

Responsible Investment in the Canadian Territorial North? Some Considerations from Nunavut

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Introduction

The importance of the extractive sector in northern Canada has grown remarkably during the last two decades² -- a quantitative change that will make a qualitative difference in northern political, economic and social life. In this paper, we are interested in the role that the principles of responsible investment and corporate social responsibility might play as these changes unfold.

Although the circumstances in northern Canada are similar in many ways to those in mining-intensive regions elsewhere, there are some unique features: in northern Canada, the massive forces of international finance capital and globalized mineral extraction companies encounter the constitutionally protected institutions of the post-treaty territorial north. These treaty-mandated institutions were designed to enhance citizens' power in economic decision-making and to transfer financial capacity to Indigenously-held corporations, in the form of capital payments (in compensation for ceded traditional lands) and the capacity to generate revenue from Indigenously held lands by taxing resource development. The impact of this new regime of property and regulation on the future shape of northern development is only beginning to be tested and to be understood. We believe that it bears close watching, not least because the ideals that negotiators attempted to embed in the new regime are unlikely to survive "automatically" as corporate forces intensify their northern operations. The implementation phase of the new regime has begun; continued institutional redesign creates a need for appropriate and healthy practices to give life to the original purposes of the land claims agreements.

Mining and petroleum exploration and development have been a feature of the northern Canadian political economy since the Klondike Gold rush in Yukon at the end of the nineteenth century and the opening of an oil production facility in the Mackenzie River Valley in the 1920s. In isolated areas, independent and especially state-sponsored prospecting, exploration and production continued through the twentieth century, though this resulted in a very few successful mines and only one operating petroleum production site.³

Beginning in the 1970s, northern Indigenous people and their non-Indigenous co-residents mobilized to protect their societies and their interests from outside pressures; they were responding to both an increasingly intrusive state presence, and corporate

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² Gavin Bridge, "Mapping the Bonanza: Geographies of Mining Investment in an Era of Neoliberal Reform" *The Professional Geographer* v. 56 i. 3 (2004) pp 406-420.

³ Arn Keeling and John Sandlos, "Environmental Justice Goes Underground? Historical Notes from Canada's Northern Mining Frontier" *Environmental Justice* v. 2 n. 3 (2009) pp 117-125.

interest in northern resources.⁴ This widely effective mobilization had many consequences, including jurisprudential and institutional innovation, policy learning and general historical and sociological rethinking. Of particular importance to our analysis here are the changes brought to northern land ownership, resource development regulation and the availability of capital through the negotiation of comprehensive land claim agreements (or modern treaties). Almost all of the Indigenous nations and peoples living in Canada's north negotiated such treaties between 1976 and 2005, creating a unique institutional landscape in northern Canada.

One of the most obvious features of the new regime of land ownership and regulation in northern Canada is its diversity and complexity. For that reason, our discussion here treats only one jurisdiction, Nunavut.⁵ Nunavut makes a relatively simple case, since it is the homeland of just one Indigenous people --Inuit-- who signed a single land claim agreement with the federal government in 1993.⁶ Among the provisions of the land claim agreement was the division of the Northwest Territories in two, to create a new Northwest Territories and the new territory of Nunavut.⁷ The land claim agreement also established a new regulatory system for renewable and non-renewable resources, divided property in land between the Crown and the Beneficiaries⁸ of the agreement, and mandated a number of mechanisms through which local benefits of development projects would be negotiated, including Inuit Impact Benefit Agreements (discussed below) and resource revenue sharing provisions. Inuit parties to the land claim agreement also received, collectively, annual cash transfers over fourteen years totaling about \$1.1 billion, in compensation for lands ceded.⁹

Responsible Investment in Northern Canadian Resource Development

As has been well-documented, negotiated agreements concerning global trading regimes

⁴ Frances Abele, "Northern Political Development: Past, Present and Future" in Frances Abele, Tom Courchene, Frances St-Hilaire, and F. Leslie Seidle, eds, *Northern Exposure: Powers, Peoples and Prospects*. Montreal: Institute for Research on Public Policy, 2009.

⁵ Modern treaties have been negotiated by Cree, Inuit and Naskapi in northern Quebec (1976, 1978), by Inuit in Labrador (2005), by Inuvialuit, Dene and Metis in the Northwest Territories (1984, 1993, 2003), and by Yukon First Nations (1993), as well as by Nisga'a in British Columbia (2000).

