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PROPOSAL REGARDING ENVIRONMENTAL AND SOCIAL IMPACT
ASSESSMENT AND REVIEW OF FEDERAL DEVELOPMENT PROJECTS

Proposal Tabled by the Inuit of Quebec
(Without Prejudice)

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PROPOSAL REGARDING ENVIRONMENTAL AND SOCIAL IMPACT
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1. STATEMENT OF ISSUE

Section 23 of the JBNQA establishes the Environmental and Social Protection Regime in Quebec north of the 55th parallel. Under this regime specific environmental and social impact assessment and review procedures are established for development projects under provincial jurisdiction (Sub-Section 23.3) and under federal jurisdiction (Sub-Section 23.4). Section 23 provided for the creation of the Kativik Environmental Advisory Committee (Sub-Section 23.5) with members appointed by Canada, Quebec and the Kativik Regional Government. This Committee is the official forum for consultation amongst the responsible governments in the Region "concerning their involvement in the formulation of laws and regulations relating to the Environmental and Social Protection Regime." (Paragraph 23.5.24)

The Environmental and Social Protection Regime recognized and confirmed a number of important rights in favour of the Inuit of Quebec with respect to future development in the Region. These rights are both procedural and substantive and must be respected by both Canada and Quebec when development projects are considered for the Region. Furthermore, both Canada and Quebec are obliged, within their respective jurisdictions, to give effect to the rights and guarantees contained in Section 23 and, where necessary, to adopt or amend applicable federal and provincial laws of general application respecting environmental and social protection in the Region.

The Government of Canada has failed to adopt the legislative and regulatory measures necessary to ensure that the rights and guarantees in favour of the Inuit of Quebec are fully recognized and protected with respect to proposed development projects subject to federal jurisdiction.

Canada has also failed to establish appropriate administrative and coordinating structures to ensure that the rights and guarantees provided under Section 23 are adequately respected and properly enforced when development projects are under consideration by the federal government.

2. BACKGROUND

2.1 Precedence of Section 23

Paragraph 23.2.3 ensures that the environmental and social impact assessment and review procedures, established by way of Sub-Section 23.4, take precedence over the general federal Environmental Assessment and Review Process (EARP):

"23.2.3

All applicable federal and provincial laws of general application respecting environmental and social protection shall apply in the Region to the extent that they are not inconsistent with the provisions of the Agreement and in particular of this Section ...".

The EARP process was confirmed by way of an Order in Council under the Government Organization Act (P.C. 1984-2132, 21 June 1984).

The JBNQA provides, however, that the procedure outlined in Sub-Section 23.4 may be incorporated into EARP as long as the federal review process "provides for Native involvement to at least the degree provided in this Section [23]" (Paragraph 23.4.1).

The priority of the JBNQA provisions, to the extent that they depart from the federal EARP procedures, or have not been incorporated into the regular federal review process, is a fundamental consideration that must be respected by Canada in terms of developing appropriate legislative and regulatory measures and implementing appropriate administrative arrangements.

2.2 Guiding Principles

Section 23 outlines a series of "guiding principles" that are to be used by the responsible governments and various agencies created under this Section while carrying out their respective duties and obligations. The guiding principles are set out in Paragraph 23.2.4:

- (a) The protection of Native people, societies, communities and economies, with respect to developmental activity affecting the Region;
- (b) The minimizing of the impacts on the Native people by development activity;
- (c) The protection of Native hunting, fishing and trapping rights;
- (d) The protection of wildlife resources, physical and biotec environment and ecological systems with respect to development activity;
- (e) The involvement of the Native people and others in the Region in the application of the regime;
- (f) The rights and interests of non-Native people;
- (g) The right to develop by persons acting lawfully in the Region; and
- (h) The minimizing of negative environmental and social impacts of development activities by the use of the impact assessment and review procedures.

