

## **PLANNING AND DEVELOPMENT AFTER THE JAMES BAY AGREEMENT**

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### **ABSTRACT/RESUME**

The author reviews the negative and positive aspects of the James Bay and Northern Quebec Agreement. He outlines many of the problems associated with the implementation of the Agreement, pointing out several issues in planning and economic development which have caused serious difficulties for the James Bay Cree. He notes the need for a continual adaptation and appraisal on the part of the Cree if they are to make the new bureaucratic structures work as intended.

L'auteur souligne les aspects favorables et défavorables de la Convention de la baie James et du Nord du Québec. Il indique un grand nombre de problèmes causés par la mise en service de la Convention, et en particulier les difficultés éprouvées par les Cris de la région de la baie James, dans le domaine de la planification et du développement économique. Il fait remarquer la nécessité d'une attention continue de la part des Cris, s'ils veulent assurer le fonctionnement acceptable des nouvelles structures bureaucratiques.

## BACKGROUND

After the announcement in 1971 of the intention by the Province of Quebec to initiate the James Bay Hydroelectric development project, the indigenous people of the area, the James Bay Cree and the northern Quebec Inuit, began an involvement in a complex negotiating process which resulted in the James Bay and Northern Quebec Agreement. Aside from the particular details of this agreement it was important for two more general reasons: (1) it was the first agreement in modern times which dealt with the relationship between the Canadian state and a group of indigenous people claiming aboriginal rights, and (2) it represented something of a test case or model for helping the various governments determine how they might deal with similar claims and conflicts in the future. It is the implications of this agreement on the original objectives of the Cree, on their efforts to re-fashion their communities in light of the hydroelectric projects, and also on their attempts to retain as large a measure of autonomy as possible which will be discussed below.

When the massive hydroelectric project was first announced it became evident to the Cree that in the region as a whole something like 8800 km<sup>2</sup> of land would be flooded which was a part of the territory upon which they engaged in their traditional pursuits of hunting, fishing, and trapping - in short, their subsistence base. It should be pointed out that there is some evidence to suggest that for the native people of the Quebec James Bay area traditional activities - subsistence and trapping - were probably a much more dominant feature of the local economy and of the region than for many other native groups across the country. So when a project was announced which threatened to damage a large part of this economic base the Cree were more than a little frightened by the prospects. It was actually an entire way of life which was being threatened.

With regard to the communities which comprised the James Bay Cree region at the time of the announcement of the hydroelectric project, it would be a mistake to view the region as a homogeneous whole populated by Cree native people all of whom had maintained some formal level of contact with one another for centuries. In fact just the contrary was the case. In 1971 the region was comprised of eight different communities having relatively little to do with one another. Each community's external relationships were defined and characterised by virtue of its own particular and unique history and its own relationship to (1) its own territory which provided a subsistence base and (2) its own relationship to the Hudson's Bay Company. With Hudson's Bay Company fur trading posts strategically located, the seasonal movements of people in the region to some extent revolved around these posts thus making people dependent on particular posts and at the same time limiting other kinds of contacts. There were, of course, occasional intermarriages and informal contacts but there was certainly nothing which would encourage anything like a regional identity. So when the negotiations began there were eight communities comprised of people whose primary allegiances were to their own communities (and in fact in some cases even to smaller units than the community) with little sense

of a regional identity. It was only as a result of the hydroelectric project and the subsequent negotiations that the groundwork for concerted, unified action on the part of the Cree communities was laid, and out of which any regional sense of identity could emerge.

The important factor to note during the entire period of the negotiations leading to the Agreement is that although the Cree won an initial court victory in one of the lower courts (in which there was recognition that the Cree did in fact have a legitimate court case based on some conception of aboriginal claims and the absence of the extinguishment of territorial rights), and although there was a very short-lived injunction against continuation of the construction work on the hydroelectric project, for the most part, construction was proceeding apace. What became very evident to the Cree, and what had a very profound effect on the course of the legal struggles, was that construction of the dams and other infrastructure related to the project could not be stopped through court involvement and legal maneuvering.