⁶ In Yukon, a single "umbrella" agreement was negotiated by all First Nations, under the provisions of which each First Nation must negotiate a specific agreement; in the Northwest Territories, there are to date Inuvialuit Final Agreement (1984), Gwich'in Final Agreement (1992), the Sahtu Dene and Metis Final Agreement (1993), and the Tlicho Comprehensive Claims and Self-Government Agreement (2003).

⁷ Inuit in Canada live in four sub-national jurisdictions of federal Canada: Nunatsiavut in Labrador, Nunavik in northern Quebec, Nunavut, and the Inuvialuit territories of NWT. All of them have negotiation modern treaties with the federal government in right of the Crown; specific provisions of the treaties differ, but all settle the question of land ownership by dividing rights to the land between the Crown and the Indigenous collectivity.

⁸ This term refers to people who are registered under the land claim agreement as parties to it.

⁹ For an overview of the political and economic changes that took place in the Eastern Arctic with the settlement of the Nunavut Land Claims Agreement, see Jack Hicks and Graham White, "Nunavut: Inuit Self-determination Through a Land Claim and Public Government?," in *Nunavut: Inuit Regain Control of Their Lands and Their Lives*, ed. Jens Dahl, Jack Hicks, and Peter Jull (Copenhagen: International Work Group for Indigenous Affairs, 2000), 30-117. and Ailsa Henderson, *Nunavut: Rethinking Political Culture* (Vancouver: UBC Press, 2007).

(sometimes referred to as trade liberalization), changes to the regulation of financial markets, the privatization of public assets, and state austerity measures have changed the relationship of states to the large institutional actors of capitalism. We do not have space here to engage the important debates about the precise nature of these global changes;¹⁰ instead, we note only that considerations of finance can accommodate, foster or block responsible investment measures, while the simple availability of capital largely determines the pace and direction of natural resource development.

Considering the importance of these matters to stable northern development, it is surprising how little has been written on this subject. Benjamin Richardson has suggested that the emergence of finance capital to rival the power of states places new demands on Indigenous people to ensure their cultural and legal interests are protected and recognized.¹¹ He argues that economic development is increasingly controlled by the private sector, and so conventional legal measures such as treaties are unlikely to provide all of the necessary conditions for Indigenous community revitalization. The financial sector, as a powerful sponsor of potentially harmful development, should adopt socially responsible investment practices to protect Indigenous livelihoods and value systems.

In a general discussion of mining in developing countries, McElroy notes the growing recognition of a "business case" for responsible investment (which takes into account environmental, social and governance performance as part of its financial picture) and the increasing use of foundations as a means of social investment as a form of local benefit.¹² These foundations redistribute a small portion of the profits from mining to the region in which the mine is located, a measure that is similar to (or at least in the same set as) measures for local business preferences and joint ventures commonly seen in Canada. Other analyses¹³ have proposed a community-centred approach to assessing sustainability of mining communities, incorporating considerations of ecological sustainability, economic vitality, and social equity. Local benefits are often understood as necessary contributions to social equity.

The picture in Canada is more complicated. Both public and private measures encourage various forms of local benefits similar to those envisioned in the global mining literature. In addition, in Canada, Indigenous organizations are increasingly becoming financially

¹⁰ For example, Jose Antonio Ocampo and Joseph E. Stiglitz, eds. *Capital Market Liberalization and Development*. Oxford: Oxford University Press, 2008; Paul Krugman, *The Return of Depression Economics and the Crisis of 2008*. New York: Norton, 2009; Leo Pantich and Martijn Korning, eds. *American Empire and the Political Economy of Global Finance*. New York: Palgrave MacMillan, 2008; Robert Brenner, *The Boom and the Bubble: The US in the World Economy*. London and New York: Verso, 2002; David Coates, ed. *Varieties of Capitalism, Varieties of Approaches*. New York: Palgrave MacMillan, 2005; David Harvey, *The Enigma of Capital and the Crises of Capitalism*. Oxford: Oxford University Press, 2010.

