



Nunavummiut Makitagunarningit

Submission to the study of the
United Nations' Special Rapporteur on the Rights of Indigenous Peoples
on extractive and energy industries in and near indigenous territories

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1. Introduction and Overview

The possible opening of the Nunavut territory in Arctic Canada to uranium mining is an important and complex story, worthy of investigation by the United Nations' Special Rapporteur on the Rights of Indigenous Peoples in his study on extractive and energy industries in and near indigenous territories.

Significant uranium mineralization has been discovered in several areas in Nunavut. Nunavummiut ('people of Nunavut') are facing proposed uranium mining that holds the potential to seriously impact Inuit cultural rights and Inuit land rights. Decisions about uranium mining are being made without respect for the principle of free, prior and informed consent, at far as the general Inuit population is concerned.

Uranium has never been mined in Nunavut before, but Inuit from the region have a long history of opposition to proposed uranium mining. In the late 1970s, Inuit from Baker Lake with the support of representative Inuit organizations launched a court case which unsuccessfully attempted to halt uranium exploration near the Inuit community of Baker Lake.

In the early 1990s, the community of Baker Lake was faced with a proposal by Urangesellschaft to mine uranium at the Kiggavik site 80 km west of the community. The project includes two properties, Kiggavik and Sissons, collectively called the Kiggavik project, with an estimated 67,000 tonnes U_3O_8 at 0.24% grade.



All representative Inuit organizations at the time¹ officially opposed Urangesellschaft's proposal for the Kiggavik uranium mine. In a municipal plebiscite held in Baker Lake in March 1990, just over 90% of the

¹ Including the Inuit Tapirisat of Canada, the Tungavik Federation of Nunavut (the precursor to Nunavut Tunngavik Inc.), and the Keewatin Inuit Association.

voters opposed the Kiggavik proposal. Mayor Garry Smith wrote Urangesellschaft asking that they “abandon the Kiggavik proposal.” The proponent subsequently requested that the Federal Environmental Assessment Review Office “delay indefinitely” its review process.

In 1993, Inuit completed the negotiation of the Nunavut Land Claims Agreement (NLCA) with the Government of Canada and the Government of the Northwest Territories². In exchange for the extinguishment of their Aboriginal title to their lands, Inuit would receive a C\$ 1.17 billion capital transfer and title to a portion of the Nunavut Settlement Area³. This title is a mix of surface and subsurface rights, to plots throughout Nunavut. This land and capital is held by representative Inuit organizations – Nunavut Tunngavik Incorporated (NTI) and the representative organizations in the territory’s three regions (Qikiqtani, Kivalliq and Kitikmeot).

Article 4 of the NLCA committed Canada to the creation of the Nunavut Territory and the Government of Nunavut (GN) following negotiation of a political accord on timing, process and substantive issues. In October 1992, subsequent to a successful plebiscite on the principle of dividing the Northwest Territories, the Nunavut Political Accord ensuring the creation of Nunavut on April 1, 1999 was signed.

In November 1992, approximately 70% of the Inuit of the eastern and Central Arctic ratified the Final Agreement. The *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* was signed by federal, territorial and Inuit representatives in May 1993. Under Article 2.2.1, the NLCA “shall be a land claims agreement within the meaning of section 35 of the *Constitution Act, 1982*.” Article 4 stipulated, however, that neither the Political Accord nor legislation enacted in accordance with it would form part of the NLCA, or benefit from section 35 protection as a land claim agreement.

The NLCA also created four Institutions of Public Government (IPGs) – the Nunavut Impact Review Board (NIRB), the Nunavut Planning Commission (NPC), the Nunavut Water Board (NWB) and the Nunavut Wildlife Management Board (NWMB). These co-management institutions are made up of people nominated in equal numbers by government and Inuit, and make decisions which in other jurisdictions would be made by government alone. The IPGs constitute the basis of the regulatory regime for extractive projects in Nunavut.

Since 2007, mechanisms designed to ensure that uranium mining required the consent of Inuit were overturned, and the representative Inuit organizations and the GN adopted pro-uranium mining policies without any plebiscite or other form of democratic vote. Numerous consultation meetings have been held, but they have not involved any serious attempt to determine whether or not uranium mining has the consent of the general Inuit population. Further, these consultation meetings were generally dominated by the uranium mining industry, and have therefore been extremely biased. They were also often held during the busiest seasons for Inuit hunting and other land-based activities. Representative Inuit organizations then

² <http://www.gov.nu.ca/hr/site/doc/nlca.pdf>

³ The Nunavut Settlement Area covers approximately 2,000,000 square kilometres, or roughly one-fifth of Canada’s land mass. Inuit have collective title to approximately 350,000 square kilometres of land within the Settlement Area, including mineral rights over approximately 10% of those 350,000 square kilometres.

proceeded to enter into business agreements with the uranium mining industry that are apparently legally binding.

The Inuit of Baker Lake are once again faced with a proposal for the Kiggavik uranium project, now on a mixture of crown, Inuit-owned subsurface, and Inuit-owned surface lands. In 2008, AREVA Resources Canada⁴, an entity ultimately controlled by the Government of France⁵, submitted a proposal for the mine to regulators in Nunavut. AREVA's proposal includes five mining operations, milling infrastructure, an airstrip, a winter road and potentially an all-season road, all in the post-calving grounds of the Beverly caribou herd. The project would therefore have substantial impacts on Inuit land rights and cultural rights.

The proposal would also involve the perpetual storage of radioactive tailings in permafrost tundra when all credible climate change modeling predicts dramatic changes to the stability of permafrost. Further, insofar as the project would involve the permanent storage of hazardous⁶ material (radioactive tailings) in Inuit territory, it requires the free, prior and informed consent of Inuit, as per Article 29-2 of the United Nations Declaration on the Rights of Indigenous Peoples.⁷

AREVA's proposal is currently making its way through the NIRB's review process. This process is structured so that a board (the members of which are appointed by the federal Minister of Aboriginal Affairs and Northern Development) makes a recommendation, and a federal politician (the same Minister of Aboriginal Affairs and Northern Development) makes a final decision.

The process as implemented fails to meet the standard of free prior informed consent. It has limited opportunity for meaningful Inuit participation due to restrictions on timing and information availability and appropriateness. Inuit are restricted in their ability to inform themselves independently and evaluate the proposal on their own terms, and while there are Inuit on the NIRB itself the decision-making process does not clearly respond to or account for broader Inuit input. Important documentation is not being translated into Inuktitut, and important meetings are being held during the height of Inuit hunting seasons.

In addition to the above matters, Nunavummiut Makitagunarningit is concerned that:

- the Nunavut Impact Review Board (NIRB)'s definition of cumulative effects is more restrictive than that of the *Canadian Environmental Assessment Act*;
- NIRB has refused to discuss the end uses of uranium mined in Nunavut.
- the process does not take into account democratic expressions of public will – such as plebiscites.

The non-governmental organization Nunavummiut Makitagunarningit ('Makita') was formed in November 2009 in response to the ways in which decisions about uranium mining were being made in Nunavut.

⁴ <http://us.aveva.com/EN/home-451/aveva-resources-canada-uranium-mining-and-production.html>,

<http://kiggavik.ca/>

⁵ http://en.wikipedia.org/wiki/Areva_Group

⁶ see: <http://www.ccnr.org/salzburg.html> and <http://makitanunavut.files.wordpress.com/2012/03/2010-10-28-vakil-harvey-letter-e.pdf>

⁷ "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

In 2010, Makita circulated a petition calling on the GN to call a public inquiry into the question of potential uranium mining in Nunavut. The GN responded by holding a “public forum” on uranium mining in 2011 – a series of consultation meetings with no clear mandate to seek public consent for uranium mining. The GN relied on Golder and Associates, a firm that AREVA had previously contracted to help prepare the Environmental Impact Statement for the Kiggavik proposal, to help with the development of their uranium policy. The result was, as expected, a GN policy supporting uranium mining.

The GN and Nunavut’s representative Inuit organizations have given their consent to uranium mining on Inuit territory. However, Makita is of the opinion that the free prior and informed consent *of the general Inuit population* has yet to be sought on the matter.

Consultation is required regarding events that will have economic and cultural impacts on indigenous peoples. Consultation is supposed to ensure 1) representation; 2) transparency, access to information, and accountability; and, 3) participation and inclusion. Inuit organizations technically ‘represent’ and to some degree ‘participate’, but for the most part the latter two principles are missing in Nunavut. Until transparency, access to information and accountability exist; and until genuine participation and inclusion occur; then there is no Inuit ‘control’ over what happens in Nunavut – therefore making the NLCA a futile exercise. A large part of self-determination is being ‘architects’ of one’s own destiny. ‘Behind closed doors’ decision making and ‘back door deals’ are *not* a means to self-determination, because there is no democratic process.

Makita believes that the free prior and informed consent of the general population can only be arrived at through a territory-wide public inquiry, followed by a territory-wide vote. The issue of uranium mining is a territory-wide issue and should not be made by an environmental review panel or one community. If, after a public inquiry, the majority of Inuit in Nunavut support uranium mining, then the communities closest to the proposed Kiggavik project should have the opportunity to vote on that particular project.

The following sections provide documentation of how decisions about uranium mining have been made in Nunavut, with a focus on the ways in which the issue of the free, prior and informed consent of the general population has been sidestepped.

