Revue internationale sur l'Autochtonie

N° 2, 2010
www.reseaudialog.ca

Encounters with Development
Environmental Impact Assessment and Aboriginal Rights

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Abstract
Until recently, First Nations in Canada were excluded from sharing the benefits of large-scale natural resource development while experiencing considerable negative socioeconomic and cultural impacts. Although the constitutional recognition of Aboriginal rights and the emergence of self-governance arrangements have given First Nations a certain degree of governing power over their territories, their control over the scope and process of development remains limited. This paper argues that the Environmental Impact Assessment process can be an appropriate tool through which Aboriginal people can simultaneously implement customary resource management practices and have a say in the design and implementation of resource development projects, and therefore gain greater decision-making power over their territories and people that is in line with their worldview and life projects.

Keywords
First Nations; natural resources; Aboriginal rights; self-governance; territory; resource management; environmental impact assessment.

Résumé
Jusqu'à récemment, les Premières Nations au Canada ont été exclues du partage des avantages découlant du développement à grande échelle des ressources naturelles tout en subissant les impacts socioéconomiques et culturels négatifs. Bien que la reconnaissance constitutionnelle des droits autochtones et l'émergence de dispositifs d'auto-gouvernance ont permis un certain degré de pouvoir décisionnel sur leur territoire, le contrôle de la portée et du processus de développement reste limité. Cet article soutient que le processus d'évaluation environnementale peut être un outil approprié par lequel les Peuples autochtones peuvent simultanément instaurer des pratiques coutumières de gestion des ressources et avoir leur mot à dire dans la conception et la mise en œuvre de projets de développement, et donc un plus grand pouvoir de décision sur leurs territoires et populations qui correspond à leur vision du monde et projets de vie.

Mots-clés
Premières Nations; ressources naturelles; droits autochtones; auto-gouvernance; territoire; gestion des ressources; évaluation.

Resumen
Hasta hace poco, las Primeras Naciones en Canadá han estado excluidas de la participación de los beneficios del desarrollo a gran escala de los recursos naturales, al tiempo que experimentan impactos socioeconómicos y culturales negativos. Aunque el reconocimiento constitucional de los derechos de los indígenas y el surgimiento de mecanismos de auto gobernabilidad permitieron un cierto grado de autoridad para tomar decisiones sobre su territorio, el control del alcance y del proceso de desarrollo sigue siendo limitado. Este artículo sostiene que el proceso de evaluación ambiental puede ser una herramienta adecuada para que los pueblos indígenas puedan al mismo tiempo llevar a cabo prácticas habituales de gestión de recursos y tener una participación en el diseño e implementación de proyectos de desarrollo, y por lo tanto una mayor toma de decisiones sobre sus territorios y poblaciones que se ajuste a su visión del mundo y proyectos de vida.

Palabras claves
Primeras Naciones; recursos naturales; derechos de los indígenas; auto gobernabilidad; territorio; de gestión de recursos; evaluación.

INTRODUCTION

Large-scale natural resource developments around the world have had a significant and disproportionately negative impact on local Indigenous people. While being excluded from sharing the benefits of such projects, Indigenous people have experienced debilitating socioeconomic impacts that afflict their lives and weaken their societies and cultures. The evidence suggests that even though institutions and private corporations have developed participatory tools and practices on paper, the experience of Indigenous people indicates that they do not have control over the development process of large-scale projects (WCD 2002). Moreover, environmental co-management regimes in Canada have produced a highly differentiated capacity for implementation and enforcement that is greatly dependent on the governance and institutional arrangements of the participating Indigenous nations (Reed 2007). Even in instances when self-government has been successfully negotiated through treaties, First Nations' power to significantly influence the normative underpinnings of development is still limited (Macklem 2001). This study assesses the role of the Canadian Environmental Impact Assessment (EIA) in reconciling First Nations' demands to use their land and resources as they see fit with the competing claims of the provincial and federal governments.

1. DEVELOPMENT AND FIRST NATIONS: THE ROLE OF THE CONSTITUTIONAL RECOGNITION OF ABORIGINAL RIGHTS

The conceptualization of development as "the active principle according to which new and higher stages of human society might emerge out of old and more simple ones: the driving motive in human history" (Blaser 2004: 27) was born out of the encounter between western Europeans and "New World" peoples. Conceptualizing these "new" and "higher" stages as characterized by modernity grounded in reason, emancipation and progress, which branded the "discovered" Indigenous people as "backward" and "traditional," elevated the superiority of the colonizing states. This inferior-superior relationship between those perceived to need help and those that have the resources to provide it furthered the universalistic Enlightenment principles of liberty and individual rights that provided the primary source and legitimacy for authority. The rise of reason reinforced the belief that humans are free only when they elevate themselves above the "necessities of life" and, through speech and action by way of contemplation, distinguish themselves from all else: a belief that separated human beings from nature (Arendt 1998). This mechanistic worldview supported Christianity, which gave humans dominion over nature through the simple belief that they have the ability to know and have a special intimacy with God. These normative underpinnings of development informed the western relationship with Indigenous nations in the new world, which led to their ultimate dispossession and exploitation. As an extension of colonialism, in the second half of the 20th century, the development discourse was re-conceptualized as the way to achieve the conditions that characterize wealthy states: industrialization, agricultural modernization, and urbanization. Promoted by market demand in the context of globalization, this new wave of development discourse unleashed a flurry of activity ranging from government-designed development plans to increased multinational corporate activities in relatively undisturbed natural habitats, which are generally home to Indigenous people (Escobar 1992).

In Canada, Indigenous people attempted to retain a measure of legitimacy and autonomy over their lives and land through the treaty process during much of the 19th century and beforehand. Nevertheless, the ambitious Canadian colonial policy succeeded in incorporating their territories, land, resources, and Indigenous people themselves into the newly formed Canadian state, thereby dealing a debilitating blow to their survival as distinct communities. Opposition to development practices and the negative impacts of natural resource exploitation became central to the resurgence of Indigenous people's autonomy in the 20th century. Together with a critique of the

central idea of development, Indigenous mobilization focuses on the recognition of Aboriginal rights: the right to territory, the right to sovereignty and self-government, and the need to redress the treaty process. The constitutional recognition and protection of these rights would allow Indigenous nations to mitigate, minimize and eliminate many of the negative environmental, socioeconomic and cultural impacts of large-scale natural resource exploitation and to some extent successfully influence the normative underpinnings of the development discourse.

1.1 The Right to Territory

Indigenous social, political, economic and cultural constructions and activities flow from an intimate relationship with the land and their positioning in a horizontal arrangement of the world. Their spatial perception is tied to an "identification with feelings and attitudes towards, and philosophies about, land and its contents […] This consciousness of, and identification with, 'the land,' the surrounding space, the 'homeland' is supported and enhanced by the level of socio-cultural well-being, as well as by the extent of knowledge of markers and symbols" (Müller-Wille 2001: 34, 37). Indigenous peoples' perception of land and territory is both a function of and a requirement for autonomy. In this autonomous spatial arena, Indigenous cultural and political identities are enacted and legitimized. This complex interweaving of land, identity, knowledge and practice has been loosely defined by western thought as Traditional Ecological Knowledge (TEK). TEK is also characterized by specific social dimensions that include: communal institutions of resource management based on shared knowledge and meaning, reciprocity and obligations towards humans and non-humans; shared symbolic meaning through oral history, place names and spiritual relationships (with the land and non-humans); and a distinct cosmology (Berkes 1993). Property regimes, both formal and informal, are a central component of environmental management as they establish the form and scope of resource allocation and use, rights of ownership, and implementation and enforcement of regulatory practice (Reed 2007).

