

**THE CONTRIBUTION OF IMPACT AND BENEFIT AGREEMENTS TO THE
REGULATION OF MINING PROJECTS: LESSONS FROM THE RAGLAN AGREEMENT
IN NORTHERN QUEBEC**

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ABSTRACT

Since the early 1990s, the Canadian mining industry has been increasingly defined by the signing of Impact and Benefit Agreements (IBAs) between mining companies and Aboriginal peoples. While these agreements are intended to complement the legal system, they also serve to establish the legitimacy of mining projects and to encourage the harmonious integration of these projects into their social and environmental contexts. Beyond their practical implications, what are the effects of such agreements on the ability of Aboriginal communities to access the institutional space where the authorization of mining projects and the conditions of their implementation are decided? Can we view IBAs as a preliminary step towards the operationalization of the principle of Free, Prior and Informed Consent? This paper aims to explore the potential of IBAs as a sustainable solution to the legitimacy issues that result from the implementation of the formal regulatory framework governing mining activities in this jurisdiction. We highlight what constraints and opportunities the James Bay and Northern Quebec Agreement (JBNQA) engenders for local communities and draw attention to the ways in which the negotiation of the Raglan IBA and the environmental evaluation processes act upon each other. We find that certain structural problems - and problems of legitimacy – related to mining in Northern Quebec cannot be solved by the sole signature of an IBA, which suggests the need for caution when considering such agreements as a panacea. The Raglan case demonstrates that IBAs, like other modes of regulation relying on the direct interface between companies and communities, would benefit from a stricter framework and more explicit ties with official regulation channels.

KEYWORDS

Impact and Benefit Agreements (IBAs), Legitimacy, Mode of regulation, Aboriginal Peoples, Northern Quebec

IBAs AS A SUSTAINABLE SOLUTION TO THE MINING SECTOR'S LEGITIMACY ISSUES?

As current governments express high levels of interest in the resources of Northern Canada, Aboriginal peoples are renewing their claims to more benefits from and increased control over the development of these resources. In the context of ongoing debate over the nature and quality of the relationship between Aboriginal peoples and the Crown, legitimacy issues in the mining sector increase in relevance. This being so, some recent approaches point to Impact and Benefit Agreements (IBAs) as the ultimate expression of a “social license to operate”, or even an operationalization of Free Prior Informed Consent (FPIC) that all sides can agree upon (see Szablowski, 2010). However, do IBAs in their current form actually resolve the structural problems and legitimacy issues that are at the core of indigenous demands for FPIC?

To answer this question, the Research Group on Mining Activities in Africa (GRAMA), a unit of the Interdisciplinary Research Center on International Development and Society (CIRDIS) at the University of Québec in Montreal (UQAM) has studied the political processes that led to the signing, in 1995, of an IBA between Falconbridge Limited (hereinafter Falconbridge) and the Inuit communities impacted by the Raglan project in Northern Quebec. Involving five years of comparative research on IBAs conducted by the author, Ugo Lapointe and Geneviève King-Ruel, this research has been conducted in the context of a larger research program that draws from Canadian experiences to inform a long-standing reflection on the global mining sector's political economy, the result of which has been published in French (Laforce, Campbell and Sarrasin, 2012). We have thus intentionally

distanced our research from the negotiation process itself and from the factors that led to a more or less favourable outcome for the parties, focusing our analysis instead on the way in which the IBA contributes to the definition and implementation of a new model of regulation and legitimation for mining investment and the effect of the IBA on the Aboriginal peoples' structural power.

We are therefore less interested in the specific details of the actual negotiation than in the kind of negotiation "space" that was created by the context in which it occurred. Our research allows us to better define the implications of the hybrid consultation and regulation regime that characterized the implementation of this mining project, which combined the various regulation processes (environmental evaluation processes, public hearings, licensing, etc.) implemented by different State institutions, on the one hand, with a process of negotiated justice, on the other hand (Szablowski, 2010, p. 117, 123). We examine below the interaction between the negotiation of the Raglan IBA and the formal regulation processes, putting them in the context of the wider socio-political and historical dynamics at play in Northern Quebec. These elements should help evaluate to what extent the regime created by the eventual generalisation of IBAs would resolve legitimacy questions at play in the mining sector in Quebec and in Canada. These questions are particularly relevant insofar as the implementation of the same model might be proposed in other parts of the world.

In this paper, we adopt the term "regime" in the broad sense proposed by legal pluralism, for which legitimation and regulation are the two defining products of any legal regime (Szablowski, 2007, p. 11). Any regime, in turn, projects a certain political identity, i.e. "the kind and degree of political recognition that is conferred by a legal order on those who are subject to it" (Szablowski, 2007, p. 303).