These "guiding principles" are to be followed during all phases of the environmental and social impact assessment and review process provided for under Section 23. The federal EARP Guidelines do not include a list of guiding principles. In contrast, the federal Guidelines merely state that the EARP procedures are intended to "ensure that the environmental implications of all proposals", for which the federal government has decision-making authority, are fully considered "as early in the planning process as possible and before irrevocable decisions are taken." (Guidelines, Section 3)

2.3 Scope of Section 23

Unlike Section 23 of the JBNQA, there is no mention of Native rights in the federal EARP Guidelines and no requirement for either proponents or "initiating departments" to review the socio-economic impacts of development projects except for "social effects directly related to those environmental effects" (Paragraph 4(1)(a)).

In the Initial Assessment Guide (issued by the Federal Environmental Assessment Review Office (FEARO) and followed by federal departments and agencies during the initial assessment phase of the EARP review procedures), there is similarly no mention of the need to consider the impact of development proposals on Native rights and only a brief reference to "native groups" in Appendix 1.

The EARP Guidelines are significantly narrower in scope than those set out in Section 23. For example, the definition of "development project" (Sub-section 23.1) and the application of the Section 23 provisions to all projects in the Region "subject to federal jurisdiction" (Paragraph 23.4.1) are broader in scope than the corresponding provisions under the EARP Guidelines. The EARP Guidelines only apply to "proposals" for which the Government of Canada has a decision-making authority (Guidelines, Section 2). The EARP Guidelines also contain a number of gaps in coverage not found in Section 23. For example, the EARP Guidelines only apply to certain federal Crown Corporations when it is a "corporate policy" of the corporation to apply the EARP process. In contrast, the Sub-section 23.4 provisions apply to all projects subject to federal jurisdiction which will have an environmental or social impact on the Region.

The level of environmental assessment and review that must be carried out by project proponents is also significantly different under the Section 23 and EARP processes. The definition of "impact assessment" under paragraph 23.1.3 of the JBNQA specifies that both the beneficial and adverse effects of proposed projects are to be studied in relation to their impact on the environment and people of the Region and that alternatives to the project are to be examined. The level of information required under such impact assessments is further described under Schedule 3 of Section 23. In contrast, the definition of an "Environmental Impact Statement" under the EARP Guidelines (Section 2) only specifies that the proponent is to prepare a "documented assessment of the environmental consequences" of the proposed project.

The non-comprehensive application of EARP within the area of federal jurisdiction, together with the restricted nature of the impact statements required under the EARP Guidelines, has the effect of putting Native people and communities in the position of having to first justify their interest in this process and to then try to have proponents and federal departments adequately respond to their concerns. These difficulties are not encountered by the Inuit of Quebec with respect to the application of Section 23 of the JBNQA.

2.4 Assessment and Review Procedures

Attached are Appendices outlining the assessment and review procedures under EARP and Section 23. The two sets of procedures are similar in approach. They both consist of an initial assessment phase, a public review phase and a final decision-making and authorization phase. The procedures to be followed during each of the three phases of the impact assessment and review process under Section 23 are also summarized in the Appendices along with references to the appropriate paragraphs in the JBNQA.

2.4.1 Initial Assessment Phase

The EARP Guidelines are based on the philosophy of self-assessment by proponents under initial assessment guidelines developed by the various "initiating departments" within the federal government. The initiating departments inform FEARO as to the content of these guidelines and of their application with respect to proposed projects. As a result of initial environmental evaluations, initiating departments may approve, reject or modify proposals or refer the proposed project to the Minister of the Environment for a public review.

The Section 23 provisions related to the initial assessment phase are significantly different. Clauses 23.4.2 to 23.4.8 provide for a Screening Committee composed of members representing Canada and the Kativik Regional Government. The Screening Committee reviews proposed projects and makes recommendations to the Federal Administrator. The Federal Administrator, under paragraph 23.4.9, has the responsibility to consider these recommendations and decide whether the project should proceed at this stage, be reassessed, or proceed to the review panel phase. The Federal Administrator also has the responsibility for issuing the guidelines to the proponent for preparation of the Environmental and Social Impact Statement.

