COLONIAL OFFICE

Memorandum on Colonial Mining Policy

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PREFACE.

In view of the importance of mining in the economic development of Colonial territories and the impact of mining operations on the social structure of the communities concerned, the Secretary of State considered it desirable that Colonial Governments should be furnished with guidance on the general principles which should be followed in framing mining policy. The questions involved were also studied by the Colonial Economic Advisory Committee and their recommendations, together with others derived from experience available in the Colonial Office in connection with mining legislation and problems have been used in the preparation of the following statement. This statement has been forwarded by the Secretary of State to Colonial Governments. In so doing the Secretary of State made it clear that it was not claimed that the statement was exhaustive, but that it did indicate the major points which should be taken into consideration in framing policy. He pointed out that no other industrial development has such potentialities for good or ill as mining and that it was therefore of the utmost importance that the Government should retain adequate control at all stages in order to ensure that mining enterprises were carried on in the interests of the territory and for the general benefit of the community at large.

MEMORANDUM ON COLONIAL MINING POLICY.

The purposes of this memorandum is to put together in a convenient form the principles which should, and broadly speaking do, govern the policy of Colonial Governments in mining matters. It is not intended to be read as a detailed statement of policy applicable equally and in all particulars in every territory in the Colonial Empire. There are in certain territories special considerations, derived from their past history or social structure, which may militate against the full adoption there of the principles set out below, but at a time when all Colonial Governments are framing their post-war policy it would seem to be of service to them to have before them such a broad general statement of policy.

2. There is a fundamental difference between mining and other forms of productive activity such as agriculture, animal husbandry and forestry. Whereas policy in the latter cases should aim at the preservation and improvement of the productive powers of the basic natural resources of a territory, mining essentially consists of the removal of valuable natural resources which once removed, cannot in the nature of things be replaced. The process is therefore in the nature of the realisation of a capital asset and the general aim of mining policy must therefore be to make the best possible arrangements for realising such an asset.

3. The logical first step in the mining policy of any territory must be the determination of the extent of its mineral resources. It is recognised that in the past many mineral deposits, some of them among the most important in the world, have been brought to light by the prospecting work of individuals, but past experience has also proved the value of the work of government geological surveys. It is to the latter for instance that was due the discovery of the diamonds, bauxite and manganese of the Gold Coast, the iron ore and diamonds of Sierra Leone, the coal and gold of Nigeria. It may well be that the exploration of mineral resources has not exhausted its possibilities and that further riches may be revealed. In these circumstances the maintenance and extension of geological surveys should be a primary object of policy, and accordingly provision has been made under the Colonial Development and Welfare Act for funds to be allocated for Colonial geological surveys. Replies from Colonial Governments to Colonel Stanley's circular despatch of the 14th of March, 1945, indicated a general acceptance of the proposals made in the Report of the Committee on Geology and arrangements have now been made for the appointment of Dr. F. Dixey, O.B.E., at present Director of Geological Surveys, Nigeria, to be the Director of Colonial Geological Surveys. As such, Dr. Dixey will be the Secretary of State's adviser on all geological matters. One of his first tasks will be to prepare a scheme for a Colonial Geological Survey Service on the lines laid down in the Report of the Committee and he will take into consideration the views expressed by various Colonial Governments on these matters.

4. The discovery of minerals raises at once the question of mineral rights. The position in regard to the ownership of such rights varies between the different territories in the Colonial Empire. In some, the Crown owns all rights; in others it retains rights in all lands alienated after a certain date, the rights in lands alienated before that date having passed to surface owners; in one or two territories such rights have been conceded to corporations by charter or by agreement; in still others all mineral rights, except on Crown Land, belong to surface owners, in some cases individual owners, in others native communities.