Despite the constitutional entrenchment of Aboriginal title, Canadian law has failed to protect ancestral territories from non-Aboriginal incursion and exploitation. This failure was a result of Canada's emergence as a nation-state and occurred through the judicial devaluation of the legal significance of Indigenous prior occupancy and the unwillingness to accord the same level of legal protection enjoyed by non-Indigenous proprietary interests. Until recently, the courts characterized Aboriginal title as a right of occupancy, a personal or usufructuary right, and as a sui generis interest, in restricting legal protection to the practices in which First Nations engaged at the time the Crown acquired sovereignty. The Delgamuukw case, although it accorded constitutional protection to Indigenous territorial interests, refused to conclude that Aboriginal title warrants the same legal protection as that accorded to non-Indigenous proprietary interests, and found that the Crown therefore retains ownership of the land. Federal and provincial governments can thus exploit, sell, lease, and grant licences for third party activity on First Nations territories, in keeping with the assumption that Aboriginal title "can only be asserted in geographic spaces left vacant by Crown or third-party non-use" (Macklem 2001: 95). It follows that in terms of resource management, Indigenous customary property regimes have little legal and regulatory significance and their participatory role in the development of environmental and developmental policy and legislation is limited to a consultative role with little decision-making capacity, further weakening the integrity of their ancestral lands.

Moreover, negotiations are preferred to court-imposed solutions because the latter are deemed expensive and time consuming, while the former can enable the parties to reach mutually agreeable trade-offs and mirror the nation-to-nation relationship between the Crown and Indigenous nations. Nevertheless, "the relative bargaining power of the parties is a function of the distribution of property rights accomplished by legal choice" (Macklem 2001: 96). Therefore, if the Crown possesses

proprietary authority over the territory in question and if Aboriginal title is not recognized, First Nations start from a disadvantaged negotiating position that limits the scope and content of their rights to the land and their decision-making power with respect to the nature of development on that land. The constitutional recognition and protection of the Aboriginal title to land is therefore central to Aboriginal peoples' ability to practice and enforce customary resource

1.2 The Right to Sovereignty and Self-Government

Sovereignty provides a legal space for a community to construct, protect and transform its collective identity; it is "the legal expression of collective difference" (Macklem 2001: 111) and gives a community legislative authority over people and land that embodies its vision of the world and its future, and of one's inherent right to pursue one's own life. Moreover, the constitutional recognition of Aboriginal sovereignty would enable the removal of imposed alien forms of economic, political and social legal organization that have oppressed Indigenous people and would allow First Nations to enjoy the same economic and social position that their non-Indigenous counterparts enjoy. Such recognition would allow for the emergence of Aboriginal self-government as a third order of government in Canada. Although this view has been greatly contested, it has already been achieved by some First Nations, such as the Nisga'a and the James Bay Cree Nations, which shows that such arrangements can determine the scope and nature of the Aboriginal governing authority. Some questions still remain over the applications of such complex differentiating legislative authority but a measure of limited paramountcy of Aboriginal law over specific interests has been accepted.

An Aboriginal right to self-government would include certain obligations on the Crown's part, such as fiscal, social and institutional arrangements that would enable the implementation of the Aboriginal governing power. Such arrangements would also include a measure of benefit sharing from large-scale resource development and, in an ideal situation, would allow the Aboriginal government to take control of the scope and process of such development. In Canada, most of the land outside urban areas is publicly owned as Crown land, and the allocation and management of these lands falls under provincial jurisdiction except in areas of explicit federal jurisdiction. Attaining legislative powers over their territories through self-government would enable First Nations to define land-use rights and values, including "ecosystem functions along with consumptive uses" that are in line with and respect the social dimensions of traditional ecological knowledge, such as reinforcing cultural and ecological integrity and maintaining public oversight over private interests and federal and provincial policies and programs (Reed 2007: 35). A self-government regime that recognizes Aboriginal jurisdiction over their ancestral lands would enable First Nations to strengthen their environmental institutional and governance capacity to successfully participate in a type of regional environmental management that includes the implementation and enforcement of their customary regulatory practices.

1.3 Redressing the Treaty Process

Aboriginal people are the only group of citizens that have entered into treaties with the Crown. Approximately five hundred such treaties have been signed. Treaties were initially regarded as political agreements that were unenforceable in a court of law, and were later categorized as contracts between the Crown and a group of citizens. With the constitutional recognition of "existing treaty rights," the judiciary has come to view treaties as constitutional accords that are more in line with the Indigenous conception, which implies that, as such, treaties are instruments of mutual recognition that distribute constitutional and juris-dictional authority. Moreover, a liberal interpretation of the treaty process recognizes its ongoing evolution, which is structured but not determined by the original text. Notwithstanding this positive interpretation, many treaties are still negotiated in a context of "radical inequality of bargaining power between

the parties" where, given substantive linguistic and cultural differences, "it is highly unlikely that Aboriginal signatories actually understood their meaning, let alone consented to their terms" (Macklem 2001: 158). Besides an inferior distribution of bargaining power, the treaties include an extinguishment clause whereby the First Nation relinquishes its Aboriginal title to the territory in exchange for reserve land and exclusive rights to hunt, fish and trap throughout the surrendered territory. The contemporary comprehensive and specific claims process assures rights of participation in environmental management, resource revenue sharing, financial compensation, and other responsibilities that intersect with provincial and federal jurisdictions.

Macklem argues that the court's interpretative framework for the treaty process ought to "reflect not only the true intent of the parties but also what the parties would have agreed under conditions of relative equality of bargaining power" (2001: 159). Writing on the James Bay and Northern Quebec Agreement (JBNQA) process, Hamely concludes:

> The 1975 treaty leaves the native peoples in a very weak position to participate in the development of their natural resources. While controlled development of renewable resources was envisaged in which native people were to be involved, the development of non-renewable resources and hydro-electric generation was out of their hands. Mineral rights remain vested with the provincial government and consent for non-renewable resource development is required only for Category 1 land where the Cree and Inuit are entitled to reasonable compensation. (Hamely 1995: 81)

The contemporary comprehensive claims process still limits the capability of the First Nations involved to abate the increase in large-scale resource development. In Québec, the new Cree-Provincial Paix des Braves agreement included a clause indicating the Cree's consent for a hydroelectric dam on the Rupert River although it also extended the government's duty to consult in regard to Category III lands. The agreement signed with the Inuit of Nunavik, Sannarutik (meaning "development tool"), gained their support for and participation in future hydroelectric projects on their territory, a potential estimated at 6300 to 7200MW (Government of Quebec 2002, Salée 2004). The agreement-in-principle signed with four Innu communities on the Québec North Shore takes a somewhat different approach. Known as Approche Commune, the agreement confirms the Aboriginal title and ancestral rights, and states that "self-government as an inherent right is included among the Aboriginal rights" (CTM 2004: 2). Moreover, it recognizes that "the full ownership of Innu Assi includes the right to exploit the fauna, aquatic, water, hydraulic, forest, floral and mineral resources therein" (CTM 2004:2) for the territories of Atikamekw, Uashat Mak Mani-Utenam, and Mamit Innuat, excluding hydraulic and subsurface resource ownership by the First Nation of Nutashkuan.