Section 23 incorporates the philosophy of self-assessment but also includes the principle of joint screening of projects by Canada and KRG. The key decisions are also made by the Federal Administrator and not by the initiating departments as under the EARP Guidelines.

2.4.2 Review Panel Phase

Under Section 23, two of the five members of the review panel must be Native people or their representatives as designated by the Kativik Regional Government (Paragraph 23.4.12).

By contrast, the EARP Guidelines stipulate that review panel members must "be unbiased and free of any potential conflict of interest ... [and] be free of any political influence" (Guidelines, Section 22).

The funding for the KRG representatives is provided for by the Kativik Environmental Advisory Committee (Paragraph 23.4.12) while funding for the EARP Review Panel comes from the federal government.

2.4.3 Final Decision Phase

Under the EARP Guidelines, the final decision rests with the initiating department. If necessary, the matter may be referred to Cabinet for collective consideration (Guidelines, Section 33).

By contrast, under Section 23, the Federal Administrator is responsible for considering the recommendations of the review panel and then making the necessary decisions (Paragraph 23.4.23). The decision of the Federal Administrator is binding on the proponent which might be another federal department, agency or Crown Corporation (Paragraph 23.4.27). The decision of the Federal Administrator is subject to review for cause by the Governor in Council which may approve the project or alter the terms and conditions set by the Federal Administrator (Paragraph 23.4.29).

3. OTHER CONSIDERATIONS

3.1 Public Review of Low Level Military Flying Activities over Labrador and Northern Quebec

On February 13, 1986, the Associate Minister of National Defence requested the Minister of the Environment to hold a public review of low level military flying activities in Labrador and over parts of Quebec. The review is to include a study of a proposed NATO Tactical Fighter Weapons Training Centre in Goose Bay, Labrador. It has been

determined that the proposal is to be subject to a public review under the EARP procedures as well as an environmental and social impact assessment under Section 23.4 of the JBNQA.

So that the proposal be subject to only one assessment and review process, a Memorandum of Understanding was signed between KRG, the Minister of the Environment, and the Federal Administrator incorporating certain features of the Section 23.4 review procedures into the EARP review. These features included incorporating the "guiding principles" of Section 23 into the EARP review; distribution of documents to KRG; consultation with the Kativik Environmental Advisory Committee on the terms of reference for the review panel; appointing a person proposed by KRG to the review panel; and, appointing an analyst designated by KRG to the review panel Secretariat.

provided to the public review phase
This is the only development project, under federal jurisdiction which has been ~~proposed for Northern Quebec~~ since the signing of the JBNQA. The Section 23 procedures have only been partially complied with to date. The federal government recognizes that Section 23 applies over part of the region where the project is taking place, and agrees to the importance of incorporating the guiding principles into the review and the need for Inuit representation on the review panel. The necessity for the Inuit of Quebec to negotiate for such basic matters as the incorporation of the guiding principles and Inuit representation underlines the need for the enactment of legislative protection for the rights and guarantees contained in Sub-Section 23.4 of the JBNQA.

3.2 Proposals for Reforming the Federal Environmental Assessment and Review Process

In September, 1987 a Discussion Paper entitled Reforming Federal Environmental Assessment was released by the Minister of the Environment. This Paper indicated the federal government's intention to improve the federal environmental assessment and review process and invited public comment on policy issues related to the EARP procedures and policy framework. Subsequent to the release of this paper, the FEARO conducted a series of meetings and consultations to ascertain the views of interested organizations and individuals.

As part of this consultation process Makivik Corporation made a submission to FEARO on behalf of the Inuit of Quebec. In addition, representatives from Makivik

Corporation and KRG attended the National Consultation Workshop on Federal Environmental Assessment Reform hosted by FEARO in May, 1988. At these meetings it was emphasized that any reform of the federal environmental assessment and review process would have to take into account the land interests of aboriginal people and the provisions of existing aboriginal land claims settlements, such as those in Northern Quebec and the Western Arctic, which involve specific social and environmental impact assessment and review procedures.

