

“Working Together”: The Dynamics of Multilevel Governance in Nunavut¹

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Received September 2013, accepted January 2014

Abstract: Aboriginal self-government is changing the governance landscape in Canada. This paper focuses on a little-studied aspect of aboriginal self-government arrangements, namely the horizontal dispersion of power among non-governmental institutions in the policy process. Nunavut, the Canadian territory created in 1999, offers a good example of this horizontal power dispersion. The Government of Nunavut is the only Canadian public government stemming from a land claim agreement. This creates a special set of obligations and entrenches a horizontal multilevel governance model, with a unique model of governance between a public government, the government of Nunavut (GN), that serves a predominantly Inuit population, and a nonprofit beneficiary organization, Nunavut Tunngavik Inc. (NTI), representing the Inuit of Nunavut. In this paper we map out the authority and legitimacy of these levels of governance and the impacts of this system on Nunavut public policies and access to resource development revenues.

Key words: Nunavut, multilevel governance, aboriginal self-government, land claims organizations, Northern public policy

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1. I wish to acknowledge the helpful participation of Alexandre Morin-Chassé, who provided expert research assistance. Jack Hicks and Graham White kindly agreed to read the first draft and gave me invaluable advice. Leslie Seidle of IRPP and two anonymous reviewers also offered critical and constructive advice. However, please note that the content as well as any factual errors are the sole responsibility of the author.

1. Multilevel Governance in Nunavut

NTI, the GN, and the Federal Government are partners, for better or worse. I think that as partners there needs to be more clearly defined roles and responsibilities in the area of social and cultural issues. Inuit organizations have a huge role to play in ensuring a healthy population. The GN and the Federal government have important roles to play in ensuring Nunavut has the essential tools to function. I think the three partners have a long way to go to achieve the sort of positive, streamlined, and helpful relationship which will allow for sustained success.

– Natan Obed, NTI Social Policy Director, Globe and Mail online discussion, Aug. 19, 2009

The governance landscape of northern Canada is evolving rapidly through the settlement of aboriginal land claims that create a new distribution of power. The agreements often establish new levels of governance through self-government arrangements and redefine the policy-making environment by giving aboriginal organizations a defined and protected role in public policy.

This paper focuses on the multilevel governance structure established by the Nunavut Land Claims Agreement (NLCA) and the creation of Nunavut in 1999. Nunavut is developing a unique model of governance between a public government (the government of Nunavut) that serves a predominantly Inuit population and a nonprofit beneficiary organization (Nunavut Tunngavik Inc.) representing the Inuit of Nunavut. Although the Nunavut government and NTI largely serve and respond to the same populations, certain tensions have emerged.

Multilevel governance (MLG) approaches were first developed to take into account the increasing complexity and dispersion of power amongst different levels of public institutions through the development of the European Union, and have since been applied to the study of similar arrangements in other parts of the world.² MLG is a response to the inability of the concepts of federalism and intergovernmental relations to properly capture recent governance trends in federal systems.³ This dispersion of power can be observed both vertically, amongst sub-national units, through processes of decentralization and regionalization, and horizontally through increased participation by non-governmental and quasi-governmental actors in policy making.⁴ Recently, Alcantara and Selles attempted a more precise definition in order to clearly distinguish MLG from federalism and intergovernmental relations. According to them, MLG has to engage “a variety of actors

2. In Canada, see for example Nelles and Alcantara 2011; Alcantara and Nelles 2013; Papillon 2008, 2012; Leo and August 2009.

3. Piattoni 2010; Stein and Turkewitsch 2010.

4. Marks and Hooghe 2004; Peters and Pierre 2004; Stein and Turkewitsch 2010.

(governmental, nongovernmental, and/or quasi-governmental) located at different territorial scales, the outcomes of which are the product of negotiation (decision-making processes or negotiated order) rather than traditional hierarchical orders such as delegation and devolution.”⁵

The multilevel governance (MLG) approach has been used to describe the governance arrangements created by aboriginal land claims settlements in Canada.⁶ For these authors, aboriginal governance arrangements create vertical power sharing by empowering sub-provincial units within the Canadian federal system, in what is sometimes referred to as nested federalism.⁷ However, in the case of aboriginal land claims settlements in Canada, the dispersion of power occurs between public institutions and indigenous organizations or institutions. Nunavut provides an example of vertical multi-level governance, since it creates a new sub-national unit that encompasses a majority of Inuit and therefore allows for a form of self-government.

Traditionally public interest was defined and promoted by public governments, but aboriginal organizations sometimes question this premise, arguing that their interests cannot be represented by traditional governments and that they alone can convey and protect their interests. Aboriginal self-government is therefore a means to institutionalize an aboriginal voice in Canadian governance. This situation can lead to complex government arrangements as, for example, in the Northwest Territories, where at least four major land claims have already been settled.⁸ In this particular case, various boards and organizations have been created and tasked with such responsibilities as making recommendations on natural resource management, and environmental and social assessment of resource development, a clear example of a vertical multilevel governance framework with a dispersion of power amongst local and regional aboriginal institutions.

