp fall in the significance of the customary economy due to a decline in younger Tiwi who are interested in hunting and gathering activities as a food source along with a sharp rise in dependence on welfare payments and an unwillingness to take advantage of available employment and training opportunities, because of the availability of relatively generous welfare payments.

Development is likely to be painful, involving changes to cultural and social structures, attitudes and institutions, as well as increases in employment and the output of goods and services. Within this context it is important that Indigenous individuals and organisations remain involved and committed to the pace and direction of such change. Following Goulet (1971) and Sen (2000), three main requirements should serve as the basis for understanding the essentials of development. These key requirements are:

- Life-sustenance
- Self-esteem, and
- Freedom, involving an increase in the range of choices available to individuals.

These represent fundamental human needs that find expression in almost all societies.

## **Commercial Dealings Involving Aboriginal Land**

Following election of the Labor government in 1972, Prime Minister Whitlam announced the establishment of an Aboriginal Land Rights Commission under Justice Woodward. The main purpose of this Commission was to enquire into the granting of land rights in the Northern Territory. Woodward was asked to design a process whereby the land rights of Indigenous Australians in the Northern Territory could be recognized. He set the main objectives of this task as ‘the doing of simple justice’ and amongst other things as ‘the provision of land as an essential resource to a people who are economically depressed and disadvantaged’ (Brennan 1993).

Mindful of the experience of Indigenous peoples in North America relinquishing title to their recently conferred lands, the Commonwealth Government was of the view that such conferred title needed to be very secure. Freehold land is able to be sold freely and mortgaged so that it is subjected to other interests. It is a key resource in economic activity and development because of these characteristics and the fact that it can be combined with other resources, such as capital and labour, to produce goods and services. Accordingly, Non-Indigenous people regard freehold as the most desirable form of land title available. It is important to note that both the *Aboriginal Land Rights (N.T.) Act 1976* and the *Native Title Act 1993*, both clearly envisage the use of inalienable Aboriginal freehold land for commercial purposes. The *Aboriginal Land Rights (N.T.) Act 1976* for example, enables the grant of estates and interests in Aboriginal Land to others, subject to certain conditions.

The *Native Title Act 1993*, prescribes the holding of Native Title, but the regulations also prescribe the circumstances in which rights and interests may be surrendered or transferred. In contrast with the *Aboriginal Land Rights (N.T.) Act 1976*, ministerial consent for these processes may not be required. Thus, within the *Aboriginal Land Rights Act* and the *Native Title Act*, estates and interests in the freehold land, short of the fee simple itself, (i.e. the absolute possession of the land), are able to be granted, transferred and mortgaged, provided there is compliance with the necessary provisions. However, in practice, it has often been difficult for an Indigenous individual, or family group, to access land on which to establish a business when land is owned or under the control of either a community or a group of traditional owners. For example, it has been extremely difficult for individuals to own community stores in the Northern Territory as these are normally located on land held under traditional land tenure. Often collective land ownership has meant that joint ventures with Non-Indigenous companies have had to be with Indigenous communities or organisations rather than with individuals or families. This has been a major constraint to the use of land as a basis for successful entrepreneurial ventures. In addition, royalties on mining and fishing and other resources which are paid communally, inevitably lack accountability and transparency and result in corruption with a few ‘big men’ appropriating most of any benefits paid (Hughes and Warin 2005).

The complexity of the provisions of the Land Rights Act has inhibited the use of Aboriginal Land for residential, commercial or business purposes. The Aboriginal Land Rights Act requires the Land Trust administering the land to be directed by the Land Council. The Land Council is required to satisfy itself that the traditional Aboriginal owners understand the nature of the proposed transaction and consent to it. Given the political polarisation which has occurred within Land Councils this has often meant that it is very difficult to receive approval from Land Councils to utilize Aboriginal Land in commercial activities, particularly where this requires approval by a full meeting of the relevant Land Council. It is argued that such political dysfunction within Land Councils has occurred principally due to a lack of representation of Indigenous groups within a region (Fuller et al. 2007). Those not represented within the power structure of the Land Council argue that their stated requirements for the use of their land for commercial purposes often does not receive due

regard by existing Land Councils. Under the Aboriginal Land Rights (N.T.) Act 1976, where the proposed grant is to the Commonwealth of Territory or any other person, Ministerial consent is required when the term exceeds ten years.