4. PROPOSED PLAN OF ACTION

4.1 Recognition of Federal Responsibilities

Canada shall take the necessary steps to fully recognize, protect and enforce the rights and guarantees of the Inuit of Quebec as provided for under the provisions of Section 23 of the JBNQA.

Canada shall immediately undertake to enact appropriate legislative and regulatory protections; establish effective administrative structures and policy guidelines; adopt measures to ensure that federal appointments as stipulated under Section 23 are made in a timely and responsive manner; and, agree with the Inuit of Quebec to enter into a consultative process related to the design and implementation of these legislative and administrative mechanisms.

4.2 Enactment of Legislative Protection

The Inuit of Quebec have long taken the position that federal obligations with respect to environmental protection under Section 23 of the JBNQA shall be the subject of federal legislation.

The enactment of federal legislation is foreseen by the following Paragraphs of the JBNQA: 23.2.2, 23.2.3, 23.5.24, 23.5.25, 23.5.31, 23.7.2 and 23.7.7. The Province of Quebec has provided legislative enactment of and protection for the provincial obligations under Section 23 by way of the Environmental Quality Act (Chapter 11).

The federal legislative provisions shall be enacted as a separate statute or incorporated within broader federal environmental assessment legislation of the type proposed by the Honourable Tom MacMillan, Federal Minister of Environment.

4.3 Administrative and Coordinating Structures

4.3.1 In order for the Government of Canada to fully and effectively implement the provisions of Section 23 it is necessary to clarify and reach agreement upon the relationship between general federal environmental provisions (EARP or a reformed federal review process) and the specific provisions of the JBNQA. This must be accomplished without diminishing either the procedural guarantees established under Section 23 or the scope of the social and environmental impact statements stipulated under Section 23.

4.3.2 A Federal proposal for the enactment of federal legislation shall be submitted to the Kativik Environmental Advisory Committee for joint consideration with the Inuit of Quebec as provided for under Paragraph 23.5.24 of the JBNQA. The legislative proposal shall also be accompanied by proposals for the establishment of appropriate administrative structures and policy guidelines. These guidelines will relate to such matters as the operation of the Screening Committee referred to under Paragraph 23.4.2; the appointment of KRG representatives to review panels as specified under Paragraph 23.4.12; and the manner in which the Screening Committee is to be informed of development projects being considered by the federal government; etc.

4.3.3 The Government of Canada shall also undertake to make the following appointments in a more timely and effective manner: the Federal Administrator as stipulated under Paragraph 23.1.2; the federal members of the Screening Committee as stipulated under Paragraph 23.4.2; and the federal members of the Kativik Environmental Advisory Committee as stipulated under Paragraph 23.5.1.

