Submission
from Makivik Corporation to the Task Force to Review Comprehensive Claims Policy

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INTRODUCTION

Québec Inuit were the first aboriginal people in Canada, along with the Cree of James Bay, to negotiate a practical social, economic and political framework for their homeland and their future through a claims settlement. As such, their experience may be particularly relevant to the Task Force reviewing claims policy.

Some 6,000 Inuit in Québec live around the coasts of Hudson Bay, Hudson Strait and Ungava Bay, forming a generally cohesive regional population. The Québec Inuit were and are people ready to adapt. The question has been not whether but at what pace. At one time we were a nomadic people, experts in travelling light, in portable goods, in exact and micro technology. Those aptitudes may serve us well today. We have travelled far in the lifetimes of our leaders. We are a mostly young population, a grim reminder that our people have not long had the luxury of a life expectancy beyond what white city dwellers would call young adulthood. Now we live longer and face more complex situations. The pace at which our people have had to travel to survive in recent decades has left many breathless or disoriented.

There seems to us a simple choice, however. One way is a sort of isolation, a numb withdrawal, a retreat into the past. Nostalgia is a condition for all humanity, but it is not sufficient as a way of life. We do not think that we can withdraw when engineers arrive to build air-strips and then land jet planes in our midst. We cannot ignore the fact that fish and game are threatened by large scale development. However comical when rival saviours arrive with competing languages, religions, trade goods and public services in our very villages, we soon learn that we cannot hide and laugh. The world imposes itself on us regardless of our apparent distance from "the Mainstream".

So we have chosen to learn new skills and to match the outsiders. We may not always or as quickly equal skills which they learned from birth. At times we may be a little clumsy with their tools and techniques. But the commitment to protect our homeland, to continue our way of life and to secure the equality which Canadians believe is the right of all gives us a persistence which makes up for any temporary awkwardness. And our children now growing are more self-confident and better prepared.

The claims process represents to us one opportunity to enter the citizenship and society of Canada on equal terms. It is a political statement based on our understanding of our culture and our life: that we owe everything to the living environment of sea and land, ice and air, and that therefore our society and its future is bound up with those elements. The idea of taking unto ourselves each of his own plot of a world common to us all and excluding others had never occured to us. When we examine the idea, as one brought by Eurpoeans, we cannot say we find much to recommend it. We are glad to see that many scholars and philosophers from the white world are also doubting it. But we find that we cannot ignore it as long as it threatens to carve up our familiar surroundings and hand them over, piece by piece, to others. Nonetheless we view the claims process as only one among many ways of assertion of our ancestral rights and our cultural identity.

In our claims we try to keep the world whole and intact. We try to talk about how to manage it - or at least that part which is our homeland - so that it will renew its life and livelihoods forever. We talk of how our people live with and live from this region of the earth and how they may continue to live. We don't try to think of all the things we will ever need, and we can't be sure what our children are going to want in ten years any more than the white man knows his children. But if we are able to maintain our relationship with our world, our sense of place and of common cares, a sense of who we are in the midst of forces as different as Québecois nationalism and industrialization which would end our uniqueness and wholeness as a people, that is enough. In the modern world that means a political settlement providing self-government within the larger human interdependence, and an economic base. Both of these we always had. Now we claim them back.

As we can see it, the work of your Task Force is to find an accommodation of territorial homelands which long predate white settlement in North America with an immigrant outlook in politics and legal institutions. We attempt to keep our suggestions below at the level of principle, rather than details which more properly belong in a specific settlement negotiation.

I. PROBLEMS PERTAINING TO UNSETTLED CLAIMS

1. The Process

1.1 The Negotiation Process

In the negotiating process the tremendous imbalance in the parties to the bargaining is always clear. It manifests itself not only in the vast expert resources and facilities on which the federal and provincial sides can draw. It also shows in the number of personnel government can put on the job, sometimes leaving the few Inuit team members exhausted and, therefore, at a great disadvantage.

There are other types of problems. Inuit and their usual staff have little experience with the range of government programming and fashions in government policy-making. These are vital elements in the closet of negotiators on all sides. Much time and research might be saved, and many more conflicts resolved, if the aboriginal side had access to better data and greater awareness of government possibilities. For that reason we recommend that as part of claims processes the federal government make available for six-month secondments middle-to-senior public officials to help. These should not be claims office officials, but rather generally seasoned individuals from central agencies or areas of work from which they have gained wide knowledge of government programs and policy, and who "know their way around" the corridors of officaldom. Some of those persons who have recently received encouragement from the government to retire early might well be usefully employed in this way, for example. But also, for officials on their way up, some experience of the reality of Aboriginal Canada would be a considerable asset in their personal and career development. They would, of course, be bound by confidentiality ethics while participating in the process on the aboriginal side. A similar technique provided useful in the late 1960s when the poorer provincial governments required expertise in new sciences of economic development advanced by Ottawa through new departments like Manpower and Regional Economic Expansion.

The main problem with the present negotiating processes for claims is the inability of the federal government to make timely decisions. This means that tentative agreements come unstuck, that trust in the good faith of the federal side is lost, that progress is pitifully slow. The problem has more than one source. Negotiators do not have the clout, politically, to deliver agreements. They are not senior enough in the decision-making apparatus. If they had a Minister of State through whom they reported to a Cabinet committee which, normally, met weekly, many problems might be allayed. After all, almost nothing any federal department does is its prerogative alone - inter-departmental decision-making is here to say whether one likes it or not. Therefore, all departments should be informed of the development of negotiations.

If Ottawa had a claims policy, one might argue, rather than the clutch of vaguenesses contained in in all fairness, any given item might be measured against some predetermined guidelines to speed things up. This is illusory. Any such guidelines will be minimalist. Claims processes, like the national constitutional process, educate government officials to circumstances and needs in aboriginal society; as matters progress officials become more open and understanding, ideally. They may come to see tht various fixed points are not very helpful. When Ottawa has taken fixed positions in advance, e.g., Fisheries on wildlife management decision-making, D.I.A.N.D. on no political development talk under claims forums, the experience has been uniformly bad for progress and process alike.

Is the Office of Native Claims a good or bad influence? It is our suspicion that if one relied on a specially seconded group for each claim, disbanded at the end, little would be gained. In one case the staff would be ignorant, or consist of persons unwanted by departments for tasks seen to be of higher priority. In the other, a permanent staff may be permanently negative and prejudiced. It is six of one and half a dozen of the other.

The practice of having meetings alternately in the claims area and in a convenient southern administrative centre seems a good one. This promotes understanding by officials of the actual problems facing aboriginal people.

No claims can proceed well unless there is an understanding on the overall political settlement. That is, if the aboriginal side does not know that at the end of the process it will have a reasonable package deal in respect of self-government and self-management, including the revenues to self-govern and self-manage, then each item negotiated will become a struggle of its own. The lack of political content in claims policy and packages has been the major stumbling block in the past. In Québec, happily, Ottawa allowed regional government to be included as a subject for negotiation. It is noteworthy that the Inuit and Cree of Québec are broadly satisfied with their settlements and want to see them implemented and developed to make future progress within those frameworks. In a volatile area of public policy where governments often suspect that aboriginal people will never settle, never be satisfied, this outcome is the more noteworthy.

Unless Ottawa is prepared to employ its constitutional powers in the full, or even to explore their application beyond what is known to be "full", there may be little hope of settlement. Curiously, however, Canada has not had a strong history of "linkage" in inter-governmental policy development. Many observers, including aboriginal associations, assume it is common, but it is not. Rather, the reverse is true. However, federal conditions of a very general kind are attached to the major fiscal transfers, e.g., in respect of environmental standards, amelioration of native opportunities and conditions, etc. The provinces live and grow rich from aboriginal lands and waters. Surely there can be a price exacted so that Ottawa alone does not bear the whole or sole burden of Canada's social and political accomodation with its first inhabitants. Otherwise there is no incentive for provinces to cooperate.

The question of funding the process is discussed further in 1.4.

The demand for secrecy of negotiations can be a problem. Aboriginal people have a history of suspicion of white governments. Therefore, in an essentially political negotiation it is most important that trust be established if the proposed claims agreement is to be understood and ratified by the native public. Secrecy places undue pressure on native negotiating teams who,

some of their constituents may fear, are succumbing to government pressures or blandishments. The open and very political negotiating process by which Greenland's home rule was established in the mid to late 1970s is a better model.

Obviously the choice of a federal negotiator may best be made with aboriginal input. This individual is not, after all, one of two equal opposites but rather an authority with power to grant from the treasury and other resources of the Canadian government. If he is appointed in a climate of goodwill he will be more effective in carrying out federal objectives, after all.

Should there be time limits on claims negotiations? A time limit might encourage more pointed discussion and preparation. However, it could camp either side. The native side may benefit as much as the government from a delay which enables recalcitrant departments to be won over to a proposed settlement. In a basic political negotiation, public opinion, both native and while, may benefit from "getting used to" the ideas contained in a settlement. Often the native side has more incentive to settle - to obtain funds, to establish self-government and new enterprises, to get a grip on local development pressures through claims regulatory provisions. A better case could be made for the need to make government feel a greater sense of urgency in resolving claims.