This paper will focus on a little-studied aspect of aboriginal self-government arrangements, namely the horizontal dispersion of power among non-governmental institutions in the policy process. Nunavut offers a good example of this horizontal power dispersion. Like all Canadian territories, Nunavut has a public form of government: the Government of Nunavut (GN). However, the GN is the only Canadian public government created by a land claims agreement, and this creates a special set of obligations and entrenches a horizontal multilevel governance model

5. Alcantara and Nelles 2013 p. 7.

6. Ladner 2010; Nelles and Alcantara 2011; Timpson 2003; Papillon 2008, 2012; Wilson 2008a; Wilson 2008b.

7. Wilson 2008a.

8. The Inuvialuit Final Agreement was signed in 1984, the Gwich'in Comprehensive Land Claim Agreement in 1992, the Sathu Dene and Metis Comprehensive Land Claim Agreement in 1994, and Tlicho Land Claims and Self-Government Agreement in 2005.

with the Inuit land claims organizations. In addition, the GN must interact with the principal land claims organization in Nunavut, Nunavut Tunngavik Inc. (NTI), the legal successor⁹ to one of the signatories of the Nunavut Land Claims Agreement (NLCA) that led to the creation of the Nunavut government. Nunavut is thus a clear example of MLG according to the definition proposed by Alcantara and Nelles.¹⁰

This situation creates quite a challenge since it establishes two poles of governance.¹¹ On the one hand is the Government of Nunavut (GN), the public pole in charge of day-to-day governance and financed mostly through transfer payments from the federal government. On the other hand is NTI, the Inuit pole responsible for protecting Inuit rights and providing services to Inuit beneficiaries.¹² NTI is financed by land claims money and royalties from resource development in Nunavut. In large part the GN and NTI represent and answer to the same population, creating competing legitimacies and the potential for disagreements. The two institutions also serve and are controlled by virtually the same population, since Inuit constitute 85 % of the population of Nunavut.

Since the creation of Nunavut, relations between the GN and NTI have been strained at times, even if some cooperation has occurred. Inter-organizational conflicts are not necessarily a problem per se, but the argument here is that because Nunavut's multilevel governance configuration has created overlapping jurisdictions and competing legitimacies, and because resource development revenues mainly benefit the federal government and NTI and the regional Inuit associations rather than the government of Nunavut, greater cooperation is required to foster and finance better public policies in Nunavut. Conflicts are not so much between these two forms of governance as between two competing institutions trying to assert their role in the Nunavut governance structure.

The first part of the paper describes Nunavut's horizontal multilevel governance structure. The second part analyzes the role of NTI in public policy and its relationship with the GN. This will allow us to assess the interaction between the two institutions and the policy coherence of these arrangements. The paper concludes with two case studies illustrating the complexity of this relationship: the Government of Nunavut procurement policy known as Nunavummi Nangminiqaqtunik Ikajuuti (NNI) and the Inuit Language Act.

9. The NLCA was negotiated by the Tungavik Federation of Nunavut. Once the NLCA was signed, the Federation was transformed into a corporation called Nunavut Tunngavik Incorporated.

10. Alcantara and Nelles 2013, p.7.

11. Loukacheva 2007; Henderson 2007, 2004; Légaré 2000.

12. The term "beneficiaries" applies to the persons who benefit from the land claim. Usually the procedure is defined in the land claim agreement and involves ethnicity and recognition by the community.

This paper is based on an analysis of documentary sources (i.e., agreements, protocols, official declarations, news releases and newspapers articles). It should be mentioned, however, that some of the ideas developed in this paper have been inspired by formal and informal discussions with Nunavummiut.¹³

2. Overview of Inuit and Public Governance in Nunavut

Nunavut, one of the three Canadian territories, was created in April 1999 following the signing of the Nunavut Land Claim Agreement (NLCA) in 1993 by the federal government, the Northwest Territories and the Tungavik Federation of Nunavut. Nunavut was a compromise between the aspirations of many Inuit who wanted to have their own government, and the federal government which was more at ease with a public government.¹⁴ However, the Inuit negotiators were able to secure a form of Inuit governance in the NLCA through the creation of co-management boards and the institutionalization of Inuit participation in the development of social and cultural policies in Nunavut. Inuit negotiators insisted on institutionalizing Inuit participation in the governance arrangements in order to protect Inuit rights in the event of an influx of Qallunaat¹⁵ in Nunavut.