5. There are powerful arguments to be adduced for the vesting of all mineral rights in the Crown. In the first place, the development of minerals in colonial conditions frequently requires considerable government expenditure, e.g., on survey, on transport or other facilities and it is undesirable that the results of such expenditure should accrue to private mineral owners. Secondly, a multiplicity of owners is frequently an obstacle to the organisation of economic units of operation. Thirdly, the payments made under contracts between owners and mining companies do not necessarily accrue to the benefit of the members of the community which have the most substantial interest in the lands affected. Fourthly, minerals are important economic assets to a territory and being the gift of nature, their benefits should be shared by the community generally, to which they belong, and not to be enjoyed merely by limited groups of private individuals who are often not members of the community concerned. Finally, Government by possession of the rights is in a position to control the size of concessions and the rate and terms of exploitation. In pursuit of these conceptions most Colonial legislation already provides for the reservation of mineral rights in any future sale or alienation of Crown or public lands; where such provision is not yet made the Governments of the territories concerned might well consider its adoption.

6. If mineral rights have already passed into private hands, the arguments stated in the preceding paragraph for the Government's retaining such rights are equally valid for recovering them, but each case will require a careful assessment of the balance of advantage. They could be recovered either by agreement or by legislation, but in either event some payment must be regarded as inevitable. Where the existence of minerals is already proved the payment demanded is hardly likely to be less than the estimated present net value of the minerals in the ground, and Government will have to consider whether the advantages of the transfer are sufficient to justify locking up part of their funds in a long-term investment of this kind. Where the minerals are not proved, an immediate cash payment may prove to be a purchase of something that does not exist. In such cases the most suitable form of compensation would seem to be the payment to the owner of the minerals for a limited period, say not more than 25 years, of a proportion of the royalties or other revenue received by the Government in respect of the exploitation of the mineral rights resumed. The proportion payable would necessarily depend on the circumstances, but ideally it should be quite small, say not more than 5 per cent.

7. The exploitation of mineral wealth opens out many problems of economic and social consequence to the territory concerned, and it is therefore of the utmost importance that it should be studied in relation to the economy of the territory as a whole and that as an industry, mining should be properly regulated, and its development in regard to transport, labour supply, other industries and agricultural and subsistence production kept amenable to public control. Mining should be carried on according to a deliberately planned programme and its social consequences carefully foreseen and directed so that the evils of unregulated development and consequent social distress and effects on agricultural village life and diversion of manhood do not arise. It would seem therefore that in shaping mining policy the following features should be kept well in mind:—

(*a*) Mines should be run efficiently.

(*b*) The unit of operation should be of economic size.

(*c*) Other natural resources should be protected.

(*d*) The rate of development and exploitation should have regard to social as well as economic considerations.

(*e*) Labour conditions should be of good standard and welfare and social arrangements properly provided for.

(*f*) Provision should be made for the indigenous populations to fit themselves for the highest technical and administrative posts.

(*g*) An adequate share of the proceeds of mining should be retained in the Colony.

Colonial Governments should, where necessary, be prepared to undertake mining operations on their own behalf. In some cases it may not be possible to achieve the objectives mentioned above except by public operation, but whether operation is private or public these objectives should be aimed at. It should not be impossible for Governments either through an existing Department or by engaging experienced technical management, or sometimes by the creation of public utility corporations, to exploit new mineral resources for the public benefit in harmony with these objectives. They might even consider the operation of mines already developed where suitable conditions exist and the necessary arrangements can be made. Indeed, there may be circumstances in which Government mining would be particularly desirable, e.g., where private concerns are unwilling to take the risk of investment, where the minerals are consumed in whole or in great part within the Colony and Government operation is thought necessary to protect the consumer against exploitation or where the mineral is of special strategic importance, but even where these circumstances do not apply the fact that private interests are ready to take the risk of investment should not be taken as ruling out of consideration public operation of mining.

So far as private working is concerned, the responsibility of the local Government for the maintenance of minimum standards in the variety of conditions of mining, is very real.

Minimum standards whether in the case of publicly or privately owned mines can be considered seriatim in relation to the objectives I have already mentioned.

(*a*) Efficient operation. In the case of private exploitation, applicants for mining leases should be required to show that they or their agents have suitable technical qualifications or (in exceptional cases of small scale mining) at any rate an adequate knowledge of the mining regulations. Holders of prospecting licences and mining leases should be required to furnish the Government with full particulars of all information of geological interest obtained in the course of their prospecting or mining operations and accredited Government officials should have full access to all mineral workings. Local Governments must insist that the grant of a mining lease involves the mechanisation of the mine, where possible, proper safety measures, fair conditions of employment, and adequate safeguards to prevent the destruction of amenities.