4.4 Access to Federal Environmental Programs and Services

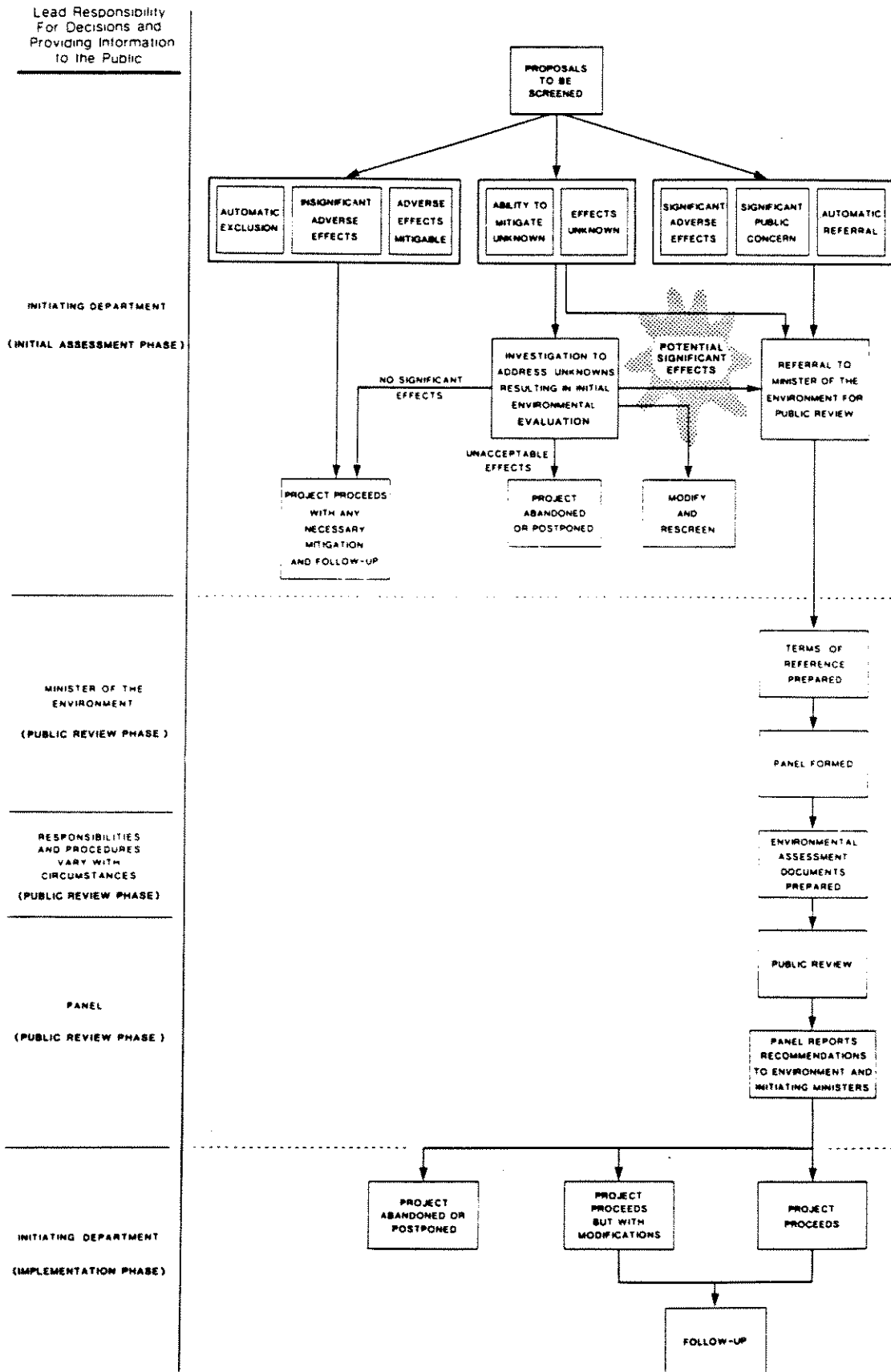
In some respects, the federal environmental assessment and review program provides benefits and services not specifically contemplated by the JBNQA. An example is the financial assistance provided to Native groups and other participants in the federal environmental assessment and review process. The Inuit of Quebec shall retain access to these federal services and benefits in a manner similar to other Native people and citizens of Canada.

4.5 Participation in Federal Reform Process

The Inuit of Quebec have been involved in the public consultations related to the federal government's proposals for reform of its overall environmental assessment process. The Government of Canada shall keep the Inuit of Quebec informed through formal consultation on all aspects of the reform proposals so as to enable the Inuit of Quebec to determine whether such proposals have an impact on the rights and guarantees found in Section 23 of the JBNQA.