2.1 Government of Nunavut

The Government of Nunavut (GN), the public arm of Nunavut governance, derives its authority from an act of the Parliament of Canada. The GN uses an adapted Westminster parliamentary system that functions without parties (Hicks and White 2006). The members of the Nunavut Legislative Assembly (MNLAs) are elected by all the Nunavummiut. Most have been and are Inuit, and so far every premier of Nunavut has been an Inuk. The GN is, therefore, a public government controlled by Inuit politicians. In the public service, the level of Inuit employment has hovered around 50 % since the creation of Nunavut,¹⁶ even though Article 23 of the NLCA states that Nunavut governments should have a representative level of Inuit employ-

13. Nunavummiut means 'from Nunavut' - it refers to all the inhabitants, Inuit or Qallunaat, of the Nunavut Territory.

14. Abele and Rodon 2007.

15. Qallunaat is the word used to describe "white people" in Inuktitut. Inuit participation in the public service is covered by s. 21 of the NLCA; this is discussed further below.

16. The level of Inuit employment varies significantly by position, with the higher level at both the lower and higher positions. For more details see Timpson 2006.

ees in all positions. The GN has pledged that Inuit employment levels will reflect the proportion of Inuit in the population by 2020, but this goal will probably be difficult to attain since most qualified Inuit are already working for the GN or Inuit organizations, and the education system is not turning out enough graduates.¹⁷

2.2 The Nunavut Land Claims Organizations

Inuit participation in Nunavut governance is centered on Nunavut Tunngavik Incorporated (NTI). NTI is an Inuit organization that was created to manage compensation funds allocated under the NLCA. In addition, three regional Inuit associations¹⁸ (RIAs) are associated with NTI. These regional associations manage Nunavut’s 350,000 km² of Inuit-owned lands and deliver certain programs. NTI is mostly involved at the policy level.

The NTI mission statement emphasizes a watchdog role over the implementation of the NLCA by the federal and territorial government:

Nunavut Tunngavik Incorporated (NTI) ensures that the promises made in the Nunavut Land Claims Agreement (NLCA) are carried out. Inuit exchanged Aboriginal title to all their traditional land in the Nunavut Settlement Area for the rights and benefits set out in the NLCA. The management of land, water and wildlife is very important to Inuit. NTI coordinates and manages Inuit responsibilities set out in the NLCA and ensures that the federal and territorial governments fulfill their obligations.¹⁹

NTI also manages the \$ 1.1 billion settlement fund through the Nunavut Trust. It receives 50 % of every first million dollars of royalties from oil, gas and mineral projects on Crown land. NTI also holds title to 38,000 km² of Inuit-owned subsurface rights in areas identified for their mineral potential, and will therefore receive royalties on resource development on these lands. It should be noted, however, that title to Inuit-owned surface land is vested in the three regional Inuit associations. The directors of each regional association are ex-officio members of NTI’s board of directors.

NTI also appoints half the members to each of the Nunavut land claims boards, also known as the “institutions of public governance” (IPGs). There are four IPGs: the Nunavut Wildlife Management Board (NWMB), the Nunavut Impact Review

17. Berger 2006; Poelzer 2009, 2011.

18. These associations represent the three regions of Nunavut: the Qiktiqtani Inuit Association representing the Baffin region, the Kivalliq Inuit Association representing west Hudson Bay, and the Kitikmeot Inuit Association representing the western part of Nunavut.

19. From NTI website : <http://www.tunngavik.com/about/>

Board (NIRB), the Nunavut Water Board (NWB) and the Nunavut Planning Commission (NPC). Half of the IPG members are either directly appointed as in the case of the NWMB, or nominated by the Inuit organizations and appointed by the relevant federal minister,²⁰ as is the case for the other IPGs. With the exception of the NWMB which has decision-making power (albeit subject to federal ministerial review)²¹, these boards only have the power to issue recommendations. In practice, however, they hold quasi decision-making power²², and as such are an important element of policy making in Nunavut. These boards provide a good example of horizontal and vertical multilevel governance because they involve both state and non-state actors on the one hand, and the GN and the federal government on the other.

NTI and the regional Inuit organizations also play an economic and social role through the implementation of the Inuit Impact and Benefit Agreements (IIBA) under Article 26 of the NLCA. This article ensures that all new development will benefit Inuit through an obligation to conclude an agreement with the concerned Land Claims Organizations (LCOs). IIBAs usually involve compensation, guaranteed employment, training funds and community investments. IIBAs are a powerful instrument of economic and social development, and they are negotiated by NTI and regional Inuit organizations without any participation from the GN or the Nunavut municipalities.

NTI also ensures that the other parties respect their obligations. Indeed, it has filed a one-billion-dollar lawsuit against the federal government for breach of contract over the implementation of the NLCA, especially with regard to the lack of training funds for the implementation of section 23.²³

Finally, under Article 32 of the NLCA, the GN must give Inuit the opportunity to participate in the development of social and cultural programs and policies:

32.1.1 Without limiting any rights of Inuit or any obligations of Government, outside of the Agreement, Inuit have the right as set out in this Article to participate in the development of social and cultural policies, and in the design of social and cultural programs and services, including their method of delivery, within the Nunavut Settlement Area.

20. To date no federal minister has ever refused to appoint a candidate proposed by an Inuit organization, and it is very unlikely that the minister will refuse.