CONSTRAINTS AND OPPORTUNITIES FOR ABORIGINAL PEOPLES UNDER THE JBNQA: AMBIGUOUS POLITICAL AUTONOMIES

The James Bay and Northern Quebec Agreement (JBNQA), which resulted from a dispute between Inuit and Cree Peoples and the Quebec government over territorial rights and hydroelectric projects, was signed in 1975 after two years of negotiation. According to the Quebec government, the agreement gave Aboriginal peoples the opportunity to renounce "imprecise and ill-defined" territorial rights in exchange for precise and clear rights:

In exchange for giving up ill-defined ancestral rights, the JBNQA granted Indigenous peoples a series of rights relative to the preservation and development of their culture and communities that were precise and enforceable while guaranteeing them an important role in the development of the territory's resources (Goudreau, 2002, p. 25; see also: JBNQA, 1998, p. xiv).

Despite the successful ratification of the JBNQA, different visions of development gave rise to dissent within Aboriginal communities. This was noted in the environmental impact assessment carried out for Falconbridge on the Raglan project (Roche, 1993, section 2, p. 25–26). These tensions were linked to the fact that notions of development are entangled with notions of identity, ancestral rights and Aboriginal relationships with the land (Mackenzie, 2001). Thus, the management of the North's natural resources, the legal link between Aboriginal peoples and the land, and Aboriginal peoples' political autonomy were, and continue to be, at the heart of controversies surrounding the JBNQA.

There are two reasons why the implementation of the JBNQA, and the way in which the use of the land is regulated, have not been straightforward: on the one hand, interpretation of the JBNQA is still subject to debate, as is the evolution of Northern Quebec's mode of government (Mackenzie, 2001; Nunavik Commission, 2001); on the other hand, as is explained below, the Aboriginal peoples' influence over the management of natural resources is exerted through a complex set of political and administrative processes, both formal and informal, which depend on changing power dynamics. As such, the mode of regulation applied to the exploitation of natural resources and the definition of the Inuit's political identity remains intimately linked.

Continuities and modifications of the mining regime under the JBNQA

Under the regime of the JBNQA, the State of Quebec remains the only owner and manager of mineral resources. In fact, apart from the reaffirmation of Quebec's ownership of these resources and the categorisation of lands described below, the Agreement does not include any specific clause on the mining sector despite it being already considered one of the most promising sectors in the region (see: CFPF, 2001; Quebec Government, Ministry of Energy and Resources, 1985, 1986; Quebec Government, Ministry of Natural Resources, 1975).

Furthermore, as was stressed by the researchers who conducted the Raglan project's social and environmental impact assessment, "the land selection resulting from the JBNQA represents what the Inuit could have, rather than what they wanted" (Roche, 1992, vol. 3, p. 45). Thus, only on land described as "Category I" by the JBNQA (approximately 1 % of the territory) is a "right to consent" granted to the Inuit on the ascription, exploration and exploitation of mining resources (JBNQA, 1998, section 7.1.3). On "Category II" land (approximately 14 % of the territory), the Inuit have a "compensation right" for mineral exploitation. Their influence on the attribution of mining rights and mining exploration, however, remains limited (JBNQA, 1998, sections 7.2.1, 7.2.3, 7.2.5). The Raglan project is situated on "Category III" land (approximately 85 % of the territory), considered as public land where the principles of free mining apply in their entirety – that is, the acquisition of mining rights is permitted without having to inform or consult local populations. The exploitation of minerals is subject to only the procuring of the appropriate environmental licensing (JBNQA, sections 7.3.1, 7.4.1).

Nonetheless, the JBNQA offers unique opportunities for Aboriginal peoples to participate in decision-making related to the development of natural resources through the environmental requirements that the Agreement imposes (Lajoie, Gélinau, Duplessis, & Rocher, 2000; Peters, 1999). Verreault (2000) underlines the explicit intentions of the parties to the JBNQA regarding the "privileged status of Inuit with regard to control over development projects in Nunavik" (p. 145). In the Raglan case, the Inuit have been able to exert some influence through the Kativik Environmental Quality Commission (KEQC), an administrative entity managed jointly by the Inuit and the Quebec government. The KEQC is composed of nine members, four of which are appointed by the Inuit (through the Regional Kativik Administration) and five which are appointed by the Quebec government (through the ministry responsible for the environment). A president is appointed by the Quebec government with the consent of the Inuit. The Commission benefits from a mandate that theoretically allows it to block a project. In the event of a conflict between the KEQC and the Ministry of the Environment, the latter would require the approval of the Lieutenant Governor in Council to revert the KEQC's decision, which has not yet occurred (Peters, 1999, p. 398, 400, 405). Verreault (2000) observes that the KEQC "is the only entity to benefit from real decision-making powers under the JBNQA" (p. 145).