The legal strategy finally adopted by the Cree was an amalgamation of two strategies. That is, an attempt was made to gain some recognition of the validity of their claim that traditional hunting and trapping activities comprised a significant part of the contemporary Cree economy as well as cultural life, thus arguing for recognition of aboriginal rights. At the same time they also sought compensation for the damages done to the environment plus monetary compensation for the extinguishment of all future claims to Quebec territory based on their aboriginal claims. The resulting agreement - the James Bay and Northern Quebec Agreement - had both positive and negative features. On the positive side there was:

- 1) an explicit recognition of some form of aboriginal rights. The territory surrounding each community was divided into three categories, each entailing different rights and obligations for the Province of Quebec and the Cree. The first category, Category I land, is entirely in the hands of the Cree and under their exclusive jurisdiction. They retain hunting and trapping rights on these lands as well as rights to other natural resources (although some ambiguity remains with respect to various resources). The Cree have gradually diminishing rights on subsequent categories of land.
- 2) A support system for subsistence and traditional activities was established. A program known as the Income Security Program which functions as a kind of guaranteed annual income scheme provides monetary support for people who spend a certain required amount of time involved in subsistence and traditional activities.
- 3) The Province of Quebec agreed to implement any remedial measures which needed to be undertaken to ameliorate the harmful effects of the hydroelectric projects. Some \$50 million was set aside for this and is administered by a board which has Cree representation.
- 4) The Cree are gradually taking control of the provision of social services. They have already established the Cree School Board and the James Bay Cree Board of Health and Social Services. This latter organization consists

of a central hospital whose board manages the various nursing stations in the communities and also provides social workers for the region.

- 5) Monetary compensation was obtained for having signed the agreement.

Very generally, the negative features of the Agreement can be summarized as follows:

- 1) Aboriginal rights which had previously been maintained in principle were extinguished for all time.
- 2) Something of a split developed between the James Bay Cree and other native groups in Quebec and Canada. This split was understandable as the agreement appeared to set a precedent for the way in which aboriginal land claims could be settled in the future and it also weakened what many native groups hoped would remain a common front on these issues.
- 3) The agreement covered so many aspects of the future social organization of the Cree that it essentially has entailed a gradual 'municipalization' of the Cree communities. This has meant since the signing of the agreement continual negotiations with various levels of government in a context of relatively few human resources, and also the inauguration of new and unfamiliar bureaucratic forms.
- 4) This last point has entailed a continuing reliance and dependence on a barrage of non-Cree legal advisors and consultants. This has caused many people to wonder about the kind of local control they have achieved. There have even been some references to these advisors and consultants as a new form of Indian Affairs.
- 5) Perhaps one of the most serious problems following the signing of the agreement was that there has been great difficulty in getting the various governments to fulfill their obligations under the agreement. This has been serious enough to have required a full-scale federal review of the implementation of the agreement.
- 6) Because of the failure of governments to fulfill their obligations the Cree have had to dip into their own compensation money in order to improve conditions which might otherwise not be remedied for a long time, particularly water and sewage systems in a number of communities. Poor water and sanitation facilities were linked to a serious gastroenteritis epidemic and were felt to require immediate action. This severely cut into the total amount of compensation monies. In addition, a significant amount of the money had to be invested by law in government bonds which cannot be touched for a specified number of years. These bonds had fixed interest rates and at the time were approximately 10.5%. This means that now, because of inflation, a good portion of the Cree compensation money is being seriously devalued every year. So what may have initially appeared as a very sizeable amount of money as compensation is, due to inflation and investments, to emergency funding, and to the administration of the Cree organizations, gradually dwindling.
- 7) There was insufficient attention paid to economic development issues resulting in alien forms of bureaucratic structure with no clear statement

of direction and objectives regarding development.