21. The minister has already reviewed a NWMB decision twice. In both cases it was about quotas for turbot. For more details see Rodon 2003.

22. White 2002.

23. NTI, December 6, 2006. To date NTI has won four motions and an appeal, but the federal government has launched another appeal (NTI 2012).

Section 32 called for the creation of a Nunavut Social Development Council (NSDC) for the purpose of consulting the Inuit. The NSDC was set up as an independent organization, but in 2002 NTI decided to disband the independent council and take over its responsibilities. At the time NTI claimed it had taken action because the NSDC hadn't performed as expected,²⁴ but the decision can also be seen as a way for NTI to strengthen its authority with regard to the GN by requiring the GN to consult with NTI to meet the requirements of section 32.

NTI is also the only settlement organization in Nunavut, and is the signatory of the land claims that created the government of Nunavut. This reinforces the MLG characteristics of policy making in Nunavut, and distinguishes it from more traditional Canadian federalism.

3. Working Together

NTI is such an important actor in the Nunavut public policy process that the GN signed an agreement with NTI to delineate their relationship. The initial agreement – the *Clyde River Protocol* – was signed in October 1999 and reviewed in 2004 when it was redubbed *Iqqanaijaqatigiit: Working Together*. The latest version, signed in 2011, is called *Aajiiqatigiinni: Working Together*. These documents, which detail the relationship between GN and NTI, are in essence MLG agreements.

In the first section titled “Mutual Recognition”, NTI recognizes the GN as a legitimate public government and acknowledges that the GN, in exercising its jurisdiction as a democratic and responsible public government, must serve the needs and priorities of all citizens of Nunavut in a fair and equitable manner. This is an important statement in which an aboriginal corporation acknowledges a public government and confirms the presence of competing legitimacies. For its part the GN recognizes that NTI represents the Inuit of Nunavut and acknowledges that NTI has a special place in Nunavut affairs as the primary Inuit organization mandated to speak for the beneficiaries of the NLCA with respect to their rights and benefits under the agreement. The GN further acknowledges that NTI's mandate embraces additional responsibilities designed to protect and promote the interests of the Inuit as an aboriginal people, a unique situation in Canada.

The different versions of the document also recognize the areas of mutual interest between the parties. In addition, the *Clyde River* and *Iqqanaijaqatigiit* versions of *Working Together* established a process for information sharing and meetings between the GN premier and NTI president, and between senior officials of the

24. D'Souza 2002.

two organizations. Finally, they delineated a process for discussing and resolving disputes. *Aajiiqatigiinni* does not mention this last point, but instead insists on the principles of a positive working relationship and the commitment to work together, a sign that there was a need to improve ties and foster a more positive relationship.

As an agreement, *Working Together* clearly recognizes NTI's governance role in Nunavut and places it at almost the same level as the GN, thus acknowledging the horizontal multilevel framework established by the NLCA.

Nevertheless, NTI is not an Inuit government, but rather a non-profit corporation whose shareholders are NLCA Inuit beneficiaries. NTI is headed by a board of directors, and all Inuit beneficiaries of the NLCA directly elect the president and two members. It should be noted, however, that turnout has been quite low, with a participation rate under 50 percent.²⁵ The remaining members are appointed by the regional Inuit associations, and the president of the Nunavut Trust, the body in charge of managing the settlement monies, is an ex-officio member.

The NLCA has clearly created a horizontal multilevel governance framework. NTI has the power to select half the IPG members, and its president is directly elected by NLCA beneficiaries. For NLCA chief negotiator Paul Quassa, as for many Nunavummiut, the GN and NTI should at the very least be placed on the same level:

The government of Nunavut and NTI are on the same level. I used to jokingly say that Nunavut is like France. In France they have a prime minister and a president. Some countries are like that. It seems like we are like that, too, in Nunavut; we have a president and a premier. I think NTI should be at a higher level ... The public votes for the president of NTI, whereas the premier is only voted in by the cabinet. I like to refer to Nunavut as its own country with its own president and its own premier. That's how I see it.²⁶

Nonetheless, NTI does not meet the requirements of a public organization or government. It is a non-profit corporation with private status, and therefore it can withhold information from the public and is not bound by processes of access to information. NTI has made efforts to be transparent, and its members and board of directors meetings are open to beneficiaries, media and the general public. Minutes of resolutions passed during the meetings are available to beneficiaries upon request. NTI also produces various reports each year, including annual reports providing information on activities and presenting financial statements. However, since

25. Bell 2001; Henderson 2007, 2004.

26. Quassa 2008: 187.

it is a non-profit corporation, its agreements with other corporations are usually not accessible to the public.²⁷

NTI has also been accused of conflict of interest, because as a non-profit corporation it can enter into partnerships with other corporations. For example, through its partnership with Kaminak Corporation, NTI has effectively become a partner in uranium exploration and mining.²⁸ At the same time, as the body representing the Inuit of Nunavut, NTI also nominates the Inuit representatives to the Nunavut Impact Review Board, the institution of public governance that will assess projects involving the NTI partnership. Therefore, there is at least an appearance of conflict of interest.