Beyond the KEQC's ability to delay or even cancel projects for social or environmental reasons, it also allows the Inuit to exert considerable influence by imposing specific conditions on the projects' operators. Indeed, the analysis of the KEQC's meeting minutes on the Raglan project (1990–1995) reveals a certain sensitivity towards local community concerns. Therefore, in the absence of a deliberative and representative political entity with decision-making powers over mineral resources, the JBNQA has established administrative units in which Inuit are represented and that allow them to intervene directly in the regulation of certain development projects. However, the pursuit of a balance of power through administrative entities is subject to many constraints, mainly a fragmentation of the issues (Duhaime 1993, p. 255–256; see also Forest & Tremblay, 1992). For Mercier and Ritchot (1997), "Aboriginal participation [...] is [broken down] in a variety of specialized tasks performed under complex administrative processes. Fragmented, these responsibilities [remain] subject to standardized bureaucratic systems that elude the much awaited collective responsibility" (p. 160). For this reason, Peters (1999) argues that "[while] the requirement for social impact assessment [...] increases somewhat [Aboriginal peoples'] level of political influence [...] it is important to remember the costs, both social and economic, of these kinds of battles. These costs have disproportionately been borne by the [Aboriginal] peoples" (p. 405).

The negotiation of the Raglan IBA fits into this context of fragmentation. The question that we must ask ourselves, then, is: how does this mode of regulation affect the definition of political identities and power dynamics in the natural resource sector in Northern Quebec?

Implementation of the Formal ESIA Process: Opportunities and Constraints for Local Populations

In the late 1950s, after having conducted mineral exploration in Northern Quebec since the late 1930s, Falconbridge acquired the mining rights for an area where one of the most important nickel deposits in the world would be discovered. In accordance with the principle of free mining, the company subsequently acquired other mining rights and, for more than 30 years, undertook numerous exploration activities without having to inform or consult the local populations. In 1990, however, the KEQC was seized of the matter and the project was then subjected to its environmental and social impact assessment (hereinafter, the ESIA process).

It was the first time in the history of Nunavik – or of Quebec – that such a process was applied to a mining project. As part of the process, the KEQC requested that Falconbridge take into consideration certain potential social consequences of the exploration project and that the company sign an agreement with local communities. Among the 14 Inuit villages of Nunavik, the communities of Salluit (of approximately 1000 inhabitants) and of Kangiqsujaq (of approximately 400 inhabitants) are those located closest to the Raglan mine. Three other communities - Kangirsuk, Quaqtaq and Puvimutuk – are also directly affected by the impacts of the mining operation. These five communities would eventually be taken into account by the ESIA and the Raglan IBA.

KEQC's mandate marks the beginning of two parallel processes regulating the social and environmental impacts of the Raglan project: a) a formal and institutionalized process, through the evaluation of the environmental impacts and the impacts on the human population (JBNQA, chapter 23), and b) another process, originally only defined as the obligation "to reach an agreement" with local communities, an obligation which was not subject to formal guidelines with respect to a framework or modalities for arriving at such an agreement. We argue that the interaction between these two processes ultimately results in a hybrid regime, *sui generis*.

Falconbridge quickly understood the role and potential power of the KEQC. In autumn of 1990, Roche, the company responsible for counseling Falconbridge on environmental issues, informed the mining company that KEQC "[had] decision-making power concerning the realization of the project", and that the Commission "[did] not rely upon a particular government and no administration [had] authority over it" (p. 28).

In addition to the KEQC's specific ability to authorize or oppose proposed development projects, the Commission has discretionary powers in the ESIA process, in both the procedural sense (shape and duration of the process, details of the public consultation, etc.), and in the substantial sense (especially with regard to selection of which social and environmental dimensions to analyze or the selection of the evaluation criteria). For example, the Agreement does not impose a specific timetable on the KEQC within which it must complete the various stages of the environmental assessment process.

With respect to the case at hand, the KEQC took nearly two years to study Raglan's impact assessment, to undertake consultations and to reach a decision. The latitude available to the KEQC represents an undeniable potential advantage for the local populations. With nearly 50 % of its representatives being Inuit, the KEQC can, in principle, exert a significant influence on decision-making processes and, if necessary, prolong them. The JBNQA also provides significant leeway to the KEQC, in that it cannot only determine which social and environmental dimensions the operator must take into account when assessing impacts, but it also has no obligation to support its decision on considerations other than those listed in the agreement, to which it can allow "the importance it deems appropriate" (JBNQA, 1998, section 03.23.19). In this way, the social acceptability of the project, the alternatives considered and the nature of the work proposed by the operator "to enhance the desired effects" (JBNQA, 1998, section 03.23.19) on local populations can be taken into account when evaluating and approving projects. It is partly due to the flexibility afforded by the agreement that the KEQC was able to require an agreement between Falconbridge and communities.

HYBRID REGULATION REGIMES: SYNERGY OR INTERFERENCE?

Beyond this requirement from the KEQC, no legal obligation forced Falconbridge to negotiate an IBA with the Inuit. In the absence of available research on Falconbridge's decision-making process, it is difficult to determine precisely what motivated the company to pursue such an agreement. Certain hypotheses may nonetheless be put forward.