To conclude, our recommendations may be summarized as follows:

- funding of Inuit organizations must be sufficient to allow them the same resort to expertise and the same human resources as the government;

- Inuit should have better access to information regarding government possibilities through the help of middle-to-senior public officials;

- government negotiators should be able to report weekly to a cabinet committee through a Minister of State;

- self-government must be made an issue in the settlement;

- all concerned departments must be involved or at least kept well informed of the development of negotiations;

- negotiations should not be under secrecy;.

- Inuit should be consulted on the appointment of government negotiators;

- the setting of certain delays, to be determined in each case,could both speed up and encourage the signature of a fair settlement.

1.2 The role of governments

The role of governments, as the options of the Natives, is fraught with conflict. Yet, the diversity of interests which the government must represent adds to the complexity of their role: on the one hand there is political pressure to settle a claim humanely and with acceptance by those involved, but also pressure not to "give away" public dollars or resources. However, in a political negotiation there is nobody else with authority to credibility like government. A lot of ink has been spilled over the value of mediation in enviromental and other matters like claims. We remain unconvinced. No power but the Crown can grant authority to any negotiator on the political and constitutional matters contained in claims settlement. The solution, then, is to divide them between political and other matters - which we reject - or to accept the Crown's complex role.

Because the subject matter of claims is aboriginal people and constitutional authority, the federal government must play the leading role among governments. That being said, there may be more creative ways for governments to involve themselves than at present where some provinces are very recalcitrant. Intergovernmental relations authorities and Judge Patrick Hartt in his interim Ontario royal commission report on the northern environment in 1977 have pointed out that joint delegations of jurisdiction to third-party native agencies such as regional governments or economic authorities (as is now the case in agriculture and fish marketing, for instance) would resolve many problems. In the main, of course, they would marry federal and provincial jurisdiction in a way which allowed native

communities to develop wholly, neither cut off from a land and resource base, nor solely dependent on welfares type politices, nor isolated from provincial activities. We think that aboriginal people can only take their full citizenship in relation to both national and regional powers and interests, provided that native interests are defined and protected as distinct and continuing entities.

Obviously the governments with the lands and resources at stake must be at the table. Territorial aboriginal groups will no doubt advise on what roles they see for territorial governments.

1.3 Overlap

The Inuit of Northern Québec accept the federal policy on overlap only insofar as it commands that the overlaps be resolved between the aboriginal groups before a settlement may be reached with the government. However, we feel that this exigence has been introduced in the negotiating process at the disadvantage of the aboriginal peoples by stalling negotiations: the Natives are not given enough support to negotiate their overlapping claims efficiently and, consequently, the settlement of the comprenhensive claims is substantially delayed. Improvement of the situation calls for both financial and procedural measures.

Financially, the native groups need funding to properly research their traditional use of areas and to meet and discuss data in order to reach an agreement between themselves.

Procedurally, the negotiation of overlapping claims should not preclude negotiations of the comprehensive claim and native negotiations on their overlapping claims should be integrated in the global process. Hence, this process should be as follows:

1) presentation of a native claim;
2) determination of an overlap through the intervention of other aboriginal groups or mere comparison of all presented claims;
3) negotiation between the concerned aboriginal groups on the overlapping interests and,
4) simultaneously, negotiation of the comprehensive claim in all matters not affected by the overlap;

5) settlement of the overlapping claim between the aboriginal groups;
6) settlement of the comprehensive claim, with the government, with the participation of the other aboriginal group(s) with whom the overlapping claims has been settled.

In the case of a dispute between the aboriginal peoples negotiating overlapping claims, our suggestion is that the aboriginal peoples be able to submit the dispute, upon their mutual agreement, to an arbitrator of their own choice and on their own terms. Provision should be made for funding such arbitration.

As to the contents of settlements which have to accommodate overlapping interests, they should include joint management and reciprocal rights among the aboriginal groups concerned in the contiguous areas as determined by the agreement. Moreover, we insist that all aboriginal parties with overlapping claims be involved in the negotiation of the overall agreement to protect their interests.

1.4 Funding

Funding of the negotiation process has been a major point at dispute between Makivik and the federal government in respect of offshore claims. Makivik has learned the hard way that costs for negotiation and preparation of the background material required as a basis from which to negotiate are very high. The federal government has unlimited access to expertise and personnel and can absorb most costs without even identifying them as part of a negotiating costs. E.g., an official in Department X simply responds to a request for information, advice, etc. in the course of his work. But for Inuit there are two main problems. There is tremendous knowledge of our homeland locked up in the Inuit language, knowledge of weather and seas, of animal habits and fish movements, and of the many small changes and signs which betoken changes in season and environment. Indeed, we are hoping to launch a joint study with Sami (Lapp), language experts at Tromsö University in Norway, to illustrate the way our Arctic indigenous languages provide a science for which moder European languages like English, French and Norwegian are but poorly equipped. During the hearings on the Arctic Pilot Project our Inuit hunters time and again non-plussed the

proponents' experts and when further studies were carried out, it was found that we had expanded the white man's scientific knowledge. Meanwhile, however, we must bring to the table materials in formats which conventionally schooled officials find palatable.

This leads to the second point, that Inuit have few formally educated individuals able to speak or write in the languages of white technology, science and expertise. We have to hire outside persons to do this for us. We have to tell them what we want and try to steer them as they work, and then translate back for our decision-makers their work and often have it redone or redirected. This is time-consuming, and it is costly.

The funding issue is a good example of great inequality between the two sides in claims negotiations. Attempts by government limit spending of Inuit can only be seen as harrassment, even though federal experts may realize that some or other item might be studied more efficiently by Ottawa's own state of the art specialists. The technical and advisory staff working for Inuit and other native groups may often be younger, less experienced and unconventional by the standards of federal Establishment figures. Sometimes we have been lucky to capture some of the best federal talent with the appeal of our more socially-directed, innovative and open work environment. Often we have attracted young people with verve and provided them an excellent and varied experience which has prepared them for wider responsibilities later. But in general we cannot match the resources of the federal government except in one way: our small scale and strong sense of purpose make decision-making and seizing of opportunities faster.

The provision of loans to Inuit against final compensation payments for negotiation of offshore claims would seem to be the best method to follow. This avoids the problem of Ottawa appearing to manage and limit our preparations.

A supplementary device might be the establishment at once of a secretariat which would provide the Inuit side of offshore background work but which would also be the embryo of an Inuit Ocean Centre. The federal government with its vast expertise in ocean matters would assist us in setting up this centre, perhaps even with the aid

of seconded staff. Such a research institute would later provide a focus for training of Inuit, provision of input to post-settlement ocean and coastal zone work and development of economic opportunities related to ocean and coastal management and development issues.

2. The Settlements

2.1 Inuit of Northern Québec Unsettled Claims in the Offshore

The James Bay and Northern Québec Agreement resolved the on-land claims of Québec Inuit, but left the offshore for later. From time to time Makivik has discussed with the federal government the commencement of negotiations, but various problems have delayed this. Nevertheless, Makivik has undertaken considerable work in anticipation of these negotiations. The vital importance for the Inuit of the Offshore and its resources will never be emphasized enough: most of our communities are coastal and two thirds of our wildlife resources come from the sea.

2.2 Minimal Contents of Settlement

Inuit are a maritime people. The roots of our Thule Eskimo culture may be seen clearly today at Barrow, Alaska, where atop and under and sticking out from the ground are the remains of the great whales which provided the sustenance and cycles of livelihood and celebration through many ages. Down through millennia our peoples moved eastwards from Bering Strait and the Bering Sea area to inhabit alone and unchallenged the vastness of Arctic North America - Greenland, Canada and Alaska. The archaelogists have amply demonstrated our dependence on the sea and, indeed, our settled life by the seas up to the time of the Little Ice Age which drove away the whales and generated much hardship for us. We had to abandon our settled villages and comfortable permanent homes in order to chase the other game which seasonally presented itself. We had to develop new technologies, new portability and new life rhythms. We had to abandon some traditional areas, and we have every reason to believe that some groups of our people perished entirely in this time of harsh transition.

But we never abandoned our association with the sea. It remains the principal source of livelihood for most of our communities. With this in mind, we would propose three principles for the establishment of the contents of an offshore settlement.

First, the overall viability of the Inuit homeland in Québec must be the goal of claims settlement processes. This was implicit in the James Bay and Northern Québec Agreement, and has ever been the desire of governments and Inuit alike. Regional economic self-sufficiency and self-government and self-management are the standards against which elements of a settlement package must be measured.

Second, the life of Inuit along the seacoast and our continuing tradition of marine orientation suggest that we play a special role on behalf of Canada in an otherwise uninhabited part of Canada in relation to sea management and develop to the greatest extent possible an economic and employment future related to those seas. This is the more urgent in that while Canada has concentrated much attention to Atlantic and Pacific coasts, the third ocean - the Arctic - has been left relatively unattended. This national negligence which has reached the proportions of a threat - e.g., in this summer's transit of the Polar Sea in the Arctic and belated federal response - endangers us and our livelihoods rather more than the dignities of foreign diplomats. We do not wish to dwell on past problems, but would rather be part of the solution.