All the same, the conflict between the GN and NTI should not be interpreted primarily as tension between Inuit and public governance. Both the GN and NTI are controlled by Inuit and employ Qallunaat lawyers, experts and consultants. The difference between the GN and NTI is a difference in nature: the GN is a government, and NTI is a nonprofit corporation. It is also a difference in representativeness: the GN represents all the Nunavummiut, while NTI serves only the beneficiaries of the NLCA, in other word the Inuit in Nunavut.

3.1 Financial Autonomy and Economic Power

In order to understand the power configuration between NTI and GN, it is important to assess their financial autonomy and economic power.

The GN is 95 percent dependent on financial transfers from the federal government through the Territorial Formula Financing (TFF) Program, the Canada Health Transfer (CHT) and the Canada Social Transfer (CST). The remaining funds are acquired through various tax revenues. For 2011–12, the GN had projected revenues of \$ 1.35 billion.²⁹

The Nunavut government does not receive any revenues from resource development, because being a territory, it does not have jurisdiction over lands and resources. Following the precedent set by the Yukon and more recently the Northwest Territories, the GN is in the process of trying to obtain these additional powers through a devolution process. However, a recent federal report on devolution concluded that, at the present time, the GN does not have the capacity to assume additional responsibilities.³⁰ It should be noted that since most mines are located

27. QIA has just signed an IIBA with Baffinland and has provided a plain language version of the agreement on its website (QIA 2013). So there is clearly a push for more transparency amongst Inuit organizations.

28. Kaminak Corporation, May 8, 2008; NTI, February 7, 2008.

29. Government of Nunavut 2011.

30. Mayer 2007.

on Inuit land, devolution would not necessarily help the GN as the revenues would still flow to NTI.³¹ This means that for the short and medium term, the GN has a fixed income and cannot increase revenues beyond inflation and local tax hikes.³²

NTI obtains its revenues from the interest incurred from the compensation fund administered by the Nunavut Trust, as well as from the royalties on the first million dollars generated from resource development projects on Crown land in Nunavut and on the 3 % of subsurface rights owned by the Inuit of Nunavut. In addition, NTI has other minor sources of income. Total NTI revenues for 2011 were \$ 20,813,069. The organization also expects to receive \$ 1 million in 2012 for exploration on Inuit-owned land.³³ In addition, the three regional Inuit associations receive royalties stemming from resource development projects on Inuit-owned lands, which cover a third of Nunavut's surface resources. With NTI, they also negotiate the Inuit Impact and Benefit Agreements (IIBAs) required for all development projects in Nunavut under Article 26 of the NLCA.

3.2 Overlapping Responsibilities

The recognition of NTI and GN mutual interests in the different versions of *Working Together* is a clear indication that they have overlapping responsibilities in many areas. The appendices to these documents contain a long list of subjects covering intergovernmental affairs, economic development, social and cultural development, education, training and language, and the environment.

However, it is important to distinguish the areas where the GN and the Inuit organizations deliver overlapping programs and services (for example, in wildlife management, support for hunters, benefits for elders, compassionate travel program, and economic development) from the areas where the GN has sole responsibility for delivery, such as health and social policy (29 % of the 2013–14 Nunavut budget) and education (16 %)³⁴, even though NTI is working with the GN to develop an Inuit cultural school, and develops and finances language materials.

The most obvious overlapping areas are the hunter support programs provided by both NTI and the GN, and the wildlife management responsibilities shared by

31. See McPherson (2003) for an account of how the Inuit have sought to identify potential mining sites during the land selection process.

32. Abele and Prince 2008.

33. NTI Annual Report 2012 available at: <http://www.tunngavik.com/files/2012/11/NTI-2012-Annual-Report-Web.pdf>

34. Government of Nunavut Main Estimates 2013–2014: <http://www.finance.gov.nu.ca/apps/fetch/download.aspx?file=Budgets%2FMain%2BEstimates%2F634988576461875000-663546179-2013-14%2BMain%2BEstimates%2B-%2BEN.pdf>

both the NWMB and the Nunavut Department of the Environment. Economic development is also an overlapping responsibility: the GN, NTI and the three RIAs all have an economic development department or organization working to foster economic development.