(*b*) The size of mining units should be such as to ensure the most economic conditions of working, that is, they must neither be so small that the burden of overheads is greater than it would be if the size of the unit was increased, nor so large that the operators lack sufficient inducement to operate them to their full economic capacity. Between these two extremes physical circumstances will usually indicate the most economic size of unit in any particular case, but mineral occurrences vary so much in character, that it is impossible to give any precise guidance on this question. There are,

however, certain devices by which the Government can provide the necessary inducement to mining undertakings to operate their properties to the full economic capacity. For example:—

(i) The period of mining leases should not be too long. I consider that a reasonable arrangement is an initial term of 21 to 25 years with provision for renewal at the option of the lessee for a similar period on the conditions available for the grant of new leases at the date of renewal.

(ii) All leases should provide for a minimum "dead rent" to be paid whatever the output, subject to waiving only where it can be shown that it creates a drain on a company's resources in the development stage or in the course of a depression.

(iii) Mining leases should not include land definitely proved to be non-mineral bearing and not needed for actual mining operations and if part of the land covered by a lease proves to be of this character, it should be surrendered. Land for houses or other ancillary purposes should be obtained under ordinary land leases.

(iv) An exclusive licence to work all the minerals in a Colony should never be granted. A mining lease should generally cover one mineral only or minerals found in association, such as a lead or copper group.

(v) Rights should not normally be granted over all deposits of a particular mineral. There may, however, be exceptional cases in which the economic interests of the Colony justify the grant of such comprehensive rights, e.g., to secure unified selling of the mineral.

Even when mining is initially started in an area with units of economic size, changes in mining technique may make these units uneconomically small. In most cases of this kind the industry will probably re-organise itself but when re-organisation is palpably in the public interest and is held up unreasonably by a minority interest Government should be ready to effect it by legislation.

(*c*) By the protection of other natural resources is envisaged particularly the protection of agricultural land, forests and rivers. These ends should be secured by legislation reinforced by inspection and Government should have the right, in particular, to include in leases clauses requiring the restoration of land to a state suitable for agricultural operations after mining has ceased, where such land was previously of agricultural or pastoral value. There should be protection against subsidence and deposits and debris should be disposed of so as not to create unsightly dumps which destroy the local amenities.

(*d*) Social factors require consideration in connection with both the initial and the later stages of exploitation. The introduction of new mining industries into a community where they have not existed before and where perhaps they can only be developed by immigrant labour, is bound to disrupt to some degree the existing structure of society. Before mining operations are allowed, their effect on the existing and future pressure on the land for the supply of the food requirements of the community, should be seriously considered. Mining inevitably results in the disturbance of the normal life of the district and it is, therefore, essential that the understanding and goodwill of the local inhabitants should be enlisted. It is, of course, in the Government's power, if it owns the mineral rights so to regulate development by the judicious grant of concessions as to reduce or remove the danger of social upheaval.

Once the industry is established, social disadvantages are most likely to arise from the fluctuations in demand to which mining industries are particularly susceptible. If purely economic considerations were allowed to determine

policy, such disequilibrium of demand and supply would be met by reductions in labour forces. A temporary recession may well not require Government intervention since companies may be ready to bear losses for a while, but Governments should be ready to take action themselves to mitigate the longer depressions. There are a variety of means at their disposal for this purpose and the following suggestions are only examples of what they might do: alternative employment for labour could be found in public works or other schemes; the mines could be helped by reductions in taxation (*per contra*, too sharp increases in employment in booms could be checked by increased taxation); or the labour force could be assisted by the establishment of compulsory unemployment insurance (even if such insurance is not universal, the peculiar liability of mining to recessions in demand may justify its introduction for that industry alone).