¹¹ Benjamin J. Richardson, "Protecting Indigenous Peoples Through Socially Responsible Investment," *Indigenous Law Journal* 6, no. 1 (June 26, 2007): 205–234. *Indigenous Law Journal*, 6, no. 1 (2007): 205-234.

¹² Caitlin McElroy, "Social Investment and Responsible Investment: Their Relationship and Intersections in the Mining Industry" in Tessa Hebb, *The Next Generation of Responsible Investing*. Springer, 2012.

¹³ Marcello M Veiga, Malcolm Scobie, Mary Louise McAllister, "Mining with Communities" *Natural Resources Forum* 25 (2001) pp 191-202.

implicated in resource development projects in their own territory. In northern Canada, cash and land from modern treaties, rights to negotiate impact and benefit agreements, and government grants, are being leveraged by Indigenous organizations to finance their participation in resource development projects. In return, mining companies are forced to consider an array of practical benefits for Indigenous communities, and Indigenous organizations may receive a revenue stream in the form of administrative fees, royalties and/or profit.

Much of the literature on northern institutional development has focused on the new political rights Indigenous people have gained through modern treaty negotiation and settlement, and the control these rights provide in resource management decision-making. While some attention has been paid to the relationship between modern treaties and socio-economic development,¹⁴ considerably less attention has been paid to the property regimes established under the same agreements and their effects on resource development.¹⁵ In the next few pages, we compare experiences in Nunavut before and after the modern treaty - the Nunavut Land Claims Agreement- signed in 1993.

Mining Before Claims: The Case of Nanisivik

Between the 1930s and the 1970s, prior to comprehensive claims settlements in the Canadian North, the state played the dual role of legislator and proprietor.¹⁶ Successive governments promoted a vision of resource-led economic development by legislating a free entry system favourable to resource developers. Under this system, a prospector or mineral developer typically has “the right to enter lands in pursuit of Crown minerals, the right to obtain a claim, and the right to go to lease and produce.”¹⁷ Mineral operators are

¹⁴ James C. Saku, “Modern Land Claim Agreements and Northern Canadian Indigenous Communities,” *World Development* 30, no. 1 (2002): 141–151; James C. Saku and Robert M. Bone, “Modern Treaties in Canada: The Case of Northern Quebec and the Inuvialuit Final Agreement,” *The Canadian Journal of Native Studies* xx (2000): 283–307; Robert B. Anderson et al., “Indigenous Land Claims and Economic Development: The Canadian Experience,” *American Indian Quarterly* 28, no. 3/4 (2004): 634–648; Robert B. Anderson, “Indigenous People, Economic Development and Entrepreneurship,” *The Journal of Indigenous Economic Development* 2, no. 1 (2001): 33–42; Martin Papillon, “Indigenous Quality of Life Under a Modern Treaty: Lessons from the Experience of the Cree Nation of Eeyou Istchee and the Inuit of Nunavik,” *IRPP Choices* 14, no. 9 (2008).

¹⁵ Paul Nadasdy, “‘Property’ and Indigenous Land Claims in the Canadian Subarctic: Some Theoretical Considerations,” *American Anthropologist* 104, no. 1 (2002): 247–261.

¹⁶ Here we adopt the analytical framework of Bankes, *Resource-leasing Options and the Settlement of Indigenous Claims* (Ottawa: Canadian Arctic Resources Committee, 1983), who distinguishes between proprietary and legislative rights in the settlement of comprehensive land claims agreements:

“Juridically speaking, either proprietary or legislative rights, or both, may be involved in the settlement of native claims. In other words, an Indigenous group may obtain title to land and/or the right to legislate or regulate matters within the claimed area, or part of it, as a result of a negotiated settlement.” (p. 12) See also Nigel Bankes, “Recognising the Property Interests of Indigenous Peoples within Settler Societies: Some Different Conceptual Approaches” in Nigel Bankes and Timo Koivurova, eds. *The Proposed Nordic Saami Convention: National and International Dimensions of Indigenous Property Rights*. Oxford: Hart Publishing (2013) pp 21-44

¹⁷ Barton “The Free Entry System Vs Government Regulation - The Clash of Old Methods with New Demands for Environmental Preservation,” *Resources - The Newsletter of the Canadian Institute of Resources Law* 45 (1994): 1. For a discussion of the congruence with this approach with the overall Canadian economic development policy pursued by successive governments since the late 19th

permitted to freely enter lands where the Crown owns the mineral rights and lay claim to those rights by their own actions, while the government is obliged to grant those rights when applied for. If an operator meets its obligations in applying for the claim, the minister has no option but to grant title. Under this system, and in the absence of settled land claims, the pace of mineral development is largely outside the control of Indigenous peoples; an arrangement Banks and Sharvit¹⁸ argue is an infringement on Indigenous title. Here, “[M]ineral interests clearly take priority over Indigenous interests.”