It is worth stating very clearly that in light of Quebec's insistence that nothing would interfere with the continuation of the hydroelectric development project and in light of the very hard stance the Province took throughout the entire negotiations, it is quite remarkable that the Cree were able to gain as much as they did, notably a recognition of some form of aboriginal rights plus a support system for traditional and subsistence activities. The Cree have, ever since signing the agreement, been accused by other native groups and by non-native support groups of having 'sold out' by giving up their total aboriginal rights for basically ephemeral gains of compensation money, and thereby muddying the waters for other native groups in the midst of their own struggles for recognition of aboriginal land rights. The point which can never be over-emphasized is that throughout the negotiations over this massive project, construction really never ceased for any appreciable length of time. It must have appeared to the Cree a bit ludicrous to base their entire legal position on an absolute claim for aboriginal rights in light of the continuing construction. Had they continued on that path they might have jeopardized gaining many of the benefits which they did win through negotiations. Even had they somehow managed to gain a total recognition of their aboriginal claims - a procedure which would have taken a long time - it might well have been a somewhat hollow victory as significant portions of land would already have been flooded. During the negotiations their backs were very much up against the wall. With their land about to be flooded, with apparently no way of stopping the construction, they had to salvage what they could through negotiations pertaining to specific compensations.

It is unfortunate that one of the results of the agreement was a straining of some of the relations which the Cree had with other native groups in Canada. But looked at from the Cree point of view and all the contradictions and difficulties which they faced at the time their own participation in the negotiations, rather than being a sell-out is probably closer to having been a form of resistance. It was no one's intention among the Cree simply to get as large a monetary settlement as possible in exchange for aboriginal rights. There was, rather, a determined effort to preserve as much of the traditional economic and cultural life as possible while trying also to create the conditions for a controlled integration into the dominant economic environment.

It appears as though the strategy adopted by the various levels of government in dealing with the James Bay Cree is one that may have been adopted for the resolution of similar conflicts elsewhere in Canada in the future. This strategy essentially consists of refusing to act on any claims for recognition of aboriginal rights and dealing with such issues only when they are related to specific large-scale development projects in any given region. In other words the strategy which appears to be developing (and indeed this was confirmed not long ago by some leaked documents from DIAND) is that in the absence of sufficient pressure on the federal government to act on native land claims they will simply ignore them. They will however permit large-scale resource develop-

ment projects to be planned as if there were no native problem to deal with. When native issues are brought up it may already be after the fact as far as the planning and implementation of these projects are concerned. As with the James Bay Cree, other native groups may find themselves up against the wall with mega- or other development projects under way with no apparent means for stopping the development. They may then also be forced into a position in which the most urgent priority will be to gain whatever concessions possible regarding their traditional economic pursuits and future economic development before it is too late and before they have lost any bargaining position whatsoever. This is not intended to be a gloomy prediction as to the fate of native people and their efforts to gain recognition of territorial claims, but one must always be aware of the interests and strategies of the various players on the scene. To say that such a strategy may exist on the part of the government does not necessarily mean that that is what will come about. In such matters one can never discount the influence of such factors as local political ideology and a wide range of different forms of resistance.

Whatever may be the difficulties with the provisions in the agreement, at the time that it was negotiated and immediately after it was signed, the Cree believed that they had struggled for and gained a large measure of local control over their affairs and a significant measure of autonomy. They believed that they succeeded in protecting their traditional pursuits and they believed also that they laid the groundwork for controlling their own planning for economic and community development in the future.

#### PLANNING ISSUES EMERGING FROM THE AGREEMENT

The population of the James Bay Cree is presently around 7500. Approximately 60% of the population is under 21 years of age which of course means that it is a very rapidly expanding population. By the end of the decade the population may be somewhere between 12000 and 14000 people. Also during this period all of the existing traplines and hunting grounds will have reached their saturation point in terms of the number of people who can use the land without completely depleting it of its resources and who use it at such a level which permits maintenance of steady levels of game and fur-bearing animals. So as the absolute number of people involved in traditional pursuits remains constant their proportion to the total population will decline. This means of course that unless something is done to intervene in this situation the number and percentage of people unemployed will increase dramatically. What is required in this situation is first of all the recognition of the necessity to plan for the long-term and secondly to begin to put into place economic development schemes which will have desirable spin-off effects, job multiplier effects, increased manpower utilization, increased capital circulation, etc. Both of these requirements are certainly features which the Cree were quick to appreciate, but at the same time there have been certain constraints to putting these principles into place so that they have concrete tangibility. Now, for example, the rate of unemployment for the region as a whole is roughly between 40 and

50%, so at least as far as the alleviation of high levels of unemployment is concerned the planning and development activities since the time of the signing of the agreement have not been a marked success.