First, the negotiation of the Raglan IBA takes place in a broader context that favors the establishment of direct interaction between mining companies and communities affected by mining projects, independently of State mediation. Thereby, according to Lanari (1998), who participated in the negotiations on behalf of the Inuit, the Whitehorse Mining Initiative (WMI) served as a guide for the negotiations: "Our negotiating position was mainly based on principles as formulated in the [WMI] document" (p. 7). As Weitzner (2010) explains, the WMI's goal was to bring industry representatives and Aboriginal communities to the table:

The [WMI] was a landmark, industry-led initiative that sought to involve key players in dialogue on how to revitalize the competitiveness of Canada's mining sector. First proposed by the Mining Association of Canada [...] at a [provincial] mines ministers' meeting in 1992, the [WMI] was to produce a plan of action, "underpinned by political and community consensus" to help Canada "move toward a socially, environmentally and economically sustainable and prosperous mining industry" (p. 91; citing the WMI Leadership Accord, 1995).

This led to the promotion of models of negotiated justice and direct interface between companies and communities which, in the words of Szablowski (2010), "aim to promote forms of direct 'horizontal' engagement between [extractive industry] firms [...] and affected communities in order to influence decision-making on [extractive] development [...] [These] regimes structure engagement as an interaction between nominally equal parties" (p. 112).

On the other hand, previous experience with the Great Whale hydroelectric project, blocked in part because of the Cree's ability to mobilize external allies, is also likely to have been an incentive. Studies produced on behalf of Falconbridge advanced the possibility that disagreement about the project would lead to the mobilization of interest groups at the national level and produced a list "of environmental groups likely to voice objections to development projects of concern to native groups" (Roche, 1990, p. 1). In 1993 these studies identified other actors involved in environmental management, including the Canadian Arctic Committee (CARC) and the Inuit Circumpolar Conference (ICC), forums where Inuit could sound their possible opposition (Roche, 1993, p. 2–26). In contrast to these scenarios, the celebration of the agreement was a major political gain for the company and the industry in general.

In addition, the Raglan project implied the development of port facilities in Deception Bay, situated in Category II territory and therefore subject to special compensations measures for the Inuit. Furthermore, Deception Bay "is closely associated with the history and development of the Salluit population" (Roche, 1992, p. 11) and negotiations were underway at the time with the federal government on ancestral rights in coastal and maritime zones, negotiations that could, in the medium term, threaten the viability of the project (Alaoui Mdaghri, 2008, p. 199; Hitch, 2006, p. 134), giving the Inuit important leverage in demanding an agreement.

Finally, we can assume that Falconbridge perceived that the KEQC's environmental approval would be compromised if conflicts emerged with local communities, while it was highly unlikely that the license would be refused in the event of an agreement, a hypothesis reinforced by the fact that some members of the KEQC and Inuit representatives in the negotiations with Falconbridge maintained close ties. From the moment the communities engaged in a negotiation process, they had every incentive to use their influence within the KEQC to ensure that the success of the negotiation was conditional upon the granting of the license, and vice versa – at least, it was in their interest that the company would believe as much. In this case, following the signing of an agreement in principle between the Inuit and Falconbridge in the spring of 1993, the KEQC told the company that before it could proceed to public hearings with the communities, the Commission would have to "have obtained very clear explanations regarding the status of the negotiations [with the communities]. [The Commission] adds that although many other aspects of the project should not be overlooked during the

assessment, the Commission considers that the conclusion of a satisfactory agreement in principle between the two parties continues to be of great importance” and it “hopes the socio-economic impacts will be positive for the region rather than be a source of tension and strife” (KEQC, 1993, 1994b).

Apart from the question as to how the formal regulatory process influenced the balance of power in the IBA negotiations, it is also important to determine what was the impact of the IBA negotiation on the formal process led by the KEQC? A first indication is that the ESIA conducted by the KEQC adjusted itself to the pace of the IBA negotiations: in November 1994, Falconbridge requested a postponement of the public consultation planned by the KEQC because “[it] judged it preferable to reach an agreement with [...] the communities of Salluit and Kangiqsujaq before the public consultation under the KEQC was undertaken. The Commission agreed to postpone the consultation to early 1995” (KEQC, 1995c).

The negotiation of the IBA likely had an impact on the flow of information and the role played by the public consultation process as part of the ESIA process. Throughout the process, indeed, it seems that the flow of information was insufficient. In its 1991 and 1992 studies, conducted for the benefit of Falconbridge, the consultant firm Roche (1993) underscored that “a good part of the population is not familiar with the project” (annex 5.5, p. 9). In 1993 few Inuit were familiar with the studies conducted during the exploration phase or the ongoing studies on the exploitation phase. Access to information, according to Roche (1993), was dependent on intermediaries in neighboring communities: “in general, the representatives of Falconbridge communicated with the mayor and his counsellors, taking for granted that they, in turn would inform the population” (p. 5–162; see also KEQC, 1994a, p. 4). These findings notwithstanding, the KEQC had to insist on the need for a public consultation despite the lack of interest shown by some Inuit negotiators of the IBA: “a certain portion of the population is in favor of the project and [...] informally, the mayors of Salluit and Kangiqsujaq expressed the opinion that it [was] not necessary that the Commission hold public consultations” (KEQC, 1995a).