Notwithstanding the significant benefits gained under the Approche Commune, the recent Québec Liberal economic plan, dubbed Plan Nord, foresees an acceleration of and massive investment in resource development in the province's north. Apart from encouraging the rapid development of mining and forestry, the Liberal government has pledged to add an additional 3,500 MW to the already scheduled 4,500 MW energy production, an investment equivalent to $19 billion. The Bureau d'audiences publiques sur l'environnement (BAPE) has released the EIA-report, thus giving the go-ahead to the 1,550 MW La Romaine hydroelectric project on the province's North Shore. This situation has sparked a series of formal legal notices from Uashat Mak Mani-Utenam that accuse the government and private corporations of illegally occupying their ancestral territories without their consent and weakening their bargaining power within the treaty process already under way (Francoeur 2009). Such circumstances prove that First Nations still have to accept further resource development and have not been able to influence the normative underpinnings of development.

A central issue has yet to be resolved: how can First Nations' demands to use their land and resources as they see fit be reconciled with the competing claims of the provincial and federal

governments? Macklem proposes some alternatives. In regard to the treaty process, he suggests requiring the federal government to legislate treaty processes that establish the statutory rights of participating First Nations and the creation of an independent treaty tribunal to resolve any disputes that may arise. An additional tool is the Environmental Impact Assessment (EIA). In practice, the EIA is the only forum in Canada that addresses fundamental questions about development (Mulvihill and Baker 2001). The significance of EIA for First Nations in engaging with development discourse, planning and implementation is compounded by the fact that their land rights are generally limited to use of the land, which prevents them from having a decision-making role over 89% of Canada's land area, of which 41% is under federal jurisdiction and 48% under provincial jurisdiction. Since the EIA applies to development taking place on Crown lands and since governments have a duty to consult and uphold Aboriginal interests on such lands, First Nations' participation in this process is of paramount importance. If EIA affords proper consultation and participation to First Nations, it can be an appropriate process in which Aboriginal people can simultaneously implement customary resource management practices and have a say in the design and implementation of resource development projects, and therefore gain greater decision-making power over their territories and people that is in line with their worldview and life projects.

2. Environmental Assessment and Aboriginal Rights: Reconciling Competing Claims?

The purpose of EIA in Canada is to "minimize or avoid adverse environmental effects before they occur" and "incorporate environmental factors into decision making" (CEAA 2007). Most importantly, EIA "encourages" and "promotes" "economic development that conserves and enhances" the environment, which is "compatible with the high value Canadians place on environmental quality," by "facilitating public participation in the environmental assessment of projects" and "providing access to the information on which those environmental assessments are based" (DJC 2010). Consequently, the role of EIA in environmental governance is seen as paramount as it decides the environmental design and implementation of a project and on what terms consent is given for such development. Moreover, EIA has established deliberative decision-making parameters that have the potential to revitalize democracy at a time of diminishing citizen trust in political institutions (Wiklund 2005).

The majority of large-scale resource development projects that fall under federal and provincial EIA are located on First Nations territories. Environmental impacts from such development are directly felt by these communities, more so than by any other Canadians, because First Nations continue to rely heavily on the land and natural resources to support their economies and cultures. Because First Nations have constitutionally protected treaty and Aboriginal rights that serve to recognize and protect their land-based lifestyles, and there is a federal duty to consult with First Nations and uphold their interests, participating in the EIA process is worthwhile even though, of the 25,000 projects received between 1995 and 2000, more than 99.9% were approved, with only 46 subjected to comprehensive studies, 10 reviewed by panels that held public hearings, and no projects referred to mediation (Boyd 2003). First Nations that have settled land claims—and especially those that have not—have a strong interest in and desire to adequately participate in Environment Assessment (EA) as equal stakeholders in order to protect their territories and people against projects that have the potential to infringe on their rights and negatively impact the environment on which they depend. Because of its democratic deliberative potential, they generally look to the EIA process as a tool that can help to increase their participation in decision-making on development and to mitigate and limit the negative environmental and socioeconomic impacts of resource development projects.

3. The Environmental Impact Assessment Process

EIA consists of seven steps, and each step is equally important in determining the overall performance of the project. Typically, the EIA process begins with screening and ends with some form of follow-up on the implementation of the decisions and actions taken as a result of an EIA report. The seven steps of the EIA process are as follows: screening, scoping, impact analysis, mitigation, review of the EIA, decision-making, and post-monitoring. The following is a discussion of each step with regard to its significance for First Nations.

3.1 Screening

Even though this first stage of EIA affords the lowest level of project scrutiny, it is central to the process as it determines whether the proposed project requires an EIA and, if it does, the level of assessment is then established. If a project is found to have "significant" negative environmental impacts, it is submitted to a comprehensive study or panel review, both of which involve the highest degree of public participation in allowing interested parties to participate in the scoping phase and throughout the EIA process (CEAA 2007). The determination of "significance" is highly subjective and is dependent on the environmental paradigms and values of the decision-makers (Fortin and Gagnon 2006). First Nations' participation in the determination of "significance" can be reflective of Aboriginal culture, economy, health and social structure as well as addressing infringements or impacts on treaty and Aboriginal rights (Lacombe 2000). Since the triggering of the EIA depends on the significance of the environmental effects, the screening phase is fundamental to First Nations' decision-making power, especially since, by enlarging the scope and nature of the impacts' significance, more projects can be assessed at stages affording the highest degree of public participation. Moreover, provisions for including TEK at this stage will allow for the consideration of values that are important to Aboriginal peoples.