(*e*) Labour conditions in mining communities require particular care, quite apart from the liability of industry to fluctuations in demand to which reference has just been made. No other industry is so likely to bring together large numbers of men living in close proximity and unnatural surroundings. The psychological stresses to which the labour force is exposed are thus peculiar. Many mining companies have recognised in these circumstances the necessity for high standards on the employer's part, but Government also has its part to play. In the first place labour legislation should be directed towards the establishment of standards covering conditions of recruitment, safety, hours of labour, work, etc.; there must be proper inspection of working conditions and provision for accidents and for medical care and treatment; mining regulations can also in appropriate cases set the standard for the provision of food, housing and clothes by the management. Education services while primarily the concern of the Government, should also be a matter of concern to the employer who should where possible assist with the provision of facilities particularly for technical education to fit the workers for more responsible positions in the undertaking (see (*f*) below). Police services on the other hand are perhaps more appropriately borne, even in isolated mining communities, by Government. The problem of family settlement for miners and provision for women and children should be kept prominently in mind and the proper housing of families is a necessary provision, for men should be encouraged to settle in with their wives. Fully organised machinery should be established to allow workers to express their grievances through their own chosen representatives. The closer the association that can be established between the workers' representatives and the management in the solution of the industry's common problems, the more speedy will be the development of a sense of partnership in the industry and of a pride in its achievement.

(*f*) Participation by indigenous peoples. In Colonial conditions mining industries offer a particularly good opportunty for the development of technical and managerial skill among indigenous peoples and all Colonial Governments should consider how they can best implement the recommendations of the 1944 International Labour Conference at Philadelphia on the Prohibition of Colour and Religious Bars and other Discriminatory Practices. In some Colonies the problem can be eased by some regulation of recruitment for the industry and the provision of technical instruction.

(*g*) The financial proceeds of mining. Broadly speaking, a Colony's share of the proceeds of mining is comprised in the proportion of the working costs expended within its boundaries, in taxation and in royalties.

Of these three sources the first is, from the narrow point of view of Government finance, an indirect and the other two direct sources of revenue. From

the point of view of the Colony as a whole, however, all three are sources of profit, and as the first is usually much the largest it should be a matter of particular care to the Government. In other words it is in the interests of the community to ensure that the total proceeds are as large as possible, even if, on occasion, it is necessary to sacrifice part of the proceeds of direct taxation to achieve this end. So far as working costs are concerned, they will be importantly influenced by the extent of the Government's intervention in regard to such matters as rates of wages and the provision of medical services and other amenities by the employers. The object of the Government in intervening in such matters is, however, to secure proper conditions for the labour force, not to inflate working costs; the latter is incidental to, not the purpose of their intervention. Obviously, an undue inflation of working costs either by unreasonable demands by a Government or by extravagant expenditure by the management, may have such an unfavourable effect on the industry as to reduce the net benefit to the community instead of increasing it. As regards taxation, this usually takes the form of export duties and income tax or other taxes on profits. The general aim here should be to establish a system of taxation of sufficient flexibility to meet the changing fortunes of mining. Freedom of action in this respect is particularly desirable in cases where mines operate under leases for long periods (some at present run for 99 years). In such cases the Government should, where the rate of royalty in the lease is unreasonably low, secure an adequate return by the levying of an export duty in addition to the royalty. In new leases, however, the situation would be met by including provision for a review of the rate of royalty at comparatively short intervals, say every five years. In that case it would be unnecessary, and indeed it would almost certainly be inacceptable to mining companies, that the Government should reserve the right to impose an export duty in addition to royalty. An export duty should, however, be levied where the minerals under exploitation are vested in private owners, in order to secure a share of the proceeds for the community. It is even more undesirable to include in concessions any exemption from income tax or other taxes applicable to industry generally.

The assessment of royalties represents the most difficult problem and one to which more attention might well be directed by Colonial Governments. The economic value of a royalty is the value of the mineral as it lies under ground, i.e., it is equivalent to the market value of the mineral less the cost of extraction and marketing (the last term including a reasonable return on capital). It therefore follows that the quantity in which a mineral is found and the conditions under which it is extracted are reflected in the rate of royalty it can pay. In most Colonies however each mineral pays a standard rate of royalty and there is no variation from lease to lease. As a result, lessees on the one hand will be unwilling to extract low-grade ores, so that the Colony thereby fails to realise part of its assets, and on the other will pay less on rich ores than such deposits could bear. Both these evils are avoided by the levying of royalty on the profits earned on the capital employed in mining operations after making allowance for amortization. The question of adopting such a system in connection with gold mining in Tanganyika and Fiji is at present under consideration and if it is found practicable in these cases the possibility of its extension to other forms of mining will be considered in due course.