In the case of a proposed grant to an Aboriginal, Aboriginal Council or Incorporated Aboriginal Association, consent is required when the term exceeds twenty-one years. This further complicates the use of Aboriginal land for economic use. Largely as a result of the difficulty of acquiring access to land for commercial purposes, home ownership is virtually unknown for the high proportion of Aboriginal residents of the Northern Territory who live on Aboriginal land. As Beadman (2004) points out, Aboriginal Australians have become 'land rich but dirt poor'. In this context native title law has been accused of preventing Aboriginal Australians from owning assets on their own land (Robinson and Elks 2009), where it is claimed that complex negotiations over native title have stalled the progress of a Queensland government scheme designed to enable home ownership in Cape York communities. According to Robinson and Elks, more than 18 months after the Bligh government introduced legislation designed to provide secure land tenure and enable the purchase of homes on remote communities, not one home loan has yet been signed, despite many willing applicants because of difficulties involved in negotiations with Land Councils.

According to Horrigan (2003), Native title's human rights dimensions can cut across the commercial dimensions. As a human rights issue, native title is important to Australia's human rights obligations under international human rights instruments ratified by Australia, such as the International Covenant on Civil and Political Rights and the International Convention for the Elimination of All Forms of Racial Discrimination. Internationally, native title and Indigenous land rights are an integral part of the framework of human rights for international trade and investment standards in developments affecting local communities. However, native title produces increased legal and financial risk management for businesses. These contexts include invalidity of title, compensation and the ability to raise finance. Native title affects financial institutions as providers of finance for business investment purposes.

The Native Title Act and Aboriginal Land Rights Act, both place limitations on using land as a security for debt financing. Thus, inadequate title audits or financial and security assessments with regard to potential impacts of native title on the twin commercial requirements of security of title and compensation liability are likely to cause commercial difficulties Horrigan (2003:22). While Horrigan argues that more than a decade after native title's recognition in Australia, the legal regime which promised much has delivered little to Indigenous people, Beadman (2010) and Fuller (2005, 2007) argue that the primary cause of this is due to the commercial constraints enshrined in both the Native Title and the Aboriginal Land Rights Act.

In the Review of the *Aboriginal Land Rights (Northern Territory) Act 1976*, Reeves (1998) stated that the definition of Aboriginal traditional owners has a number of key elements.

These include the notions of local descent group, common spiritual affiliations, primary spiritual responsibility and entitlement to forage. The concept he argued has not been confined to an exogamous descent group which is patrilineal and whose members exercise a primary spiritual responsibility for a clan estate. Decisions have recognized that a local descent group may be matrilineal or even ambilineal, that it may include *managers* of the land (known as kurtungurlu or djunggayi) as well as owners (kirda or mingirringgi). This has greatly increased the complexity of the need to negotiate provisions in the Land Rights Act and made it far more difficult to reach agreement between the various often conflicting views of individuals and groups concerning the use of land for economic purposes.

Reeves (1998) pointed out that an overemphasis on the notion of ‘traditional owners’ at the expense of other Indigenous individuals and groups within a community or region, has led to a number of serious difficulties in moving to economic and social justice for Aboriginal people via land ownership in a contemporary society. Such difficulties have resulted in the exclusion of Indigenous people, who are not regarded as Traditional Owners, from decision making regarding the use of land and from the receipt of substantial revenue streams in the form of royalties and benefits from leasing of land. Such control of decision making by a complicated and questionable definition of what constitutes a ‘traditional owner’, has often inhibited the development of economic enterprise by individuals and groups who are not regarded as ‘traditional owners’, of a particular area on which a town community has been historically established. In this sense, the clear preference given to traditional owners by the Act, prevents available resources from achieving their most efficient and effective allocation and is akin to the economic results associated with monopoly – in particular significantly reduced levels of economic output at far higher prices. This also results in economic and social outcomes more closely identified with a number of less developed and caste based societies. These social and economic outcomes are not tolerable in contemporary Australian society.

Disputes concerning Indigenous traditional ownership have been very common. Such disputes are very costly in terms of resources as well as being socially costly to Aboriginal people and the wider Australian community. The common and difficult nature of such disputes has been clearly recorded by Morton (cited in Reeves 1998).