Although the paramount importance of First Nations' participation at this stage is evident, a cautionary note on its implementation is needed at this point. Projects undergoing screening are rarely found to have significant adverse environmental impacts and are never stopped at this stage. "Public involvement in a screening is at the discretion of the responsible authority" and, so far, the public only participated in 10% to 15% of the screenings done between 1995 and 2000, and follow-up programs were required for only 5% of screened projects (CEAA 1999). Projects subjected to screenings must follow the Inclusion and Exclusion List Regulations as per paragraph 59 of the *Canadian Environmental Assessment Act* (CEAA). These lists play a major role in EIA because they determine which projects require an assessment based on specific thresholds of environmental impact. They are continuously, but not regularly, updated. The reliance on such lists has attracted considerable criticism. Proponents often tailor projects and submissions in a way that exempts them from a rigorous assessment, such as a comprehensive study or panel review. Baril notes:

> En effet, l'existence d'une liste exhaustive basée sur des seuils précis d'assujet-tissement permet à certains de présenter leur projet de façon à "passer" sous ces seuils, s'évitant ainsi une procédure plus longue et plus coûteuse et le risque du rejet de leur projet par les communautés visées […] Par ailleurs, il existe ce que des auteurs appellent la "technique du saucisson", qui consiste à découper le projet en divers éléments de façon à ce qu'aucun de ses éléments, pris séparément, ne franchisse les seuils réglementaires d'assujettissement. Quant à la "technique du centrage sur le noyau", elle implique de centrer l'évaluation des impacts sur le cœur d'un projet, mais sans tenir compte des structures accessoires nécessaires au projet principal[1]. (2006: 41-42)

[1] "Indeed, the existence of an exhaustive list based on specific subjection thresholds has allowed some proponents to present their project in such a way as to fall below these thresholds, thus avoiding a longer and more costly procedure and the risk of their project being rejected by the communities involved […]. There also exists what some authors call the 'sausage technique,' which consists in dividing the project into different

This has been the case with the La Romaine hydroelectric project on the Québec North Shore, where Hydro-Québec insisted that the 735 Kv, 498-km-long transmission line linking the power stations to the grid be evaluated as a separate and distinct project (HQP 2007).[2] The James Bay Advisory Committee on the Environment (JBACE) has also expressed its dissatisfaction with the updating of the exclusion and inclusion lists: "the JBNQA explicitly provides that schedules 1 and 2 'shall be reviewed by the parties every five (5) years and may be modified by mutual consent of the parties as may be necessary in light of technological changes and experience with the assessment and review process'" (JBACE 2008: 7). A number of unsuccessful attempts to review the lists have been made over the years with no satisfactory result for the JBACE.

The participation of First Nations in the screening phase needs to be legislated as mandatory, as is currently the case for comprehensive studies and panel reviews. Even though such significant legislative changes are generally slow to materialize, First Nations can gain jurisdictional power over the conduct of screenings outside the *Canadian Environmental Assessment Act* (CEAA 2000, Devlin and Yap 2008, Lajoie and Bouchard 2006). For example, co-management boards such as the Gwich'in Land and Water Board and the Sahtu Land and Water Board in the Northwest Territories are responsible for the preliminary screening of projects that fall under their respective jurisdictions (Armitage 2005). On some occasions, even First Nations that have negotiated specific environmental management and EIA regimes are marginalized in terms of decision-making. Ginette Lajoie, environmental coordinator with the Cree Regional Authority, writes: "Contrary to the original intent however, submission of projects to the Evaluating Committee has been controlled by proponents and by the federal and provincial Administrators. Therefore, the Evaluating Committee and the JBACE have not played their intended role in determining the course of the ESIA [social and environmental impact assessment] procedure on the basis of whether the development in question involves matters of federal jurisdiction, provincial jurisdiction or both" (GCC 2000:15).

Environmental co-management institutions are nevertheless available only to First Nations that have negotiated land claims and are therefore limited to their specific jurisdiction. For First Nations that have not resolved their land claims, legislative changes to the CEAA are necessary. First Nations' participation in screening can also involve calling for follow-up programs to be mandatory so as to strengthen the protection of Aboriginal lands and people.

3.2 Scoping

Once the EIA has been triggered, the scoping stage (see figure 1) identifies those components of the proposed development (such as Value Ecosystem Components (VECS)) that should be considered part of the project for the purposes of the EA. This stage identifies the key issues and impacts that should be further investigated and defines the boundaries and time limits of the study. A third aspect of the scoping stage consists in determining "who is interested in the project, what their concerns are, and how they should be involved in the assessment" (CEAA 2010). Because this stage issues the Environmental Impact Statement (EIS) Directives, scoping sets the stage for the entire EIA process and is therefore as central to First Nations' decision-making power as the screening stage. Contrary to the screening stage, because scoping is part of the comprehensive studies and panel reviews, public participation is secured. Nevertheless, experience suggests that it occurs unevenly and inconsistently, especially in Canada's northern regions (Mulvihill and Baker 2001).

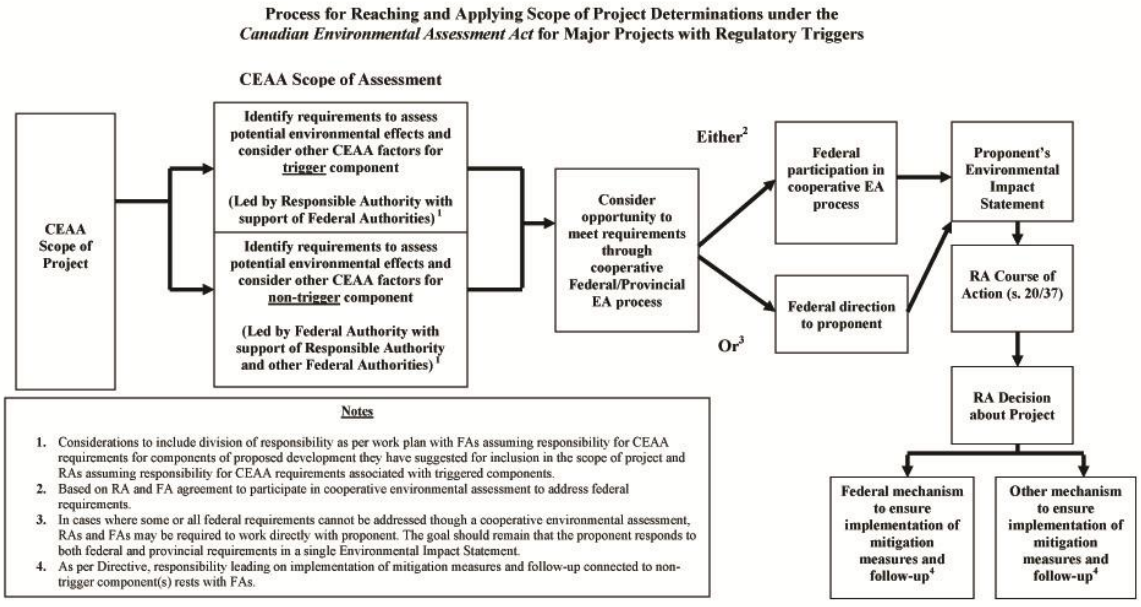
Just as with screening, the efficient implementation of scoping is highly dependent

components so that none of these components, taken on its own, exceeds the regulatory subjection thresholds. And the 'core centering technique' involves centering the impact assessment on the core of the project, without considering the accessory structures that are necessary to the main project" (Baril 2006: 41-42, our translation).