The capacity of a Colony to retain an adequate share of the profits of mining in its territory also turns to some extent on the length of the leases which it grants for mining operations. Clearly the longer the duration of a lease the greater the likelihood of changes in the conditions under which mining is being carried out. In view of this it is in the interests of Colonies

to keep the terms of their leases as short as possible, and I have made suggestions in this connection in paragraph (*b*) (i) above. Moreover, in conditions in which a concession would tend to give a mining company a dominant place in a Colony's economy, the Government of the Colony may think it proper to stipulate as a condition of the concession that it should have the right to nominate one or more directors and that such nominees should have full access to all the Company's documents and accounts.

The principles set out in the preceding paragraphs will serve Colonial Governments for the determination of the terms on which they can agree to admit companies to the exploitation of their mineral resources, although I desire to repeat that Governments should seriously consider public exploitation wherever practicable. The rate of exploitation once a particular concession has been granted (and subject of course to the terms on which it is granted), depends primarily on the operating company, although it remains a matter of concern to the Government. Governments are, however, able to influence the rate of exploitation in other ways than by restrictions imposed on any particular lease. They must have regard to the degree of disturbance mining operations will have on the social life, on the maintenance of a right balance between agriculture and mining and to the danger of the creation of a lop-sided economy. In fact it is essential to any co-ordinated mining policy that the Government should have a clear conception of the policy by which the exploitation of minerals should be governed. As far as economic considerations are concerned, this poses the question whether in view of the fact that minerals are a wasting asset a policy of conservation should be followed rather than expansion encouraged. A policy of " go slow " will not however in itself alter the fundamental fact that minerals are a wasting asset. It should be Government's policy to secure that such a wasting asset should be converted into a permanent asset and that can be done by securing that the money accruing to Governments from royalties, etc., are employed to build up such assets, e.g., by training the local population as rapidly as possible to acquire the knowledge and the aptitude to support a higher standard of living. Many Colonial Governments feel that they are faced with the necessity of achieving these and kindred objects as quickly as possible, and for that reason favour an expansive rather than a restrictive policy as regards exploitation of their mineral resources. It should, however, be added that there may be in some areas valid reasons for some degree of restriction, e.g., land may be reserved for native occupation, forest reserves or other valid purposes and reference has been made above to the special need that may arise to curb mining activities in order to prevent excessive dislocation of the existing structure of society or to guard against sharp contractions in employment.

It is important, however, that Governments should consider how far they can by direct action help in the exploitation of mineral resources. There are many opportunities that present themselves to this end. The need for systematic geological surveys has already been mentioned. These should be as wide as possible and it is desirable that Government geologists should have reasonable access for the purpose and that all prospecting should be properly licensed and regulated. Secondly, within the framework of their general development plans, Government can assist the opening up of areas for mineral development by providing for the necessary transport, power and water facilities. Thirdly, Governments, particularly in territories where mineral deposits are few and scattered, may be of special assistance to the small prospector and miner on whose efforts the working of such deposits is likely to depend. Directions in which such assistance might be of value,

are the provision of loans, the encouragement or participation in organised marketing and the provision of adequate technical advice, e.g., in assaying laboratories. Finally, it is suggested that as part of a policy of encouraging the development of secondary industries, special attention might be devoted to the establishment in mining areas of industries to supply some at least of the many manufactured articles for which a mining industry provides a market. This indeed forms a counterpart to the assistance which a mining industry can give to the development of secondary industries by providing the raw material for local manufacturing or processing industries. In the latter instance, local processing and refining may lower costs, particularly where ore contains a large proportion of waste material, by lowering transport charges even to the extent of making it profitable to exploit ores which it would not otherwise be economic to work.

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