

Human Rights and the Mary River Project

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Presentation to the final public hearings for the
NIRB review of the Baffinland Mary River Project
Iqaluit, Nunavut
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Overview of presentation

- Review of Intervenor's mandate and objectives of a human rights impact assessment
- Video presentation by Zacharias Kunuk
- Overview of Intervenor's recommendations for the NIRB review process, with emphasis on:
 - Integrating international standards and guidance about human rights into framework for Mary River project
 - Using new media and information technology to contribute to effective on-going consultation with Inuit
 - Applying human rights considerations to the economic flows to be generated by the proposed mine
- Conclusion: human rights as an opportunity to apply international best practices for Mary River and mining in Nunavut

Review of Intervenors' mandate

- Zacharias Kunuk is an Inuit from Igloolik with extensive ties to the project-affected communities, land and marine environment
- Isuma TV administers the “Digital Indigenous Democracy” project that uses media technology to promote Inuit participation in important public issues in Nunavut
- Lloyd Lipsett is a human rights lawyer with experience conducting human rights impact assessments of mining projects in Canada and around the world
- The Intervenors do not have a legislated mandate with respect to mining in Nunavut; they represent an independent perspective on the issues raised by the Mary River project
- The Intervenors are not against mining development in Nunavut; they are for informed consultation and application of the latest international standards and best practices related to human rights in the planning, decision-making and operation of the Mary River project—as well as for all future mining projects in Nunavut that will have cumulative impacts on the environment, social and economic conditions and human rights

Objectives of HRIA

- Human rights impact assessments are tools that help governments, companies and communities understand the implications of international human rights
- Understanding and addressing human rights impacts is the cornerstone of “human rights due diligence” and is central to the corporate responsibility to respect human rights
- Mary River HRIA was undertaken to explicitly address human rights issues that are implicitly or not otherwise addressed in the FEIS, as well as to promote public discussion about human rights issues related to mining in relation to the Mary River project and future mining development in Nunavut
- The HRIA is not completed; however, we have decided to intervene in the NIRB review process to offer some preliminary recommendations and to encourage Baffinland and the other Parties to take a proactive approach to human rights

Objectives of HRIA

- The final HRIA report will:
 - provide a full assessment of the human rights standards applicable to the Mary River project;
 - offer recommendations to Baffinland and other Parties to address risks and enhance opportunities related to human rights;
 - contribute baseline information for the future assessment of actual human rights impacts of the mine if it is approved
- The next steps for the HRIA are further interviews with stakeholders and experts; research and analysis using international human rights tools; preparing a final report, including consultation on conclusions and recommendations
- The Intervenors extend an invitation to Baffinland and the other Parties to collaborate with the completion of the HRIA in the coming months, so that the final analysis, findings and recommendations balances all relevant points of view

Zacharias Kunuk's video: "My Father's Land"

- "This NIRB Public Hearing isn't the only one coming. My Intervention recommends that NIRB, Baffinland and decision-making Ministers of Canada bring this Environmental Review Process up to date in the professional field I know best: information. ... Without using media today to inform and consult Inuit better than before, we risk falling behind our time."
- "Last March, Canada's Natural Resources Minister, Joe Oliver, explained that his government has '*a moral and constitutional obligation to consult.*' ... With a development this size, with impacts this large, we have the opportunity and responsibility to create a new model for our information century. This Baffinland model could demonstrate to other mining companies coming along soon, and to other countries in the same situation with the same problems, how Inuit and Baffinland use state-of-the-art media tools to meet 21st century standards of knowledgeable democratic participation by Inuit in our own spoken language. This *information* model could prove how modern resource development can be honorable and just; how it can be proposed, reviewed, approved, monitored and enforced using today's top information technology."
- "My newest grandchild is named after my father who passed away a few years ago. Inuit take names very seriously; when we name a new baby with an *atig* from an ancestor we believe the child also carries the spirit of that ancestor forward in a new life. I call my grandchild my ataata, my father. When I speak of *My Father's Land* I mean the land of my father who is passed away, and also the land of my father who is my grandchild moving into the future."