[2] See comments on the transmission line issues in the BAPE EIS Review and various citizen submissions: http://www.bape.gouv.qc.ca/sections/mandats/La%20Romaine/index.htm

on the existing environmental management institutional arrangements of the First Nations parties involved. For example, the Great Whale scoping process is considered "unprecedented in Canadian experience with EA […] that represents a departure from common practice" (Mulvihill and Baker 2001: 376). The EIS guidelines derived from this case were explicitly intercultural and were designed to protect the Aboriginal value systems of the participating Cree and Inuit. Among their guidelines, the panels included directions for the proponent to allow for: a multicultural definition of the environment; local knowledge, conceptual and symbolic systems; the cultural relativity of values; issues of regional development that go beyond the specific project under study; and the communities' rights to determine their future. Nevertheless, such ambitious scoping came on the heels of considerable legal action on the part of the First Nations involved and the project was ultimately shelved which makes it hard to assess whether the guidelines were properly implemented or if they would have had an impact on the mitigation measures. In other cases, such as the Ekati Mine in the Northwest Territories, the scoping tends to be more restrictive. The Ekati diamond mine scoping process started late in the mine's development phase. The exploration, design and development phases were already established before the EA process had begun. Relatively little opposition to the project allowed for a speedy process, and therefore some issues identified by the public review were not adequately addressed: less attention was paid to intercultural issues; there were limited opportunities for prepared interventions; the panel did not retain any technical expertise except for a short paper on TEK, thus the documentation and incorporation of TEK were deferred to the post-approval stage; few changes were made to the EIS guidelines as a result of public hearings; and even though the draft guidelines were promising, they were nevertheless watered down (Mulvihill and Baker 2001). These experiences indicate

FIGURE 1 – SCOPING PROCESS



Source: CEAAA s.d.

the need for Aboriginal supra-regulatory institutional arrangements that can effectively interact and assume environmental assessment functions for projects that affect local communities.

3.3 Impact Analysis

This stage of EIA identifies and predicts the likely environmental and social impacts of the proposed project and evaluates their significance. It has no room for public participation as the impact analysis is the responsibility of the proponent (whether a government department or a private company), which undertakes the relevant sectorial studies. These studies are done by the technical experts already on the proponent's payroll or by the subcontracting firms that have a long working relationship with the proponent. The five-year EIA Review produced an interim guideline for including TEK in the EIA—*Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act*. The local expertise and knowledge of Aboriginal people are increasingly being included in the impact analysis stage. For example, during the EM1A Rupert Diversion project in Québec, the inclusion of TEK in the impact analysis methodology was specifically incorporated into the EIS Directive. Local trappers and community members actively participated in data collection by accompanying expert teams during the fieldwork phase. Numerous meetings and workshops on the specific sectorial studies were conducted with the trappers in the community. For example, the Nadoshtin Agreement provided an archaeology and cultural heritage program in which Cree youth groups supervised by two expert archaeologists undertook digs and recorded the incidence of artefacts confirming Cree use of the territory. Cree trappers routinely participated in fish and wildlife impact studies. Unfortunately, Aboriginal participation in the impact analysis is restricted to data collection, with little input in the analysis of such data, therefore increasing the chance that impact determination will not include TEK in the decision-making. Technical experts often ignore Aboriginal people's comments on field methodology, further undermining the legitimacy of TEK (Jolly *et al.* 2010, Lévesque *et al.* 2004, Whiteman 2004).

Because the decision to either proceed with or reject a project is based on the severity of the environmental impacts engendered, First Nations' participation in impact analysis and determination should be a prerequisite for effective decision-making. For example, the Northwest Territories' Consolidation of Scientists Act R.S.N.W.T. 1988, c.S-4 has legislated First Nations' participation in scientific research (ARI 2008). The Guide to Research stipulates "including residents in field trips or hiring them to assist with [your] research." It acknowledges that TEK and knowledge of local socioeconomic aspects allow for "new directions" in research and that local residents, through continuous interaction with technical experts, have "high levels of scientific training and knowledge and can provide valuable information and assistance to visiting researchers" (ARI 2008).

3.4 Mitigation

This stage in the EIA recommends the actions that should be taken to reduce and avoid the potential adverse environmental consequences of development activities. The developer is expected to make a concerted effort to address Aboriginal people's concerns; nevertheless, such an exercise does not include Aboriginal people in determining the mitigation measures to be taken. First Nations can comment on mitigation only during the public review of the EIA. In addition, detailed mitigation plans are rarely defined during the EIA process and are often finalized only after the project construction stage has been completed. Although this structure limits Aboriginal participation in general, several First Nations have successfully participated both in the determining of mitigation measures and in their management and application. The Nadoshtin and Boumhunan agreements signed between the Cree Nation and Hydro-Québec in the context of the development of the EM1A Rupert Diversion project provide significant mitigation and remedial works participation and support for the Cree communities involved. For

example, the Boumhunan Agreement includes, among other things: a $3 million Mercury Fund for a duration of 20 years that gives access to alternative fishing sites, and provides for fishing and hunting subsidies, fish and wildlife habitat enhancement, and development of waterfowl hunting ponds; a $32 million Remedial Measures Fund to facilitate the continuance by the Cree of traditional activities and to alleviate the negative impacts of the project; and a $3.9 million Eenou Indohoun Fund to promote Cree traditional activities and to mitigate the impacts of the project. These funds and the works are managed in part by the respective Cree regional and community institutions, giving the Cree Nation a degree of flexibility and participation that strengthens their decision-making power over their lands and people (GCC 2002a).

3.5 Review of the Environmental Impact Statement

This review examines the adequacy and effectiveness of the Environmental Impact Statement (EIS) report and provides the information necessary for decision-making. Public participation is mandatory at this stage, and since the inception of the *Canadian Environmental Assessment Act*, numerous provisions for the expansion and implementation of this stage have been made, particularly as concerns about EIA practices have resulted in a large body of research on the effectiveness of public participation. It is important to note that the effectiveness of the review is also highly dependent on the scoping phase as the latter decides how stakeholders are involved in the EIA process, therefore setting the stage for the form and content of such participation. Panel reviews afford the highest degree of First Nations participation as, in most cases, joint review panels are set up. The nature of these panels varies, depending on the project under review and the respective jurisdictions. They are often tripartite panels with members from the federal, provincial and territorial authorities. Recent land claim agreements have established independent boards that examine projects co-jointly with federal and provincial governments and can make recommendations. These include, for example, the Environmental Impact Review Board in the Inuvialuit Settlement region, the MacKenzie Valley Review Board in the Northwest Territories, and the COMEV/COMEX boards in Eeyou Istchee, Québec. Nevertheless, First Nations that have yet to settle land claims are more limited in participating in project reviews. They do not always benefit from institutionalized independent review boards, their recommendations and concerns may therefore not have the same weight as those of Aboriginal groups that have negotiated specific resource management regimes.

The federal, and rarely provincial, authorities make participant funding available to the public and local or not-for-profit organizations. Participant funding is not regularly extended to for-profit organizations. Funding issues have been identified either in the literature or by the First Nations consulted. For example, the amount of participant funding made available between 1995 and 2000 was $840,046, or 0.5% of the total annual federal expenditure on environmental assessment which stood at $40 million annually in 2001 (Boyd 2003). In some cases, court proceedings have imposed specific fund transfers, as in the case of the Great Whale. In March 1991, the Cree Chiefs took the federal government, the provincial government and Hydro-Québec to court, asking that they abide by the provisions made under Section 22 of the JBNQA and that they uphold federal government's fiduciary duty. The court ordered the transfer of $255 million from Hydro-Québec to the Cree. Nevertheless, such cases are rare; for example, the Canadian Environmental Assessment Agency awarded some $109,066 to seven non-Aboriginal applicants to support their participation in the environmental assessment process for the Romaine River hydroelectric project on Québec's North Shore. For its part, Hydro-Québec transferred $12 million to the Municipality of Mingan to "ensure that the project is accepted",[3] and this included the drafting and presentation of review documents during public hearings. Under the Aboriginal

[3] Marie-Élaine Deveault, spokesperson for Hydro-Québec, quoted in R-C 2008 (our translation).