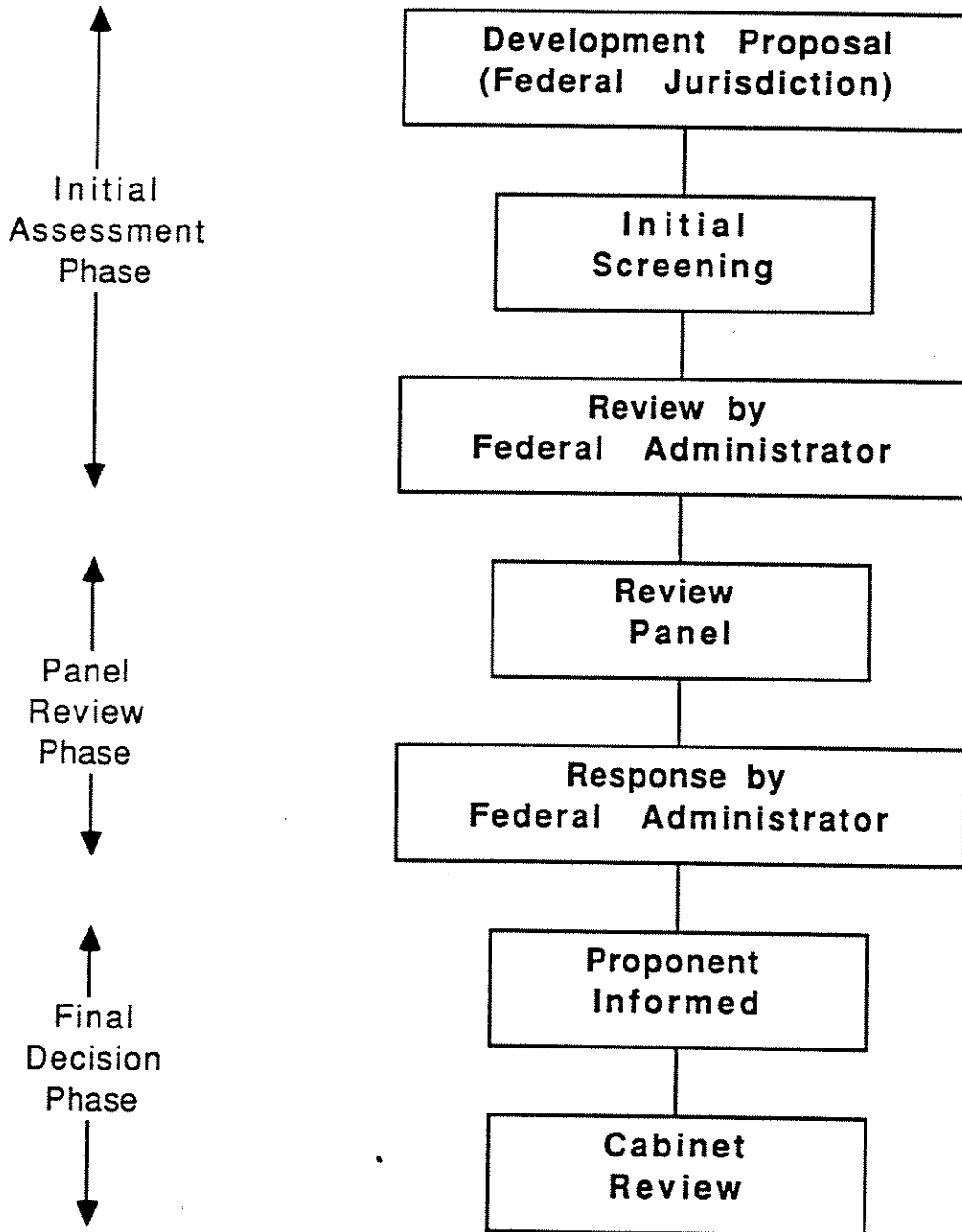
APPENDIX ONE

Federal Environmental Assessment and Review Process

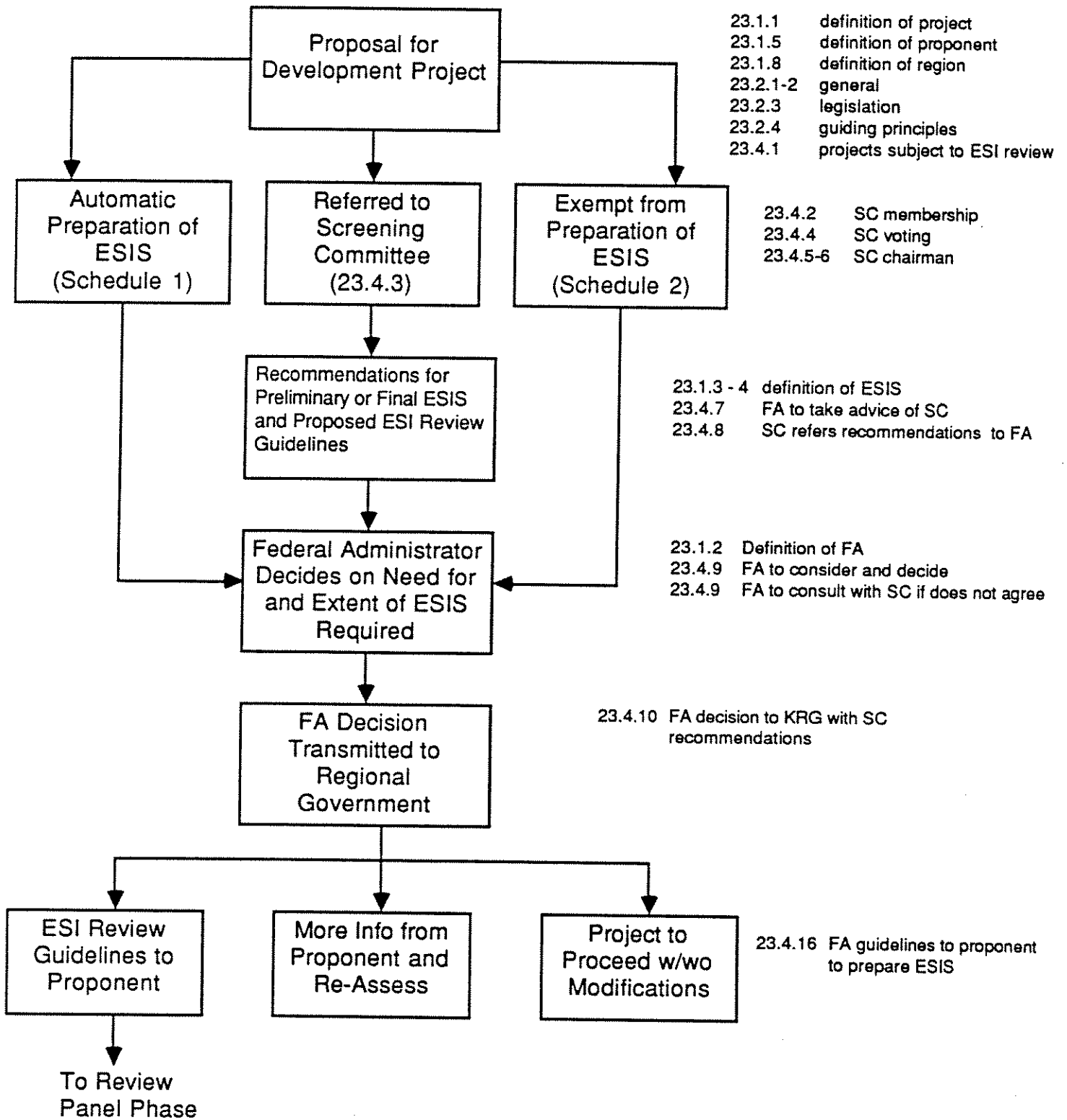


APPENDIX TWO

JBNQA Section 23 - Environmental and Social
Impact Assessment and Review Procedures
for Development Projects Under Federal Jurisdiction