Third, Inuit of Québec were first into the modern claims negotiation business and should benefit from the experience which has accumulated since those awkward first days. We were up against a massive wall of ignorance and disbelief on the part of public, of amusement on the part of government and of public policies which still were paternalistic and did not accept that aboriginal Canadians had rights. These attitudes and policies have subsided and in no small part thanks to Québec Inuit and their prime role in the James Bay and Northern Québec Agreement and constitutional process. Hence, the claims policy must also be revised to reflect a mentality more respectful of Inuit rights. The very failures and hardships which have been visited on our people are the stuff which enable this Task Force to design a new and more workable claims policy.

The specific contents of a settlement must be negotiated. It remains to the negotiators to determine these. However, one may imagine some possible elements for the purposes of illustration.

A federal commitment to specific ocean management matters in the seas surrounding the Québec penninsula, activities in which Inuit should have the maximum employment, supply and sub-contracting benefits possible is an element. We are deeply concerned that the activities of provinces with north-running rivers are altering the physical environment, perhaps irrevocably. In the case of Québec, these also undermine the very coastal zone in which we live and find our livelihoods(1). Employment and supply preferences related to marine management should be guaranteed for Inuit and Inuit businesses in any claims settlement, not least because section 25 of the Constitution Act 1982 will provide these with real meaning.

The establishment of an Inuit Ocean Centre at a suitable northern Québec location with research stations located as required has already been mentioned in the previous section. This would be an investment for the future of arctic seas as much as of Inuit advantage. It would help Inuit find the jobs, commercial opportunities and training required to restore their link with ocean productivity. It would be a piece of the jigsaw puzzle Canada must fill in to again survey and manage the vast areas left unattended thanks to Canada's dispossession of the aboriginal trustees of the continent.

The development of a coastal zone management plan by Québec Inuit in cooperation with Québec and federal governments, local and regional government, and industry (e.g., Hydro-Québec) should be a first order of business. We have studied with care the coastal zone work of the

(1) A recent study has demonstrated the drastic effects of development on the Hudson and James Bays: Prinsenbeng, S.J. (1980) Man-made changes in the freshwater input rates of Hudson and James Bays: Can. Jour. Fish. Aquat. Sci. vol. 37, p. 1101-1110.

North Slope Borough created by Alaska Inuit and have certain ideas as to how to improve on that effort. We are following with interest the coastal Sami work in arctic Norway. Of particular interest is that coastal Sami base their proposals on the integrity of a mixed economy - i.e., rather than basing all their economy on a single occupation, say, fishing, they acknowledge the composite nature of their year's work and approach its protection and management as a whole. (A copy of the Sami study by SLF, in English translation, has been provided separately to the Task Force by Mark Gordon through ICC Canada.)

Inuit have exclusive legal and constitutional rights in the offshore in Hudson Bay, Hudson Strait or Ungava Bay. Therefore, any offshore claims settlement must take into account the limitations of Canadian sovereignty in the area from the surviving Inuit title.

The protection and enhancement of subsistence activities and guarantee of harvesting rights are also a mandatory component of a land claims settlement. No industrial development may be allowed without clearly delimiting its realization and expansion in a way compatible with the protection but also the development of Inuit economy.

Decisional power of the Inuit must be secured particularly on wildlife resources, through joint management in which we would have preponderant power considering that we form the overwhelming majority of the population in our homelands and that we are by far most knowledgeable of their environment. Our authority must also be preserved in all matters vital to our culture such as, for example, family matters, archeological research.

Finally, any settlement must be a commitment by the Government of Canada and other governments party to agreements, to provide clear official coordinating mechanism for monitoring and implementing agreements. The lines of responsibility within government must be clear. This was a most serious omission in the case of the James Bay and Northern Québec Agreement.

The other main element of a settlement, compensation, is looked at below. The negotiation of land rights is discussed within the subject of extinguishment. Still, in the context of the

minimal contents of settlement we would like to add reference to land rights and summarize these minimal contents in the following points:

i) the conditions of the settlements must ensure long-term economic benefits;

ii) a fixed and fairly short-term for the agreement must be set, without extinguishing ancestral rights;

and, as mentioned above,

iii) the conditions of the settlements must ensure long-term economic benefits;

iv) the special role of the Inuit in the Arctic in relation to the assertion of Canadian sovereignty must be recognized and integrated as a determining factor of the settlements;

v) Inuit of northern Québec should benefit from the favourable revision of attitudes and policies which has occurred since the conclusion of their settlement;

vi) such revision of the settlement could include the development of a joint coastal management plan;

vii) subsistence activities and harvesting rights must be totally protected so that our subsistence and commercial needs be satisfied;

viii) Inuit authority over wildlife and internal matters must be secured;

ix) mechanisms of implementation of the agreement must be determined and sanctions fixed for non-compliance.

2.3 Compensation

The overriding principle which must guide the negotiation of compensation in native land claims settlements must be to provide a sure economic base for long-term Inuit economic development. Furthermore, the approach must now change to consider the Inuit as, themselves, developers and "entrepreneurs" in the North. To this end, we suggest that compensation be paid in more than one form, as follows: i) a basic indemnity; ii) a tax (or royalties) on profits through carried interests, equity participation, disturbance fees;

iii) mandatory transfer of technology through the training of native people at managerial as well as technical levels; iv) priority of employment clauses and v) priority of contract clauses.

Clearly, dollar amounts of compensation depend in large part on the other contents of settlement, with more compensation required if other benefits are few, but the principle remains that capital for investment in Inuit self-sufficiency must be the main standard. That means funds to launch economic developments or to build facilities required for these, or money for investment in special management and training courses. Inuit are more concerned with funds for opportunities in building Canada's and Québec's future than in compensation for wrongs done or foreseen. Yes, damage to the marine, riverine and related eco-systems must be compensated, not only with money but with action. Some of this may be inevitable with development - any development - and it is our hope that Inuit and governments can work together in implementation for good results. We have spent too many years fighting with governments over problems with the James Bay and Northern Québec Agreement. Presumably government has now learned that it cannot sign an agreement and then just walk away. In future we must work continuously and together to make our agreements work too - and work for everyone's benefit.

So, funds for dealing with the effects of development must be a second measure here. Leaving such effects to be argued over by governments mindful of discretionary budgets is not satisfactory. At least some funds must be included into the compensation package for these purposes.

2.4 Extinguishment of title

2.4.1 Actual positions

The federal extinguishment policy with respect to land claims pursues the objective that the "settlement formula be thorough so that the claim cannot arise again in the future."(2). In other words, aboriginal title in the land must be

(2) Federal policy statement "In All Fairness" (1981) p. 19.

totally extinguished through the settlement. This approach is obviously residual of a "conqueror's" mentality.

The Inuit of northern Québec reject this policy of extinguishment on the ground that it is an inadequate and unnecessary basis for land claims agreements. In our view, aboriginal title entails rights and jurisdiction over all lands and resources within our traditional areas, and aboriginal rights flowing from this title are enjoyed because of Inuit ancestral heritage in the land. It also implies the right to grant certain uses of the land but nothing can or should, sever the ancestral link from which the Inuit draw their cultural identity and way of life.

The land claims process is then one of determining what land, what resources and what jurisdictions will be shared by the aboriginal group with the government, not the other way around. The process is one of negotiating equitable agreement on sharing, not a process of extinguishing the constitutionally guaranteed aboriginal rights which the Inuit have as a result of their historical occupation and use of the land.

It is therefore untrue to say that the government is giving land and other benefits to the Inuit - it is the other way around.

Seen in this light, a land claims agreement stipulates what areas of land and resources the Inuit will share totally with non-native society, what will be shared partially and what will be wholly reserved for the Inuit. It also outlines jurisdictional relationships as well as compensation.

The compensation is given not to extinguish rights, but rather to compensate the Inuit for land or resources wrongfully taken in the past and to provide economic benefit for resources to be taken in the future under the sharing provisions of the agreement. Specifically, our objections to extinguishment are as follows: i) it severs our links with our past; ii) it is unnecessary and excessive; iii) it is discriminatory as it is never required of other peoples in order to join or participate in the Canadian federation; iv) it undermines the enforceability of the government's commitments in the agreement; v) it contradicts

the constitutional process; and vi) it requires giving up an unknown quantity.

i) Extinguishment severs our links with our past

According to the federal extinguishment policy, through the settlement of native claims, aboriginal rights would flow from the Agreement, or from the government's granting of these rights, rather than from the native people's original ownership of the land, ie. from aboriginal title. Extinguishment of aboriginal title has a profound negative effect on the Inuit as on all other First Nations and on their perceptions of themselves as a distinct people. In fact, it does have the negative effect of eliminating a key aspect of their distinctiveness since aboriginal title or rights are fundamental to their existence as a people.

ii) It is unnecessary and excessive

The primary objective of government for entering into land claims agreements is to obtain certainty with respect to the rights of First Nations. The principal reason for desiring such certainty is to facilitate development within the traditional territories of aboriginal peoples.

