ENVIRONMENTAL IMPACT ASSESSMENT AND IMPACT AND BENEFIT AGREEMENTS: CREATIVE TENSION OR CONFLICT?

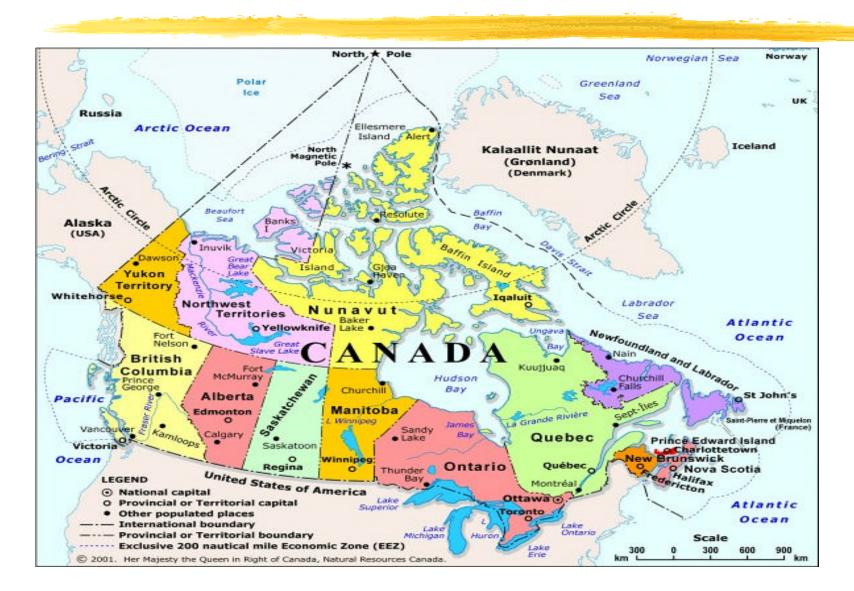
### Problem statement

- public policy issues raised by the implementation of IBAs and the implementation of SEAI processes;
  - tension between of socio-economic impact assessment as a mechanism to identify and mitigate impacts and private negotiated agreements between the proponent and First Nations which provide benefits to mitigate social and economic impacts from development; and
  - coordination of these two mitigation approaches so that matters of fairness and participation are not lost

### Content

- SEIA and IBA requirements in Nunavut, Yukon and the NWT
- recent experience for large development approvals
- tension between public SEIA processes and private IBAs and mitigating for socio-economic impacts
- approaches to reconcile the issue and encourage public participation and effective public decision-making

### Northern land claim areas



### Land claim SEIA requirements

- Legislated SEIA based on land claims includes strong socio-economic assessment provisions
  - regional and community demographics and mobility;
  - local, regional and territorial/national economies;
  - education, training and skills;
  - subsistence, sport and commercial harvesting;
  - I human health and community wellness;

### Land claim SEIA con't

- social and cultural patterns and cohesion;
- Iand use;
- infrastructure and institutional capacity;
- revenue, royalties, rents and taxes;
- incremental costs to different levels of government; and
- net revenues to the territorial and federal governments.

# Types of impact and benefit agreements

- legally required by land claims e.g., Nunavut, Inuvialiut Settlement Region (focus of this discussion);
- ad hoc arrangements supported by government (focus of this discussion);
- social and economic agreements between the proponent and the territorial governments and/or municipal governments; and
- legislated requirements (e.g., COGOA) to ensure that benefits from a development stay locally.

# IBAs required by land claims

- form of mitigation for potential social and economic impacts on the way of life and the environment utilized by aboriginal people
- negotiations begin before the SEIA is completed
- does not apply to the non-aboriginal population, or the territorial / municipal governments

# IBA content for land claim related arrangements

- employment;
- training;
- economic development and business opportunities;
- social, cultural and community support;
- financial provisions and equity participation; and
- environmental protection and cultural resources.

## Reviewing the issue

tension between IBA and SEIA on socioeconomic matters

fairness and access to the SEIA process

access to evidence in the SEIA process

### **Tension**

- Both SEIA and IBAs cover the same socio-economic ground, but concentrate on different populations
- Both processes have similar mitigation solutions, namely contractual arrangements (socio-economic agreements vs. IBAs)
- One is public and the other is private

### Fairness and Access

- Northern EIA processes are based on and encourage procedural fairness and public participation
- Fairness and participation is the ability of affected and interested parties to be heard and express their views e.g., hearings, written comments
- Minimum periods of consultation and seeking of input
- Proponents encouraged to seek public input and opinion early and often
- Expectation that decision-makers will make their decisions based on the evidence on the public record

## Accessing evidence

- Decision-makers are boards of public government and operate in a quasijudicial manner handling evidence like a court i.e., relying on information filed on the public record including the EIA report prepared by the proponent
- The proponent or the affected First Nations will make declarations saying that all social and economic issues have been dealt with in the IBA
- IBAs are private contractual matters and are not put on the public record
- Decision-makers must make decisions regarding socio-economic matters blindly and not unduly burden the proponent

## Solutions / options

- Tailor the SEIA process on only impacts to the non-aboriginal population and government
- Tailor the SEIA process to not consider matters that would typically be covered in the IBA process
- Require the proponent to better distinguish between the populations to be affected by the project and more clearly identify the impacts on discrete portions of the population
- Require the completion of a draft IBA prior to the completion of the EIA and require a summary of mitigation results to be put on the public record

### Conclusion

Two new mechanisms for addressing social and economic impact of development have emerged in northern Canada

- IBAs and strengthened SEIA processes are important approaches to identifying and mitigating socio-economic impacts
- These mechanisms must be reconciled in order to ensure effective mitigation of these impacts