In fact, based on observations by Benoît (2004), it may well be that populations in the villages of Salluit and Kangiqsujaq, both signatories of the Raglan IBA, were little or not at all informed of the negotiations surrounding the development of the Agreement. If the majority of the participants in a study conducted by Benedict were aware of the signing of the Raglan IBA, very few were aware of its content and an even smaller portion had read it, even in part. Moreover, some participants said it was difficult to obtain a copy of the IBA and that some Inuit employees at the mine were not aware of the IBA or of its hiring priority clauses (Benoît, 2004, p. 62). In fact, for the KEQC, the experience with Raglan demonstrated important shortcomings which led the Commission to examine in depth the issue of “public participation” in the implementation its ESIA process (KEQC, 1995b).

Difficulties related to the flow of information and the public consultation process could therefore have lead to a reduction of the options considered by the KEQC in its review of the Raglan project. By comparing the ESIA processes of the Great Whale hydroelectric project and that of Raglan, Bouchard and Delisle (1998) have identified two radically different approaches, although they were both deployed under the auspices of the JBNQA and in similar environmental and social contexts (p. 214). These authors observe that the Great Whale project, which was opposed by several segments of society and of the Cree communities (Bouchard & Delisle, 1998, p. 216), and faced several court challenges, was subjected to an ESIA process that incorporated the principle of integrated resource planning (IRP) under which:

what is considered valuable is the service provided by the resource and not the resource per se [...] This involves first assessing the need, and then comparing the various resources that could be developed to satisfy it [...] Definitely, it does not take for granted that a resource should be developed on the sole basis of being available and being available to generate a given monetary profit from its exploitation (Bouchard & Delisle, 1998, p. 218).

The scoping of the ESIA process for the Great Whale project, as well as the wide public consultation that took place helped to raise awareness and channel the debate on its social desirability, a debate that took place within a larger debate on Quebec’s energy policy, the development of the North, and the relations between Aboriginal Peoples and the rest of society (Bouchard & Delisle, 1998, p. 221). The terms of this debate enabled the articulation and operationalization of political alliances

and the mobilization of the media and public opinion (see O’Faircheallaigh, 2008, p. 69), which eventually led the Great Whale project to be put on hold (Peters, 1999, p. 402-403).

Unlike the Great Whale project, in the case of Raglan, the ESIA was carried out exclusively by the KEQC. No public hearings were held before the scoping process. It was not subject to the principle of IRP and therefore no consideration was given to the issue of social desirability of copper and nickel exploitation or to the availability of alternative supply (Bouchard & Delisle, 1998, p. 224). In addition, the absence of preliminary hearings and the fact that local communities did not reject the project as a whole may have resulted in reduced media attention (Bouchard & Delisle, 1998, p. 220). The ESIA focused on local environmental and social impacts, however, without considering economic alternatives, the potential effects related to ore processing or the long-term effects of climate change, or the management of residues (Bouchard & Delisle, 1998, p. 221–222). For Bouchard and Delisle (1998), it seems to follow that if the “development of a public resource blows the scope of an [ESIA] to public and holistic societal issues, the development of a private resource avoids these issues” (p. 224).

By not adopting the principle of IRP and implicitly requiring an IBA as a condition for a favorable decision, the KEQC undoubtedly provided an important motivation for Falconbridge in its negotiations with the Inuit. But, at the same time, the Commission delegated whole sections of the regulation of impacts and social benefits to communities through the negotiation of a contractual agreement. For O’Faircheallaigh (2008), indeed, IBAs “[place] a substantial burden on Aboriginal groups that must be met successfully if [their] potential benefits are to be realized in practice” (p. 78). If the possibility of direct influence on issues related to profit sharing, employment policies and long-term management of the cultural, social and environmental impacts of a project actually represents an opportunity for communities, “the question of whether obligations taken on by corporations through [IBAs] are both substantial and enforceable and so represent a ‘fair trade’ for the forbearance promised by those groups cannot be resolved a priori” (O’Faircheallaigh, 2008, p. 76). In particular, such a mechanism does not take into account the asymmetries of power and resources at play in the negotiation itself.

Indeed, IBA negotiations are not regulated and communities benefit from no support or arbitration in the process. This hybrid regulation process leaves these issues to the sole mechanism of what Trebeck (2008) calls “civil regulation”, which refers to the actions of civil society or individuals to “restrict the range of behaviors available to economic (or state) entities to achieve a specific response” (p. 11). According to this model, the willingness of companies to adopt social responsibility measures depends to a large extent on the ability of a group to inflict damage - to reputation, in particular - to a company or to continually threaten its “social license to operate”. Affected populations and civil society must maintain constant surveillance and pressure. However, this type of regulation - without direct mediation of the State - has significant shortcomings. Among these are the limited resources available for communities, the potential lack of representativeness and legitimacy of the “civil regulator”; the systematic advantage it provides to those who conform to dominant values; and the fact that it is dependent on certain prerequisites, such as civil rights and the possibility to protest freely and safely (Trebeck, 2008, p. 13-14).