*Since going to work with Arrente people in Central Australia in 1981, I have assisted the Central Land Council with determining the traditional ownership of five areas of land ... In none of these cases (although some of them overlap) have I failed to encounter at least one dispute between Aboriginal claimants, ...*

The senior anthropologist from the Northern Land Council, Mr. Geoff Stead stated;

*At least one quarter of the work effort of four staff anthropologists at the NLC is currently expended in handling disputes over land. The last five years has seen an increased number of disputes accelerating to a serious stage, especially disputes that involve the proponents hiring outside legal assistance (cited in Reeves 1998).*

Langton (1999) argues that as the Indigenous desire for land and sea ownership has increased and received legal recognition, the public perception that Indigenous ownership is generally prone to conflict acts as a major impediment to the establishment of business and other institutional regimes and partnerships, which are required to efficiently and effectively manage such resources. Thus, joint-venture or joint management arrangements are increasingly used within the mainstream, market economy to facilitate economic and commercial development. This may for example, be with a supplier of finance such as a financial intermediary. It is the case that any joint-venture partner to an Indigenous business located on Indigenous land, will seek to have a form of tenure, more secure than that of a licence over a project, such as a tourist facility.

As a result, Reeves argued that the Aboriginal Land Rights (NT) Act 1976, be reformed *inter alia* to:

1. provide for representative bodies at the regional level to make decisions about the use of their lands,
2. allow representative bodies to accept decision making processes that accord with their traditions, as they interpret them; and
3. provide a system of dispute resolution that accommodates Aboriginal traditional practices and processes and is accessible, inexpensive and effective.

It seems particularly unfortunate in the face of rapidly escalating social and economic problems within Aboriginal communities in the Northern Territory that such advice has not been acted upon by the Commonwealth Government.

### **Township Leasing in the Northern Territory**

In May 2009, the Northern Territory Chief Minister and Indigenous Policy Minister, announced a policy called *A Working Future*, (N.T Government Media Release 2009), aimed at developing twenty towns in the Northern Territory in an attempt to better coordinate the delivery of infrastructure, services and the economic development in remote areas of the Northern Territory. A main purpose of the policy was to develop 'real jobs' for Aboriginal Australians. *A Working Future*, was designed to refocus the Government's Indigenous funding with \$160m to be expended over five years through the Remote Service Delivery National Partnership Agreement with the Federal Government. This would be at the same time as the expenditure of \$300m by the Northern Territory Government under the *Close the Gap*, initiative.

A Territory Co-ordinator General for Indigenous services, was appointed to work with the Federal Government to ensure the delivery of remote services occurred in an effective and targeted way. An integral element of the economic development strategy proposed for the

Growth Towns included encouraging local people to own homes and businesses by working with traditional land owners to secure leases on Aboriginal land to facilitate private investment. In his first Report Beadman stated that in his view, township leasing ‘...is the most fundamental issue to securing outcomes envisaged under both the Remote Services Delivery and Working Future ...policies’ (Beadman 2009:29). Beadman saw such Township Leasing as an important means of overcoming some of the serious constraints to Aboriginal economic development, imposed by the *Aboriginal Land Rights (Northern Territory) Act 1976*. ‘I have long held the view, attested to by various written articles, that one of the major obstacles inhibiting business development (and home ownership) in remote Aboriginal communities is the *Aboriginal Land Rights (Northern Territory) Act 1976*.’ (Beadman 2009:29).

The possibility of township leasing arrangements with traditional owners for township areas on Aboriginal lands enables security of tenure for private sector investment, fundamental to sustainable economic development. Beadman and others (See Fuller and Parker 2002, Fuller, Howard and Buultjens 2005), saw no other means of explaining the unequal development that existed either side of the boundaries of Aboriginal land. This, in combination with generous welfare benefits has led to significant problems of human and economic development for Aboriginal people located on Aboriginal lands. Altman (2003:1) however, is of the view that the absence of market or private sector economies explains in part why these communities exist. He further indicates that ‘while orthodox economic theory might suggest that Indigenous residents of such communities should migrate elsewhere to engage with the market economy, it is highly contestable how effectively they would compete for employment, owing to historic legacy.’

There are then, two crucial policy requirements for Indigenous human and economic development as viewed by Beadman and Fuller. First, the preconditions need to be established for economic development by improving human and physical capital and identifying relevant employment and business opportunities. Second, once employment opportunities are generated, they need to be taken up by Indigenous people in a move from welfare dependency to paid employment. In economic terms, there will be an important need to remove current labour market signals based on welfare payments, that provide a significant disincentive to work. Such pricing signals are likely to have serious implications for social and human development and result in large scale individual and social costs.