However, it is unnecessary to extinguish aboriginal rights to achieve this purpose: certainty is a modality not a content and, thus, any clear, certain definition of the rights and obligations of the parties to a aboriginal claims settlement, within a definite term, creates the certainty necessary to allow development projects. Extinguishment is simply superfluous and harmful.

In addition, it is excessive in two ways: it results in socio-economically undesirable consequences, which go well beyond and are inconsistent with the legitimate objectives of land claims agreements and it is disproportionate to the undertakings of the government.

The government and the Canadian public must be shown that something other than extinguishment is feasible, and will not undermine any of their fundamental objectives in land claims. It is particularly relevant to Inuit offshore claims that no extinguishment clause, in regard to Nova Scotia's offshore claims, was included when Canada and Nova Scotia recently signed an offshore agreement. Similarly to land claims agreements, this offshore agreement specified the arrangements for revenue-sharing from resource development as well as sharing of jurisdiction. If it was possible to find a workable alternative to extinguishment of provincial claims, it should also be possible to find a suitable alternative to extinguishment of aboriginal title or claims (which have a greater legal and historical basis than provincial offshore claims).

iii) <u>It is discriminatory in that no other people are required to extinguish or abandon their rights in order to join or participate in the Canadian Federation</u>

Canadians who enter into agreements with the government not to exercise (in specified situations) certain of their constitutionally guaranteed rights, for example, freedom of speech, may do so by way of an agreement. For example, Canadians who obtain employment with the civil service are required to restrict their freedom of speech to a certain extent for work-related matters and not to criticize government policy. This does not mean, however, that their freedom of speech was extinguished; it merely meant that such freedom of speech was curtailed under specified circumstances for the life of the agreement.

Similarly, aboriginal groups may agree to exercise their aboriginal rights only in ways consistent with the terms in a land claims agreement and to restrict the exercise of their rights in ways set forth in such an agreement. This does not mean, however, that their constitutionally recognized aboriginal rights in and to land must be extinguished. Rather, aboriginal title can continue to exist over all traditional lands. However, for the life of a land claims agreement, the

rights flowing from aboriginal title to land would be exercised only according to the terms of such agreement.

iv) It undermines the enforceability of the government's commitments under the agreement

Under normal contract law, should one party breach an agreement in a fundamental way, the other party may sometimes revert to the situation as it existed prior to the original contract. In other words, if the government failed to live up to the terms of a land claims agreement, the Inuit could declare that their aboriginal rights may now be fully relied upon.

Should these rights, however, have been completely extinguished, it is possible that the only remedy the Inuit would have in the case of a fundamental breach would be monetary damages. Moreover, the government could likely continue to breach the fundamental terms of a land claims agreement, yet not expose itself to any risk that the full effect of aboriginal title might be invoked against the government in a lawsuit. Once aboriginal rights are extinguished, there is less incentive for government to abide by the terms of the agreement. This is obviously unacceptable.

v) It contradicts the constitutional process

At the same time as the First Ministers are engaged in an ongoing constitutional process to identify, define and strengthen aboriginal rights at the constitutional level, the government of Canada is pursuing a policy of extinguishing these same rights at the local level. This is inconsistent.

vi) It requires giving up an unknown quantity

The Canadian legal system has not yet fully formulated a complete list of aboriginal rights. Therefore, no lawyer can say with complete certainty what rights the courts may in the future find included in the phrase "existing aboriginal rights". Accordingly, the Inuit are being asked to give up matters which have not even been identified. This obviously makes it impossible to tell whether

an agreement is good or bad if the Inuit do not know what is being extinguished in return for the agreement.

The government's goals of certainty and definition are goals which are shared by aboriginal groups. No aboriginal group wants to be in the position of having to fight with federal or provincial governments every time they assert one of their rights. Hence it is mutually desirable to have the rights to be exercised in the future explicitly set forth in a settlement. Furthermore, aboriginal groups no more wish governments to re-open negotiations in order to restrict their rights in the future than governments want aboriginal groups to do the same. Finality is essential to both groups.

This finality, however, must recognize the evolutionary nature of political relationships and provide for a mutually agreeable amending process in order to keep the agreement current through the next decades. For example, in the recent Canada-Nova Scotia offshore agreement, an acceptable degree of finality and flexibility for the future was achieved by the parties in a number of ways.

In any event, the desired degrees of certainty and finality may be obtained by both parties to land claims agreements through a formula whereby the agreement exhaustively sets forth the rights of both parties and the ways in which their respective ownership and powers will be exercised within a region. The government will quite reasonably expect the aboriginal party to an agreement to honour the terms of that agreement. So, too, will the government be expected to live up to its recognition of the rights set forth under the settlement formula.

2.4.2 An alternative to Extinguishment

The fundamental problem, from a legal perspective, is to provide an alternative model or framework whereby a land claims agreement will provide the government with its desired degree of certainty (particularly with respect to permitting future development in traditional territories) while not extinguishing aboriginal title.

The alternative model being proposed takes into account the following prevailing positions or factors:

(a) Despite the fundamental difference in perceptions and positions concerning aboriginal title, both the government and the Inuit of northern Québec wish to enter into just and equitable land claims agreements. Through such treaties, mutually acceptable arrangements may be made for sharing of jurisdiction, lands and resources on the traditional lands of aboriginal peoples.

(b) While the precise nature of aboriginal title in and to traditional lands may possibly not be agreed upon, the government and the Québec Inuit are in favour of entering into land claims agreements in order to establish greater certainty concerning the exercise of their respective rights. Both parties are also in favour of allowing development within traditional territories to proceed in accordance with mutually acceptable rules.

Based on the above, an alternative model or framework for land claims agreements would include the following elements:

i) <u>Existence of aboriginal title and rights would continue, subject to an agreement based on sharing</u>

If aboriginal peoples intend to retain their aboriginal title and rights over a specified geographical area, and yet at the same time agree that the government will be able to engage in or permit development in a way that interferes with aboriginal rights in such area, then the only possible conclusion is that aboriginal peoples are willing to agree to limit the exercise of certain aboriginal rights over that area, according to the terms and conditions of an appropriate agreement. In other words, First Nations will allow some curtailment of the <u>exercise</u> of their rights so that government <u>or third</u> parties may exercise other rights as specified in a land claims agreement.

In effect, in order to provide the government with its desired degree of certainty, aboriginal peoples will be prevented by the agreement from exercising some of their rights in such a way as to impede a development in question. For example, a land claims agreement would likely provide certain rules or procedures, based on which proposed developments could proceed. If such rules were respected, aboriginal peoples could not then turn around and oppose the development, by asserting their aboriginal rights in a manner inconsistent with the terms of the land claims agreement. A similar situation exists for any land-owner under Canadian law. An owner may, by agreement, grant a right-of-way to someone over his or her land, but could not then oppose the exercise of such right simply by asserting his or her ownership.

ii) Exercise of aboriginal title and rights would be limited, in the manner and for a term specified in a land claims agreement, for the life of the agreement

As already indicated, aboriginal title and rights would continue to exist but their exercise would in some ways be limited, as provided in the land claims agreement. Such limitation is compatible with the principle of sharing and would only continue for the duration of the agreement.

To date, land claims agreements have been entered into with no limited term for their duration. It may be worth examining the possibility of such agreements having a specified, finite term for their duration, such as fifty or ninety-nine years, for example. This would have the further attraction of allowing agreements, in whole or in part, to be renegotiated in order to reflect changing circumstances in the future.

It is interesting to note that the Canada-Nova Scotia offshore agreement, signed recently, allows either party to terminate the agreement any time after March 1, 2024 upon three years notice (section 23). The agreement also provides for the objectives to be reviewed every 5 years or at any other

time upon the request of either party (section 2). It also provides for a review of the revenue-sharing provisions at 5-year intervals (section 15(1)). Finally, there is also included a most favoured province clause (section 25) to allow further up-dating of the agreement.

iii) <u>The agreement would provide for a mutually acceptable arrangement for the exercise of jurisdiction and rights, but would not likely recognize that such jurisdiction and rights were "granted" by either party</u>

Since the respective positions of governments and aboriginal peoples in respect to aboriginal title may presently be irreconcilable, an arrangement for the exercise of certain rights and powers may be all that is currently feasible. Again, precedent for such an approach can be found in the Canada-Nova Scotia offshore agreement. If aboriginal peoples and governments were to agree to a provision in a land claims agreement similar to that found in the Nova Scotia offshore agreement, such a provision might read along the following lines:

"The government of Canada, the government of (province) and (the native nation) have reached agreement upon the following matters relating to lands, resources, and jurisdiction. Such agreements shall be implemented through legislation which the parties shall introduce to Parliament, the Legislature of (the province) and (the native nation) respectively. This political settlement of the issues between the parties has been reached without prejudice to and notwithstanding their respective legal positions. It is the intention of the parties that the terms of this settlement shall survive any decision of a court with respect to ownership and jurisdiction in the geographic area identified in (annexed schedule) of this agreement."

As evident from the above clause, neither the precise nature of the governments' interests nor aboriginal title would be specifically recognized in the land claims agreement.