It is clear from this analysis that the parallel processes of negotiation of the IBA and the ESIA were conducted without questioning the dominance of the values conveyed by the principle of free mining. In this case, if Roche noted in 1993 that “the Inuit population [perceived] the land as its own” and feared “‘uncontrolled’ development of resources, i.e. where their opinions, perspectives and projects would be ignored” (p. 10), its attitude toward Falconbridge must be read in the context of the powerlessness expressed by some members of the community with respect to their effective sovereignty over these lands: “[T]he government [...] gave the permit to mine in and exploit in this area. They did not consider the surrounding communities in providing their permit, when they said to the company that they could go up there and mine for minerals, [...] [T]hey have done this and [...] they will continue to do this” (Makivik Corporation, 1999, p. 9).

CONCLUSION: RECOGNIZING AND CORRECTING THE STRUCTURAL IMPACTS OF IBA NEGOCIATIONS

It is therefore possible that the negotiation of an IBA might have prevented wider social and identity issues from those being raised by the Raglan project. At best, these issues have been relegated to the sole balance of power established in the negotiation between Falconbridge and the surrounding communities; and they necessarily were restricted to the only dimensions on which the former had any influence. This despite the fact the project appeals directly to the authorities insofar as it affects the relationship between Inuit and the Quebec and Canadian society.

In addition, because the IBA negotiation process, as a negotiated system of justice, is not formally accompanied by the State, it might have interfered with the consultation process conducted by the KEQC. It seems indeed that the negotiation of the IBA in this case played a leading role in the granting of the environmental license, to the detriment of the public consultation process. In fact, despite the concerns of the KEQC, we could even argue that the negotiation of the IBA substituted itself to the public consultation process.

This substitution might have presented some advantages. O'Faircheallaigh identifies several potential benefits of IBAs: establishment of jointly managed socio-environmental structures that continue to function long after the ESIA process is concluded, economic benefits, etc. However, it might also have had less unforeseen consequences, including the following:

- The scope of the social aspects considered in the granting of the license has been significantly reduced, since only aspects directly related to the company's operations were taken into account;
- The amount of control exercised by Aboriginal Peoples was subject to the contingencies of the balance of power established in the negotiation instead of being prescribed by a regulatory body on the basis of objective considerations;
- The participation of Aboriginal Peoples did not benefit from the involvement of an instance (such as the KEQC) with the ability to take into account the asymmetries of power and access to resources, and ultimately subject to a degree of democratic control. In this regard, Szablowski observes that different regimes of negotiated justice in the mining sector involve different criteria on the conduct of negotiations and on the way in which the problems associated with asymmetries of power are taken into account (Szablowski, 2010, p. 125-126);
- The abstraction of the Raglan project from a wider debate over the political implications of this particular development model.

These elements probably explain why, despite greater interest toward the negotiation of IBAs, legitimacy issues cannot be considered resolved in Northern Quebec's mining sector. Despite having increased participation in the administration of Nunavik since the signature of the JBNQA, the Inuit still lack a key structural tool for taking concerted political decisions, that is: a government or a central political authority which would enable transversal and autonomous decision-making consistent with their priorities and aspiration (Nunavik Commission, 2001; Duhaime, 1992, 1993; Rouland, 1978; Simard, 1979) and that would allow, as recommended by the Commission for Nunavik in 1999, for any natural resource development to be submitted to its prior agreement according to a licensing process elaborated jointly with the Quebec government (Nunavik Commission, 2001, p. 42). Otherwise, the influence of the Inuit remains restrained by political orientations centralized in Quebec or Ottawa (Duhaime, 1992, p. 155; see also Duhaime, 1993; Forest & Tremblay, 1992, p. 308; Rouland, 1978, 1979; Simard, 1979). As we have seen, for the time being, the potential offered by the administrative structures put in place by the JBNQA are subject to the contingencies of community mobilization.

When it comes to the exploitation of natural resources, two distinct political identities are projected on Aboriginal Peoples, following competing regulation models. On the one hand, as we mentioned, autonomist claims project a political identity based on the existence of collective rights on the land. On the other hand, the social and environmental bodies enable the conceptualization of Aboriginal Peoples as "stakeholders" and the consideration of their needs and interests without it constituting the formal acknowledgment of rights. This later political identity is more diffuse in content and in terms of obligations and constraints imposed on private actors and on the State. Thus,

the JBNQA allows for contradictory and ambiguous dynamics regarding the political identity that will prevail.