Funding Envelope (AFE), the Canadian Environmental Assessment Agency made over $1 million in funding available to "enable Aboriginal groups and peoples to participate in the consultations on the impact study and in the public hearings planned" for 2008-2009. The AFE allocated a total of $198,200 to the three Innu communities of Ekuanitshit, Nutashkuan and Pakua Shipu for the La Romaine EIA review (CEAA 2009). In terms of funding allocation, First Nations are often better serviced than their non-Aboriginal Canadian counterparts.

3.6 Decision-Making

This is the most controversial and contested phase of the entire EIA process. The federal (or provincial) authority is in charge of making a decision about a project even if the same federal department is the proponent or has invested in the project. Van Hinte *et al.* define the decision-making criteria as follows: "rules that clarify how decisions will be made to ensure accountability, transparency and consistency in decision-making" (2007: 130). They have found that EIA is vague in terms of decision-making criteria and, in all instances, even if such criteria were to be available, the final decision rests with the responsible authority (a minister or federal department) which can give authorizations regardless of the assessment recommendations and without providing a clear rationale (Van Hinte *et al.* 2007). The self-assessment nature of the EIA undoubtedly creates serious conflicts of interest and negatively impacts the public's perceptions about the EIA process. The Québec Bar supported this conclusion when it stated in 1993, following (the) projet de loi 61 modifiant la *Loi sur la qualité de l'environnement* (Bill 61 amending the Environment Quality Act): "[…] les pouvoirs discrétionnaires considérables attribuées au ministre ou au gouvernement sur les aspects essentielles de la procédure d'évaluation environnementale portent atteinte à la règle de droit. Ils risquent de faire de ce processus une coquille vide qui peut être contournée de façon discrétionnaire"[4] (Baril 2006: 45-46).

In their *Brief to the House of Commons Standing Committee on the Environment and Sustainable Development Regarding Bill C-19: An Act to Amend the Canadian Environmental Assessment Act*, the Grand Council of the Crees also indicated their reservations about the nature and form of decision-making:

> Decision-making under CEAA to allow federal powers to be exercised and to allow projects to proceed is on the self-assessment model by federal authorities (ss. 20 and 37). Such authorities are often proponents, partners in projects or the federal department with a "client" interest in seeing the project proceed. Furthermore, at the end of the day, CEAA makes it rather easy to put aside environmental concerns on the basis of it being "justified in the circumstances," [...] Section 22 of the JBNQA provides for development decisions and project authorizations on the basis of impact assessment, while under CEAA, the assessment simply feeds decisions taken outside of the assessment process. This difference is sometimes invoked by federal officials and legal advisors as a reason for preferring CEAA to the federal side of the E&SIA [environmental and social impact assessment] procedure on the grounds that the Section 22 procedure may carry the risk of federal overstepping of its constitutional authority and thus interference with provincial jurisdiction. (GCC 2002b: 16)

The lack of independent decision-making has been identified by some as the fundamental flaw of the *Canadian Environmental Assessment Act* and the EIA process and has created many conflicts, some of which have led to litigation, such as the Great Whale hydroelectric project in 1992 or the 1997 case of the Voisey's Bay nickel project. Although the Liberal government promised in 1993 to "shift decision-making power to an independent Canadian Environmental Assessment Agency,"

[4] "[...] the considerable discretionary powers granted to the minister or the government in regard to essential aspects of the environmental assessment procedure undermine the rule of law. They risk making this process an empty shell that can be avoided at the public authority's discretion" (our translation).

it has never fulfilled this commitment; the 2003 five-year review did not include any changes to the agency's decision-making provisions (Boyd 2003: 153). It doesn't seem likely that drastic changes will be made in the future unless considerable public pressure is mounted; andFirst Nations can play a key role in this, given the federal government's fiduciary duty to uphold their interests.

3.7 Post-Monitoring and Follow-Up

This stage comes into play once the project is commissioned. It ensures that the impacts of the project do not exceed the legal standards and that implementation of the mitigation measures is carried out in the manner described in the EIA report. Generally, post-approval follow-up is the proponent's responsibility. The direct involvement of local communities in the carrying out of the mitigation depends on the provisions made in the EIA Directives, the EIS, and/or the authorizations, and the general organization and resources committed. Some proponents are also resistant to making the monitoring and follow-up reports available to the public. In effect, public participation ends with the decision-making stage. Nevertheless, given their proximity to projects and their interest in mitigating direct impacts, First Nations have generally established terms of reference that include their direct involvement in post-commission phase monitoring. Under the JBNQA, Cree representatives were charged with "overseeing environmental protection, developing environmental monitoring and implementing mitigation measures." A Chisasibi-Hydro-Québec working group was established with the objective of solving problems related to the La Grande complex. The group is made up of three representatives of each party. Since 1999 the results of the monitoring regime have been regularly presented to the community of Chisasibi, and in 2003 they were presented to the Ministry of Natural Resources and members of COMEX (André *et al.* 2004). Former Chisasibi Chief Abraham Rupert has expressed dissatisfaction with the form, content and presentation of monitoring results on numerous occasions,[5] serious disagreements on the impacts of eelgrass remain (an independent study by Dr. Fred Short contradicted Hydro-Québec's results), and evacuation plans for the community are still not finalized to the satisfaction of community members more than 30 years after the completion of La Grande (no specific "safe ground" has been identified) (CEAA 2006). On their part, Eastmain community members have expressed dissatisfaction with follow-up study results. In some cases, they have stated that the proponent has not communicated these results to the community, which prompted some to infer that the information is controlled by Hydro-Québec (Lévesque *et al.*, 2004).

Conclusion: Integrating Environmental Impact Assessment and First Nations Self-Government

As government and developers look to the Canadian North in search of economic opportunities, the reliance on EIA has increased and concurrently scrutiny of the research, policy and underlying assumptions associated with this process has become more demanding and stringent, especially as concerns effectiveness in decision-making and public participation. It is now accepted that there is a significant gap between EIA legislation and its implementation. As implemented and understood, constitutional recognition of Aboriginal rights still limits First Nations' influence on the normative underpinnings of development. Neither of these two options provides maximum participation and gives effective decision-making power to First Nations if undertaken in isolation. They need to be integrated.