Both the Commonwealth and Northern Territory Governments made it clear that the very large expenditure upon infrastructure and assets involved in *Closing the Gap* in Indigenous disadvantage would be conditional upon one Government or the other, obtaining security of tenure over the assets built upon the land on which expenditure would occur, in order that there would be some accountability for the expenditure of government monies (Beadman 2009). It was thought by those drafting the *Aboriginal Land Rights (Northern Territory) Act 1976* that, even though townships had been built on land owned by particular Traditional Owners, it would be appreciated by all that these townships had been established over time,

for the benefit of the wider population resident at that location, and not for the exclusive benefit of the Traditional Owners of that country. However, this has not been the case and Traditional Owners, often not resident in a particular town, have asserted their rights under the Act, in relation to town development, often at the expense of economic and human development requirements and responsibilities for the wider regional and Aboriginal community. As a result changes to the *Aboriginal Land Rights (Northern Territory) Act 1976*, were made in 2007 to allow for Township Leasing under a new section 19A. The Northern Territory Government declined to establish a statutory entity to take up the function of leasing remote townships. As a result, the Australian Government created its own Statutory Office of the Executive Director of Township Leasing (EDTL). This scheme envisaged the EDTL holding a head lease over a town, and subleasing land and assets to Shire Councils, government agencies, private individuals and for private sector commercial investment. The EDTL is now holding title to townships in the jurisdictions of the Tiwi and Anindilyakwa Land Councils, including the Territory Growth Towns of Nguiu, Umbakumba and Angurugu. To date the Northern Territory Government has played a passive role in the negotiation of the township leases in these areas (Beadman 2009).

### **Current Problems Associated with Township Leasing**

One of the main difficulties associated with the Township Leasing model is that the Northern Territory Government has failed to establish the required Township Leasing statutory authority, as a result of on-going debate concerning the merits of the model. As a result, the Aboriginal Land Rights Act was amended to include a provision that the Commonwealth could establish such an entity. In 2007, the Commonwealth Government created its own 'Executive Director of Township Leasing'. The main problem with this arrangement is that the Northern Territory Government is not in a position to control the important process of Township Leasing. This is likely to have an important impact on the economic development of Growth Towns. Township Leasing continues to require the relevant Land Trust to be directed by the relevant Land Council to grant a Township Lease, which has the consent of the Traditional Owners and has been approved by the Commonwealth Minister. If a Land Council is ideologically opposed to Township Leasing, or sees Township Leasing to be of relatively low priority, it is difficult to commence the complex negotiations required by Township Leases. Three years after the legislation was passed, there is not a single Township Lease that has been granted in the mainland areas of the Northern Territory. In the three *Territory Growth Towns* where Township Leasing has been established (Nguui on the Tiwi Islands and Angurugu and Umbakumba on Groote Eylandt) the problems of a restrictive head lease have emerged. In an analysis of the Township Lease at Nguui for example, the Commonwealth Bank has found that the documents do not provide that platform for investment envisaged by governments (Beadman 2010:74). This is a serious constraint to economic and urban development.

In addition, the ability of leasing arrangements to facilitate economic and urban development depend to a large extent on the way in which the leases are to be administered. In order for a

market to operate successfully, parcels of land should be independently valued and a ‘one-off’ payment charged to purchase the sub-lease. This guarantees the essential requirement of security of tenure, essential for investor security. Rental arrangements on the other hand does not provide the necessary conditions of security which serves to restrict investment in land and the establishment of a commercial property market where land can be bought and sold, based on security of tenure. Township Leasing on Aboriginal Land is essential for establishing the foundations for a secure form of land tenure to underpin private sector investment, commercial transactions and economic development. To date, the progress in securing long term leases by the Northern Territory government has been inadequate.

## **Conclusion**

Following the intervention by the Commonwealth into Aboriginal communities in 2007, five year leases were acquired by the Australian Government over townships. Some researchers argue that the Commonwealth government has other main motivations for the introduction of Township Leasing on Aboriginal Land. According to Altman (2007), the Northern Territory intervention started with an unclear focus and eventually settled on 73 prescribed communities with populations over 200. Altman argues that the compulsory acquisition of township leases is designed to dilute land rights and that any attempt to expand the potential for commercial development, will dispossess traditional owners of their land. It is argued by Altman and others (Donald 2007, Turner and Watson 2007) that there is considerable scope for viewing such measures as a ‘trojan horse’ to further dispossess Aboriginal land owners.