2. The Government of the Northwest Territories failed to agree on a policy re: uranium mining

When the Government of Nunavut came into being on April 1, 1999, it inherited a great deal of legislation from the Government of the Northwest Territories (GNWT) – but nothing specific to uranium mining. This was because the GNWT failed to adopt a policy regarding uranium mining, despite the subject having been discussed in the Legislative Assembly of the Northwest Territories in 1981, 1982, 1986 and 1990.

On March 1, 1990, Rankin Inlet MLA Peter Ernerk had introduced a motion entitled ‘Opposition to Exploration and Mining of Uranium in the N.W.T.’. Ernerk’s motion cited a motion passed by the Inuit Circumpolar Conference to “support Inuit of the Keewatin region in opposing the proposed Kiggavik uranium mine”, and an amendment to its draft Arctic Policy which stated:

Mining, milling, reprocessing or enrichment of uranium and its decay products should be prohibited throughout the Arctic on environmental, health, ethical and political grounds, whether the uranium is being mined for its own sake or is extracted in the course of mining some other substance. Almost all uranium is used for nuclear weapons or nuclear reactors; the tiny amount used for medical, research or other purposes can be obtained from existing stockpiles or produced by other means. The

greatest danger to human health and the environment from the entire nuclear cycle lies in the radioactive materials left in the tailings from uranium mining.

Ernerk's motion noted that the Legislative Assembly had heard from expert witnesses (including Gordon Edwards of the Canadian Coalition for Nuclear Responsibility) in 1981, and that on May 21, 1982 the Legislative Assembly had passed Motion 14-82(2), moved by William Noah (MLA for Keewatin North).

Noah's motion concluded:

I move, seconded by the Honourable Member for Frobisher Bay, that this Assembly resolve into Committee of the Whole at the fall session of this House to finally determine its position on the mining and production of uranium in the Northwest Territories.

The MLA for Frobisher Bay, Dennis Patterson, then stated:

... we should have no excuse by the fall for not being fully prepared to take a position on this subject. The information is in. I think we have received very complete and exhaustive testimony on all the various viewpoints and interests that bear on this vital subject.

Ernerk's motion also noted that while Motion 14-82(2) was never acted upon (due to pressure from the mining industry), Patterson had told the Legislative Assembly on June 19, 1986:

... the critical ingredient [in nuclear weapons] is uranium and I would like to say here that I am opposed to the exploration and mining of uranium in the Northwest Territories... there is no satisfactory way of dealing with the tailings and the waste that result from the mining of uranium. There is no proven, long-term method of dealing with uranium tailings... [the laws and regulations which supposedly prevent Canadian uranium from being used in nuclear weapons] have been proven to be entirely ineffective and meaningless... The truth is that Canadian uranium goes into nuclear weapons.

Ernerk's motion was never acted upon either, again due to pressure from the mining industry.⁸

3. The Nunavut Land Claims Agreement

The Nunavut Land Claims Agreement (NLCA) is a 'modern day treaty' that is entrenched under section 35 of the *Constitution Act, 1982*. The Preamble to the NLCA states four basic objectives shared by the parties to the Agreement:

- to provide for certainty and clarity of rights to ownership and use of lands and resources, and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore.
- to provide Inuit with wildlife harvesting rights and rights to participate in decision making concerning wildlife harvesting.
- to provide Inuit with financial compensation and means of participating in economic opportunities.
- to encourage self-reliance and social well-being of Inuit.

⁸ "Motion opposing Kiggavik stalled by the Legislative Assembly," *Nunatsiaq News*, March 9, 1990

At the heart of the NLCA is a fundamental exchange between the Inuit of Nunavut and the federal Crown. For their part, the Nunavut Inuit agreed to surrender “any claims, rights, title and interests based on their assertion of an aboriginal title” anywhere in Canada (including the Nunavut Settlement Area – the area to which the terms of the land claim apply). In return, the Agreement set out an array of constitutionally protected rights and benefits that the Inuit of Nunavut will exercise and enjoy in perpetuity.

The most important of these provisions for the Inuit beneficiaries are:

- collective title to approximately 350,000 square kilometres of land, of which roughly ten per cent include subsurface mineral rights.
- priority rights to harvest wildlife for domestic, sports and commercial purposes throughout lands and waters covered by the NLCA.
- establishment of a series of co-management boards, often referred to as Institutions of Public Government (IPGs), that work alongside and with government but are not a part of it. The Nunavut Wildlife Management Board (NWMB), for example, has equal numbers of Inuit-appointed and government-appointed members to oversee wildlife harvesting and management, as well as specific wildlife harvesting rights and economic opportunities related to guiding, sports lodges and commercial marketing of wildlife products. Other IPGs include the Nunavut Impact Review Board (NIRB), which conducts environmental and socioeconomic reviews of development proposals; the Nunavut Planning Commission (NPC), with responsibility for land use planning; and the Nunavut Water Board (NWB).
- capital transfer payments of \$1.148 billion to be paid over a 14 year period; these monies – which are to be administered by the Nunavut Trust on behalf of Nunavut Tunngavik Inc. – are not paid to individuals but are for the collective benefit of all Nunavut Inuit.
- a series of other provisions, such as commitments to increase Inuit employment in government and to give preference to Inuit-owned businesses in government contracting; a share in royalties on non-renewable resources; an obligation on the part of developers to conclude impact and benefit agreements in relation to certain types of development; a \$13 million training trust fund; a federal commitment to establish three national parks in Nunavut; and others.
- last, but certainly not least: a commitment to create a Nunavut territory and a Government of Nunavut on April 1, 1999.

In effect, the Inuit of Nunavut surrendered their rights to lands and resources at common law – known as ‘aboriginal title’ – for the measures contained in the NLCA.⁹ This exchange did not involve any surrender of Inuit rights to self-government in existence at the time the land claim was agreed to, or which may be defined by future constitutional amendments.

A key objective of the NLCA was to implement a new land and resource management system in the Nunavut Settlement Area to replace a previously existing system which had been perceived by Inuit negotiators to be ad hoc, incremental and fragmented. This system was intended to be comprehensive, exercising authority over the entire Nunavut Settlement Area (including surface lands, waters, marine areas and the maximum limit of land fast ice). It was also intended to achieve integration, linking a number of

⁹ The extinguishment of broad aboriginal rights for narrow specific recognition, title to specific areas, and financial compensation are longstanding federal government policy, but this approach is increasingly being criticized as illegitimate.

different institutions and processes together in one unified management system with jurisdiction over both Crown and Inuit owned lands in Nunavut.

Of central importance in this system are the linkages established between land/habitat and wildlife management. At the centre of this new set of power-sharing arrangements between Inuit and the state are the four IPGs. Co-management arrangements between the state and an aboriginal people were believed to be an achievable way to “bring together the traditional Inuit system of knowledge and management with that of Canada’s ... blending ... two systems of management in such a way that the advantages of both are optimised and the domination of one on the other is avoided.”¹⁰

In a strict legal sense, the four IPGs are ‘advisory’ bodies that make recommendations to federal and territorial government Ministers, but in practice they are powerful institutions which were clearly intended to be decision makers with sufficient authorities and resources to function relatively independently from both government departments and Inuit organizations. The Inuit land claim negotiators ‘went to the wall’ at the negotiating table to overcome the strenuous objections of federal ‘line departments’ to ensure that the IPGs would have those authorities and resources.¹¹

The powers and authorities of existing federal and territorial departments were neither replaced nor superseded by those of the IPGs, but government departments are now required to share some of their powers and to include the co-management bodies in their decision making processes. Depending on the issue, this power sharing takes various forms, ranging from ‘rubber-stamping’ the recommendation of an IPG, to structured consultations, to a department’s need to secure the “approval” of an IPG before proceeding with a decision or policy.

In the final analysis, the decisions of the IPGs are subject to Ministerial authority and discretion. Even so, the NLCA spells out a number of conditions and circumstances under which this Ministerial authority can be exercised. Beyond this, most of the traditional responsibilities of government departments continue.

Implementation of the NLCA has thus created a new political and administrative regime in Canada’s eastern and central Arctic; a ‘regime’ in the sense of ‘a method or system of government’. Many types of important decisions are no longer made by unelected and/or unaccountable people in faraway boardrooms; they are made in Nunavut, largely by residents of Nunavut.

4. Nunavut Tunngavik Inc.’s Uranium Policies

Nunavut Tunngavik Inc. (NTI) is the corporate entity that manages the subsurface resource rights and capital which Inuit received through the NLCA. Following the approval of the NLCA in 1993, NTI initially did not issue permits for the exploration or mining of uranium on lands to which the Inuit organizations held rights.¹² In 1999, NTI’s Board of Directors passed a resolution calling for the Lands

¹⁰ A former Vice-President of the Inuit Tapirisat of Canada, as quoted in: Thierry Rodon, “Co-management and self-determination in Nunavut”, *Polar Geography* 22:2, 1998, p. 123.

¹¹ While that may have been the intent, NIRB Chair Elizabeth Copland recently told Members of Parliament that “with the level of development that we are currently experiencing in Nunavut, the Nunavut Impact Review Board’s core capacity is already stretched to the breaking point.”