In this context, “entering into contracts with corporate interests has [wide] and important implications for the relationship between Aboriginal groups, the state and civil society” (O’Faircheallaigh, 2008, p. 80). However, as Peters (1999) argues, to the extent that the initial objectives expressed by the Inuit during the JBNQA negotiations - greater control over economic activities occurring on the land and the ability to preserve their traditional way of life - are being implemented mainly through administrative structures, increased reliance on IBAs for the regulation of the mining sector is likely to drive these goals further away from the reach of the Inuit if the issue of their articulation with these administrative entities is not resolved. Indeed, the Raglan case suggests that IBAs, like other modes of regulation based on a direct interface between companies and local communities, would benefit from being subjected to a stricter regime and more explicit ties with formal regulation channels. It appears therefore that the adoption of a framework to « check corporate power by promoting a sphere of structured engagement between firms and community actors that is backed by certain principles and processes [that are] appropriate, [and in which] procedural protections [...] meet rigorous standards » (Szablowski, 2010, p. 113) would allow, at least in part, to remedy this situation.

In the absence of such a framework that would clarify the interaction between the formal process and the negotiation of the IBA, the ambiguity that characterizes the political identity of the Aboriginal Peoples under JBNQA in relation to the exploitation of natural resources is likely to perpetuate itself. There is also a risk that this ambiguity would increase insofar as the benefits of IBAs in terms of legitimacy for the industry do not correspond to an equivalent transfer of decision-making power to the communities. It is therefore prudent to maintain a certain reserve about the potential of IBAs a durable solution to the legitimacy problems faced by the mining industry in Northern Quebec, Canada more generally, or other parts of the world where might be implemented.

REFERENCES

- Alaoui Mdaghri, Z. (2008). *Intégration de la pensée cycle de vie aux études d'impacts : cas du site minier Raglan* (Unpublished doctoral dissertation). Faculty of Urban Planning, University of Montreal, Montreal, QC.
- Benoît, C. (2004). *L'Entente Raglan: outil efficace pour favoriser la formation et l'emploi inuit? Évaluation et documentation de la situation de l'emploi des Inuits à la mine Raglan, au Nunavik, dans le cadre de l'entente sur les impacts et bénéfices* (Unpublished master's thesis). Department of Environmental Sciences, University of Quebec in Montreal, Montreal, QC.
- Bouchard, M.A., & Delisle, C.E. (1998). Comparison of the EIA of the Great Whale Hydroelectric and Raglan Mine Projects: Lessons learned on societal views towards natural resources. In R.M. Kyan (Ed.), *Assessment and Impacts of Megaprojects, Procedures of the 38th Meeting of the Canadian's Society of Environmental Biologists* (pp. 213–227). St. John's, NFLD.
- CPFP (Commission permanente des finances publiques) (2001). *Cahier no. 3*. Québec, QC: Assemblée Nationale
- Duhaime, G. (1992). Le chasseur et le minotaure : Itinéraire de l'autonomie politique au Nunavik. *Études/Inuit/Studies*, 16(1–2), 149–177.
- Duhaime, G. (1993). *La gouverne du Nunavik. Qui paie quoi?* (Collection Travaux de recherche). Québec, QC: GÉTIC, Laval University.
- Forest, P.-G., & Tremblay, J.-F. (1992). Le retour des choses: La science politique et l'analyse de la modernité inuit. *Études/Inuit/Studies*, 16(1–2), 301–313.
- Goudreau, E. (2002). Synthèse de la Convention de la Baie-James et du Nord Québécois. In A.G. Gagnon & G. Rocher (Eds.), *Regard sur la Convention de la Baie-James et du Nord Québécois* (pp. 25–38). Montreal, QC: Québec-Amérique.