In the recent Supreme Court of Canada decision regarding the Musqueam band, it was recognized by the Court that there are no legal terms under conventional Canadian law which precisely describe the nature of aboriginal title. If such is the case, it lends further justification for First Nations to retain their own perceptions of the nature of their title to traditional lands. Moreover, if the Canadian Charter of Rights and Freedoms can provide that Charter rights shall be interpreted "in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians" (section 27), then other fundamental rights, such as constitutionally recognized aboriginal rights, should also be interpreted in a manner and spirit consistent with the cultural heritage of First Nations.

iv) <u>In the event of certain specified fundamental breaches by government, aboriginal peoples would be able to assert their aboriginal title in a court of law and not be subject to any limitation related to the land claims agreement.</u>

Should government fail to respect the terms of a land claims agreement, it would be unfair to expect aboriginal peoples to continue to agree to limit the exercise of their aboriginal rights under such agreement. In other words, governments should not be able to rely upon the terms of a land claims agreement, in order to limit the full exercise of aboriginal title, if these same governments have committed a fundamental breach of the agreement.

In order to give effect to this principle, the agreement would have to specify which fundamental breaches would give rise to the full assertion or exercise of aboriginal title. However, it should be noted that this concept is quite difficult to implement in the multi-faceted context of a land claims agreement. Therefore, it requires further study and analysis before it can readily be made workable. Our proposal in this regard is developed further in section 3.3 of Part II of this text.

In summary, our proposal for an alternative to extinguishment contains the following elements:

i) existence of aboriginal title and rights would continue, subject to an agreement based on sharing;

ii) exercise of aboriginal title and rights would be limited, in the manner specified in a land claims agreement, for the life of the agreement;

iii) the agreement would provide for a mutually acceptable arrangement for the exercise of jurisdiction and rights, but would not likely recognize that such jurisdiction and rights were "granted" by either party;

iv) in the event of certain specified fundamental breaches by government, aboriginal peoples would be able to assert their aboriginal title in a court of law and not be subject to any limitation related to the land claims agreement;

2.5 Surrender of Aboriginal Title for Essential Services

It is unthinkable that any group of Canadians should have to buy into the public services which citizens expect - e.g.,schooling for their children in their own language, community services, etc. In fact, it becomes all the more scandalous when the price that is paid constitutes of a people's ancestral lands. Yet that is how officials have often seen claims settlement. What a claims settlement should do, rather, is ensure that mechanism are put in place to allow aboriginal people to manage and decide on those public services in their region to the greatest possible extent. But public tax revenue should underwrite the costs associated as in all other communities.

As we will see further, this perception which confuses public services to aboriginal people and compensation for native claims settlements undermines the implementation of the settlements.

2.6 Land Claims and Self-Government

We see self-government as a main goal of claims settlements. We discuss this throughout our brief, but one subject is important here: the application of aboriginal authority to territory.

We are pleased by the newly released report of Ontario's Royal Commission on the Northern Environment. Following in the footsteps of Judge Patrick Hartt, commissioner Falhgren has recommended that the province turn over lands to native people, not only as some few concessions, but to provide a real basis for the future economic vitality and support of aboriginal homelands. The philosophy contained in Chapter 10 of that report should be read; the recommendations for native land needs in recommendation 4.4 might usefully be framed on the wall of the Task Force, in part ... in identifying and recommending Crown land for grant to northern Indian communities, (the responsible authorities) consider:

- the adequacy of existing reserves for community needs;
- current and future populations;
- present and future community requirements for food gathering, housing, community facilities, water supply, energy, fuel, building materials, transportation and communications;
- existing surface and subsurface rights;
- the needs of existing, contemplated or likely local businesses or economic development projects;
- the views of the Indian community affected;
- the need for buffer zones to shelter the community from adjacent resource development impacts.

In the north, typically, non-aboriginal communities consist of resource boomtowns or transient installations (weather stations or exploration camps or hydro control stations). Whites living in aboriginal communities are either working with or for the aboriginal people, or have been accepted by them. This influx of southerners and possibly the creation of new communities

makes it the more important to ensure the right of aboriginal people to govern themselves in their ancient homelands.

The real problem is one of land and resource use. Settlement and industrial use of land and resources threatens traditional environmental balances and may eliminate living species or their habitat, cutting into the aboriginal harvesting economy. Just as farmland was lost for many years to industry and settlement, until provincial governments as in British Columbia began to control this, so wilderness has been considered a more primitive value than other forms of development and one too little defended. The development of claims settlements has, often for the first time, retrieved the north from the proper conception of the Arctic as a waste land. It has provided governments with a window, through studies and surveys and new management regimes, on northern resources and resource use. Claims settlements, far from limiting man's use of Canada's territory have in fact, allowed him to understand, then protect and benefically develop territory in comprehensive and balanced ways. The native "bush", a sort of empty land in the minds of whites who have done little to save it from plundering and degradation, has become a vital place with measurble economic potential. Makivik has been in the forefront of this development through its Research Department and we have opened up whole new horizons in Canada in renewable resource use and management. We think it would be useful for the Task Force to visit with our Research staff and projects in the north to gain an understanding of this profound contribution to Québec and to Canada.

Through claims, in short, Canada and Québec have for the first time understood and begun to develop the true potential of the north, rather than to squander it. They have begun to balance single, industry developments with the mutiple uses of the original population, Inuit and Indian and Metis. By providing compensation funds and jurisdiction through claims settlements, what is more, they are turning over to the true developers, the native people, the ability to supply the "value added" and new marekting of old staples needed to renew the north economically. The shattering of the old northern economy by the concentrating of native people in villages or on reserves, and the disorientation and poverty

frequently resulting, has wasted many generations and lives. Now a new era is opening through claims.

For that reason we take great exception to the MacDonald Royal Commission's opposition to claims processes as vehicles for political development (Commission Report (English), Volume 3, Chapter 24, page 351). Indeed that whole chapter - on the north - is very uneven and inadequate, but in the main we will leave comment to groups in the northern territories. On claims, however, the Report's application is wider than the territories. By insisting that political development can only occur through white-designed and dominated political institutions, the Report would perpetuate the minority status of the peoples of northern homelands and homogenize these into an assimilated Canada. That critique of the MacDonald Report as centralist will no doubt swell to a chorus as readers across Canada actually wade through its vast bulk. It is not helpful in our case, and in the chapter following, on aboriginal self-government, again shows its inability to comprehend, let alone recommend for, aboriginal Canada. The incapacity of best minds in white Canada to come to terms with northern and native issues in this Report is perhaps the best reason for employing claims forums - to make sure that somebody knows what is going on, and to involve native people as the real experts.

The aboriginal associations representing aboriginal peoples through claims processes are the genuine spokesmen of those peoples. They bring together the people through leadership structures of their own choosing with the advisory and technical resources required to make informed decisions and recommendations in the context of a modern industrial society. No fair-minded person acquainted with the northern 75% of Canada would suggest that any provincial legislature or party speaks for native people. We wish it might be so, but it is not. Therefore, again we find the claims process involving Canada's northern peoples.

What must result from claims processes for the good of provinces and of Canada as a whole is a zoning of the physical enviroment protective of renewable resource economics and ensuring their future through balanced assessment processes for other uses, and a patchwork of native self-governments which bring northern Canada under the

effective and active sovereignty of Canadians and Canadian native political institutions.

It is thus our conclusion that self-government be the final and main objective of land claims settlements.

II. PROBLEMS PERTAINING TO SETTLED CLAIMS

1. Ratification

The ratification process in native land claims settlements pursues two main objectives: first, to create a binding obligation and, second, to ensure that the settlement is in accordance with the will of the aboriginal people. This precaution is justified on mainly two accounts: native claim settlements are of the importance of a profound socio-political change which warrants an approval by, say, "referendum"; and, in the important delays of negotiations, circumstances may change to the point of commanding confirmation of approval by the population.

The first objective really constitutes a procedural matter: each party must be sure that its interlocutor has negociating and binding authority. This requirement is easily satisfied through the development of strict internal rules within the organization of each party.

The second objective calls for a procedure of approval among the aboriginal people after the terms of the agreement have been defined. Considering the extraordinary importance of the settlements for the native group, and considering the impact on the rights and life of each individual, a phenomenon which is particularly real for Inuit considering their relatively small number, the settlement should always be approved by popular vote. To further ensure the legality of this approval, the vote should be by secret ballot and the necessary majority should be determined by the aboriginal group.

Our proposal is that each settlement be submitted for approval by the native population, according to the procedure as decided in each group provided that it is in conformity with the principles of a democratic society.