Overview of recommendations:

Adopt a human rights framework

- That Baffinland voluntarily adopt and implement a human rights due diligence strategy that conforms to the UN Guiding Principles on Business and Human Rights and other guidance relevant to the mining industry.
- The design and implementation of a human rights due diligence strategy should be done in consultation with Inuit and other stakeholders and should draw upon specific human rights expertise.
- The proponent and other parties collaborate with the HRIA as it pursues its research, interviews and analysis in the coming months. While they are not bound by the findings, conclusions or recommendations of the final HRIA, there is a constructive opportunity to build shared understanding and dialogue around human rights due diligence for the Mary River project.
- To the extent that Baffinland wishes to adopt a human rights due diligence framework, that it revise the final FEIS to include relevant international human rights instruments ratified and implemented by Canada as part of its description of the legal and regulatory framework for the Mary River project.

Overview of recommendations:

Adopt a human rights framework

- The NIRB Board should consider encouraging or requiring Baffinland to adopt and implement a human rights due diligence strategy that conforms to the UN Guiding Principles on Business and Human Rights and other guidance relevant to the mining industry.
- For future review processes of mining projects in Nunavut, that the NIRB encourage or require proponents to proactively integrate human rights into their environmental impact statements in conformity with the UN Guiding Principles on Business and Human Rights and other guidance relevant to the mining industry.
- For future mining projects in Nunavut, that NIRB encourage or require proponents to consider international human rights instruments that have been ratified and implemented by Canada as part of their description of the legal and regulatory framework.

Overview of recommendations: Environment, Social and Labour

- That stakeholders involved in the Mary River Project more fully consider the development and its cumulative impacts in the context of climate change.
- That NIRB review the practices followed by the Diavik mine in the Northwest Territories to ensure that the standards set for the Baffinland project, should it go ahead, are not less than those.
- That the proponent should be required to develop employment and education opportunities at all levels (Level B, C, and D) that would allow workers to structure their “wage work lives” in a way that harmonizes with the mixed economy and family obligations.
- That Baffinland considers expanding the scope of its future work on gender issues to develop this as a transversal issue across all areas of operations and impact assessment.

Overview of recommendations: Ensure on-going consultation

- That NIRB, the proponent and other parties ensure that any final approval of the Mary River project take into account the principles of Free, Prior and Informed Consent (and other human rights principles related to consultation with other stakeholders). Furthermore, any major changes to the project in the future should also be subject to a process of Free, Prior and Informed Consent.
- That NIRB, the proponent and other parties ensure that any on-going consultation about the Mary River project (if approved) cover the full range of topics that are relevant to human rights.
- That NIRB, the proponent and other parties consider how to use radio, social media and other means to maximize informed consultation in Oral Inuktitut on an on-going basis throughout the lifespan of the project (if approved). The HRIA and Digital Indigenous Democracy project extend an invitation to dialogue about lessons-learned from their experience with the use of community radio and social media.
- That Baffinland reflects and gives more information on how the oral tradition of Inuits will be systematically integrated in the Stakeholder Engagement Plan (Appendix 10F-1).
- That Baffinland considers conducting periodic independent evaluations and monitoring with respect and preservation of Inuktitut and its oral tradition, as well as accessibility to information.

Overview of recommendations: Grievance mechanism and monitoring

- To the extent that Baffinland voluntarily undertakes or the NIRB Board encourages and/or requires additional human rights due diligence, ensure that the Mary River project formally adopts and implements a rights-respecting grievance mechanism according to the UN Guiding Principles on Human Rights and other relevant guidance.
- That an Independent Monitoring Agency be created to which the proponent would make public reports, and which would be empowered to require changes in practices that do not appear to be leading to compliance with the standards that have been set.

International standards and guidance

- HRIA requires an examination of international human rights standards as they are implemented in Canada
- International human rights are not just an issue for countries in Africa or Latin America: “The UN Guiding Principles on Business and Human Rights apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”
- Canada is generally recognized as having strong human rights protections and good implementation
 - Canada has ratified the major conventions relevant to business and human rights
 - Canadian Constitution, Charter of Rights & Freedoms and Supreme Court jurisprudence provide protections of human rights and aboriginal rights, including the duty to consult
 - The Nunavut Land Claims Agreement provides a modern and comprehensive framework for the implementation of Inuit rights

International standards and guidance

- However, there are some potential gaps:
 - On-going concern within UN mechanisms about indigenous peoples rights in Canada
 - Concern about implementation of NLCA raised in on-going litigation with Canadian government
 - Concern about protection of human rights in Nunavut raised by recent report to the legislature
- While fully respecting the need to comply with Canadian and Nunavut laws and regulations, a human rights policy and due diligence process for the Mary River project would help ensure that human rights are not infringed as a result of potential gaps between international and domestic human rights standards