Most Crown lands in the NWT and Nunavut were – and still are – governed by the *Territorial Lands Act* and the *Canadian Mining Regulations*, and administered by a department of the federal government. The principle of free entry applies to prospectors who acquire mineral rights through claim-staking activities. These rights, however, do not apply to the acquisition of rights to perform exploration or development activities, for which additional land use and environmental regulations apply. Security of tenure is achieved through the claim-staking and registration process administered by the mining recorders office in the Department of Indian Affairs and Northern Development.

While the Crown’s legislative regime provided private enterprise with free access and relative certainty to mineral title,¹⁹ the proprietary regime entitled the Crown to dispose of, and benefit from the proceeds of, public lands including mines, minerals, and royalties. In some cases, the Crown’s proprietary interests extended to joint venture agreements with resource development companies. This occurred in the case of the Nanisivik mine.

The Nanisivik property – a lead zinc deposit near Arctic Bay on the North coast of Baffin Island – was discovered in the early 1900s and assessed by Texagulf Inc. geologists in the late 1950s. A decade later, the company had established that the deposit held economic potential, and with tenure secure began negotiating an export license for sulfide concentrates with the federal government. The federal government rejected the application citing loss of economic benefits to Canadians, environmental costs, and socio-economic impacts on local residents.²⁰ Eventually, Texagulf sold its interest to Mineral Resources International (MRI), a junior miner lacking development capital and technical expertise.

Project development posed serious financing challenges to MRI. The location of the project and its large capital requirements worked against the company, whose balance

century, see Abele, “Northern Development: Past, Present, and Future,” ed. Frances Abele et al. *Northern Exposure: Peoples, Powers and Prospects in Canada's North*. Montreal: Institute for Research on Public Policy (2009) pp 19–68..

¹⁸ Nigel Bankes and Cheryl Sharvit, *Indigenous Title and Free Entry Mining Regimes in Northern Canada*, 1998.

¹⁹ Bankes, “The Registration and Transfer of Interests in Crown Lands,” in *Public Disposition of Natural Resources*, ed. Nigel Bankes and J. Owen Saunders (Banff: Canadian Institute of Resources Law, 1983), 89 – 107. argues that the registration system used for mineral title is inferior to other public land registries, e.g. the Torrens system

²⁰ McPherson, *New Owners in Their Own Land: Minerals and Inuit Land Claims* (Calgary: University of Calgary Press, 2003).

sheet would not have been able to convince lenders to fund the project.²¹ MRI therefore proceeded to explore alternative financing arrangements that were eventually secured. The Government of Canada agreed to commit \$16.5 million for project infrastructure in return for an 18% equity stake. MRI then negotiated with prospective buyers of an interest in the sale of the future mine's output, obtaining provisions that would cover \$10 million in development costs. Commercial sales contracts were secured, and the purchasers received 25% equity in the project. Finally, MRI negotiated an \$18.5 million loan from commercial banks that was senior to the other loans.²²

The disproportionate influence held by government relative to Inuit during this process is discussed in detail by Gibson and later by McPherson.²³ The equity stake in the project gave the government the power to seek an extended mine life (from the more efficient eight years to the more stable fifteen years) and a town site rather than a camp to serve the mine. Meanwhile, Inuit concerns regarding the town site, water service, road, school, nursing station, and airstrip had little effect on the design of the project. In particular, potential Inuit employees expressed a preference to keep their families in Arctic Bay, away from the mine site. Gibson refers to the conduct of the company during this time as a "public relations effort" rather than a consultation exercise.²⁴ Ultimately, the Nanisivik mine and a town were built in 1974 and became operational in 1976. The mine was in operation until 2002.