- Hitch, M. W. (2006). *Impact and Benefit Agreements and the Political Ecology of Mineral Development in Nunavut* (Unpublished doctoral dissertation). Department of Geography, University of Waterloo, Waterloo, ON.
- James Bay and Northern Quebec Agreement (1998). *Convention de la Baie-James et du Nord Québécois: Édition 1998*. Sainte-Foy, QC: Les Publications du Québec.
- Kativik Environmental Quality Commission (1993). *Procès verbal de la 88ème assemblée*. Montreal, QC, 8 December.
- Kativik Environmental Quality Commission (1994a). *Procès verbal de la 89ème assemblée*. Kuujuaq, QC, 3–4 February.
- Kativik Environmental Quality Commission (1994b). *Procès verbal de la 95ème assemblée*. Quebec, QC, 13 December.
- Kativik Environmental Quality Commission (1995a). *Procès verbal de la 96ème assemblée*. Quebec, QC, 18 January.
- Kativik Environmental Quality Commission (1995b). *Procès verbal de la 99ème assemblée*. Montreal, QC, 28–29 June.
- Kativik Environmental Quality Commission (1995c). *Rapport annuel de la CQEK: 1994–1995*. Quebec, QC: Quebec Government, Ministry of Sustainable Development, Environment and Parks. Retrieved from <http://www.mddep.gouv.qc.ca/evaluations/rap5cqek.htm>.
- Laforce, M., Campbell, B. & Sarrasin, B. (Ed.) (2012). *Pouvoir et régulation dans le secteur minier. Leçons à partir de l'expérience canadienne*. Boisbriand, QC: Presses de l'Université du Québec.
- Lajoie, A., Gélinau, E., Duplessis, I., & Rocher, G. (2000). L'intégration des valeurs et des intérêts autochtones dans le discours judiciaire et normatif canadien. *Osgoode Hall Law Journal*, 38, 143–188.
- Lanari, R. (1998, April). Resource Development and the Inuit of Nunavik. Negotiating a Future: Agreements and their Evolution. In *Industry and Indigenous Peoples*. 18th Annual Meeting of the International Association for Impact Assessment Sustainability and the Role of Impact Assessment in the Global Economy, Christchurch, New Zealand.
- Mackenzie, G. (2001). Vers un Nunavik autonome, *Relations*, 667, 28–39.
- Makivik Corporation (1999). *Raglan Mine: Action-Oriented Social Research Program. Scoping Phase: Analysis. A Report to the Community of Kangiqsujuaq*. Kuujuaq: Makivik Society, November 1999.
- Mercier, G., & Ritchot, G. (1997). La Baie James : Les dessous d'une rencontre que la bureaucratie n'avait pas prévue. *Cahiers de Géographie du Québec*, 113, 137–169. Retrieved from: http://www.cgq.ulaval.ca/textes/vol_41/no_113/Ma591.htm#Retour13.
- Nunavik Commission (2001). *Partageons: Tracer la voie vers un gouvernement pour le Nunavik*, Report of the Nunavik Commission, March 2001.
- O'Faircheallaigh, C. (2008). Understanding Corporate-Aboriginal Agreements on Mineral Development. A Conceptual Framework. In C. O'Faircheallaigh & S.H. Ali (Eds.), *Earth Matters. Indigenous Peoples, the Extractive Industries and Corporate Social Responsibility* (pp. 67–82). Sheffield (U.K.): Greenleaf Publishing.
- Peters, E. (1999). Native People and the Environmental Regime in the James Bay and Northern Quebec Agreement. *Arctic*, 52(4), 395–410.

- Quebec Government, Ministry of Energy and Resources (1985). *Énoncé de politique en matière d'exploration géologique et d'assistance à l'exploration minière*. Quebec, Qc.: Les Publications du Québec, Quebec Government, Director General of Geological and Mineral Exploration.
- Quebec Government, Ministry of Energy and Resources (1986). *Exploration en Ungava: Données récentes sur le géologie et la gîtologie*. Québec, QC: Les Publications du Québec, Quebec Government, Director General of Geological and Mineral Exploration.
- Quebec Government, Ministry of Natural Resources (1975). *Travaux sur le terrain: 1975*. Quebec, Qc.: Government of Quebec, Directorate of Geology.
- Roche (1990). *Environmental and Social Impact Assessment and Review Procedure North of 55th Parallel*. Ste-Foy, QC: Roche, December 1990.
- Roche (1992). *Étude environnementale*. Ste-Foy, Qc.: Roche:
- Roche (1993). *Projet Raglan: Étude d'impact sur l'environnement*. Ste-Foy, QC: Roche, April 1993.
- Rouland, N. (1978). *Les Inuit du Nouveau Québec et la Convention de la Baie James*. Quebec, QC: Association Inuksiitiit Katimajit/Centre d'études nordiques, Laval University.
- Simard, J.-J. (1979). Terre et pouvoir au Nouveau-Québec. *Études/Inuit/Studies*, 3(1), 101–129.
- Szablowski, D. (2007). *Transnational law and local struggles: mining, communities and the World Bank*. Oxford/Portland: Hart Publishing.
- Szablowski, D. (2010). Operationalizing Free, Prior and Informed Consent in the Extractive Sector? Examining the Challenges of a Negotiated Model of Justice. *Rethinking Extractive Industry: Regulation, Dispossession and Emerging Claims, Canadian Journal of Development Studies*, 30(1–2), 111–130.
- Trebeck, K. (2008). Corporate Social Responsibility and Democratisation. In C. O'Faircheallaigh & S.H. Ali (Eds.), *Earth Matters: Indigenous Peoples, the Extractive Industries and Corporate Social Responsibility*, (pp. 8–23). Sheffield: Greenleaf Publishing.
- Verreault, M.-J. (2000). *Les régimes juridiques d'évaluation environnementale applicables au Nunavik* (Unpublished Master's Thesis), Laval University, Quebec, QC.
- Weitzner, V. (2010). Indigenous Participation in Multipartite Dialogues on Extractives: What Lessons Can Canada and Others Share. *Rethinking Extractive Industry: Regulation, Dispossession and Emerging Claims, Canadian Journal of Development Studies*, 30(1–2), 87–109.