2. Definition of the obligations

As an example, it was brought up by the James Bay and Northern Québec Agreement Implementation Review,(2) and still remains, that the provisions of the J.B.N.Q.A. have suffered from a very narrow interpretation by the governments of their obligations. For unsettled claims, this suggests that the provisions of land claims agreements should be extremely clear and detailed so not to leave their implementation to the hazards of the governments' discretion. As to settled claims, it calls for a clarification of the governments commitments, to fill the important lacks observed in the J.B.N.Q.A. Implementation Review:

Many important provisions of the Agreement are not specific enough to commit Canada to specific levels of service or funding, or to commit the government to achieve goals by a defined date. Some of these provisions indicate that services and funding should be in line with those available to other Canadians, Inuit or Indians and that obligations should be achieved within the limits of funding authority approved by Parliament. These provisions are often difficult to interpret in terms of the monetary expenditure and/or the quality and quantity of services and/or capital goods required to fulfill them.(3)

Our recommendation in this regard is to set strict efficiency criteria, which have the necessary precision to remedy the actual uncertainty of implementation but are flexible enough to suit the evolution of Inuit needs. Needless to say, the determination of these criteria would necessarily be reached by consultation between all parties. Concretely, this clarification of the governments' obligations could be elaborated through:

1) strict criteria of services, evaluated against national average of the standard of living but adapted to the harshness of the territory, the climate and socio-economic conditions;

(2) Dept. of Indian and Northern Affairs, February 1982.
(3) P. 10

2) fixed percentages of the national budget reserved for the implementation of the J.B.N.Q.A.;

3) provision for an emergency fund in case of disasters such as the drowning of the caribous.

We shall examine this issue further as a particular problem in the implementation of agreements.

3. Implementation

3.1 Implementation Process

Problems of implementation of agreements are very much linked to the issue of the whole enforceability of agreements which we will study separately. At this point, we shall examine mainly lacks and necessary reforms in implementation mechanisms.

The expression which states that delay may amount to denial is very appropriate in this context: the slowness in the implementation of the J.B.N.Q.A. has so far denied to many Inuit the benefits they were entitled according to the agreement. For example, the Kativik School Board curriculum development centre was never established for lack of financial support (section 17.0.63 J.B.N.Q.A.) and priority of contracts and of employment has neven been enforced (section 29.0.31 J.B.N.Q.A.)

The Inuit of northern Québec have experienced serious problems with the implementation by Canada of its obligations under the James Bay and Northern Québec Agreement (J.B.N.Q.A.). These problems may be attributed to: i) an unclear definition of the government's responsibilities; ii) lack of authority of implementation institutions, iii) confusion of implementation issues and institutions with the rest of the administration - so that issues never receive proper attention; iv) structures that have no clear terms of reference; v) a lack of coordination between the various departments concerned with the fulfillment of the government's obligations, vi) a lack of funding and delegation of powers to Inuit entities implementing the agreement, and vii) a bureaucracy too heavy for Inuit needs.

i) Definition of the government's responsibilities and division of government powers.

For Inuit of northern Québec, conflicting interpretations of the governments' responsibilities is a particularly accute problem as Québec and Ottawa fight to avoid duties. So far, each government has made the fulfillment of its obligations

contingent upon the other's, hindering implementation, and has applied such a narrow interpretation of its commitments to completely avoid honouring them.

Each government's responsibilities must be clearly identified in the agreement and if not, in a subsequent agreement which would specify the responsibilities of each level of government in the implementation of the main agreement.

In the particular case of the James Bay and Northern Québec Agreement we suggest that a meeting of all parties could clarify the implementation responsibilities of each government. The understanding reached at this meeting could simply be consigned in a memorandum of agreement which would then govern implementation of the J.B.N.Q.A. So far, the tripartite committee set up for this purpose, was never recognized by the governments.

ii) Authority of implementation institutions

For the moment, implementation institutions have no power and no access to "power": the Québec Claims Implementation Secretariat in DIAND lacks the authority to act on any request from the Inuit and is thus incapable of playing any significant role in the implementation of the J.B.N.Q.A. Yet, the Secretariat is considered to be the body in charge of the fulfillment of the government's obligations and, consequently, no other government institution sees to it.

Our proposal is that the Secretariat be restructured and its powers redefined in order to give it power to act at least on certain issues, and to structurally ensure its links with the political level, as follows:

- the Secretariat should have general decisional power on matters in strict implementation of the provisions of the J.B.N.Q.A.;

- for all other matters requiring political action, the Secretariat should have ready access to the Minister's office and,

- structurally, the Secretariat should directly depend upon the Minister's office;

- the Secretariat should have power to act upon government's obligations which depend upon other departments as well as those depending upon DIAND.

Finally, the federal government, under its constitutional responsibility towards native peoples, should pressure the provinces into complying with the settlements, for example, through financial incentives and political talks.

iii) Distinct implementation structures

Implementation of the J.B.N.Q.A. has been neglected through confusion of J.B.N.Q.A. programmes with all other existing programs: so far the federal government has always tried to fit its obligations under the J.B.N.Q.A. into regular native programmes, thus escaping full implementation of the Agreement.

This practice really flows from a poor conception of the nature of the government's commitments under the J.B.N.Q.A.or any land claims settlement: instead of recognizing them as in strict compensation for the immense resources and areas of land surrendered by Inuit, and as additional to any services owed to Inuit as Canadian citizens, these commitments are administered as ordinary services, if not favours. It is too easily forgotten that Inuit have fulfilled their obligations under the Agreement long ago.

To correct this problem and to ensure proper implementation of the Agreement we recommend that the terms of reference of the Québec Claims Implementation Secretariat grant powers and functions distinct from any other structure in the government. More specifically:

- powers and functions of the Secretariat should be clearly spelled out as to the exact powers to act, their scope, the powers on implementation of the agreement by other departments and the specific objectives;

- powers and functions of the Secretariat must be exclusive and

- structurally, coordination or actual implementation of the Agreement should be exclusively vested in the Secretariat.

iv) Clear terms of reference

As mentioned above, so far, the Québec Claims Implementation Secretariat has never received a clear definition of its functions and the Inuit and the government are still discussing its role. Without any direction on their terms of reference, officials of the Secretariat are inhibited from taking any action and the uncertainty precludes any progress.

We expect a restructuring of the Secretariat in the near future and we hope that it will contain a strict and clear definition of its powers and functions in accordance with the criteria set above. Moreover, we believe that this definition should be achieved by taking into account the Inuit needs and expectations.

v) Coordination between the concerned departments

For the past ten years it has seemed that the fulfillment of the government's obligations under the J.B.N.Q.A. was the responsibility of DIAND, except when DIAND was pressed for implementation and offered the excuse that it was the responsibility of another department.

In a recent meeting between officials of DIAND and representatives of the Makivik Corporation, the parties agreed that there was a lack of information among the various departments on the obligations of the federal government under the J.B.N.Q.A.

This situation hinders the implementation of the J.B.N.Q.A.: whatever efforts the Québec Claims Implementation Secretariat deploys to implement the Agreement, they will not be effective until the departments in charge of these services and programmes understand the full extent of their obligations. To correct this problem, we propose that systematic information be carried out and responsible officers be appointed in all departments of the federal government concerning its commitments under the Agreement.

vi) Adequate funds and powers of institutions for Inuit

Through the J.B.N.Q.A., several institutions have been created to deliver some services and participate in the management of the territory.

These institutions are particularly important as they are both vital to Inuit self-government and essential to the efficient administration of the territory and communities.

Yet, these institutions have never received sufficient and consistent funding to carry out their operations. Furthermore, their powers are too weak and poorly defined. It would be useful to re-examine this issue with the federal government and establish a clear pattern at funding to Inuit institutions in amounts which would reflect recognition of their role in the implementation of the Agreement, and a real delegation of powers.

vii) A bureaucracy too heavy for Inuit needs

In drafting the J.B.N.Q.A., the parties have set up for its implementation some ethnic and some non-ethnic entities which all oversee a very small section of the agreement and all provide for Inuit participation.

Inuit participation, and eventually, self-government, is central to our aspirations and it is not our purpose to criticize this measure. On the contrary. Rather, the problem is the reproduction in the North of the southern type of bureaucracy: it is too heavy for such a small population which is inevitably exhausted by endless meetings of endless committees.

Future settlements should provide for a more centralized bureaucracy through multidisciplinary committees and grouped interests and fields of action.

To sum up, the future implementation of the J.B.N.Q.A. as an example to land claims settlements calls for an additional, perhaps informal agreement, whereby all parties would clearly define their responsibilities, set up effective structures of implementation and provide for the participation of Inuit institutions in this process.

3.2 Attitudes

As the implementation of the J.B.N.Q.A. or any land claims settlement for that matter, is very much a question of policy, the attitudes of the government and its officials are determinant of the fulfillment of their obligations. In our brief to the James Bay and Northern Québec Implementation Review we had put to light the main negative attitudes which mar the imple-

mentation of the Agreement:

"a) a prevailing distrust of Inuit intentions on any given point;

b) residual negative feeling on the part of some government functionaries stemming from the negotiation process leading to the signing of the Agreement;

c) the attitude that when the Agreement is silent on even the most minor points, it was meant to be limitative of the aboriginal peoples' rights and that, in any event, the Crees and Inuit received too much;

d) the attidude that where obligations cannot be met within framework of existing programs, no new programs will be created and funded."(4)

We would now add:

e) the conception that Inuit have been tremendously and even unduly enriched by the settlements and,

d) the attitude that settlement terminates any need for action in favour of natives.