It is argued that the approach to Indigenous welfare reform undermines the pursuit of self-determination and self-management. Hinkson (2007) has argued that ‘the figure of the innocent child’ has provided the justification for the replacement of the Community Development Employments Program with a responsibility for the private sector and public sector to partner with Indigenous peoples to provide employment opportunities. According to this analysis the figure of the innocent child has also be used by the Commonwealth Government to replace the kinship-based collective ownership that distinguishes Indigenous land title with market based, individual home ownership (Gregg 2007) and the intention to incorporate Aboriginal people into mainstream employments and training opportunities and to reduce the dependence of Aboriginal people on welfare payments.

However, Beadman (2004:23) has attacked such attempts to justify the relevance of communal ownership interests.

*And when those royalties are paid to an incorporated cooperative to support an array of community owned enterprises managed often by people with questionable ethics, who are usually under little scrutiny, and to the extent they then use a distribution of royalties to individuals to curry favour, things often go awry. I will leave it to others, particularly the descendants perhaps some generations from now, to pass judgement on what has been*

*achieved by the receipt of many hundreds of millions of dollars in royalties paid in the last couple of decades. My reason for raising the issue here is to make the point that cooperatives/incorporated associations are ineffective vehicles to foster Aboriginal advancement. Ask how many locals have taken up jobs in the businesses. And those businesses have certainly not been safe investments. Nor has the distribution of royalties to individuals, along with continued receipt of welfare benefits, done much for personal motivation in terms of pursuing educational qualifications or employment opportunities.*  
Beadman (2004:23)

In an earlier research paper Altman (1990) enunciated his position with respect to economic development upon Aboriginal Land. He argued for example (Altman 1990: 14) that ‘most land transferred to Aboriginal interests is of marginal commercial value. This is despite considerable evidence to the contrary (Fuller et al. 2007) and the fact that Aboriginal land now constitutes around fifty per cent of all the land area of the Northern Territory. Much of this land is highly sort after for economic purposes such as agricultural, pastoral, horticultural developments, mining and tourism. There are many towns and communities with sufficient expenditure capacity to support a range of small enterprises.

Altman (1990:15), further argued that ‘a major problem that Federal Government will face is that a significant proportion of Aboriginal land owners are tradition-oriented and do not seek incorporation in the mainstream economy.’ This statement, not supported by empirical findings, contradicts much more recent research and policy documentation (Pearson 2000, Fuller et al. 2005, Hughes and Warin 2005, Beadman 2009, 2010), which finds that ‘tradition-oriented’ Aboriginal Australians seek a far better life for their children, than they have endured through the economic utilization of their lands. Beadman (2009, 2010), Pearson (2000) and Fuller et al. (2005), counter that there is little point in Aboriginal people in the Northern Territory being ‘land rich but dirt poor’. Rather, they see the lack of economic development and opportunity as the root cause of the unacceptable levels of social inequality – including drug and alcohol dependence, poverty, infant mortality, child abuse, violence, and life expectancy. To these writers, bringing the factor of production land, into productive use is fundamental to economic and human development and that in the face of such injustice and social inequality, it makes little sense to discuss rights in the context of large tracts of unused land.

Against such challenges the arguments of Altman et al. according to Cohen (2007), appear to rest in the realms of the ‘noble savage’. In an article in *The Australian* (2 July, 2007), writing on the intervention by the Commonwealth Government, former Labor Party Federal Minister, Barry Cohen, pointed out that given the disturbing social and health problems evident in Aboriginal communities ‘action was what was needed’. He criticised what he called ‘the usual suspects (who) trotted out the usual epithets of racism and paternalism, with the silliest suggestion being that this was a grab for Aboriginal land.’ Cohen (2007) then went on to point out that the problems faced by Aboriginal communities are not unique to Australia and that these had previously been discussed by Maori author, Alan Duff (*Once Were Warriors*).

Cohen quoted Duff, "I have been appalled at the notion that a return to our traditional ways will somehow be the answer to our social problems, the saviour of our self-esteem, the promise of living happily ever after and don't worry about an income, the government will provide."

"That this agenda is one pushed as much by the white liberal set as it is by certain elements within Maoridom particularly gets my goat. These people are 'feel goods' - it makes them feel good to pat us brown, noble savages on the head and say what we need is our culture - and one which has no faults, it is infallible - that we are happier as a race when we are like this. So let's get started, don't waste a moment. Every brown person come and learn to be bone carvers, weavers of flax mats, sit around the camp fire in bare feet, of course, singing traditional songs and everything will be all right.