Although it is impossible to summarize the many issues of the Environmental Impact Assessment implementation involving First Nations in such a short study, the discussion has provided support for EIA, in light of its deliberative democratic potential, as a good decision-making process for First Nations' engagement with development in and around

[5] In personal communications.

their lands. Given that, in practice, the EIA is the only forum in Canada that addresses fundamental questions about development, and considering the constitutional recognition of Aboriginal rights and the federal fiduciary responsibility to uphold these rights and the interests of First Nations, adapting the EIA process to respond to these needs and interests can give Aboriginal people the necessary constitutional and legislative authority to mitigate, minimize and eliminate many of the negative environmental, socioeconomic and cultural impacts of large-scale natural resource exploitation and to some extent successfully influence the normative underpinnings of the development discourse.

The *Report of the Minister of the Environment to the Parliament of Canada on the Review of the Canadian Environmental Assessment Act* had recommended that an Aboriginal advisory committee be established. This committee's role would have been to "provide advice from Aboriginal groups on environmental assessment issues such as consultation and traditional knowledge, and consider broader issues beyond the scope of the review" (CEAA 2003). As with the Royal Commission on Aboriginal Peoples' recommendation for independent treaty commissions and a specialized Aboriginal Lands and Treaty Tribunal, such independent bodies have yet to be established. It remains to be seen whether such changes will be envisioned in the upcoming five-year review of the Act.

In September 2007, the Canadian Council of Ministers of the Environment (CCME) established the Environmental Assessment Task Group to "identify, evaluate and recommend options to streamline EA for projects subject to provincial/territorial and federal environmental assessments." They recommend a one project / one assessment approach with the following provisions:

1. All jurisdictions should ensure that their statutory regimes include a range of models including coordination, joint process, delegation and substitution. Therefore, each jurisdiction should ensure that their statutory regimes have enough flexibility to address any scenario in which these models may be used.
2. Focused efforts should be made to identify a resolution to the issues associated with diffused accountability of the current federal framework through the upcoming CEAA review.
3. The EA process should continue to be led by the best placed jurisdiction defined as the "Lead Party" in section 5.6.0 of the CCME Sub-Agreement on Environmental Assessment.
4. The level of participation of the Non-Lead Party in the EA process should be based on the consideration of a number of factors, including:
    a. Nature and magnitude of the anticipated public concern. High level of public concern in a proposed project is likely to increase expectations that both orders of government will play an active role in the EA.
    b. Nature and magnitude of the anticipated/ potential environmental impacts.
    c. Socioeconomic issues and implications and associated political profile.
    d. Ability of Lead Party to deliver on (or address) the Non-Lead Party requirements.
    e. Constitutional Aboriginal consultation requirements.
    f. Where a project elicits a high level of public concern due to anticipated potential environmental impacts and socioeconomic implications for the jurisdiction, with a requirement for extensive Aboriginal consultation. In this event, there would likely be increased expectations that both orders of government will play an active role in the EA process, perhaps through the coordination model. In the case of a small-scale proposed project that does not elicit public concern and has low potential environmental impacts without an Aboriginal consultation component, it may be more appropriate to achieve process efficiencies through full substitution, if the Lead Party can address all party requirements.
5. In considering the proposed project against these factors, jurisdictions could decide

which model would be most appropriate. Models range from substitution (fully rely on other process altogether) to coordination (decide to work closely with the other jurisdiction) (CCME 2009: 17-18).

Although the CCME has made specific provisions for First Nations issues, it made no changes to the existing decision-making criteria allowing jurisdictions to "retain their legislatively defined decision-making functions" (CCME 2009). Considering the gaps in EIA implementation identified throughout this study, First Nations should negotiate specific environmental and social as well as strategic impact assessment regimes within treaties. The groups that have already settled land claims, supra-regulatory environmental management regimes in the form of Aboriginal advisory committees and/or independent commissions should be established. For maximum participation and effective decision-making power, First Nations should take advantage of and combine both contemporary comprehensive claims processes that provide a liberal interpretation of the constitutional recognition of Aboriginal rights and environmental assessment regulatory provisions. The approaches and practices of the Cree Nation in Québec and the various First Nations in Northwest Territories can provide a starting point for defining the content and form of such a process.

REFERENCES

André Pierre, Delisle Claude E. and Jean-Pierre Revéret (Eds.). 2004. *Environmental Assessment for Sustainable Development: Processes, Actors and Practice*. Montréal: Presses Internationales Polytechnique.

Arendt Hannah. 1998. *The Human Condition*. Chicago: University of Chicago Press.

Armitage Derek R. 2005. Collaborative environmental assessment in the Northwest Territories, Canada, *Environmental Impact Assessment Review* 25 (3): 239-258.

Aurora Research Institute (ARI). 2008. *Guide to Research in the Northwest Territories.* http://wiki.nwtresearch.com..., Accessed 2009-04-06.

Baril Jean. 2006. *Le BAPE devant les citoyens: Pour une évaluation environnementale au service du développement durable*. Québec: Presses de l'Université Laval.

Berkes Friket. 1993. Traditional Ecological Knowledge in Perspective, *in* Julian T. Inglis (Ed.), *Traditional Ecological Knowledge: Concepts and Cases*. International Development Research Center. http://www.idrc.ca..., Accessed 2009-04-10.

Blaser Mario. 2004. Life Projects: Indigenous Peoples' Agency and Development *in* Mario Blaser, H.-A. Feit, and G. McRae, (Eds.)*, In the Way of Development: Indigenous Peoples, Life Projects and Globalization:* 26-44. London and New-York: ZED Books. http://www.idrc.ca..., Accessed 2009-03-15.

Boyd David R. 2003. *Unnatural Law: Rethinking Canadian Environmental Law and Policy*. Vancouver: University of British Columbia Press.

Canadian Council of the Ministers of the Environment (CCME), 2009. *Potential Models for a One Project-One Environmental Assessment Approach. Discussion Paper for Public Consultation*. One Project-One Assessment Subgroup of the CCME. Environmental Assessment Task Group. http://www.ccme.ca..., Accessed 2009-04-12.

Canadian Environmental Assessment Agency (CEAA). 2010. The Self-Directed Environmental Assessment: Screening and Comprehensive Study *in Responsible Authority's Guide: The Practitioner's Guide*. http://www.ceaa.gc.ca..., Accessed 2010-11-20.

Canadian Environmental Assessment Agency (CEAA). 2009. *La Romaine Complex Project—Stage II. Report of Funding Review Committee Allocation of Federal Funds Aboriginal Funding Envelope*. http://www.ceaa-acee.gc.ca..., Accessed 2009-03-10.

Canadian Environmental Assessment Agency (CEAA). 2007. *Basics of environmental assessment.* http://www.ceaa-acee.gc.ca..., Accessed 2009-03-10.

Canadian Environmental Assessment Agency (CEAA). 2006. *Statement by the Chiefs of the Cree Nations of Nemaska, Chisasibi, and Waskaganish to the Federal Review Panel and the Comex on the Environmental and Social Impact Assessment of the Proposed Eastmain 1-A/Rupert Hydro-Electric Project.*

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY (CEAA). 2003. *Report of the Minister of the Environment to the Parliament of Canada on the Review of the Canadian Environmental Assessment Act.* http://www.ceaa-acee.gc.ca..., Accessed 2009-03-10.