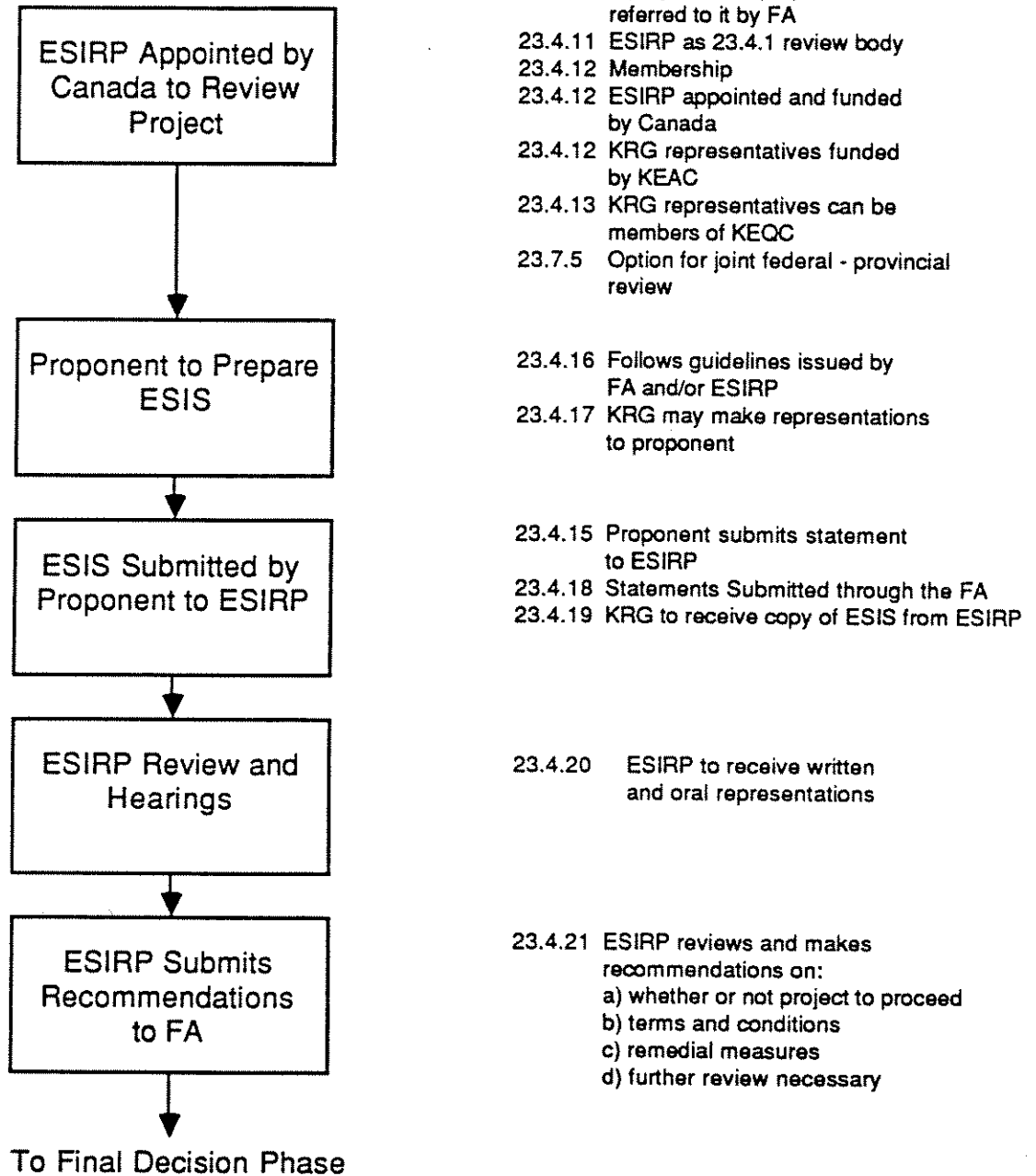


Phase One: Initial Assessment Phase



ESIS Environmental and Social Impact Statement
 SC Screening Committee
 FA Federal Administrator
 KRG Kativik Regional Government

Phase Two: Review Panel Phase



ESIRP. Environmental and Social Impact Review Panel
 KEAC Kativik Environmental Advisory Committee
 KEQC Kativik Environmental Quality Commission

Phase Three: Final Decision Phase