3.3 Enforceability

In studying alternatives to extinguishment we have already mentioned enforceability as the two issues are inevitably linked: an agreement which forever extinguishes the rights of one party is as hard to enforce for this party as it is easy to elude for the other. Enforcement of land claims agreements is where their unfairness is most obvious. The first requirement for the enforceability of land claims settlements is the development of alternatives to extinguishment, which we have dealt with previously. There remains to be discussed the mechanisms of enforceability of land claims settlements, in other words, remedies for the non-fulfillment by the parties of their obligations.

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(4) Makivik Corporation Brief to the James Bay and northern Québec Agreement Implementation Review.

The courts offer a general remedy to the non-fulfillment of the obligations under native claims settlements. However, it is well known that those proceedings are so lengthy and expensive that they do not truly constitute a remedy. This consideration and the experience of so many violations of federal commitments lead us to search for a more expedient procedure for the settlement of disputes relating to native agreements.

In this perspective, we propose the creation of an ad hoc arbitration tribunal, composed of three arbitrators, one named by the Inuit party, one by the Government party and the third named jointly by both parties. The arbitrators would be named at the arisal of each issue although their list of powers and scope of jurisdiction would be strictly defined beforehand. Perhaps not all disputes could be submitted to this procedure but most of them could be settled in this more expedient way.

The establishment of this arbitration tribunal could be made through the same instrument which we have proposed as a correction of actual implementation problems.

3.4 Evolutionary nature of the settlements

In the spirit of the J.B.N.Q.A., the Agreement was merely a first step towards self-government, better relations between the Inuit and the provincial and federal governments, and improvement of conditions of the Inuit. This applies to all native settlements. Thus, they must remain adaptable to Inuit aspirations and social development and be a dynamic mechanism rather than static documents. This nature of the J.B.N.Q.A. was asserted in the James Bay and Northern Québec Agreement Implementation Review:

> "The Agreement was designed to allow for the evolution of Inuit and Cree self-government and to allow for the adaptation of specific rights, benefits, and institutions to changing conditions and circumstances. The Agreement was not intended to be a fixed and static legal document but rather a flexible agreement which would allow problems to be worked out through ongoing interaction. The fact that many important aspects of the Agreement were left subject to ongoing negotiation complicated the implementation and interpretation of

the Agreement and contributed to some of the specific problems..."(5)

Consequently, we must consider the establishment of mechanisms whereby settlements may be revised and amended to suit a change in circumstances, Inuit political will and Inuit needs. To this end, we recommend the following mechanisms:

1) a bi-annual revision of certain provisions of the J.B.N.Q.A. to determine, by mutual consent, the amendments imposed by new circumstances or supplementary agreements;

2) an amending process of the legislation related to the J.B.N.Q.A., that ensures Inuit consent to any such amendments;

3) a tripartite committee (Canada-Québec-Inuit) to coordinate, examine and draw-up all budgets of programmes and entities created by the J.B.N.Q.A. If need be, the decisions of the committee could be submitted to the approval of the Treasury Board.

To conclude on the issue of implementation, we suggest that a supplementary agreement to the J.B.N.Q.A. be negotiated in order to correct the actual flaws, which we have identified above, create mechanisms of enforceability of the Agreement and reflect the evolution of the needs and the aspirations of the Inuit since 1975, according to the spirit of a dynamic mechanism as found in the J.B.N.Q.A.

4. Extinguishment of title

In the first part of this document we have examined the issue of extinguishment in future land claims agreements. For the Inuit of northern Québec, the issue of extinguishment as a result of past agreements or treaties is also crucial.

The government takes the position that aboriginal title has been extinguished as a result of treaties and such land claims agreements as the James Bay and Northern Québec Agreement. The questions that arise in

(5) p. 13.

these areas are, first of all, whether any extinguishment has occurred as a result of these agreements and, secondly, if extinguishment has occurred, then to what extent. For example, the James Bay and Northern Québec Agreement refers to aboriginal title being extinguished "in and to land". Therefore any aboriginal rights to the offshore, or to traditional language, culture and religion, or even to self-government, have not been extinguished as a result of these words. A third question to be asked is, if extinguishment of aboriginal title or rights has occurred, how could such title or rights be restored.

4.1 Extinguishment in past agreements

Section 2.1 of the J.B.N.Q.A. states that through the Agreement the native parties "cede, release, surrender and convey all their native claims, rights, titles and interests, whatever they may be, in and to land in the Territory and in Québec."

From every point of view this provision constitutes a cession of title: according to the law on aboriginal rights it expressly and validly transfers the right to the land and according to the law of nations it also expressly and validly bestows rights to the land upon the Crown. Consequently, Inuit ownership of these land was thereby extinguished.

This position has been contested on the grounds that aboriginal title is unextinguishable. Although this assertion may be founded it must be qualified according to the definition of aboriginal title. In fact, aboriginal title equates, in nature, if not in scope, to state sovereignty in that it entails decisional power of a people and a territory. If sovereignty may be surrendered, so can aboriginal title. However no surrender of decisional power has ever been agreed to by the Inuit, and we must now define the extent of the extinguishment of Inuit rights.

4.2 Extent of extinguishment

Section 2.1 of the J.B.N.Q.A. has clearly two consequences: the first, as we have just examined is extinguishment, but the second is to restrict extinguishment to the rights "in and to land". This leaves the other component of aboriginal title, i.e. decisional power over the people and the territory intact, and, hence, in force.

4.3 Restoration of extinguished title.

The restoration of extinguished aboriginal title is essential in the fulfillment of two main objectives of native settlements: uniformity across Canada, and enforceability of the agreements. In addition, it may be the framework of a revision of settled claims for an improvement of the aboriginal peoples' condition.

The Inuit feel it is imperative to ensure a uniform federal policy across Canada in respect to such a fundamental principle as the continued recognition of aboriginal rights. This uniformity is required by the nature of aboriginal title itself, i.e., a title which is inherent to the existence of a people and therefore bears too great importance to be negotiated according to mere economic circumstances. Because aboriginal title is inherent to "aboriginalness" all aboriginal people should see their title respected according to the same moral and legal considerations. Therefore, if rights have effectively been extinguished as a result of past agreements or treaties, it is essential to determine how they can be revived.

Further, as we have mentioned in our analysis of the extinguishment policy, restoration of title is essential to the enforceability of the agreements. Some courts have suggested that aboriginal rights, once surrendered or otherwise extinguished, disappear and are not capable of being transferred back to aboriginal peoples. We do not see the logic of such reasoning: the government is sovereign to restitute any lands transferred with due respect for the rights of third parties (including rights of provinces). The nature of aboriginal title allows us to make an analogy with the cession of territory between sovereign States: extinguishment of one State's sovereignty does not preclude the conclusion of an agreement for the retrocession of the territory, according to the will of the parties and with due respect for acquired rights of third parties. It would be advisable to amend existing settlements and related legislation so as to declare any past surrenders or extinguishments as having been invalid ab initio (i.e. as never having been valid from the beginning). This amendment could be consigned in a subsequent agreement between the Inuit and the governments concerned to remedy the lacks of the first agreement and set forth an evolutive structure that would satisfy both parties.

If a revival of aboriginal rights were agreed to, then additional amendments should also be considered so that the terms of existing treaties or agreements could

be made more consistent with the basic principles of native settlements proposed in the first part of this brief. In return, the Inuit of northern Québec would consider a further amendment to exonerate the federal government from any liability, based on aboriginal rights, for any actions taken by them during the period when such rights were presumed to have been extinguished. Still, restoration of title could provide the framework for a settlement more favourable to the Inuit of Northern Québec whereby their political and economic autonomy would be secured and their culture better protected.

In cases such as the James Bay and Northern Québec Agreement, the legal implications concerning the Agreement of restoring the aboriginal rights of third parties would also have to be carefully examined.

We are therefore concluding, on the basis of the need for uniformity in native settlements and enforceability of such settlements, that a new agreement be negotiated between the Inuit of northern Québec and the federal government, to restore all aboriginal rights to land. Only through a new agreement could Québec Inuit recover their economic base and benefit from the positive recent evolution in the settlement of native claims.

5. Individual rights

One of the great disappointments of the Inuit in the settlement of their land claims is the absence of any individual benefits and the disregard for individual rights. This expectation must be balanced against two considerations: the requirement for a compensation that ensures long-term economical benefits and the principle that the rights compensated for are collective rights. However, individual rights must not be excluded from the settlements. The individual rights and benefits to be guaranteed or created are mainly financial benefits, the protection of acquired rights to the land and individual participation in local management.

Financial benefits must be assessed on the basis, on the one hand, of the collective need for funds to allow economic development and, on the other hand,the individual need to concretely improve living conditions. So far, native settlements have fallen short of both objectives.

The protection of acquired rights may come into play as land is redistributed in the settlement and as hunting and fishing are regulated. This protection

implies two sets of measures: provisions in the land claims settlements which take into account the existing use of the territory and integrate it so not to deny individual rights and internal mechanisms for the settlement of disputes between an individual and the collectivity.