Nonetheless, the costlier policies in areas such as health and social services and education are funded entirely by the GN.³⁵ In practice, this means that NTI participates directly in the elaboration of these policies in the earliest stages. This creates an unusual situation, since NTI is heavily involved in public policy design, but is not responsible for the cost of implementation. Conflict ensues when NTI petitions for more generous or costly programs than the GN can afford. NTI and the RIAs, on the other hand, are sure to benefit from resource exploitation and are already geared to do so. However, some Inuit organization leaders are very reluctant to invest in social policies, as shown in the following exchange between Donald Haviyok, president of the Kitikmeot Inuit Association (KIA), and Leona Aggluqaq, Nunavut's former minister of health. When the minister asked KIA to share information on the Inuit Impact and Benefit Agreement (IIBA) negotiations, in order to address rising rates of alcoholism, drug abuse, and violence against women and children in the region, Haviyok responded that providing social services was not in KIA's mandate.³⁶ It is true that Inuit organizations have no mandate to provide social programs. Nevertheless, in terms of financial capacity, Inuit organizations are well placed to negotiate advantageous deals with mining companies, an option that will not be available to the GN until it obtains control over Crown land resources through devolution.

In fact, the GN's lack of jurisdiction over Nunavut's land and resources leaves it struggling to provide adequate services to Nunavummiut. There are two solutions to this conundrum. The GN could ask for an increase in federal transfer payments or for devolution of control over resources from the federal government. Neither is likely to happen in the near future. In the first case, the federal government has not given any indication that it will significantly increase Nunavut's budget³⁷; in the second case, as noted above, the Mayer report on devolution concluded that Nunavut lacks the capacity to administer additional responsibilities.³⁸ Nonetheless, in early 2009 the federal government appointed a representative to examine the feasibility of devolution.³⁹

A "third way" would be to have an open discussion between the Inuit organizations and the GN on the use of land and resource revenues from Inuit and Nunavut

35. NTI implements Inuit elder's benefits and has a compassionate travel program, but the funding is partly provided by the GN.

36. Quoted in Thompson 2007.

37. Abele and Prince 2008.

38. Mayer 2007.

39. Canada, January 15, 2009.

land. The Inuit are in dire need of funds for education and social policies. The new money generated by mining activities could be used to alleviate Nunavut's social problems and build capacity.

Still, channeling money generated by resource development to fund social policy would not be easy. The NLCA has created a governance structure that vests responsibility for social policy in the GN, an institution with no access to independent sources of revenue, and limits access to resource revenues to Inuit organizations that do not always acknowledge having social responsibilities.⁴⁰

4. Mapping out Authorities and Legitimacies in Nunavut Public Policies

In this section we assess how Nunavut horizontal multilevel governance affects the public policy process by looking at the interaction between NTI and the GN on two public policy issues. In particular, we explore how the two institutions are mapping out their authority and legitimacy throughout the policy process.

In spite of the *Iqqanaijaqatigiit* protocol, relations between the GN and NTI have not always been harmonious, and conflict has arisen over a number of issues. These conflicts are often related to the cost of measures, but sometimes stem from deeper disagreements over policy goals. In these cases, NTI acts like an opposition party, a function that does not exist in the Nunavut Legislative Assembly.

Finally, in some instances, conflict arises about who has the authority to decide on public policy, especially when it is related to the NLCA. The GN, as a public government, considers that it has the authority to decide after proper consultation. NTI, as the protector of Inuit rights and a signatory of the NLCA, considers that it has a veto over all public policy decisions concerning Inuit rights and NLCA implementation.

Two examples will be examined: one where the disagreement concerns implementation of an aspect of the NLCA (the Nunavummi Nangminiaqtunik Ikajuuti policy), and one where NTI acted more like an opposition party (the Inuit Language Act).

4.1 Nunavummi Nangminiaqtunik Ikajuuti policy

The Nunavummi Nangminiaqtunik Ikajuuti (NNI) policy stems from section 24 of the NLCA, which states that Inuit-owned businesses should be given preferential access to government contracts. In order to fulfill this obligation, the GN, in close consultation with NTI, proposed the NNI policy in 2000, and it was subsequently

40. Mifflin 2009.

announced jointly. Furthermore, the NTI president at the time declared that, with this policy, the GN was acting in compliance with Article 24.⁴¹

However, two disagreements eventually surfaced between NTI and the GN over the policy. The first was over the criteria for appeal. The GN had decided that the criteria should be strictly related to the NNI policy, but NTI felt the criteria should be based directly on Article 24. This position completely undermined the policy by making the NLCA the sole grounds for appeal. To deal with the dispute, an "Agreement of Settlement" was concluded on August 4, 2002 between NTI and the GN, and a facilitator was appointed to settle the appeal board issue between the parties.⁴² The crisis was resolved when the parties agreed to the "Terms of Reference for the Board" developed by the facilitator. The terms of reference were subsequently included in the NNI policy.

But the most significant conflict with regards to the NNI policy was the use of a grandfathering clause that gave businesses more time to adapt to the new policy. The GN extended the grace period to one year to allow Nunavut businesses enough time to comply with the new rules. NTI strongly opposed this decision, indicating that it had not been properly consulted by the GN, and filed a motion asking the court to repeal the GN cabinet decision on the grounds that it violated NLCA requirements. The dispute was settled out of court and NTI ensured that the GN would not extend the grace period any further.⁴³

At the heart of the controversy over the NNI policy is the question of who has authority over public policy relating to NLCA implementation. All moves by NTI to date have clearly been a way of asserting its veto over such matters. It has successfully asserted its authority by forcing the GN to go to mediation to establish the appeal board, and by filing a lawsuit over the extension of a grace period, obliging the GN to come to an agreement with NTI.