¹² http://www.nunatsiaqonline.ca/stories/article/65674nunavut_boards_say_they_cant_pay_for_bill_c-47_obligations/
http://www.nunatsiaqonline.ca/archives/nunavut990329/nvt90305_03.html

Department to develop a discussion paper outlining issues related to the possibility of uranium mining in Nunavut. From its earliest stages, this work strongly supported a policy that permits uranium mining.¹³

The discussion paper was completed in 2005, and recommended that NTI release a policy which supports uranium mining.¹⁴ A draft uranium policy was approved in 2006, and circulated among the regional representative Inuit organizations, the IPGs, the federal Department of Indian Affairs and Northern Development, the uranium mining industry, and the communities of Baker Lake and Kugluktuk.¹⁵ The Kugluktuk HTO and Hamlet Council responded, indicating that they were not able to comment on the draft policy because they lacked necessary technical expertise.¹⁶

In late May of 2007, NTI held consultation meetings in Baker Lake and Kugluktuk. NTI's Lands Policy Advisory Committee was in each community for less than one day for consultations.¹⁷ Only 27 people from Baker Lake and 45 people from Kugluktuk attended the consultation meetings. Late May is one of the busiest hunting/fishing seasons for Inuit in Nunavut, and perhaps the worst possible time to hold a consultation meeting and expect a serious turnout.¹⁸

Each meeting consisted of presentations by NTI staff, the uranium mining firm AREVA Resources, the consulting firm SENES (which has also been contracted by AREVA), and the Canadian Nuclear Safety Commission. Only three residents of Baker Lake are on record giving any feedback whatsoever. One participant complained that the meetings were dominated by long presentations and gave relatively little time for community feedback. Another community member complained that the presentations were too fast.¹⁹ During the meeting in Kugluktuk, a participant complained about the timing of the meeting and the brief nature of the consultation. Numerous participants expressed concern and apprehension about uranium mining. Only seven residents of Kugluktuk are on record giving any feedback.²⁰

In 2007, NTI Board of Directors approved a policy supporting uranium mining.²¹ In 2008, NTI proceeded to enter into agreements with three uranium firms, without any public consultation about entering such agreements in principle or the specifics of the agreements signed.²²

In response to growing controversy surrounding uranium mining in Nunavut, in February of 2011 NTI President Cathy Towtongie announced that she wanted to review the organization's uranium policy. She said that there had not been enough public consultation in 2007, and as a result Inuit had not been properly informed about the pros and cons of uranium mining. "I believe we need some other experts to get a

¹³ <http://makitanunavut.files.wordpress.com/2012/07/2004-09-02-nti-lands-briefing-uranium-mining.pdf>

¹⁴ <http://makitanunavut.files.wordpress.com/2012/07/2005-02-uranium-discussion-paper-vol-i.pdf>,

<http://makitanunavut.files.wordpress.com/2012/07/2005-02-uranium-discussion-paper-vol-ii.pdf>

¹⁵ <http://makitanunavut.files.wordpress.com/2012/07/2006-03-05-uranium-cover-letter.pdf>,

<http://makitanunavut.files.wordpress.com/2012/07/2006-03-05-draft-uranium-consultation-document.pdf>

¹⁶ <http://makitanunavut.files.wordpress.com/2012/07/kugluktuk-hto-ham-april-10-2006.pdf>

¹⁷ <http://makitanunavut.files.wordpress.com/2012/07/ntischedule.pdf>

¹⁸ http://makitanunavut.files.wordpress.com/2012/07/baker_reg.pdf,

http://makitanunavut.files.wordpress.com/2012/07/kugluktuk_reg.pdf

¹⁹ http://makitanunavut.files.wordpress.com/2012/07/baker_minutes.pdf

²⁰ http://makitanunavut.files.wordpress.com/2012/07/kugluktuk_minutes.pdf

²¹ <http://makitanunavut.files.wordpress.com/2012/07/ntiuraniumpolicy.pdf>

²² <http://makitanunavut.files.wordpress.com/2012/07/nr-08-06-ura-eng-nti-grants-uranium-rights.pdf>,

<http://makitanunavut.files.wordpress.com/2012/07/nr-08-44-mou-eng-nti-and-forum-sign-mou.pdf>,

http://www.nunatsiaqonline.ca/archives/2008/805/80516/news/nunavut/80516_1193.html

balanced approach to uranium mining,” Towtongie said.²³ Towtongie promised that a “territorial-wide consultation process on uranium” would take place.²⁴ No such process occurred.

In March of 2011 NTI announced that it would review its uranium policy, but would “take into account existing legal obligations” in its policy review (seemingly a reference to the business agreements they entered into in 2008).²⁵ At NTI’s annual general meeting in November of 2011 it was announced that NTI had no plans to change its policy regarding uranium mining.²⁶

5. The Government of Nunavut’s Uranium Policy

The issue of uranium mining was essentially ignored – at least in public – until the Nunavut Planning Commission’s Uranium Mining Workshop in Baker Lake June 5-7, 2007 (see section 8). Later that month the Minister of Economic Development and Tourism, Baker Lake MLA David Simailak, tabled the GN’s ‘Uranium Development Management Plan Principles’²⁷ in the Legislative Assembly:

1. The Government of Nunavut regards mining, including uranium mining, as an important source of jobs for Nunavummiut and for revenues to meet the needs of our growing population.
2. The Government of Nunavut recognizes that uranium development places special responsibilities on government because of the nature of uranium and its byproducts, the history of its use for both peaceful and non-peaceful purposes, and its potential risks to human health and the environment.
3. Uranium development must have the support of Nunavummiut, especially in communities close to development.
4. The Government of Nunavut will support uranium development in Nunavut provided that the following conditions are satisfied:
 - a. Health and safety standards are issued for workers.
 - b. Environmental standards are assured.
5. The Government of Nunavut believes that nuclear power will be an important part of meeting global energy needs while limiting greenhouse gas emissions.
6. The Government of Nunavut believes that Canadian Law and international agreements provide assurance that uranium mined in Nunavut will be used for peaceful purposes.

On March 19, 2010, the new MLA for Baker Lake, Moses Aupaluktuq, asked the Minister of Economic Development and Transportation, Peter Taptuna:

In 1990, Mr. Speaker, residents of Baker Lake voted against opening a uranium mine at the Kiggavik site. Many Nunavummiut are calling for a full and open public dialogue on uranium mining in Nunavut before any major projects go forward. Before a new mine goes ahead at Kiggavik, does the Government of Nunavut support holding a plebiscite in the community to determine the wishes of the majority of its population, yes or no, and if not, why not?

²³ <http://www.cbc.ca/news/canada/north/story/2011/02/24/nunavut-inuit-uranium-policy.html>

²⁴ Ibid.

²⁵ <http://makitanunavut.files.wordpress.com/2012/07/nr-11-10-ura-eng-uranium-policy.pdf>

²⁶ http://www.nunatsiaqonline.ca/stories/article/65674rosy_financial_future_ahead_for_nti_towtongie

²⁷ The GN media release was entitled “Balanced Approach for Uranium Mining in Nunavut.”

Taptuna ducked the question, stating:

I can't answer that question with a yes or no. It is a complex project and it involves all other organizations, the Inuit organizations, the affected communities, the communities of Kivalliq, the Nunavut Impact Review Board, and other regulators. So answering that question with a simple yes or no doesn't really mean anything.

Nunavummiut Makitagunarningit had been formed in November, 2009,²⁸ and had circulated a petition calling on the GN to launch a public inquiry into the question of potential uranium mining in Nunavut.²⁹ Signed copies of the petition were tabled in the Legislative Assembly by MLAs Moses Aupaluktuq (Baker Lake) and Ron Elliott (High Arctic) in early June, 2010.

On June 29, 2010 Makita issued a position statement entitled 'Why Nunavut needs a public inquiry into uranium mining'³⁰ – which is appended to this submission. The statement made the case for the public government holding a public inquiry into the full range of policy issues arising from the possibility of opening the territory to the nuclear industry, rather than having the issue decided by a regulatory process holding one project-specific review with a limited mandate. The statement also noted that the provinces of British Columbia and Nova Scotia have banned uranium exploration and mining in their jurisdictions.

In October, 2010 Premier Eva Aariak tabled her government's response to the petitions. The Premier rejected the petitioners' request, and instead announced that the GN would hire consultants to undertake a study on uranium mining – and would hold three 'public forums' on the issue of uranium development (in Iqaluit, Baker Lake and Cambridge Bay).

The supposedly unbiased discussion document released by the GN³¹ reads like the kind of thing consultants to the mining industry would write, likely because it *was* written by consultants to the mining industry. The GN had hired Golder and Associates, had previously contracted to help prepare the Environmental Impact Statement for the Kiggavik proposal. Apparently no one in the senior levels of the GN thought this in any way inappropriate.

The public forums resulted in some useful media coverage³² and debate³³, but there was never any doubt what the outcome of the process would be. On June 6, 2012, Minister Taptuna announced in the Legislative Assembly that "The Government of Nunavut will support the exploration and mining of uranium subject to the following principles:

1. Uranium mined in Nunavut shall be used only for peaceful and environmentally responsible purposes.
2. Nunavummiut must be the major beneficiaries of uranium exploration and mining activities.