The institutional context in place prior to the settlement of comprehensive land claims agreements presented a serious challenge to the control Inuit had historically exercised over their lands and resources. Crucial decisions over resource use and allocation – decisions affecting the maintenance of harvesting lifestyles, preservation of language and culture, and economic relations with settler society – had come under the control of the state and finance capital. As more and more exploration and development activity took place, Inuit noted that the state favoured mineral interests over their historic relationship with the land.²⁵ The extent to which this relationship has changed is discussed below.

The Nunavut Agreement and the Transformation of the Regulatory and Proprietary regimes

Nunavut is Canada's newest territory, having been established in 1999. It has the largest proportion of Indigenous people: Inuit are about 85% of the population. By most

²¹ Schreiber and Castle, "A Case Study of the Strathcona Sound Project (A Non Recourse Project Financing)," in *Finance for the Minerals Industry*, ed. C. Richard Tinsley, Mark E. Emerson, and W.D. Eppler (New York: Society of Mining Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers, 1985), 671–682. show that capital costs for the project were expected to total \$45 million, and the company's total assets amounted to \$4.5 million. However, the project contained high grade ore, the price of zinc and lead was favourable, and the federal government had taken an interest in the project – factors created a favourable investment climate.

²² Ibid

²³ Gibson, *The Strathcona Sound Mining Project; a Case Study in Decision Making* (Ottawa, Ont: Minister of Supply and Services Canada, 1978).; McPherson *New Owners in Their Own Land*.

²⁴ Gibson *The Strathcona Sound Mining Project; a Case Study in Decision Making*.

²⁵ See McComber, *Changing the Face of Canada: The Life Story of John Amagoalik, Life Stories of Northern Leaders*, vol. Volume Two (Iqaluit: Nunavut Arctic College, 2007).

measures Nunavut faces the most significant deficits in infrastructure: for example, none of the communities are connected by roads; internet access is below the Canadian standard; water and sewer systems are barely adequate. It also faces the largest challenges in institutional development and governance related to the small size of the population (33,000 people), to geography (Nunavummiut live in 27 communities dispersed over an area the size of Europe), and to the newness of the territory and its institutions.

Nunavut has a strong harvest-based economy that so far co-exists with the wage economy, and retention of Indigenous languages and culture in Nunavut is probably stronger than any where else in Canada. A few mines have opened in the past (and some have closed), but it is clear that the experience of many communities with mineral development as an aspect of territorial economic development is still quite shallow. The public service still provides by far the largest proportion of employment.

The birth of Nunavut was a landmark in Canadian institutional innovation. Unlike the other provinces and territories, Nunavut is the product of modern treaty negotiations with the Crown. With the 1993 Nunavut Land Claims Agreement Inuit surrendered their existing (but “undefined”) Indigenous rights in exchange for the defined package of rights and benefits negotiated in the Agreement. Those rights include fee simple ownership of large areas of surface and subsurface lands (i.e. mineral rights), water rights, harvesting rights, rights to participate in co-operative resource management processes, and rights to negotiate benefits from major development projects. In addition, the NLCA calls for the establishment of Nunavut, a territory carved out of the eastern portion of the Northwest Territories by a 1999 Act of Parliament.

In keeping with its territorial status, the Government of Nunavut does not control development on Crown lands; this power is still held at the federal level, as is the power to levy taxes on resource development. About 15% of the surface (and 1.5% of the subsurface) land in Nunavut is not Crown land, but rather is owned collectively by Inuit beneficiaries²⁶ of the Nunavut Land Claims Agreement. Mineral development is proceeding on beneficiary lands; beneficiaries do have the power to tax this development --indeed, the first royalties from a mine on beneficiary-owned lands have just been collected from Agnico-Eagle’s Meadowbank gold mine north of Baker Lake.²⁷

All mines and many other kinds of developments must be assessed by a system of jointly managed regulatory bodies established under the comprehensive claim agreement that replaced the former federal environmental assessment and permitting processes. The beneficiary organizations (territory-wide and regional) have substantial rights to intervene in land use decisions. They are also, potentially, investors, as all receive capital transfers pursuant to the claims agreement in addition to potential royalties. Of particular importance for residents of Nunavut's many small communities, the Nunavut Agreement

²⁶ This term refers to people who are parties to the Nunavut Agreement. To become a beneficiary, a person would have to have met certain pre-specified criteria in order to be enrolled (listed as a beneficiary). Beneficiary status is inherited.