Some of the problems to date which have constrained the efforts of the Cree in economic development planning are in a sense intrinsic problems within a development/underdevelopment problematic. That is, starting from very little (as far as standards of living, ability to fulfill basic needs, etc. are concerned) the task of generating a viable social system from that starting point is ominously difficult. There are always the problems of 1) few human resources (i.e. trained people in a wide range of skills), 2) little technical knowledge as to how to go about the construction of different kinds of infrastructure or industrial operations, 3) the danger that the manpower one has may be drawn off to be utilized as a reserve labour pool with little labour applied to constructing people's own communities, 4) of dealing with a legacy of dependency and how that will influence the capacity for locally-controlled development, and 5) the fundamental problem of finding some way to generate sufficient amounts of capital which could permit some level of development to facilitate, to some extent, the local fulfillment of basic needs.

In addition to these general problems within an underdevelopment framework (problems which are shared in varying degrees with underdeveloped third world countries) there are very specific and historically unique circumstances which have faced the Cree and have placed some obstacles in the way of the successful implementation of their planning strategies. The political conflicts between Canada and Quebec have caused serious problems for the Cree. The contradiction which each government faces is that at the same time they each want to maintain a distinct presence in the region, but they are each facing growing fiscal crises which diminish their capacity to provide funding and other types of programme assistance. When it comes to some of the concrete points in the agreement regarding such issues as remedial works and assistance to economic development the performance by the various governments has been inadequate. In the agreement the Quebec government was required to establish a James Bay Native Development Corporation. This corporation has a working capital of only around 2¼ million to be used for the financing of specific economic development schemes. This is, of course, a very paltry sum of money when we are talking about eight communities all of which require extensive economic development. But worse than that is the philosophy of the day-to-day administrators of this corporation (non-natives) who function somewhat like bank managers, that is, they apply very narrow criteria to the feasibility of any proposal and they refuse to consider requests which are not made by individuals. What this means is that they are very reluctant to fund cooperative endeavours or any band-operated project. The result of this is that few projects are funded since few individual Cree in the region have sufficient capital to raise which would satisfy the bank manager mentality of the corporation. The ones that do get funded are not often the kinds of projects which really maximize the potential economic spin-offs (tending to be things like local taxi services, snack bars, and the like). The corporation has not been significantly involved in

resource development projects, which are the ones that really do have the job multiplier effects and which maximize value-added operations.

Another constraint particular to the region has to do with the specific effects of the hydroelectric development projects. The projects have or will cause either flooding or serious erosion of the land on which several communities are situated requiring the relocation of these communities. Thus, entirely new communities have had to be planned and constructed. This has meant that people at both the local level and at the regional office in Val d'Or have had to engage in extensive consultations and negotiations with architects, lawyers, construction companies, and a large range of government departments. In the course of doing this, a very large portion of the skilled people in the region who are capable of dealing with such complex issues were very preoccupied with these matters. In fact they became so preoccupied, quite understandably so given the complexity of relocating villages in remote areas, that economic development was necessarily a lesser priority. In one community in particular, Fort George, now, about five years after the relocation began the people have a very well-planned and attractive community with a commercial centre, a sports arena, a modern hospital, and new housing. But, as desirable as all these things are, aside from some traditional activities and some administrative employment, that is all they have. Their commercial centre is woefully underutilized and there are very few jobs in the community relative to its population. In addition, the skilled administrators in the community, having gone through a five-year ordeal of relocation, may be a bit burned out and are not prepared for a crisis in economic development. A problem arises which is basically the consequence of a conjuncture of environmental damage and few human resources.