²⁸ http://www.nunatsiaqonline.ca/stories/article/nunavut_mlas_pressed_for_public_inquiry_on_uranium_mining/

²⁹ <http://www.cbc.ca/news/canada/north/story/2009/11/30/nunavut-uranium-petition.html>

³⁰ <http://makitanunavut.files.wordpress.com/2012/03/2010-06-29-makita-position-statement.pdf>

³¹ [http://www.uranium.gov.nu.ca/Uranium%20in%20Nunavut%20Review%20PL%20-%20ENG%20\(FINAL\).pdf](http://www.uranium.gov.nu.ca/Uranium%20in%20Nunavut%20Review%20PL%20-%20ENG%20(FINAL).pdf)

³² http://www.nunatsiaqonline.ca/stories/article/98789_nunavut_uranium_forum_reveals_stark_divisions,

<http://www.cbc.ca/news/health/story/2011/03/18/nunavut-uranium-igaluit-forum.html>,

http://www.nunatsiaqonline.ca/stories/article/987867_video_interviews_from_nunavut_uranium_event/,

http://www.nnsi.com/frames/newspapers/2011-03/mar21_11ua.html,

³³ http://www.nunatsiaqonline.ca/stories/article/98789_on_uranium_dont_look_for_simple_answers/,

http://www.nunatsiaqonline.ca/stories/article/31446_in_defense_of_emotionalism_makita_reponds/

3. The health and safety of workers involved in uranium exploration and mining and all Nunavummiut shall be protected to national standards.
4. Environmental standards must be assured for uranium exploration and mining, especially for the land, water and wildlife.
5. Uranium exploration and mining must have the support of Nunavummiut, with particular emphasis on communities close to uranium development.”

Nunavummiut Makitagunarningit stated that it was “not surprised” by the GN’s announcement that it supports opening the territory to uranium mining.

This outcome was predictable, as the consultation process was biased from outset. The GN’s ‘public forums’ were a way to deflect Makita’s call for a public inquiry into the wisdom of opening Nunavut to the uranium industry. ... It was clearly not an ‘objective’ policy review.³⁴

No details were supplied as to how the GN intends to determine whether uranium development has “the support of Nunavummiut, with particular emphasis on communities close to [proposed mines]”, but it is noteworthy that a (different) consultant’s report³⁵ on the GN’s public consultation process quotes e-mails making the case for a public vote:

Because Baker Lake will be impacted the most by uranium mining, there should be a plebiscite to determine what the people actually want. Some people are afraid to speak out against uranium mining, for fear of losing jobs, community blame and so on. (from a resident of Baker Lake)

I think the people of Nunavut should make the decision regarding Uranium Mining in Nunavut, via a plebiscite. I live in Kivalliq and there is an atmosphere of not wanting to speak out for or against uranium mining because of public backlash. This fear will prevent an honest evaluation of the subject. (from a resident of the Kivalliq region)

6. AREVA’s Kiggavik proposal

In 1993, AREVA became the operator of the Kiggavik project, which had been put into “care and maintenance” in 1998. AREVA began a public relations campaign in 2005, and opened an office in Baker Lake in 2006. AREVA resumed exploration for uranium at Kiggavik in 2007, and submitted a proposal for a mining project to Nunavut regulators in 2008.³⁶

AREVA’s proposal calls for the construction and operation of five mines – four open pits and one underground operation. The Kiggavik project would involve an airstrip, a winter road, and potentially an all-season road. Uranium milling infrastructure would be constructed, and tailings would be stored in mined out pits. Uranium oxide (‘yellowcake’) would be produced and then flown south for processing.³⁷

³⁴ <http://makitanunavut.wordpress.com/2012/06/08/makita-not-surprised-by-gn-support-for-uranium-mining/>

³⁵ <http://www.uranium.gov.nu.ca/What%20was%20said%20about%20Uranium%20in%20Nunavut%20Summary%20-%20ENG.pdf>, p. 10

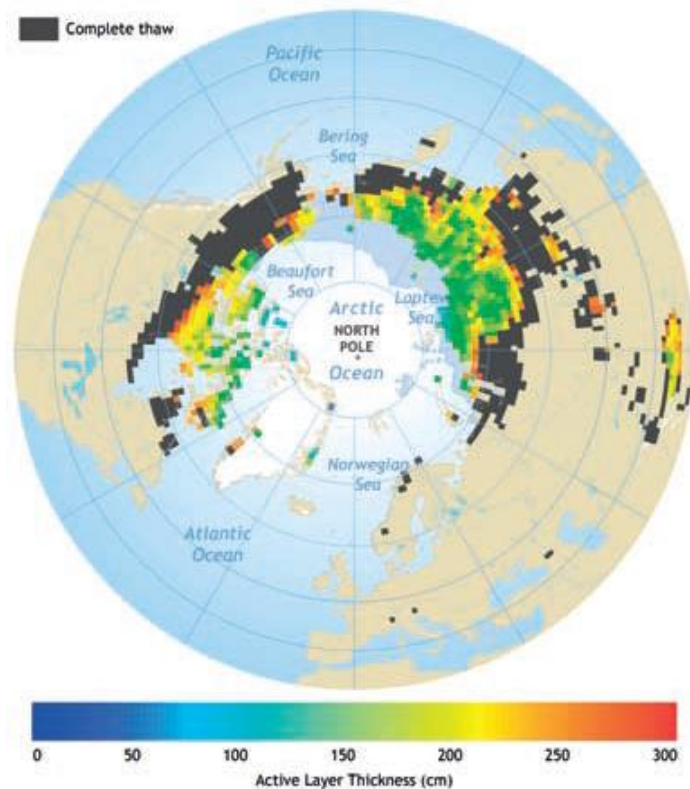
³⁶ <http://kiggavik.ca/download/Kiggavik-ProjectProposal.pdf>

³⁷ <http://makitanunavut.files.wordpress.com/2012/05/deis-volume-2-project-description.pdf>

The proposed project lies within the historic post-calving grounds of the Beverly caribou herd. The Beverly and Qamanirjuaq Caribou Management Board³⁸ recommends that mineral exploration and extraction be prohibited in calving and post-calving grounds.³⁹ The caribou board voiced opposition to AREVA's proposal during the application for an exploration permit in 2007,⁴⁰ and has expressed serious concerns repeatedly since then.⁴¹

Makita has serious concerns about the potential of the project to disturb caribou, the storage of tailings in a permafrost environment (which is currently melting due to climate change) and AREVA's ability to properly respond to an accident during Arctic blizzard conditions. Any impact to caribou, either through contamination or disturbance, could have a substantial impact on the culture and wellbeing of indigenous peoples, both in Nunavut and elsewhere. This is especially true for Inuit in Baker Lake, who are located inland and thus rely almost entirely upon caribou for hunted meat.

Makita also has very serious concerns about AREVA's proposal to store – *in perpetuity* – radioactive waste in permafrost tundra. As the United Nations Environment Program (UNEP) report *Policy Implications of Warming Permafrost* noted, “large-scale thawing of permafrost may have already started” – and is forecast to accelerate – as a result of global climate change.⁴²



³⁸ <http://www.arctic-caribou.com/about.html>

³⁹ http://www.arctic-caribou.com/PDF/Position_Paper.pdf

⁴⁰ <http://makitanunavut.files.wordpress.com/2012/06/bqcm-b-exploration-screening-comments.pdf>

⁴¹ http://www.arctic-caribou.com/PDF/AREVA_Kiggavik_December_2008.pdf

⁴² http://makitanunavut.files.wordpress.com/2012/06/nirb_screen_report.pdf

⁴² <http://www.unep.org/pdf/permafrost.pdf>

The UNEP report included a graph⁴³ showing a model projection indicating “a 59% loss in near-surface permafrost area by 2100 for the IPCC A1B scenario. The dark grey regions show where taliks may form and permafrost in the top 15 meters of soil may completely thaw.”

A key question that Makita and other interveners will be asking AREVA and the regulatory authorities is “Who is going to ensure, in perpetuity, that the tailings impoundment would be safe, especially under changing climate conditions?” As the Canadian Nuclear Safety Commission noted in a Request for Proposals for a consultant to do their own permafrost review,

Uranium mines generate vast quantities of waste -- tens of millions of cubic meters mine tailings and mine waste rock. Successful management of these wastes are important for environmental protection. The success of the tailings management is to rely on the integrity of the tailings pits and the proper design of the tailings management facilities (TMFs). ... The success of the project will greatly rely on the integrity of the permafrost because a continuous permafrost zone beneath the TMFs acts as a natural low-permeability barrier to control the downgradient movement of contaminants. If the permafrost beneath the TMFs is thawed, the contaminants in the TMFs might enter into aquifers and migrate along the preferential flow channels (faults) to the water receptors (lakes) and cause potentially significant groundwater contamination. If the groundwater regime indicates artesian pressures in the underneath aquifer, the artesian inflow into the TMFs could cause potential overflow of the contaminated water from the TMFs and require a significant increase in the water treatment capacity. Currently, it is not clear how the permafrost beneath the TMFs will evolve under the disturbances caused by the TMFs. The current trends of global warming could also further exacerbate these disturbances.⁴⁴