"What struck me about this nonsense is that I could plainly see that the very people who were advocating the 'solution' for us were not so taken by it that they were raising their own children on traditional Maori culture. Instead they were raising their kids on acquiring knowledge and understanding of the modern, the real world. They were teaching them literacy, numeracy, life skills and computers because they know what is required to function in the modern world."

Cohen argued that if one were to replace "Maori" with "Aborigine" we would have a mirror image of what has been happening in Aboriginal affairs over the past 40 years. 'The problem has been that any non-Aborigine who said so would have been publicly pilloried by those who control the debate about Aboriginal affairs. At best they would have been labelled paternalistic; at worst, racist.'

According to Henrare, Director of the Mira Szasy Research Centre at Auckland University, Indigenous communities form a 'sleeping giant' in the Australian economy and will need to confront social dysfunction and poor levels of financial literacy. He pointed out that in recent years the Maoris had emerged as strong players in the New Zealand economy. 'As Aboriginal communities gain control of their assets, the land and all the resources that are on the land, they will [wish to] turn those into business enterprises ...' (Rintoul 2008)

Leasing arrangements founded on the need to preserve the root title and interests of Aboriginal people associated with the land, which permit Indigenous entrepreneurs to establish economically valuable relationships with businesses in the wider Australian community are required, in order to benefit both Aboriginal people and Australia as a whole. It is now evident that the human and economic development of Aboriginal peoples in the Northern Territory depends crucially upon amendments to the *Aboriginal Land Rights (Northern Territory) Act 1976*. These amendments must streamline the ability of Aboriginal people to utilize this vital asset for development purposes in a manner which protects the ownership requirements of Indigenous people but which also promotes Indigenous involvement in economic enterprises and economic development. Such economic

development is fundamental to the means of overcoming the terrible levels of social and human misery that is the lot of most Indigenous Australians living within remote communities today.

## References

Altman, J. (1990) *The economic impact of Australian Aboriginal land rights*, Centre for Aboriginal Policy Research, Australian National University, Canberra.

Altman, J. (1996) 'Aboriginal economic development and land rights in the Northern Territory: past performance, current issues and strategic options', *CAEPR Discussion Paper No. 126*, Centre for Aboriginal Economic Policy Research, ANU, Canberra.

Altman, J. (2003) *Economic Development and Participation for Remote Indigenous Communities: Best Practice, Evident Barriers, and Innovative Solutions in the Hybrid Economy*, Presentation to Ministerial Council for Aboriginal and Torres Strait Islander Affairs, Sydney, November.

Altman, J.C., (2004) 'Economic development and Indigenous Australia: contestations over property, institutions and ideology', *The Australian Journal of Agricultural and Resource Economics*, 48:3, 513-534.

Altman, J. (2007) *The Howard Government's Northern Territory Intervention: Are Neo-Paternalism and Indigenous Development Compatible?* Address at Australian Institute of Aboriginal and Torres Strait Islander Conference, 7 November 2007, Canberra.

Beadman, B. (2004) *Do Indigenous Youth Have A Dream?* The Menzies Research Centre, Barton, ACT.

Beadman, B. (2009) Northern Territory Coordinator-General for Remote Services (2009), *Report No. 1: May to November 2009*, Department of the Chief Minister, Darwin.

Beadman, B. (2010) Northern Territory Coordinator General for Remote Services (2010) *Report Number 2: December 2009 to May 2010*, Department of Housing, Local Government and Regional Services, Darwin.

Becker, G.S. (1964) *Human Capital*, University of Chicago Press, Chicago.