Individual participation in local management is already ensured at a certain degree, through the establishment of Inuit management institutions. Yet, greater attention should be paid to this right as a vector for Inuit self-government and for the expression of Inuit political will.

6. Social Impact of Claims Settlement

To leap into the middle of our subject, the most beneficial social impact of claims settlement in northern Québec has been the gaining of power by Inuit in their communities and region, and the establishment of their voice at national and Québec level. This has bred self-confidence which has shown itself in business enterprises, in social improvements, in relations with whites, in greater participation in Canadian relations with whites, in greater participation in Canadian and local affairs, and in enhanced self-image. It would be hard to imagine the change in a community like, say, Kuujjuaq had one not had recent comparative experience. Where Inuit were once marginalized and even mistreated by the white minority, all that has changed and whites are a comfortable minority in a community clearly and firmly run by Inuit.

But there have been problems too. Greatest of these has been the division introduced into Inuit life, among Inuit people. Some of this relates to the terms of the settlement and suspicion of those who made it, due in part to lack of information during negotiations. Many Inuit feared that their land was "for sale". This is not merely a problem among uneducated Inuit in northern Canada, but also among the most educated of them. The historial attachment of northern people to the land makes any transaction apparently a sacrilege. In northern Québec it caused deep division and aggravated traditional ones.

As Judge Berger has pointed out in his Alaska Native Review Commission report, Village Journey, other divisions may be caused through implementation of settlements. The unfamiliar nature and imperatives of native development corporations cause misunderstanding in communities, as well as jealousies between those who work and earn in a southern business life mode and

those who remain in the largely non-monetary traditional economy. We do not agree with Judge Berger that the answer is to dismiss the corporations. It must be underlined that corporations in Alaska have exclusively economical objectives, whilst Makivik sees to the general promotion of the Inuit interests. Further, we believe that corporations, and the trained sophisticated personnel they develop, have a vital role to play in the future of native homelands. We do agree with him, however, that particular emphasis must be placed on the development of native governments. In Québec we have tried to use our corporation, Makivik, as the cutting edge of Inuit aspirations. In lieu of adequate budgets to local and regional governments, the Makivik corporation has played a vital role in fighting for the very self-governing interests which those governments have. In Québec, we hope, the corporation has served in support of community interests more obviously than may have been the case in some instances cited by Judge Berger in Alaska.

The question of the impact of development and development corporation is complex. Claims settlements usually occur because development is taking place and the local people are fighting for breathing space. In short, development is a fact. Claims institutions like the corporations may have to fight fire with fire, and adopt many of the very methods of the outside intruders in order to defend the traditional society as whole. We do not regard this as bad, but rather as change which is in itself neutral. How we as Inuit handle those changes, how we make the best use of them to ensure our children a relevant future in a very big world, will of course depend in part on how wisely we and governments structure our responses to development. We think the Task Force must pay particular attention to that very question: how are institutions under claims settlements to be structured to best serve the immediate and long-term interests of aboriginal homelands?

The Berger report unfortunately offers no solutions. Its answer is to withdraw and isolate oneself from change. That is neither realistic nor possible. Makivik itself is searching constantly for answers and we have tried various techniques but we cannot pretend to have solved the problem. Is it possible for any population to experience sudden and rapid change without serious dislocation? Probably not. But by that standard the experience of every claims settlement will be bad. But measured against what might happen without strong Inuit institutions - whether in Alaska or northern Québec or Greenland - the

altenatives are almost certainly much worse. We have seen what has happened with the DEW-Line where Inuit were unprepared and remained marginalized through white influxes and development unconnected with local values. Communities, families and individuals were destroyed, and humiliated. The ill effects remain in some of those places today, and the lives affected will never recover. The corporate and other institutions created under claims settlements provide the aboriginal people with tools to work and weapons to fight for their own interests.

Visitors to Nuuk, Greenland, today cite social problems there and blame development, or blame Inuit. Yet Copenhagen at the turn of the century was a terrible place for most people, i.e., the working classes, a monument to the evils of the industrial revolution. No violence or abuse was unknown. Schnapps was everywhere. Yet in a couple of generations that city became the most livable, humane, safe and genrally cultivated and welcoming of European cities. We believe in mankind, and in the ability of mankind to improve his world.

The balancing of tradition and change in homelands centred on traditional economies of land and sea is difficult. No doubt the Task Force is studying such efforts as NANA Corporation's Spirit Program from Kotzebue, and the successes of the North Slope Borough. Adult education techniques whether like the Danish folk high schools or through new broadcast media should be examined. Certainly the area of social impacts has been one where experience has shown that the early settlements like James Bay have been sadly deficient.

We reject the approach taken in the federal government's most flossy and expensive study ever, the Beaufort Environmental Assessment Review Panel Report. In a chapter entitled "The Human Environment", the panel releases an altogether shocking jumble of condescension, evasion, irresponsibility and busy-body intrusiveness. As with the MacDonald Commission report, however, this very unsatisfactory outcome itself proves the need for that which it despises: a comprehensive and sensitive social administration related to communities and individuals in the development era.

We think that social impacts are best handled through the political institutions which parallel claims implementation bodies. Local and regional

governments should be made stronger and more effective by taking on this role which is, after all, the sort of thing for which they were originally designed. This would require additional funding, some sort of catch-up temporary assistance. If the people are themselves focused on their own problems through these institutions, they will have taken a large first step towards solving them through community pride and common effort. This may be especially important among Inuit for whom social problems were a family matter and not one in which the community was expected to intervene. Nowadays social and community effort is needed, the more so as some problems threaten the entire community - the old test of when to trigger social action.

Again, a few conclusions may be drawn from experience:

- self-government may ensure a better harmony in the implementation of native settlements in native society;

- the integration of development in Inuit society must be done, and must be done gradually; and,

- the pace and type of development must be connected to Inuit values.

III. LAND CLAIMS SETTLEMENT AND THE CONSTITUTIONAL PROCESS

Canada's constitution has already been amended twice to deal, explicitly, with claims settlements. This attests as clearly an anything can to the fact that even in a country so constitutionally cautious as Canada, claims settlements are already preceived as constitutional processes. They are the aboriginal form of nation-building.

As Njal says in the greatest of the Icelandic sagas, "With laws shall this land be built". Like today's Inuit, he said those words in a rapidly changing and developing society. The claims process offers the most effective, and the only comprehensive approach to nation-building over that vast 75% of Canada where conventional political processes have failed to reach and where official institutions have been almost totally neglected by the white urban majority in the south. The pleasant side of that neglect is that rather than colonize northern peoples, the south has left things till now when an indigenous politicization process through claims has become possible. This is the best possible outcome. It is

also unique in the circumpolar world. Claims processes may have begun in Alaska, but Canada has made them her own. Here they have been elaborated, by native people and usually with governments kicking and screaming in resistance, but at last through the Task Force government has recognized the real scope and opportunity.

First of all, by recognizing claims settlements as fundamental constitutional processes brought to fulfillment, Canada's constitution wisely places them prior to national laws based on the cultural convention of Canada English - and French-speaking majorities. They are where the aboriginal people speak in the Constitution. They are where our voices are heard and our ways of life made clear as the basis for future growth. They are the charter of our participation in Canadian society and the Canadian state. They are political documents and they are also social contracts.

These documents of our aboriginal homelands are not threatening to Canada or Canadians. They are not means by which we are taking back assets and wealth and benefits, taking them away from other Canadians. Rather they are agreements on how we plan to manage and share this country together. White people have offered us that opportunity, but today we offer it to them. We do not wish to overturn your institution, dispute your laws. We only wish to share. We will manage large parts of this country, for ourselves but also for you.

Claims processes are separate from the national constitutional review going on now, but their destination is the constitutional entrenchment of the right to self-government. The nature itself of the right to self-government commands its constitutional protection as essential to the survival of aboriginal peoples. Ultimately, self-government will give back to aboriginal peoples the authority to protect their cultural identity through such matters, for example, as language, family law, archeology, collectively held property or local justice. We therefore maintain that the constitution should be amended to include a right to self-government, a process for working out its institutions, as submitted by the Inuit Committee on National Issues.

Two main objectives must be pursued in this process: first, the federal government must continue to play a leadership role in the constitutional process to overcome the objections of the provinces; second, uniformity of constitutional rights among Natives across Canada must be ensured.

IV. CONCLUSIONS

The native Canadian north, whether at latitude 50 or 75 degrees, is unfinished business for Canada. Governments expropriated an ancient economy and now must provide for the future of the people dependent on it. Settlers and their institutions displaced and refused to acknowledge political structures which enabled the first inhabitants to organize their territory and regulate their lives. Now the white governments have stepped back and allowed this native and northern world to fall into disrepair and in some places, chaos, while not allowing the first peoples to reassert control. Claims processes provide the means to correct these successive actions and inaction.

By means of claims processes, the map of Canada may be changed. Large empty blanks may be filled out with self-governing aboriginal homelands working within the structures and boundaries of Canadian federalism. Canadian vigilance and attention may be established again across huge areas, and an effective form of management of national sovereignty implemented by native people working together with the governments of all Canadians.