Makita is concerned that the regulatory system in Nunavut will be unable to properly assess AREVA’s proposal, and would be unable to properly monitor and enforce regulations if the proposal is approved. The fall 2012 report of Canada’s Commissioner of the Environment and Sustainable Development found that federal agencies are not properly monitoring and enforcing existing regulations on mines in Canada’s north. In particular, the report found that in the north federal agencies do not properly monitor the amount of money companies set aside for cleanup, do not complete over 70% of required site inspections, lack adequate information on mines they are supposed to be regulating, and do not employ adequate or consistent disciplinary measures for breaches of project conditions.⁴⁵

Local experience with the Meadowbank gold mine near Baker Lake is also a cause for concern about the enforcement of regulations for the Kiggavik project. Monitoring reports indicate that Agnico-Eagle (the operator of Meadowbank) is years behind schedule in installing air/dust monitoring equipment, has a faulty groundwater monitoring system, and has no intention of suppressing dust on the all weather access road to

⁴³ from Kevin Schaeffer et al, “Amount and timing of permafrost carbon release in response to climate warming,” *Tellus B*, 63 (2011): 165-80. <http://tinyurl.com/cuasunz>

⁴⁴ http://www.merx.com/English/SUPPLIER_Menu.asp?WCE=Show&TAB=1&PORTAL=MERX&State=7&id=208231&print=Y&src=osr&ForceLID=&HID=&hcode=iUhk532v7ajO73GGLGjibiQ%3D%3D

⁴⁵ http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201212_e_37708.html See also: <http://www.cbc.ca/news/canada/north/story/2013/02/06/north-feds-mine-monitoring-north.html>, <http://www.cbc.ca/news/politics/story/2011/12/13/pol-environment-commissioner-report.html>

the mine. All of these are breaches of project conditions, and no disciplinary actions seem to have been taken.⁴⁶

In submissions to an early stage of the NIRB review in 2009, various institutions, communities and individuals expressed concern with, or opposition to, AREVA's proposal. 45 Inuit from Baker Lake expressed opposition to the project, while 29 indicated some degree of support and nine indicated that they were undecided. Additionally, the Athabasca Desuline First Nation expressed serious concerns with the proposal and the Lutsel K'e Dene First Nation indicated its opposition (both communities are located outside of Nunavut but hunt the same caribou herds).⁴⁷

7. The Kivalliq Inuit Association and the negotiation of an Impact and Benefit Agreement for AREVA's Kiggavik proposal

The Kivalliq Inuit Association (KIA), the regional representative Inuit organization, is responsible for negotiating Impact and Benefit Agreements with the mining industry and for issuing Land Use Permits for exploration and mining on Inuit owned lands (surface). KIA held consultation meetings regarding the Kiggavik proposal in 2006, 2007 and 2010.

In October of 2006, a "uranium information session" was held in Baker Lake. This involved a two hour presentation by SENES (a consulting firm that has taken contracts from both Urangesellschaft and AREVA), followed by a question and answer session. People expressed serious concerns with disturbance and contamination of caribou.⁴⁸ The report of the workshop stated "at this point the general public is not ready to make an informed decision".

In January of 2007, the KIA passed a resolution supporting AREVA's proposal to move forward into the environmental assessment, despite having held only one public consultation on the matter.⁴⁹

In April of 2007 the KIA embarked on a "uranium mining community tour" to all seven communities in the Kivalliq region (including Baker Lake). Presentations were made by AREVA, SENES and the Canadian Nuclear Safety Commission.⁵⁰

In January and February of 2010, the KIA held a community tour for AREVA's proposed Kiggavik mine. All seven communities, including Baker Lake, were visited. The meetings involved long presentations by KIA staff, providing an overview of AREVA's proposal. Surveys were distributed and collected at these meetings. The results of the survey suggest that 66% of the residents of Baker Lake supported AREVA's proposal.⁵¹

⁴⁶ <http://makitanunavut.files.wordpress.com/2012/12/2012-site-visit-report-ot2e.pdf>,
http://makitanunavut.files.wordpress.com/2013/03/meadowbank_2011_report.pdf,
http://makitanunavut.files.wordpress.com/2013/03/meadowbank_2009_report.pdf

⁴⁷ http://makitanunavut.files.wordpress.com/2012/06/nirb_screen_report.pdf

⁴⁸ http://makitanunavut.files.wordpress.com/2013/03/kia_tour-2006.pdf

⁴⁹ http://makitanunavut.files.wordpress.com/2012/05/resolutions_of_support.pdf

⁵⁰ http://makitanunavut.files.wordpress.com/2013/03/kia_2007_qa.doc
http://makitanunavut.files.wordpress.com/2013/03/kia_2007_presentation.ppt

⁵¹ http://makitanunavut.files.wordpress.com/2013/03/kia_tour_2010.pdf

However, the neutrality of the meetings is highly questionable. Numerous staff employed by AREVA attended the meeting as “observers”.⁵² During the break, numerous residents discussed the surveys with AREVA’s staff. Posters made by AREVA were on display around the perimeter of the room. While the consultation meeting was publicized, there was no prior announcement that surveys were being administered at this meeting. Makita believes that these surveys were deeply flawed, and not an effective tool for gauging public opinion. Given the high number of expressions of opposition to AREVA’s proposal submitted to the NIRB in 2009 (see above), it seems unlikely that this survey accurately represents the perspective of Inuit from Baker Lake.

The results of this survey are now being used by KIA to justify moving forward with the negotiation of an Impact and Benefit Agreement with AREVA for the Kiggavik project.⁵³ This IBA is being negotiated confidentially – Inuit from Baker Lake will only know what is in the agreement once the negotiations are complete.

8. The Nunavut Planning Commission, the Keewatin Regional Land Use Plan and AREVA’s Kiggavik proposal

Under the NLCA, the Nunavut Planning Commission (NPC) holds the responsibility of developing and implementing land use plans for Nunavut. When a mining company submits a proposal for a project, it first goes to the NPC for a “conformity determination” – that is, the NPC checks to ensure that proposals conform to land use plans as the first step in the environmental review.

The Keewatin Regional Land Use Plan was approved in June 2000. Two sections of land use plan deal specifically with uranium – terms 3.5 and 3.6.⁵⁴

Term 3.5 states: “Uranium development shall not take place until the NPC, NIRB, the NWB, and the NWMB have reviewed all of the issues relevant to uranium exploration and mining. Any review of uranium exploration and mining shall pay particular attention to questions concerning health and environmental protection.”

Term 3.6 states: “Any future proposal to mine uranium must be approved by the people of the region.”

The Nunavut Planning Commission (NPC) held a three day Uranium Mining Workshop in Baker Lake June 5-7, 2007. Representatives from a broad array of organizations were in attendance, including uranium mining companies, various Inuit organizations, Hunters and Trappers Organizations from various communities in Nunavut, the GN, and Nunavut’s four IPGs. Additionally, a number of groups critical of uranium mining sent representatives, including the Pembina Institute and the Canadian Coalition for Nuclear Responsibility.

While the presentations were therefore less biased than previous consultation meetings, the format of the meeting only gave community members five minutes to speak – many Elders were cut off before they could finish speaking. Further, this meeting was held in early June, one of the busiest hunting and fishing seasons for Inuit in Baker Lake. In the opinion of Makita, this meeting did not suggest approval of uranium

⁵² AREVA Community Liaison Committee Meeting Minutes (February 3, 2010)

<http://makitanunavut.files.wordpress.com/2013/03/areva-clc.pdf>

⁵³ http://www.nunatsiaqonline.ca/stories/article/65674kivalliq_inuit_org_signs_new_iiba_for_meadowbank/

⁵⁴ <http://makitanunavut.files.wordpress.com/2012/05/keewatin-regional-land-use-plan.pdf>

mining from the community members present. Indeed, the report from the workshop explicitly states that no decisions were made at the workshop.⁵⁵

A motion from the NPC was attached to the beginning of the workshop report. The motion, which was passed unanimously, stated that by holding the workshop the NPC had fulfilled condition 3.5 of the Keewatin Regional Land Use Plan.

The chairs of the NIRB, NWB and NWMB responded to the workshop report with an extraordinary joint letter noting their surprise “because, among other things, we had not seen the report; as such, it did not come from us; nor did we fully participate in the Workshop – other than giving a very brief overview presentation.”⁵⁶ Thus, Makita finds it difficult to believe that all four organizations “have reviewed all of the issues relevant to uranium exploration and mining” as per term 3.5.

In December of 2006, Hamlet Councils in the Kivalliq region began passing conditional resolutions of support for AREVA’s Kiggavik proposal to enter an environmental assessment.⁵⁷ The Kivalliq Inuit Association passed a similar resolution in January 2007, before it had even officially adopted a uranium policy or held more than one consultation meeting in the community of Baker Lake. These resolutions were passed quietly, without specific public consultation on the matter and without announcing that the resolutions had been passed. More importantly, they were passed without any form of public vote or plebiscite.

On January 16, 2009 the NPC issued a conformity determination for the proposed Kiggavik project, stating that the project proposal conformed to the Keewatin Regional Land Use Plan and that terms 3.5 and 3.6 had been satisfied.⁵⁸ The NPC took the position that the resolutions from the KIA and Hamlet Councils were evidence that “the people of the region” had approved AREVA’s proposal.⁵⁹

The NPC then forwarded the project proposal to the NIRB for screening.