²⁷ Nunatsiaq News. *Agnico-Eagle pays NTI \$2.2 million as royalty payment*, May 1, 2012. URL: http://www.nunatsiaqonline.ca/stories/article/65674agnico-eagle_pays_nti_2.2_million_as_royalty_payment/

mandates the negotiation of Inuit Impact and Benefit Agreements between companies and communities to respond to local interests.

As even this brief and incomplete sketch of the northern regulatory regime suggests, the circumstances in northern Canada are unusual and complex. Perhaps more complex, however, are the evolving relationships among the federal government, Inuit organizations, and a growing cast of international mining companies. Modern treaties modify established patterns of capital investment and regulation, creating a powerful, quasi-private method of project development and regulation. This pattern cannot be fully understood, however, without discussing the proprietary regime established by the Agreement.

Proprietary institutions under the NLCA

The structural change in proprietary rights is an important institutional outcome of modern land claims agreements. With the settlement of the NLCA in 1993, the *Territorial Lands Act* and the *Canadian Mining Regulations* still generally apply, and the state retains ownership and control over Crown lands totalling an area nearly one-fifth the size of Canada. However, in exchange for Indigenous title, Inuit became fee-simple owners of the largest private real estate holdings in Canadian history. They received capital transfers of \$1.1 billion, and secured rights to participate in resource management processes. Lands and capital holdings are administered by a network of beneficiary-controlled corporations and a trust. In what follows, we describe these institutions in more detail before turning to their effect on local control.

Land

Title to Inuit Owned Lands is held in one of two forms. The largest area of land, known as surface IOL, is held in fee simple “saving and excepting the mines and minerals found to exist within, upon, or under such lands, together with the right to work the same, but including the right to all specified substances.”²⁸ A smaller area of fee simple title (35,000 km²) is known as subsurface IOL and includes the mines and minerals that exist within, on, or under the land. At the time of ratification, title was vested with the Designated Inuit Organization (DIO) and recorded by the registrar.

The terms of access to IOL are in keeping with the government’s pre-existing legislative regime, except where Inuit own mineral title. People other than Inuit are prohibited from entering IOL without DIO consent, subject to certain provisions. Operators are granted “the right to explore, develop, produce, or transport minerals in, on or under Inuit Owned Lands only in accordance with the Agreement.”²⁹ A prospector may access IOL provided his or her activities (if they were conducted on Crown land) would not require a land use permit under the *Territorial Land Use Regulations* with the consent of the DIO. The DIO is required to grant consent provided the prospecting activities are carried out in a manner consistent with a code developed in consultation with government and industry and approved by government and the DIO. The code must respect confidentiality for

²⁸ Canada, *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada*, 1993. s.19.2.1(b)

²⁹ *Ibid.*. s.21.7.8

prospectors. The effect of this regime is to enable mineral development by preventing the DIO from withholding consent for prospecting, while enabling the exercise of Inuit surface rights for exploration, development, production or transport.

Responsibility for administration and control over surface and subsurface lands fall to the three Regional Inuit Associations, who have established a land management policy and developed procedures in four different areas: the formalization of community participation in the Inuit land management regime; the development of a coordinated system of land management in Nunavut; the establishment of land management administrations in relevant Inuit organizations; and the development of rules to govern the disposition of interests in Inuit Owned Land.¹

Financial capital

In exchange for the surrender of Indigenous title, Inuit received \$1.1 billion (1993) in cash from the federal government. Payments occurred over a period of 14 years and were placed in a trust established by the Agreement. The proceeds of the trust are to be used to fund the operations of NTI and the three Inuit organizations in perpetuity, with additional capital available for distribution to the other two beneficiaries - the Nunavut Economic and Social Development Trust and Nunavut Elders' Pension Trust. The Trust must therefore generate enough investment income to outpace inflation. It does this through a diversified investment portfolio managed by a mixture of portfolio management firms.³⁰

While the Nunavut Trust invests in Canadian resource equities, its mandate does not include the direct provision of finance capital to resource development firms, to the development of businesses in Nunavut, or to Inuit businesses themselves. There is however a financial vehicle for this purpose. Capital from the Trust is diverted to the Nunavut Economic and Social Development Trust which in turn invests in the Atuqtuarvik Corporation, a for-profit investment company capitalized to \$70 million focusing on medium-risk loans and equity investments to Inuit firms through "superior access to reliable sources of financing and investment, directly and through strategic partnerships."³¹

A complex network of Inuit firms has grown to take advantage of capital and business opportunities. Regional Inuit Associations sponsor and control regional development corporations, which in turn invest in joint ventures with a diverse array of for-profit enterprises, which may or may not be Inuit-owned. Inuit firms access finance capital through Atuqtuarvik and federal and territorial government granting programs.