The debate over NNI was the first major disagreement between the GN and NTI. It not only showed the difficulties created by horizontal multilevel governance, but also highlighted different conceptions of NLCA implementation. The debate centered on the Nunavut economy and the place of the Inuit within that economy. The GN was afraid that an overly strict approach to the NNI would negatively affect the economy of the new territory, while NTI wanted to ensure that benefits from the new opportunities created by the NLCA start flowing to the Inuit as quickly as possible. In 2011, NTI's president again questioned the NNI policy, especially in terms

41. Quoted in Bell 2002.

42. Janda 2006.

43. Ibid.

of benefiting small Inuit business.⁴⁴ She requested and obtained an independent program review, which was conducted in 2012.

4.2 Inuit Language Protection Act

The second case concerns language legislation, a very contentious subject in Nunavut and in Canada more generally.⁴⁵ In 2007 the GN introduced legislation to protect and promote the Inuit language.⁴⁶ A committee made up of officials from NTI, the GN, the federal government and the office of the Nunavut languages commissioner developed the legislation.⁴⁷ Here again, the GN adopted a collaborative approach, and NTI was closely involved in the policy process. The committee experienced numerous difficulties while working on the legislation, with various members threatening to resign, but finally produced a draft that secured initial NTI support.⁴⁸ Before long, however, NTI began criticizing the status of the Inuit language under the bill, and the delay in its implementation of bilingual education. With regards to the status of Inuktitut, the GN proposed that cabinet be given the power to order that certain laws be published in the Inuit language, and to decide that the Inuit language versions of certain territorial laws be declared legally authoritative. NTI argued that all laws and regulations should be translated in Inuktitut if the Inuit language was to be equal to French and English.⁴⁹ It was clearly a cost issue, given that translating all the laws and regulations would be very expensive. The following exchange between NTI President Paul Kaludjak and Tunnuniq MLA James Arvaluk during the hearings held by the Standing Committee Ajauqtiit⁵⁰ is a good illustration of the divergent points of view: “We can’t take away from essential services [...] we have to consider other impacts on government operations,” Arvaluk said. Kaludjak replied by warning that NTI would use its lawyers if its demands weren’t met, and said “I don’t think we should be concentrating on the expense part of it.”⁵¹

The second disagreement was over the delay in implementing bilingual education, and was similar in nature. The issue was one of pragmatism versus principle. The conflict over the *Inuit Language Protection Act* was therefore a more classic case,

44. George 2011.

45. Timpson 2009.

46. “Inuit language” is used here to refer the two main dialects of Nunavut, Inuktitut and Inuinnaqtun.

47. Bell 2007a.

48. Ibid.

49. NTI, June 6, 2007; NTI, June 2, 2008.

50. Standing Committee on Legislation. One of the five standing committee of the Legislative Assembly of Nunavut.

51. Quoted in Bell, 2007b.

in which NTI played the role of an advocacy group trying to convince the government to increase funding and to implement reforms more quickly.

I have emphasized conflict because it is more visible than cooperative behavior, but the relationship between NTI and the GN has not always been marked by conflict. There are examples of cooperation and partnership, as Paul Quassa has emphasized:

Before we had our Nunavut government I stated that NTI and the government of Nunavut had to work as partners in order to move forward. A partnership always makes something stronger, whatever it is. The Nunavut government didn't have lots of money for government offices or the Legislative Assembly. The Inuit organizations built these facilities and the government now rents them. NTI used their business arm to get them built. That's a partnership.⁵²

In fact, cooperative behaviors seem to occur mostly when there is a conflict with the federal government. For example, the GN and NTI worked together in the fight to obtain a fishing and shrimp quota for Nunavut, in opposing the federal gun control law, in the effort to secure more federal funding for housing in Nunavut, in the negotiations with the federal government about devolution, and in the conflict over implementation of the NLCA. On this last issue, NTI filed a lawsuit against the federal government for breach of contract with regards to the implementation of the NLCA.

The GN and NTI also had success in developing a Nunavut economic development strategy known as Sivummut, which was prepared by a committee co-chaired by the NTI president and the Nunavut minister responsible for economic development. The GN and NTI have also worked together to establish an Inuit cultural school in Clyde River.

The relationship between the GN and NTI is unique, quite complex, and at times tense. The uneasiness is often perceived as tension between Inuit and public governance, but as we have seen, both institutions are Inuit controlled. Analyzing the conflict along these lines would explain little. Tensions could also be seen as the result of conflict between a government and a lobby group, but NTI is not simply an advocacy organization promoting Inuit rights. In fact, the GN and NTI have a two-pronged relationship, one marked by competing authority and legitimacy, and the other by an advocacy role.