- Brennan, F. 'Mabo and Its Implications for Aborigines and Torres Strait Islanders', in Stephenson, M.A. and Ratnapala, S. (eds.) (1993) *Mabo: A Judicial Revolution*, UQ Press
- Briant, J. (2004, Foreword in Beadman, B. *Do Indigenous Youth Have a Dream?* The Menzies Research Centre, Barton, ACT.
- Cohen, B. No more 'noble savage' The Australian, 2 July, 2007, transcript available at <http://www.theaustralian.com.au/news/opinion/barry-cohen-no-more-noble-savage/story-e6frg6zo-1111113864248>
- De Soto, H. (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books, New York.
- Domar, E. (1946) 'Capital expansion, rate of growth, and employment', *Econometrica*, 14, 137–147.
- Donald, P. (2007) 'Intervention is a land grab: Indigenous leaders', *The World Today*, ABC Radio National, 26 June, 2007, transcript available at <http://www.abc.net.au/worldtoday/content/2007/s1962031.htm>
- Duncan, R. (2003) 'Agricultural and resource economics and economic development in Aboriginal communities', *The Australian Journal of Agricultural and Resource Economics*, 47:3, 307-324
- Duncan, R. and Pollard, S. (2002) 'A framework for establishing priorities in a country poverty reduction strategy', ERD working paper series no. 15, Economics and Research Department, Asian Development Bank, Manila.
- Pritchard, B. and Gibson, C. (1996) 'The BLACK economy: regional development strategies in the Northern Territory', NARU report series no. 1, North Australia Research Unit, The Australian National University and the Northern Land Council, Darwin.
- Finlayson, J.D. (1999) Northern Territory Land Rights: Purpose and Effectiveness, *CAEPR Discussion Paper* 180.
- Fuller, D. Howard, M. and Buultjens, J (2005) *Indigenous Community Development and Self-Employment*, CQU Press, Rockhampton.
- Fuller, D. and Parker, L. (2002) *Indigenous Economic Development in Northern Australia: Opportunities and Constraints*, CQU Press, Rockhampton.
- Goulet, D. (1971) *The Cruel Choice: A New Concept in the Theory of Development*, Atheneum, New York.
- Gregg, M (2007) 'Normal Homes,' *M/C Journal*, vol. 10, no. 4, pp. 1-19.
- Harrod, R.F. (1939) 'An essay in dynamic theory', *Economic Journal*, 49, 14–33.
- Horrigan, B. (2003) 'Australian Native Title Law, Policy, And Practice – A Report Card', *Economic Papers*, 22:4, 16-27

Hughes, H. and Warin, J. (2005) 'A new deal for Aborigines and Torres Strait Islanders in remote communities', *Issue Analysis*, 54:1-20.

Jones, N. (1998) 'Economic Exploitation of Aboriginal Land in the Northern Territory,' Unpublished paper, Office of Aboriginal Development, Northern Territory Government, Darwin.

Langton, M. (1999) 'The Growing Cooperation between Indigenous and Mainstream Managers of Northern Australian Landscapes and the Challenge for Educators and Researchers', in Havemann, P. (ed) (1999) *Indigenous Peoples' Rights in Australia, Canada and New Zealand*, Oxford University Press.

Lawrence, R. & Gibson, C. (2007) 'Obliging Indigenous Citizens? Shared Responsibility Agreements in Australian Aboriginal Communities', *Cultural Studies*, 21, 4-5, 650-671

North, D. (1990) *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge, MA.

Northern Territory (N.T.) Government Media Release (2009) *A Working Future: Real Towns, Real Jobs, Real Opportunities*.

Olson, M. (1996) 'Big bills left on the sidewalk: why some nations are rich and others are poor', *Journal of Economic Perspectives*, 10, 3-24.

Pearson, N. (2000) *Our Right to Take Responsibility*, Noel Pearson and Associates, Cairns.

Pearson, N. (2006) *Wild Rivers and the Cape York Heads of Agreement*, Musgrave, Cape York Peninsular.

Reeves, J. (1998) *Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976 – Building on Land Rights for the Next Generation*, ATSIC, Canberra.

Rintoul, S. (2008) *The Australian*, November 28.

Robinson, N. and Elks, S. (2009) *The Australian*, December 24.

Rowse, T. (2002) *Indigenous Futures*, UNSW Press.

Sen, A. (2000) *Development as Freedom*, Anchor Books, New York.

Solow, R.M. (1956) 'A contribution to the theory of economic growth', *Quarterly Journal of Economics*, 70, 65-94.

Todaro, M. (1994) *Economic Development* (5<sup>th</sup> edition), Longman, London.

Todaro, M. and Smith, S. (2008) *Economic Development*, Prentice Hall

Turner, P. and Watson, N. (2007) 'The Trojan Horse', in Altman, J. and Hinkson, M. (eds) *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia*, Arena Publications, Melbourne.

World Bank Group (2004) *Glossary* World Bank Group, viewed 25 April 2011 - <http://www.worldbank.org/depweb/english/beyond/global/glossary.html>