9. The Nunavut Impact Review Board and AREVA’s Kiggavik proposal

AREVA’s proposal was first submitted to the NIRB in November 2008. NIRB “screened” AREVA’s proposal and – as expected – found that it could “have significant adverse effects on the ecosystem, wildlife habitat or Inuit harvesting activities; adverse socio-economic effects on northerners; will cause significant public concern; and involves technological innovations for which the effects are unknown.”⁶⁰ For these reasons, NIRB recommended to the Minister of Indian Affairs and Northern Development that the Kiggavik proposal required a full environmental review – and the Minister concurred. The review process began in March 2010.

The focus of the NIRB review is an Environmental Impact Statement (EIS) – a document produced by the proponent that details all of the impacts the proposed mine may have on the environment and society. In November 2010 NIRB released “draft guidelines” to direct AREVA in their development of an EIS.

⁵⁵ http://makitanunavut.files.wordpress.com/2012/05/ipg-uranium-mining-workshop-report_eng.pdf

⁵⁶ <http://makitanunavut.files.wordpress.com/2012/05/ipg-letter.pdf>

⁵⁷ http://makitanunavut.files.wordpress.com/2012/05/resolutions_of_support.pdf

⁵⁸ <http://makitanunavut.files.wordpress.com/2012/05/npc-conformity-determination.pdf>

⁵⁹ http://makitanunavut.files.wordpress.com/2013/03/npc_ir.pdf

⁶⁰ http://makitanunavut.files.wordpress.com/2012/06/nirb_screen_report.pdf

NIRB then requested comments on these draft guidelines from various organizations which had obtained ‘intervener’ status in the review – only some of which it accepted as valid.

Some of interveners’ comments pointed to significant problems with the way in which the review was being framed, among them the failure to adequately address the ‘basin opening’ nature of the proposed project. As Makita stated at the time⁶¹,

A broader definition of cumulative effects is not without precedent in Canada. *The Canadian Environmental Assessment Act* defines cumulative effects as “any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out.”⁶² The Canadian Environmental Assessment Agency (CEAA) interprets this to include assessment of “the most likely future scenario”, which may include consideration of hypothetical projects.⁶³

The Report of the Joint Review Panel for the Mackenzie Gas Project, *Foundation for a Sustainable Future*⁶⁴ (December 2009), has put this higher standard into practice. ...

Cumulative effects assessment in Nunavut should reflect, at a minimum, the minimum standards of best practice in the rest of Canada. We note that such an approach would contribute to proper environmental planning for a ‘basin opening’ project like Kiggavik.

To make the same point from the perspective of an Inuit hunter:

“Everyone knows that this review is not really about the Kiggavik proposal, yes or no. This review is about opening the Kivalliq – and Nunavut as a whole – to uranium mining, yes or no.

“We know that there’s a lot of uranium around Baker Lake, which is why this community is surrounded by uranium exploration. AREVA has already spoken publicly about the possibility of the mill at Kiggavik being used to process uranium from other mines to be built in the future. In 20 years there could be several or many mines, with several or many roads between them, and everything else that comes with additional mines.

“For this review to be intellectually honest, you are going to have to model a realistic ‘likely scenario’ of what could very well happen if this region is politically opened up to uranium mining.

“I believe that “foreseeable future actions” resulting from approval of the Kiggavik could be six or 12 or who knows how many uranium mines. How are you going to model their cumulative effects on the caribou, on the environment and on the people of Baker Lake?”⁶⁵

The Kivalliq region is a treasure house of minerals, as this 2012 map of mining and mineral exploration shows:

⁶¹ <http://makitanunavut.files.wordpress.com/2012/03/makita-comments-draft-eis-guidelines.pdf>

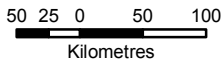
⁶² see the CEAA’s Operational Policy Statement: <http://www.ceaa.gc.ca/default.asp?lang=En&n=1F77F3C2-1>

⁶³ Ibid.

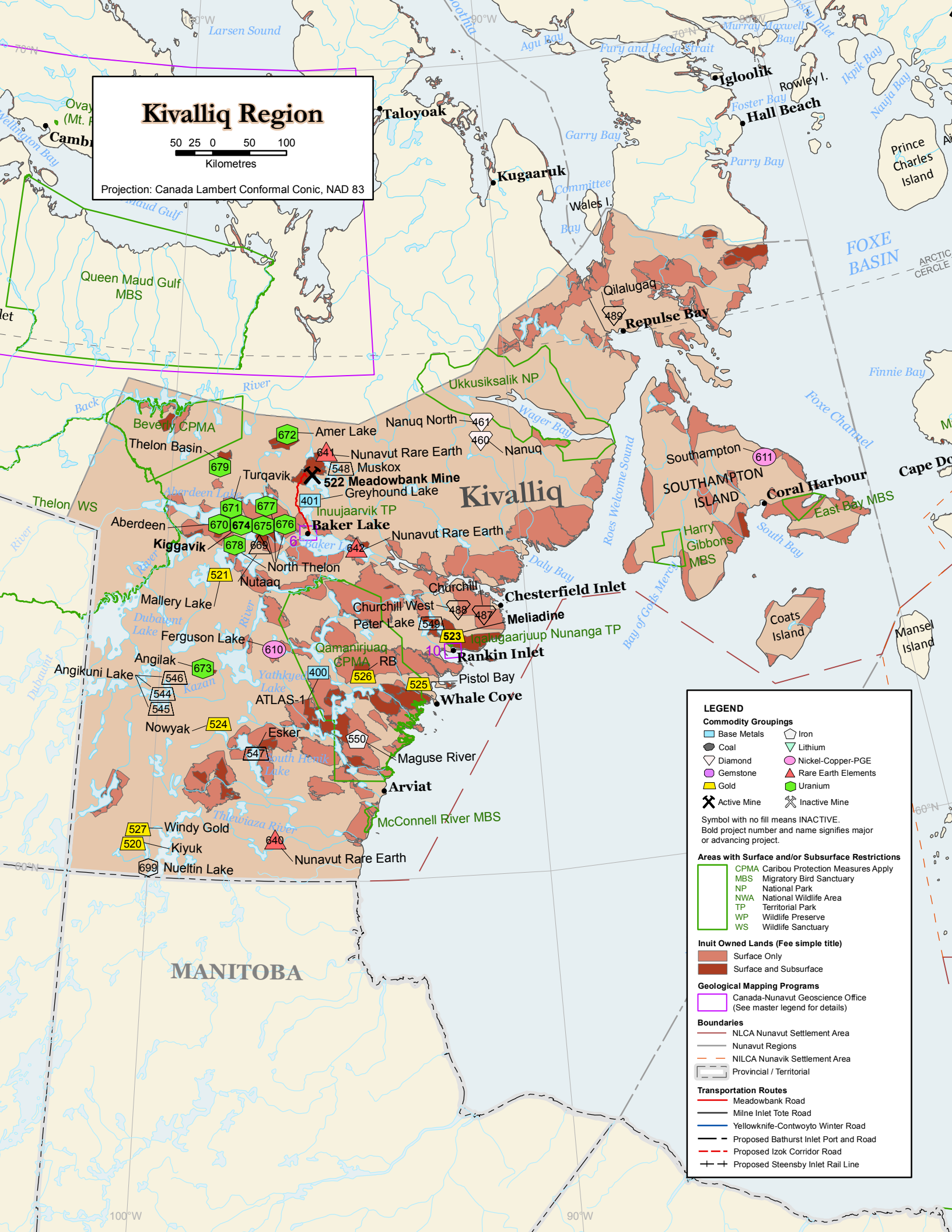
⁶⁴ <http://www.ceaa.gc.ca/default.asp?lang=En&n=71B5E4CF-1>

⁶⁵ www.nunatsiaqonline.ca/stories/article/98789_nirb_uranium_firm_governments_look_like_part_of_same_team/

Kivalliq Region



Projection: Canada Lambert Conformal Conic, NAD 83



LEGEND

Commodity Groupings

- Base Metals
- Coal
- Diamond
- Gemstone
- Gold
- Iron
- Lithium
- Nickel-Copper-PGE
- Rare Earth Elements
- Uranium

Symbol with no fill means INACTIVE.
 Bold project number and name signifies major or advancing project.

Areas with Surface and/or Subsurface Restrictions

- CPMA Caribou Protection Measures Apply
- MBS Migratory Bird Sanctuary
- NP National Park
- NWA National Wildlife Area
- TP Territorial Park
- WP Wildlife Preserve
- WS Wildlife Sanctuary

Inuit Owned Lands (Fee simple title)

- Surface Only
- Surface and Subsurface

Geological Mapping Programs

- Canada-Nunavut Geoscience Office (See master legend for details)

Boundaries

- NLCA Nunavut Settlement Area
- Nunavut Regions
- NILCA Nunavik Settlement Area
- Provincial / Territorial

Transportation Routes

- Meadowbank Road
- Milne Inlet Tote Road
- Yellowknife-Contwoyto Winter Road
- Proposed Bathurst Inlet Port and Road
- Proposed Izok Corridor Road
- Proposed Steensby Inlet Rail Line

There can be no question that approval of the Kiggavik proposal would open the door to additional uranium development in the region -- more mines, and more roads. Once that door is opened, it will be impossible to close it again.

