



# **IMPACT BENEFIT AGREEMENTS**

Neida Gonzalez  
February 27, 2014

# Impact Benefit Agreements (IBAs)

- What are IBAs?
- What do they do?
- How are they addressed in modern treaties?
- Why are they important?
- Issues and Opportunities

# What are IBAs?

- IBAs are contracts
- They are either:
  - Negotiated privately between Aboriginal organizations and companies
- OR
- Negotiated, as required by modern treaty agreements, between Aboriginal organizations and governments

# What are IBAs for?

- IBAs are intended to provide
  - 1) benefits to Aboriginal communities from resource development, or other activities, in their territories, and
  - 2) ensure that any potential detrimental impacts are addressed.

# What can IBAs address?

- Aboriginal participation in project management
- Education and training
- Preferential hiring
- Labour practices including health and safety
- Access to Constructed Facilities
- Community Infrastructure Needs
- Business Opportunities
- Housing, accommodation and recreation.
- Protection of Culture and Heritage
- Language of workplace
- Environmental concerns
- Disruption to Wildlife and Compensation for loss of Wildlife
- Protection of archaeological sites and specimens
- Performance Bonds
- Enforceability
- Dispute Resolution



# Modern Treaty Agreements – Triggers for IBAs

- Most Modern Treaty Agreements transfer lands to Aboriginal organizations.
- Two examples:
  - In the Gwich'in Settlement Area in the Northwest Territories the Gwich'in Tribal Council holds subsurface and surface rights to approximately 11% (6,158 km squared) and surface rights to another approximately 28% (16,264 km squared).
  - In the Nunavut Settlement Area, 19% of lands are held by Inuit (356,000 km squared). 2% of those are subsurface lands by NITI, and surface lands are held by the three Regional Inuit Associations, Kivalliq, Kitikmeot and Qikiqtani Inuit Associations.

# Requirements for BIAs

- Modern Treaty Agreements often have a requirement that proponents come to an agreement on access to aboriginal lands
- NWT Examples:
  - *Gwich'in Final Agreement*  
Section 20.4.6 (a) - right of access to Gwich'in lands to explore, develop or produce minerals **with the agreement of the Gwich'in Tribal Council**
  - *Inuvialuit Final Agreement*  
Section 10 **requires “Participation Agreements”** with developers who require access to, or across, Inuvialuit Lands.

# *Nunavut Land Claims Agreement –*

## Article 26

- Section 26.2.1 states that “no Major Development Project may commence until an IIBA is finalized in accordance with this Article”.
- Article 26 requires that Project Proponent and the relevant Inuit organization negotiate an IIBA prior to the commencement of the project to address potential detrimental impacts and benefits for Inuit on a Nunavut wide, regional and local basis.



# Resource Development IBAs

## IBAs Research Network:

[http://www.impactandbenefit.com/IBA\\_Database\\_List](http://www.impactandbenefit.com/IBA_Database_List)

### Modern Treaty

### IBA

Tlicho Final Agreement,  
2003

Snap Lake Project: Tlicho First Nations and De Beers  
Canada, 2006

Nunavut Land Claims  
Agreement, 1993

Meadowbank Mine: Kivalliq Inuit Association and Agnico-  
Eagle Mines Ltd.

Nunavut Land Claims  
Agreement, 1993

The Mary River Project: Qikiqtani Inuit Association and  
Baffinland Iron Mines Corporation

### The Mary River IIBA online at:

[http://www.qia.ca/apps/UPLOADS/fck/file/QIA%20-%20Baffinland%20-%20IIBA%20-%20Sept%206,%202013%20\(signed%20and%20sealed%5D%20%20with%20Article\\_\\_\\_\\_.pdf](http://www.qia.ca/apps/UPLOADS/fck/file/QIA%20-%20Baffinland%20-%20IIBA%20-%20Sept%206,%202013%20(signed%20and%20sealed%5D%20%20with%20Article____.pdf)

# Issues with Resource Development IBAs

- Getting the Results: Implementation and enforceability
  - Anticipating the need for amendments in the IBA
  - Effective dispute resolution mechanisms
- Filling gaps for government programs
  - Danger that IBAs are more than just complimentary to government programs and are used to fill program gaps
  - Example, the Mary River project, the Qikiqtani Inuit Association struck community committees to assess impacts of the mine development in part as community members did not have access to intervener funds through the environmental review process to fully participate

# IBAs with Government of Canada

- Many Modern Treaty Agreements require IBAs with Government for the establishment of parks, protected or conservation areas
- For example, Sections 8.4.4 and 9.4.1 of the *Nunavut Land Claims Agreement* requires IBAs prior to the establishment of a Park or Conservation Area
- There is also a requirement to conclude IIBAs within 5 years for existing parks and conservation areas

# Examples of IBAs in Nunavut with Government

- National Parks
  - Auyuittuq, Quttinirpaaq and Sirmilik IIBA
  - Ukkusiksalik National Park (Wager Bay) IIBA

## Other IBAs

- National Wildlife Areas and Migratory Bird Sanctuaries IIBA
- Territorial Parks IIBA

# Opportunities through IBAs

- National Wildlife Areas and Migratory Bird Sanctuaries IIBA, 2008
  - 5 NWAs and 11 Migratory Bird Sanctuaries
  - \$8.3 million over 7 years for tourism, Inuit education and employment assistance programs, community infrastructure, area co-management committees and other benefits
  - 11 Inuit Communities to receive benefits



# Arviat Community Eco-Tourism Initiative

- community of approximately 2,850 people
- IIBA contributions for Eco-Tourism Project are \$240,000 a year for five years
- Goal is to *develop an internationally competitive and unique wildlife viewing and Inuit cultural experience*
- Some results already seen, see online at [http://www.nunatsiaqonline.ca/stories/article/65674offering\\_an\\_authentic\\_inuit\\_experience/](http://www.nunatsiaqonline.ca/stories/article/65674offering_an_authentic_inuit_experience/)

# Negotiation Difficulties

- More incentive for companies to conclude IBAs than governments. For companies an IBA is a tool to reach development goals.
- Government does not have the same incentive and we are seeing longer negotiation time periods.

# Nunavut Example – Negotiation Issues

- Obligations to re-negotiate or negotiate IBAs with Government are not being met.
- For example, Canadian Heritage Rivers IIBA is still outstanding
  - Missed opportunity to provide benefits to 3 communities (Baker Lake, Kimmirut, Kugluktuk)
  - Potential benefits could include education, youth outreach, support for heritage and culture, business opportunities and water quality monitoring

# Stumbling Blocks

- Timeline for CHR IIBA negotiations
  - Negotiations between 2004 and 2011
  - Approximately 10 negotiation sessions without agreement on an IIBA
    - Issues: Inuit organizations negotiating without knowledge of Government's financial mandate
    - Negotiation exercise costly for Inuit organizations

# Making Treaty Obligations Work for Communities

- IBAs are a tool within modern treaties to that bring economic opportunities to Aboriginal communities, as well as many other opportunities including cultural support, social and community programs and environmental mitigation and monitoring.
- IBAs obligations should be fulfilled to allow communities to benefit from resource development and government activities in their areas .