³⁰ See www.nunavuttrust.ca/stratgic.htm. The trust's investment portfolio is managed by a group of experts in diverse fields contracted to provide financial services. The portfolio includes a mixture of fixed-income securities and equity investments. In 2010, 36% of the portfolio was invested in Canadian equities, 35% in foreign equities, and 22% in Canadian bonds. The other 7% was invested in other bonds cash and equivalents, and "alternative investments." Of the equity investments, 12% are invested in financial services and conglomerates, and 11% are invested in resources.

³¹ Atuqtuarvik Corporation, *Strategic Plan 2011-2015* (Rankin Inlet, 2010).

The mining sector has become an important sink for Inuit investment capital. In the Kitikmeot region, for example, the Kitikmeot Corp. (the development arm of the Kitikmeot regional beneficiary organization) has invested in a number of joint ventures to service the mining industry.³² Meanwhile, the Kitikmeot Inuit Association has sponsored the establishment of the Nunavut Resources Corporation, an enterprise intended to “work in concert with government and private sector partners to facilitate the development and growth of Nunavut’s non-renewable resources sector.”³³ NRC has invested in a number of junior miners, with the financial assistance of the Government of Canada through its Major Project Investment Initiative.

Resource development today

What do these structural changes in regulatory and proprietary regimes imply for the relationships among the extractive sector, Inuit, and the state? How has the locus of authority changed, and how is that authority being exercised to ensure development proceeds with the maximum contribution to environmental, social, and governance outcomes?

Clearly the new legislative regime ensures that Inuit --and indeed all residents of Nunavut-- will have a greater say. Under the pre-claim regime that governed the development of Nanisivik, developers had no responsibility to consult with Indigenous people, and negotiations occurred between government officials and company representatives. The environmental assessment processes established by the federal government in the 1980s provided for no sharing of procedural oversight with Inuit. Today, the legislative regime has improved transparency and access to public decision-making.³⁴ Resource developers are forced to engage in public dialogue with the state and Indigenous people as well as other interested parties about the design of the project and its possible environmental and socio-economic effects.

In other ways, the legislative regime has changed very little. The environmental assessment and permitting processes in place in Nunavut today are consistent with the standards set by the Canadian Environmental Assessment Act. The process is run in a quasi-judicial, centralized manner that creates problems for meaningful public participation.³⁵ The federal government remains the final arbiter for environmental assessment decisions. Meanwhile, the free entry system remains in place, providing prospectors and developers with access to the subsurface and expectations for future exploration and development. Private land owners lacking mineral rights have little recourse if their intention is to prevent development from taking place at the earliest stages of development. Of course, this same arrangement creates favourable conditions for investment because of the low-cost, low-risk environment for resource identification and assessment, somewhat offset of course by the high costs associated with any northern

³² <http://www.kitikmeotcorp.ca/jointventures.htm>

³³ <http://www.nunavutrc.com/about-nrc/about-the-nrc/>

³⁴ G White, “‘Not the Almighty’: Evaluating Indigenous Influence in Northern Land-Claim Boards,” *Arctic* 61, no. 1 (2008): 71–85.

³⁵ Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Indigenous-State Relations in the Southwest Yukon* (Vancouver: UBC Press, 2003).

activity, due to climate and geography. The legacy of the general Canadian approach to mineral development is apparent in the new arrangements in Nunavut, and this tends to reduce the impact of the amendments to the regulatory regime achieved under the modern treaty.

With the addition of property rights and the right to negotiate Impact and Benefit Agreements, however, Indigenous interests have been transformed and the locus of control and form of authority have shifted. In Nunavut, powerful forces are arrayed in the interests of maintaining and growing the available stock of financial capital, and Inuit institutional land owners see their title to surface and subsurface lands as potential sources of revenue through licensing fees and mineral royalties. There is, however, a growing tension in Inuit society, between those who are more favourable to mineral development, and those who view this step with caution and concern. All face the question of how to manage the pace and sequencing of mineral development projects in negotiations with global interests.