The NIRB also ruled that it “does not have the resources nor the mandate” to address the end use of uranium mined in the territory – which we believe to be an important moral question for many Nunavummiut. As Makita noted at the time, “What a gift to the proponent, NIRB’s willingness to accept without question AREVA’s assertion that there is no chance of uranium from Kiggavik ending up in nuclear weapons!” Especially when AREVA is building what, “If built ... would be the largest nuclear power generating station in the world”⁶⁶ in India. Indian governments of different parties have all refused to sign the Treaty on the Non-Proliferation of Nuclear Weapons⁶⁷, and India is one of the four non-parties to the treaty that are known to possess nuclear weapons. Makita asserts that AREVA cannot guarantee with certainty that uranium from Kiggavik would not end up in Indian nuclear weapons.

Another critical issue is the lack of documentation translated into Inuktitut. Both Makita⁶⁸ and the Baker Lake Hunters and Trappers Organization (HTO)⁶⁹ requested that the review of AREVA’s proposal be put on hold until the draft guidelines could be translated into English and an English/Inuktitut terminology list for uranium and mining could be developed. Both groups argued that the failure to translate the draft guidelines into Inuktitut made it impossible for unilingual Elders to properly participate in the review process.

Despite these criticisms, the NIRB refused to put the review on hold.⁷⁰ The issue of translation of key documents was again addressed by the Baker Lake HTO at a NIRB workshop.⁷¹ In May of 2011, the NIRB released the final guidelines for AREVA’s Environmental Impact Statement, in English only.⁷²

The issue of translation raises serious issues about the way in which section 3.5 of the Keewatin Regional Land Use Plan was deemed satisfied by the NPC (see above). Specifically, if “NPC, NIRB, the NWB, and the NWMB have reviewed all of the issues relevant to uranium exploration and mining”, Makita would have expected that these institutions would have reviewed issues related to community consultations and developed key Inuktitut/English terminology related to uranium mining.

AREVA submitted a Draft Environmental Impact Statement (EIS) in January, 2012. This submission was rejected by the NIRB⁷³, and AREVA submitted a revised version in April of 2012, which was accepted for review.⁷⁴

In late June of 2012, parties submitted Information Requests to the NIRB.⁷⁵ These are formal written questions that the NIRB forwards to AREVA or regulators, meant to provide further information necessary

⁶⁶ http://en.wikipedia.org/wiki/Jaitapur_Nuclear_Power_Project

⁶⁷ http://en.wikipedia.org/wiki/Treaty_on_the_Non-Proliferation_of_Nuclear_Weapons

⁶⁸ <http://makitanunavut.files.wordpress.com/2012/03/media-release-nirb-translation.pdf>,

<http://makitanunavut.files.wordpress.com/2012/03/makita-comments-draft-eis-guidelines.pdf>,

<http://makitanunavut.files.wordpress.com/2012/03/makita-comments-re-revised-eis-guidelines.pdf>

⁶⁹ <http://makitanunavut.files.wordpress.com/2012/04/htoguidelinescomments.pdf>

⁷⁰ <http://makitanunavut.files.wordpress.com/2013/03/nirb-to-blhto-re-guidelines.pdf>

⁷¹ http://makitanunavut.files.wordpress.com/2012/03/nirb_has_failed_us.pdf

⁷² <http://makitanunavut.files.wordpress.com/2013/03/eis-guidelines.pdf>

⁷³ http://www.nunatsiaqonline.ca/stories/article/65674nirb_gives_areva_failing_grade_on_kiggaviks_draft_eis/

⁷⁴ <http://makitanunavut.wordpress.com/arevas-draft-environmental-impact-statement/>

to review AREVA's draft EIS. AREVA indicated that it would respond to Information Requests directed to it by January 31, 2013.⁷⁶

On October 15, 2012 the NIRB issued a new timeline for the review of AREVA's proposal. The technical meeting and pre-hearing conference were scheduled for late May and early June of 2013.⁷⁷

On December 3, 2012 Makita wrote to the NIRB, requesting that the technical meeting and pre-hearing conference be put off until the fall of 2013.⁷⁸ Makita was concerned that the meetings were scheduled during an important time for hunting and other land-based activities in Baker Lake. Makita argued that scheduling meetings during this time prevents most Inuit from meaningfully participating in the review process, because Inuit will not be able to properly prepare for the meetings during busy seasons on the land.

On December 6, 2012 the North Slave Métis Alliance in the Northwest Territories wrote to the NIRB expressing support for Makita's request that meetings be delayed until the fall of 2013, to better accord with Aboriginal culture and seasonal cycles. The letter stated, "Interference with the natural cycle of land use of Indigenous peoples is just one more cumulative effect of development on Aboriginal Cultural Rights that frequently go unrecognized, and unmitigated."⁷⁹

On December 7, 2012 the NIRB responded, indicating that it was not willing to delay hearings until the fall, but would consult with communities about the specific timing of meetings.⁸⁰

AREVA provided responses to Information Requests on January 31, 2013 and the technical review continued with meetings scheduled for May/June. On February 25, 2013 the Beverly and Qamanirjuaq Caribou Management Board wrote to NIRB, reiterating the request that public meetings should be delayed until the fall.⁸¹ The caribou management board argued that Aboriginal peoples, in Nunavut and elsewhere, would be unable to properly participate due to the conflicts between the review schedule and Indigenous hunting seasons.

On February 27, the NIRB circulated an updated review schedule – with meetings still scheduled for May/June 2013.⁸²

⁷⁵ <http://makitanunavut.wordpress.com/2012/07/05/nirb-information-requests-reveal-serious-deficiencies-in-arevas-draft-environmental-impact-statement/>

⁷⁶ Some Information Requests were directed to regulatory agencies. The GN committed in writing to replying to all its IRS by September, 2012, but by March, 2013 it had failed to do so. When an intervener complained, NIRB issued a tersely-worded statement: "Although the NIRB is disappointed that the GN failed to respond to CARC's IR within the timeframe it had committed to, the Board has no ability to compel the GN to respond and cannot suspend the review because the GN has not done so."

⁷⁷ <http://makitanunavut.files.wordpress.com/2013/03/nirb-updated-timeline.pdf>

⁷⁸ <http://makitanunavut.files.wordpress.com/2013/03/makita-timeline.pdf>

⁷⁹ <http://makitanunavut.files.wordpress.com/2013/03/nsma-timelines.pdf>

⁸⁰ <http://makitanunavut.files.wordpress.com/2012/06/nirb-ltr-to-nm-re-review-timeline-oede.pdf>

⁸¹ http://makitanunavut.files.wordpress.com/2013/02/bqcm-b-nirb_comments-on-kiggavik-technical-review-timeline_25feb13-1.pdf

⁸² <http://makitanunavut.files.wordpress.com/2013/02/nirb-ltr-dist-re-tech-mtg-phc-tech-comment-format-ot2e.pdf>

10. Conclusion

Since it was formed in November 2009, Nunavummiut Makitagunarningit has lobbied the institutions created by the NLCA to provide mechanisms to ensure the free, prior, and informed consent of Inuit in questions regarding uranium and other mineral extraction in the territory.

The experience of Nunavummiut to date has been rather the opposite of free, prior, and informed consent:

- The Nunavut Planning Commission held a single invitation-only workshop before passing a motion deeming that, without any public discussion whatsoever, requirements that (A) the other IPGs had “reviewed all of the issues relevant to uranium exploration and mining”; and, (B) that uranium development had to be “approved by the people of the region”; had been met.
- The Board of Nunavut Tunngavik Inc. did not fully consult NLCA beneficiaries before changing its policy on uranium mining. The nuclear industry was a part of NTI’s carefully controlled process.
- NTI did not consult NLCA beneficiaries before accepting a ‘gift’ of shares in a start-up uranium company, and allowing this company to explore for uranium on Inuit-owned land.
- The Government of Nunavut rejected a petition calling for a comprehensive public inquiry into uranium mining. Again, the nuclear industry was a part of a process carefully designed and managed to achieve the desired outcome.
- NTI President Cathy Towtongie promised a “territorial-wide consultation process on uranium” so that NLCA beneficiaries could hear both the ‘cons’ and the ‘pros’ of opening the territory to uranium mining. No such process occurred.
- The Nunavut Impact Review Board has failed to insure that adequate terminology had been developed, failed to translate critical documents, and declared itself unable to address key issues of concern (e.g. cumulative impacts and end-use) to many NLCA beneficiaries.

All these decisions were taken by institutions created by settlement of the NLCA, but all the key decisions have been made behind closed doors. These institutions have avoided the issue of democratic consent at all costs, opting instead for carefully controlled “consultations” with no real mandate to assess community consent in any meaningful way. The mining industry has been overrepresented in these “consultations”, to the point that both NTI and the GN relied on industry consultants for supposedly unbiased and impartial policy “advice”.

AREVA is currently negotiating an Impact and Benefit Agreement for their proposed Kiggavik mine with the Kivalliq Inuit Association – once again behind closed doors.

These are the reasons why concerned Nunavummiut in Baker Lake and Iqaluit formed Nunavummiut Makitagunarningit – an independent, non-governmental organization.

And these are the reasons why Makita stands by its calls (appended to this submission) for a public inquiry into uranium mining, to be followed by free and democratic votes – by the residents of Baker Lake and among NLCA beneficiaries – of the wisdom of opening the door to who-knows-how-many uranium mines in Nunavut... with all the cumulative effects they would entail.