Another problem which arises in planning and development for the region has to do with the relationship between administrative people at the local levels and administrative people at the regional level in Val d'Or. As the organization is constituted at the regional level, the Val d'Or office is responsible for negotiating with governments on various issues, and for providing assistance and support for economic development including planning studies, management advice, etc. In some ways the regional office functions somewhat as a regional government administering services and funds, and representing the Cree to outside agencies. What has sometimes happened in the past is that at the regional level the organization has needed personnel and has sought out those people from its own communities. The problem arises in that when people with skills at the local level are lured away to the regional offices it leaves a substantial gap in the communities. The result is a concentration of skilled resources at the regional level which has produced some rational and logical planning but there has been a vacuum at the local levels for implementation purposes. At its worst this situation has produced some resentment on the part of the communities towards the regional organization, but in general the end is a lack of coordination in development planning.

One of the difficulties in carrying out coordinated development strategies in the region has to do with the form of the regional structures which themselves were the products of legalistic negotiations leading to the Agreement. The Cree



Regional Authority, the agency created to implement the various terms of the agreement, was not an indigenous Cree invention. Its shape was the product of legal processes and compromises carried out by the Cree negotiators along with their non-Cree legal advisors. To a significant extent policy-making and planning appear at times to be constrained by the fact that legal interpretations of the agreement can have priority over community aspirations. The communities cannot carry out activities which are impossible within the terms of the Agreement. Due to the legal complexity of the Agreement a new dependency on legal advisors has been produced. This is not to suggest that the Cree Regional Authority is not a formally representative organization without community level involvement or even formal community control. Certainly many appropriate representative features are present. But what needs to be considered is the extent to which, even in the presence of formal representational control, an organizational structure not created indigenously will always appear somewhat foreign and alien and will therefore entail a diminished sense of community control over such an organization. If that sense of control and ownership of an organization is not present then the organization may suffer from a lack of clear direction, and it will be subject to a wide range of conflicts (regional vs. local conflicts, inter-community conflicts, and intra-regional conflict) some of which have already appeared in the Cree milieu. One of the most salient defining characteristics of the period since the signing of the Agreement is the placement of numerous new forms of agencies and organizations all of which require time for the Cree to familiarize themselves with. The critical question is to what extent they will gain a genuine mastery over these organizations and adapt them to meet their broader objectives of local self-sufficiency. The point which needs to be emphasized is that having formal representative structures does not necessarily mean that an organization will function in such a way that reflects community notions of local control. It can be predicted that if the communities do familiarize themselves with the structures which have been put into place and engage in whatever additional community-based training measures there might be which would give more substance to the representative forms of these structures, then the shape of these organizations may be much different from what they are now. During the period of the negotiations over the terms of the Agreement the Cree had made it clear that what they wanted to gain was as much control as possible for the communities in the region over the course of their future development. The mechanisms for realizing these goals are still in the process of being worked out.

Because the entire area of economic development was dealt with in a very superficial manner in the Agreement, problems have arisen particularly regarding the financing of various proposals for projects or enterprises. Some of the problems relating to the James Bay Native Development Corporation have already been mentioned. In addition to this source of financing economic development projects there is also the Cree Board of Compensation, the organization which holds the funds paid to the Cree for signing the Agreement, as well as a number of governmental sources of funding, both provincial and federal. The Cree Regional Authority, although having the capacity to evaluate project

proposals brought to it from the communities does not itself have any fund to draw directly from in order to implement development projects. Its role when it comes to financing is a consultative and coordinating one whereby the staff assist in facilitating funding among a variety of sources.

With regard to the compensation funds, there have been some differences of opinion between the Cree and the governments as to how the usable portion of these monies should be expended. The Cree have maintained that the compensation money was intended to be held in trust for future generations of Cree and should not be used in such a way as to seriously deplete the capital stock. Earned interest has been used for administrative costs, and to the extent possible, for the funding of economic development projects. The Cree have felt that they should not use compensation funds to provide programs and services which they feel should be provided as a matter of course by the governments. The federal government had interpreted the Agreement to mean that a significant portion of the costs of implementing the Agreement, including the sections dealing with economic development, would be born by the Cree. A recent federal review of the implementation of the Agreement concluded that the implementation costs were much higher than originally estimated at the time of the signing of the Agreement, and that the Cree should not be expected to bear such costs.