International standards and guidance

- HRIA also looks at guidance related to human rights and the mining industry
- In addition to the general framework for business and human rights articulated in the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, mining companies have adopted and accepted the following standards and guidance.
- For example, mining industry associations are engaged on human rights:
 - ICMC: Human rights in the Mining and Metals Industry: Overview, Management Approach and Issues; Human Rights in the Mining and Metals Industry: Resolving Local Level Concerns and Grievances; ICMC, “Integrating Human Rights into Corporate Risk Management.”
 - Canadian mining associations (MAC, CIM, PDAC) are increasingly developing tools and encouraging their members to address human rights issues

International standards and guidance

- Mining companies have adopted and accepted the following standards and guidance related to human rights:
 - ArcelorMittal has a Human Rights Policy and participates in the Extractive Industry Transparency Initiative
 - Other leading international and Canadian mining companies have strong human rights policies and undertake human rights risk or impact assessments (e.g. Goldcorp, BHP Billiton, Rio Tinto Alcan, Barrick, etc.)
- Human rights are increasingly accepted and proactively addressed by the mining industry
- These standards and guidance will undoubtedly evolve over the lifespan on the proposed mine; a human rights due diligence process will ensure that Mary River remains up-to-date in terms of the good practices for the mining industry

Snapshot: evolution of international standards and guidance about human rights

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Social, Economic and Cultural Rights (1966)
- ILO Declaration of Fundamental Principles and Rights at Work (2000) and 8 “core” ILO Labour Treaties
- Extractive Industries Transparency Initiative (2002)
- UN Declaration on Indigenous Peoples Rights (2007)
- UN Protect, Respect and Remedy Framework (2008)
- ICMIM provides first guidance on human rights for mining and metals industry (2009)
- UN Guiding Principles on Business and Human Rights (2011)
- OECD Guidelines on Multinational Enterprises (revised in 2012)
- IFC Performance Standards (revised in 2012)

New media and on-going consultation with Inuit

- Evolution of standards related to consultation with indigenous peoples towards Free, Prior and Informed Consent: this standard is accepted in the UN Declaration on Indigenous Peoples Rights and in the revised IFC Performance Standards
- Informed consultation and consent requires respect for indigenous languages, including through translation
- Translation and communication is a major challenge, especially with respect to highly technical information
- Using media that respects the Inuit oral tradition and reinforces principles of transparency and access to information can help fulfill indigenous peoples rights to consultation and consent
- Indigenous peoples rights to consultation and consent are on-going; therefore, the Intervenors recommend further discussion and collaboration with Baffinland and the Parties about using new technologies to enhance consultation with Inuit throughout the lifespan of the mine, if it is approved

Human rights related to economic flows

- One of the potential positive impacts of mining is through the impressive economic flows that a mine can generate:
 - Taxes and royalties to government(s) can contribute to human rights through social programmes
 - Direct payments to and investments in communities (e.g. IIBA payments) can be invested in programmes or projects that enhance human rights
 - Direct payments to individuals and local businesses contribute to the human rights of workers and their families
- For these potential positive human rights impacts to occur, it is important to assess how the economic flows are actually spent
- Human rights principles also state that companies should prioritize investing in measures that address negative impacts, especially those that are difficult to remediate. There should be no trade-offs between positive contributions in one area and negative human rights impacts in another

Human rights related to economic flows

- Access to information and transparency are also an inherent human rights based principles
- Transparency about economic flows has become the international standard and expectation for the extractive industry:
 - Extractive Industry Transparency Initiative
 - Further initiatives upcoming related to U.S. Dodds-Frank Act
- Recommendation that Baffinland (and all the Parties that will administer the economic benefits that will flow from the mine) set an appropriate example about transparency and access to information in order to:
 - Facilitate the accurate assessment of positive human rights benefits from the mine
 - Reinforce public confidence in the contribution of the mine to sustainable development

Conclusions

- Zacharias Kunuk recommends that the Mary River project, and future mining development in His Father's Land, be based on indigenous peoples rights to consultation and consent, using 21st century information technology that respects their language and oral tradition
- The HRIA is not complete, but the Intervenors have decided to participate in the NIRB hearings to recommend that human rights are more explicitly addressed in the FEIS. In comparison with other HRIAs, this initiative has begun at a very early stage of mining development (prior to project approval, construction and operation) when human rights issues can still be addressed proactively and constructively
- Mary River is important, both because of the scale of the proposed project and as a precedent for mining in Nunavut. It is therefore recommended that a modern human rights framework should be applied to ensure that negative impacts are addressed and remediated and the potential positive impacts are maximized