The GN and NTI each have their own sources of authority and legitimacy. The GN has the authority entrusted in it by the Nunavut Act, and the legitimacy of a public government elected by all the Nunavummiut. NTI derives its authority from being the signatory and guardian of the NLCA. It can be seen as an Inuit govern-

52. Quassa 2008: 193.

ment that delivers some services to Inuit and advocates for their rights, but it also often acts as an official opposition. In fact the conflicts between NTI and the GN can be interpreted as the effort of two institutions to assert their respective authority in a unique and unprecedented multilevel governance arrangement. Unlike other MLG arrangements where non-state actors have been incorporated into an existing and established governance system, Nunavut was created with this system in place from the very beginning.

Conclusion

Nunavut governance offers a good example of MLG and clearly fits the definition proposed by Alcantara and Nelles⁵³: various governmental (federal, GN) and non-governmental actors (NTI and the three regional Inuit organizations) represent different territorial scales (federal, territorial, and regional), and decision-making processes are constantly being renegotiated.

NTI is an integral part of Nunavut governance, and has a legitimate and important role in the public policy process, especially in a system where there is no formal opposition in the legislative assembly. As an advocate for and protector of Inuit rights, NTI also ensures that the letter and spirit of the NLCA are respected, and guarantees that the territorial government never forgets the fundamental reason for which it was created – to allow self-government for the Inuit of Nunavut, even in the event that they one day no longer constitute the majority in the territory.

Horizontal multilevel governance is therefore a reality in Nunavut, but it creates its own set of challenges for both the GN and NTI. First, NTI's multiple political and economic roles place it in a potential conflict of interest situation with respect to certain issues. Second, as a non-profit corporation answerable solely to its beneficiaries, NTI lacks the political accountability of a public organization, even though it plays an important role in Nunavut public policy, delivering various services to Inuit, advocating for their rights, nominating or appointing members to the institution of public governance, and often acting as an unofficial opposition. Finally, despite NTI's overlapping responsibilities with the GN in many areas, the most expensive programs and services – education, and health and welfare – are delivered by the GN, which derives the vast majority of its revenue from federal transfers, whereas NTI and the three regional Inuit associations are bound to benefit extensively from future resource development.

53. Alcantara and Nelles 2013 p. 7.

For the GN the main issue is to develop better cooperation with NTI, especially in the area of resource revenue sharing. This can only occur if the GN does not act as the sole representative of the public interest, thus acknowledging the horizontal multilevel governance established by the NLCA. Multilevel governance frameworks entail a redefinition of the role of government that includes a dispersion of power and authority beyond government, and Nunavut is a good example of this.

However, the Nunavut governance arrangement raises a number of questions. First, what role should NTI play in public policy development? At present, NTI develops policies with the GN, demands and sometimes exercises a veto on issues related to NLCA implementation, and in some cases plays the role of an advocacy group and unofficial opposition. It would be important to develop a clearer set of rules addressing these issues in the next protocol between the GN and NTI, in order to achieve more collaboration between these two actors.

Second, does the status of NTI allow for sufficient accountability? At this point, the three elected members of the NTI Board of Directors are elected by Inuit beneficiaries and are accountable to their board, which is mainly composed of appointed members from the regional Inuit associations and the Nunavut Trust. Furthermore, land claims organizations have the status of nonprofit corporations and are thus protected from access to information requests. This status is not necessarily compatible with the public role played by LCOs.

Third, do NTI's multiple roles in resource development create a potential for conflict of interest? Until recently this was a theoretical question. However, when NTI became a partner with a uranium company, the possibility of a conflict of interest arose because half the members of the Impact Review Board tasked with assessing uranium mining projects are appointed by NTI.

Finally, and probably most importantly, how should resource revenues be controlled and used? The GN bears the cost of most social programs and all health and education services, but has no access to revenues from resource development in Nunavut. The devolution of land and resources from the federal government is widely seen as the answer to this problem, but the Inuit organizations could also be part of the solution. Some Inuit organizations are recognizing they have a role to play in alleviating social problems, but the GN and the Inuit organizations need to find a way to collaborate more closely to address these issues. One creative solution would be to develop a partnership for the delivery of certain programs, as is already the case for the Clyde River Cultural School; this would give NTI the influence it seeks in public policy and allow the GN to access more funds for social policies.

To conclude, the Nunavut experience is still young. With its unique system of Inuit and public governance, contradictions, tensions and conflicts like the ones discussed in this paper are to be expected and are a sign that Nunavut is a healthy

polity. However, if Nunavut is to succeed, these questions will have to be addressed. The experience with the negotiation of the Language Act shows that conflict can delay important legislation, and waste money and energy, both of which are scarce in Nunavut. A more cooperative approach to policy making and implementation on the part of the GN and NTI is necessary to strengthen policy making and achieve greater policy coherence and efficiency in Nunavut.

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