The amount of funds available to the communities for economic development from the Board of Compensation is not insubstantial, but depending on the proposed projects it may not cover all the development financing requirements. In practice, project financing tends to be a result of coordinating the available funding from a variety of different sources - the Board of Compensation, James Bay Native Development Corporation, DIAND, DREE, and relevant provincial departments. Development financing, in the last analysis, is carried out on a project-by-project basis as it was in the pre-Agreement period. In such a context, comprehensive development strategies are much more difficult to articulate and then implement. In the absence of an unambiguous financing mechanism which lends itself to the realization of comprehensive development plans success will tend to be irregular. Certainly the greater the number of financing entities - each with their own criteria for acceptable funding - involved in Cree development financing, the greater will be the potential for ambiguity and confusion over procedures for securing appropriate funding. In general, comprehensive planning without comprehensive financing is extremely difficult to carry out.

The wide range of entities which have a direct financing capacity has produced ambiguity as to the roles of various organizations in the Cree milieu. Confusion has been produced at the community level over the seemingly overlapping functions of Cree entities with other Cree and with non-Cree entities. It has not been entirely clear to which agency people at the communities should go after an idea for a project has been developed. With the dispersal and overlapping of financing responsibilities such confusion is predictable.

As a result of perceived inadequacies in the area of economic development and general ambiguities in the interpretation of the obligations of the parties

to the Agreement (and triggered by the development of health crises involving governmental responsibilities for infrastructure), a review was carried out by DIAND of the implementation of the Agreement and the extent to which the involved parties were fulfilling their obligations.

The major issues for the Cree in this review were funding for economic development (with an emphasis on housing, infrastructure, and transportation improvements) and core funding for the Cree Regional Authority. The review recognized that there was insufficient funding for the Cree Regional Authority to carry out its obligations and the result was an agreement to provide additional funding for several years. In addition, further monies were allocated to the Cree for carrying out several housing and infrastructure programs as well as funds for improving the condition of the airstrips of the coastal communities. The necessity for undertaking a review of the Agreement is reflective of the fact that during the negotiations a clear and comprehensive perspective was never articulated for a number of areas, most notably economic development. There were no clear statements of the relevant principles which expressed what should be the respective roles of the communities, the regional agencies, the governments and the various interrelationships of all these groups. Neither were there clear statements of policy regarding resource exploitation and the roles of Cree and non-Cree agencies with respect to such policies. There was never a statement made regarding a clear approach to development financing. Although not all of these issues were addressed in the review of the Agreement, there was a recognition that successful economic development requires a much more comprehensive approach than the governmental interpretation of the Agreement has led to so far.

The Cree have realized not only that they have had imposed on them a network of new bureaucratic forms with overlapping functions and responsibilities, but also that some important functions and organizations may be missing. The important consideration from a strictly developmental perspective is that when organizations and agencies are not indigenous inventions, then familiarity with them and gaining mastery over them will be more difficult. The Cree have been since the inception of the Agreement in a constant process of adjustment, re-adjustment, and re-fashioning of these new bureaucracies in an attempt to address the serious problems they face. This process will continue to be a test of their creativity and dedication to the genuine development of the communities in the region.

#### REFERENCES

Anonymous

1976 *The James Bay and Northern Quebec Agreement*. Quebec: Editeur Officiel.

Epstein, Robert J. and Gary H. George

1981 The James Bay Agreement Cracking at the Seams. *Perception* 5(2): 12-13; 22-23.

Feit, Harvey A.

- 1980 Negotiating Recognition of Aboriginal Rights: History, Strategies and Reactions to the James Bay and Northern Quebec Agreement. *Canadian Journal of Anthropology* 1:159-172.

La Rusic, Ignatius E. et al.

- 1979 *Negotiating a Way of Life: Initial Cree Experience with the Administrative Structures Arising from the James Bay Agreement*. SSDCC Inc. Ottawa: Research Division, Policy, Research and Evaluation Group, Department of Indian Affairs and Northern Development.

Leys, Colin

- 1977 Underdevelopment and Dependency: Critical Notes. *Journal of Contemporary Asia* 7(1).