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY (CEAA). 2000. *Report to the Minister of Environment From the Regulatory Advisory Committee (RAC): Five-Year Review of the Canadian Environmental Assessment Act*. http://www.ceaa.gc.ca..., Accessed 2009-04-15.

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY (CEAA). 1999. *A Discussion Paper for Public Consultation Review of the Canadian Environmental Assessment Act*. http://www.ceaa-acee.gc.ca..., Accessed 2009-04-04.

CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY (CEAA). S.d.Memorandum of Understanding for the Cabinet Directive of Implementing the *Canadian Environmental Assessment Act*. http://www.ceaa-acee.gc.ca..., Accessed 2010-12-12.

CONSEIL TRIBAL MAMUITUN (CTM). 2004. *Summary of the Agreement-In-Principle of General Nature between the First Nations Of Mamuitun and the First Nation Of Nutashkuan and the Government of Québec and the Government of Canada*. http://www.mamuitun.com..., Accessed 2009-03-08.

DEPARTMENT OF JUSTICE CANADA (DJC). 2010. *Canadian Environmental Assessment Act (1992, c.37)*. http://laws.justice.gc.ca..., Accessed 2009-03-16.

DEVLIN JOHN F. AND NONITA T. YAP. 2008. Contentious Politics in Environmental Assessment: Blocked Projects and Winning Coalitions, *Impact Assessment and Project Appraisal* 26 (1): 17-27.

ESCOBAR ARTURO. 1992. Imagining a Post-Development Era? Critical Thought Development and Social Movements, *Social Text* 31 (32): 20-55.

FORTIN MARIE-JOSÉ AND CHRISTIANE GAGNON. 2006. Interpreting Major Industrial Landscapes: Social Follow-up on Meanings, the Case of Two Aluminum Smelters, Alcan (Alma, Canada) and Pechiney (Dunkirk, France), *Environmental Impact Assessment Review* 26: 725-745.

FRANCOEUR LOUIS-GILLES. 2009. Développement hydroélectrique—Québec et Ottawa mis en demeure d'empêcher le projet de la Romaine, *Le Devoir* (7 février). http://www.ledevoir.com..., Accessed 2009-02-07.

GOVERNMENT OF QUÉBEC. 2002. *Partnership Agreement on Economic and Community Development in Nunavik.* Secrétariat aux affaires autochtones. http://www.autochtones.gouv..., Accessed 2010-02-11

GRAND COUNCIL OF THE CREES (GCC). 2002a. *Eeyou Eenou Nation.* http://gcc.ca/gcc/eeyoueenou..., Accessed 2009-03-12.

GRAND COUNCIL OF THE CREES (GCC). 2002b. *A Matter of Cree Treaty Rights and Good Policy: James Bay and Northern Quebec Agreement Environmental and Social Impact Assessment and Review vs. Canadian Environmental Assessment Act*. Brief to the House of Commons Standing Committee on the Environment and Sustainable Development Regarding Bill C-19: *An Act to Amend the Canadian Environmental Assessment Act*.

GRAND COUNCIL OF THE CREES (GCC). 2000. *Environmental and Social Impact Assessment and Review Under Section 22 of the James Bay and Northern Quebec Agreement and the Five-year review of the Canadian Environmental Assessment Act*. http://www.gcc.ca..., Accessed 2009-03-12.

HAMELY WILLIAM. 1995. Resource Development and Aboriginal Rights in the Canadian Northlands, *The London Journal of Canadian Studies* 11: 77-81.

HYDRO-QUÉBEC PRODUCTION (HQP). 2007. *Complexe La Romaine: Sommaire Étude d'impact sur l'environnement*. http://www.hydroquebec.com..., Accessed 2009-04-03.

JAMES BAY ADVISORY COMMITTEE ON THE ENVIRONMENT (JBACE). 2008. *Report of Recommendations Regarding the Review of Schedules 1 and 2*. http://www.ccebj-jbace.ca..., Accessed 2009-04-07.

JOLLY FREDDIE, WHITEMAN GAIL, ATKINSON MIRIAM, AND IOANA RADU. 2010 [In press]. Managing Outside: A Cree Hunter's Perspective on Management Education, *Journal of Management Education.* http://jme.sagepub.com..., Accessed 2010-10-08.

LACOMBE PAT. 2000. *Determining Significance of Environmental Effects:* An Aboriginal Perspective. Ottawa: CEAA. Research and Development Monograph Series, Catalogue No. EN05-3/70-2003E-IN. http://www.ceaa-acee.gc.ca..., Accessed 2009-03-21.

LAJOIE GINETTE AND MICHEL A. BOUCHARD. 2006. Native Involvement in Strategic Assessment of Natural Resource Development: the Example of the Crees Living in the Canadian Taiga, *Impact Assessment and Project Appraisal* 24 (3): 211-220.

LÉVESQUE, CAROLE, MONTPETIT CHRISTIANE AND GINETTE LAJOIE. 2004. *Transmission, circulation et diffusion de l'information au sein des communautés cries dans le contexte du projet de centrale de l'Eastmain-1-A et de dérivation Rupert: Eastmain premiers constats.*

MACKLEM PATRICK. 2001. *Indigenous Difference and the Constitution of Canada*. Toronto: University of Toronto Press.

MÜLLER-WILLE LUDGER. 2001. Shaping Modern Inuit Territorial Perception and Identity, *in* Colin Scott (Ed.), *Aboriginal Autonomy and Development in Northern Quebec and Labrador*: 33-40. Vancouver: UBC Press.

MULVIHIL, PETER R. AND DOUGLAS C. BAKER. 2001. Ambitious and Restrictive Scoping: Case Studies from Northern Canada, *Environmental Impact Assessment Review* 21: 363-384.

RADIO-CANADA (R-C). 2008. Projet de la Romaine: des élus partenaires d'Hydro-Québec. *Nouvelles* (Est du Québec), vendredi 7 novembre 2008 http://www.radio-canada.ca..., Accessed 2009-04-12.

REED MAUREEN G. 2007. Uneven Environmental Management: A Canadian Perspective, *Environmental Management* 39 (1): 30-49.

SALÉE DANIEL. 2004. The Quebec State and Indigenous Peoples, *in* Alain Gagnon (Ed.), *Quebec: State and Society* 97-124. Peterborough: Broadview Press.

VAN HINTE TIM, GUNTON THOMAS I. AND J.-C. DAY. 2007. Evaluation of the Assessment Process for Major Projects: a Case Study of oil and Gas Pipelines in Canada, *Impact Assessment and Project Appraisal* 25 (2): 123-137.

WHITEMAN GAIL. 2004. The Impact of Economic Development in James Bay, Canada: The Cree Tallymen, *Organization & Environment* 17 (4): 425-448.

WIKLUND HANS. 2005. In Search of Arenas for Democratic deliberation: a Habermasian Review of Environmental Assessment, *Impact Assessment and Project Appraisal* 23 (4): 281-292.

WORLD COMMISSION ON DAMS (WCD). 2002. *Dams and Development: A New Framework for Decision-Making*. London: Earthscan Publications.