As a result of their ownership of lands (including minerals), their access to capital, and their right to negotiate IIBAs, Inuit *as a collectivity* are in a position to exert some influence the design and management of major development projects involving the development or exploitation of resources under Inuit Owned Lands.³⁶ Although this paper has not provided an empirical account of project financing arrangements for contemporary resource extraction projects in Nunavut, we know that Inuit firms are actively leasing their lands, negotiating financial compensation deals through IIBAs, and engaging in joint ventures with firms in a variety of sectors, including resources.

In their dealings with resource development companies, Inuit associations have sought ways to improve the design and management of projects to accommodate environmental, social, and cultural interests of the wider Inuit society. These circumstances and the pressures to generate revenue and collect rent while looking after social wellbeing have placed Inuit associations in a difficult position: simultaneous participation in public regulatory processes and private financial dealings raise concerns about transparency, fair representation, and free prior informed consent. It is likely that these contradictions will intensify with growing pressure on northern resources and increased mining activity.

These conflicts are only part of the price Inuit have paid for greater private authority. Each Inuit organization must also develop the legal, technical, and administrative capacity needed to ensure its rights are respected and its proprietary interests are satisfied. This means investing in personnel and human resource training, or contracting expensive expertise from southern Canada. It also means plunging deeper into an economic system whose values and norms may undermine cherished features of Inuit society.

The federal role in Nunavut remains strong and it weighs against the broadly democratic reforms that we have been discussing. The northern regulatory system, despite its many legal powers and its democratic reach, does not have ultimate decision-making power

³⁶ Of course, where resources are located other than below IOL, Inuit control is somewhat diminished.

concerning major projects: regulatory board decisions are advisory to the federal Cabinet. In addition, any development on Crown lands (85% of the lands in Nunavut) is taxed directly, with all proceeds to the federal order. The current federal government has initiated a process of regulatory reform that seems likely to weaken the new system in the north by such measures as the imposition of a two year time limit on regulatory board deliberations. In short, the gains that we have been describing in this article may be attenuated by the decisions of the larger players.

Conclusions

The Canadian territorial north is the focus of increasing international attention as global markets for northern resources continue to grow, while climate change and the warming of arctic waters makes these more accessible. For the approximately 100,000 residents of the territorial north, more than half of whom are Indigenous people, these are times of uncertainty and change. An important driver of change is the international mineral industry as it interacts with Canadian national development policy and the institutions created in the north by Indigenous peoples' activism over the last forty years.

Indigenous political mobilization, in the particular circumstances of Canadian liberal democracy during the last quarter of the twentieth century, resulted in a distinctive regulatory and property regime intended to rebalance power relations between global corporations, large state actors, and small Indigenous societies. In the new times we have now all entered, there are countervailing forces. Some are internal to Indigenous societies, at least in the case of the Inuit of Nunavut: in exchange for increased collective power and financial resources, Inuit have entered a new political and economic system with its own logic and contradictions, and a unique power to create social divisions and inequality. They must find ways to use the institutional power that they have not only to profit from development, but also to make the choices that permit them, collectively, to build a new society that resembles one they would like their children and grandchildren to live in.

As we have seen, certain responsible investment strategies are already being implemented through modern treaties. The availability of loans through Inuit financial institutions capitalized by the NLCA is one example, and the requirement to negotiate IIBAs is another. But other strategies might well have a role to play in this project. For instance, the regulatory and proprietary changes discussed above are implemented largely through bureaucracies (Indigenous, state, and private sector), potentially leaving land claim beneficiaries in an information deficit about the inevitable trade-offs among the principles of ecological sustainability, economic vitality, and social equity resulting from project development. The democratic reforms embedded in modern treaties could thus be enhanced by a private sector commitment to obtaining free, prior informed consent of affected communities. Finally, beneficiary organizations *as institutional investors* may themselves wish to adopt the principles of responsible investing or use tools such as socially responsible investment screens to ensure their investments are contributing to the cause of Indigenous rights and wellbeing globally.

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