Makita invites the United Nations’ Special Rapporteur on the Rights of Indigenous Peoples and/or his staff to contact us if they require additional information on any of the issues discussed in this submission.



Nunavummiut Makitagunarningit

POSITION STATEMENT

WHY NUNAVUT NEEDS A PUBLIC INQUIRY INTO URANIUM MINING

IQALUIT and BAKER LAKE – June 29, 2010

A petition initiated by Nunavummiut Makitagunarningit has been tabled in the Legislative Assembly calling for a public inquiry on whether or not to open Nunavut to uranium mining.

Nunavut is in danger of being on the receiving end of one of the biggest ‘snow jobs’ in its history. The uranium industry has come to town, and the elected leaders of our public government may be willing to let bureaucrats in Nunavut and Ottawa decide whether or not its arrival is in our public interest.

Some other jurisdictions in Canada have concluded that it is not in their best interest. In British Columbia, Nova Scotia and the City of Ottawa, elected leaders and citizens have debated the wisdom of uranium mining and nuclear power. They have decided that the risks outweigh the rewards, and they have banned uranium exploration and mining in their jurisdictions.

Similarly, the new government in Greenland banned uranium mining in the country as one of its first acts upon taking office last November.

Contrary to the messaging coming from the heads of land claims organizations and some senior government officials, Nunavummiut Makitagunarningit believes that a uranium industry in Nunavut would pose serious risks to the environment, to public health and safety, and to Inuit traditions and practices.

For whatever reasons, the elected leaders of our public government have not been willing or able to publicly acknowledge those risks – or examine whether Nunavut is ready to deal with them.

Those who would have us believe Nunavut’s regulatory system can protect us against the risks of a project like Kiggavik say: “The company must prove it can build and operate its project in an environmentally and socially responsible manner.”

But this is not about a single project – it is about an entire industry. As a hunter in Baker Lake recently told the Nunavut Impact Review Board (NIRB), “Everyone knows that this review is not really about the Kiggavik proposal, yes or no. This review is about opening the Kivalliq – and Nunavut as a whole – to uranium mining, yes or no. ... In 20 years there could be several or many mines, with several or many roads between them, and everything else that comes with additional mines.”

Some other jurisdictions in Canada have decided they are comfortable with the uranium industry polluting their lands. Saskatchewan is, and so is Ontario. Both of these jurisdictions have pitched their future health and wellbeing on their ability to regulate the uranium industry. And both of them made their decisions openly, through public inquiries.

Nunavut, on the other hand, is about to leave the decision to a regulatory process led by bureaucrats and federal politicians.

Why does this matter? Why shouldn't we let Nunavut's regulators make the decision? For one, a determination on a single project cannot address the magnitude of the decision. It simply isn't appropriate or fair to 'use' a regulatory process intended to review individual projects to make decisions about an entire sector of the mining industry.

When it comes to uranium, a public inquiry creates the accountability that a regulatory process (including an environmental assessment process) cannot. There are three reasons why Nunavut needs a public inquiry.

First, a public inquiry is more transparent, flexible and democratic than a regulatory process is.

- The members of the Nunavut Impact Review Board (NIRB) are not elected, and so are not directly accountable to the public.
- The impact review process is highly technical and difficult for the public to understand, so it cannot properly gauge public acceptability.
- The scope of NIRB's process is defined by the Nunavut Land Claims Agreement – which requires the Board to focus on the environmental and socio-economic effects of a single project rather than the impacts of an entire industry.
- A public inquiry would force Nunavut's experts to come out and say what they think about uranium mining. Does Nunavut's Chief Medical Officer of Health think uranium mining is safe? If he does, what evidence did he use to make his decision? (Especially when the City of Ottawa's Chief Medical Officer of Health does not.) The public deserves to know this.
- In a public inquiry, Nunavut's elected representatives would be responsible for framing the issues, setting the scope of inquiry and calling evidence. Rather than leaving the decision in the hands of federal bureaucrats (and a few from Nunavut), our own elected MLAs would examine the issues on behalf of all Nunavummiut.

Second, a public inquiry is important because Nunavut's organizations have already shown themselves incapable of protecting the public interest in matters of uranium.

- Representative Inuit organizations have overturned their long-standing opposition to uranium mining without involving beneficiaries in the decision-making process, putting

in place a policy that absolves them from responsibility by leaving regulators to decide on their behalf.

- Without public consultation or research, the Government of Nunavut has implemented essentially the same policy.
- The Nunavut Planning Commission has already determined that the people of the Kivalliq region support the Kiggavik project, allowing the project to proceed to an environmental assessment without regard for the democratic standard set in Baker Lake by a public plebiscite conducted by the Hamlet in 1990. At that time, just over 90% of votes cast in Baker Lake were against the Kiggavik project.
- Today, the same project may be developed because a very small group of politicians have decided behind closed doors that it should proceed.

Third, our land claims institutions are not equipped to deal with the complex long-term and cumulative effects of a nascent uranium industry in the territory.

- The health and safety of animals and people depends on government's capacity to enforce regulations, build infrastructure and implement programs to support the industry. Programs might include socio-economic monitoring, job training, social programs and collaborative wildlife monitoring. Are these programs in place? Are they enough?
- Nunavut's regulatory process is proponent driven. A public inquiry is not. It is not in the proponent's interest to criticize government regulations if they are inadequate for protecting the environment. Are we confident our regulations are adequate?
- What about infrastructure? Are we going to trust AREVA Resources (the proponent; http://www.arevaresources.com/exploration/kiggavik_scissons/) to tell us whether the Kivalliq region has the necessary medical infrastructure to deal with the possible results of uranium mining?
- Let us be clear. The NIRB is not a regulator or policy maker. Its primary role is to provide advice to government on environmental decisions. The NIRB does not control purse strings or decide how much to spend on inspection and enforcement or other programs and services.

So far our elected leaders have been asleep at the switch and the tough questions still wait to be answered. Unless a public inquiry is called, we will never know whether uranium mining is the right choice for Nunavut.

The effects of uranium mining will last for thousands of years. Do we not owe it to ourselves, to our children and to our grandchildren to take enough time and care to make sure that we have it right?

Under the rules of the Legislative Assembly, the Government of Nunavut has until August 6 to respond to the MLA for Baker Lake, who along with the MLA for Quttiktuq tabled signed copies of the petition in the Assembly.

We urge the Premier and Cabinet to choose transparency and democratic accountability, and call a public inquiry. If they do not, future generations will judge them harshly.

Nunavummiut Makitagunarningit

■ COMMENTARY: Nunavut March 17, 2011 - 11:44 am

Nunavut voters should decide uranium policy in public vote Plebiscite could bring quick resolution to "prolonged debate"

NUNATSIAQ NEWS

NUNAVUMMIUT MAKITAGUNARNINGIT

IQUALUIT and BAKER LAKE – A prolonged debate about the possibility of a moratorium on uranium mining in Nunavut could negatively impact on how potential investors perceive the territory. Mining capital can go anywhere it chooses. If investors have doubts about the certainty afforded by Nunavut's regulatory regime, they can simply invest their money somewhere else.

Nunavummiut Makitagunarningit believes that this is why Nunavut should do what the Province of British Columbia has already done.

Their very pro-mining Liberal government recognized that the people of the province did not want to see uranium mines opened in their watersheds or nuclear reactors built on seismic fault lines, so the B.C. banned uranium mining and nuclear power generation in the province.

This decision was the result of careful consideration of the pros and cons of uranium mining and nuclear power generation. The B.C. government concluded that the negative impacts of uranium mining far outweigh any potential benefits.

Has this policy scared mining capital away from B.C.? Not at all. On the contrary—it clarified matters considerably.

If you want to explore for gold or copper or almost anything else, you are welcome to apply for permission from the province's regulatory agencies—but not for uranium. That's as clear as it could possibly be.

If Nunavummiut were to so choose in a free and democratic vote, Nunavut could make it unequivocal that while we are a pro-development and pro-mining jurisdiction—with a settled land claim and an orderly regulatory process—we are firmly opposed to uranium mining.

That clear message will not frighten away iron miners or diamond miners or gold miners.

The present situation in Japan is a stark reminder that the ability of human beings to 'manage' unforeseen events has its limits.

The Japanese nuclear industry's recklessness and irresponsibility in building nuclear reactors on seismic fault lines is having tragic consequences for millions of innocent people.

In addition, Nunavummiut Makitagunarningit believes that it would be impossible to ensure that uranium from Nunavut would never be used in unsafe nuclear reactors or in nuclear weapons.

As MiningWatch Canada has noted, "Canadian uranium is pooled with uranium from other sources and contributes to the total uranium available on the global market. Transfers between countries also make assurances of the initial importing country difficult to uphold."

A 1993 joint federal-provincial review of uranium mining in Saskatchewan noted that "Current Canadian limitations on end uses of uranium provide no reassurance to the public that Canadian uranium is used solely for non-military applications by purchasers."

In the United States, Canadian uranium is enriched for use in nuclear reactors along with any other uranium being processed. The leftover "depleted" uranium (U-238) is stored at the enrichment sites, and may be made into depleted uranium weapons.

There is no way to identify the origin of the depleted uranium used in these weapons, just like nuclear weapons made from highly-enriched uranium and/or plutonium from reprocessed nuclear fuel waste.