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IMPACT BENEFIT AGREEMENTS:

A TOOL FOR HEALTHY INUIT COMMUNITIES?

Full Report

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Inuit Tuttarvingat



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July 2009

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Cover Photo: Meadowbank Gold Project, Kivalliq District, Nunavut, located near the Hamlet of Baker Lake. *(Photo: Agnico-Eagle Mines Ltd.)*

Under the *Canadian Constitution Act, 1982*, the term Aboriginal Peoples refers to First Nations, Inuit and Métis people living in Canada. However, common use of the term is not always inclusive of all three distinct people and much of the available research only focuses on particular segments of the Aboriginal population. NAHO makes every effort to ensure the term is used appropriately.

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An aerial shot of the Mackenzie Delta, NWT (Photo: Inuit Tuttarvingat)

Executive Summary

In March 2008, representatives from the four Inuit regions and Inuit national organizations met to discuss resource development in Inuit regions and its impact on community well-being. Prior to this meeting, the group had attended a roundtable with representatives of First Nations and Métis communities and organizations to discuss community responses to mining and resource development activities in Northern Canada. This roundtable was organized by the National Aboriginal Health Organization (NAHO). While the NAHO roundtable discussions concerned the broad impacts on health and well-being from activities related to resource development, such as mining and drilling for oil and gas, the Inuit-specific meeting focused on community benefits and sustainability. Following recommendations from that meeting, the authors prepared this paper discussing Impact and Benefit Agreements.

All Arctic exploration and mining activities in Canada require that corporations negotiate some form of agreement with local Indigenous populations. For agreements involving Inuit, the decision making is done by Inuit regional corporations and governments. Inuit have entered into Impact and Benefit Agreements (IBAs) in the past and are presently negotiating agreements with companies that intend to extract resources from grounds included in Inuit land claim settlements. The focus of this paper is on Impact and Benefit Agreements (IBAs) and their role in community well-being.

This paper provides a general overview of the nature of IBAs currently in place in the Arctic regions of Canada, and provides examples of similar agreements with Indigenous populations in other countries, in particular Australia. Special attention is devoted to learning processes and good practices in negotiating, developing and implementing IBAs, including the success stories and lessons learned.

The paper discusses IBAs from the perspectives of negotiators for Indigenous organizations, industry negotiators and government. In Canada, IBAs began to be negotiated in the mid 1970s, usually as agreements between the federal or provincial government and industry. Since then, land claim settlements enabled Inuit and First Nations to negotiate and influence the content of IBAs directly. Today, the Inuit community's goal is to negotiate the proper use of its land, reduce expected and unexpected damages and ensure the greatest economic benefit to the community.

From the industry perspective, IBAs are seen as mutually beneficial, long-term relationships between companies and Indigenous Peoples. They are often described as a return on invested capital plus interest, a rate of return consistent with the high risk of investment. They are also seen as security of long-term resource development, meaning a company relies on its rights given by the agreement to extract minerals or gems over a

longer time such as one, two or three decades. Today, industry sees that having a successful IBA negotiation is one key to a successful project.

From the government standpoint, the IBAs negotiated between industry and Indigenous organizations serve to complement government policies and programs. This applies mainly to government programs that have the purpose of improving socio-economic status or are targeted at specific economic issues. To view these agreements as complimentary to government responsibilities may carry a risk of having industry provide programs to communities that usually would be delivered by governments.

IBA negotiations can focus on economic benefits or, more broadly, contain socio-economic and environmental sections such as community capacity building, respecting traditions, and reducing the burden put on the environment by the process of, for example, mine development. In the so-called 'social provisions' of an IBA, it is specified what kind of health, cultural and community support the company will provide. IBAs often require industry to provide some kind of social and community assistance and counselling for employees and their families. Under these agreements, industry may fund community projects, and support physical infrastructure (for example by building access roads or handing over buildings to the community after mine closure) and cultural activities in the workplace and in the community. However, it is difficult to assess how Inuit communities are using these provisions since the agreements themselves are private. Based on interviews we conducted for this report, it seems that social wellness is less often addressed than employment and economic development issues.

According to conversations with individuals from the four Inuit regions, a primary objective of an IBA is to ensure the certainty of Inuit benefiting from resource development. These benefits are understood broadly as economic benefits, such as job opportunities, and as social benefits, such as training and use of Inuit language. To achieve this objective, eight practices have been identified:

How to ensure Inuit benefit in IBA negotiations:

- Learn from experience and approaches of others about the exact process of negotiating IBAs.
- Conduct in-depth community consultations prior to negotiations.
- Communicate openly and honestly and involve the entire community.
- Be specific and know what to achieve in negotiations – feel empowered as a land owner.
- Priority goals such as bringing economic development to the region should not overshadow other community well-being issues.
- Ensure that the principles are mutually acceptable to the negotiation parties.

- Monitor the relationships on an ongoing basis.
- Ensure effective co-ordination in implementing the agreement.

The stakeholders we spoke with have selected a number of issues that they consider outstanding and that demand careful consideration in negotiating IBAs in the future.

What to consider in future IBA negotiations:

- Address the need for experienced and committed people to negotiate IBAs.
- Ensure that union agreements do not stand in conflict to IBAs.
- Give bidding preferences to Inuit contractors.
- Build a sharing culture so that the community which benefits most is willing to support more distant communities.
- Partner with government in developing training programs so that Inuit can be trained quickly to meet the mining company's needs.

There is general agreement among those we interviewed that priority should be given to social and health issues when negotiating IBAs. Inuit respondents believe that more social programs will lead to improved well-being of the community; high levels of well-being are considered necessary for developing stronger communities. On the other hand, societal benefits (culture, environment, wildlife) are difficult to negotiate. This is because of how the negotiations are structured – focusing on major economic benefits.

This paper confirms that the overly secretive nature of negotiations in the context of IBAs results in a lack of sharing and learning. Moreover, the narrow focus on direct economic benefits and payouts happens at the cost of neglecting social and health oriented investments.

We argue that IBAs are still the best instrument a community has at its disposal to share in mining, oil and gas profits. But Inuit communities need to be proactive and better foresee what is happening on their lands. In this regard, IBAs need to become tools for awareness building toward, and contribution to the development of healthy communities. In our conversations with Inuit observers we found general agreement that Inuit would benefit from a more open process in negotiating IBAs, to contribute to learning from community to community, and to strengthen the social and health provisions in each new agreement that is negotiated.

Addressing community well-being is a theme that awaits inclusion. An IBA can be an effective tool to support community well-being but it needs flexibility. Perhaps a dual approach composed of two separate but parallel IBAs – one focused on economic issues (negotiated with the mining company) and another on community well-being (negotiated with government) – will offer a better possibility of addressing social and



health challenges. Or perhaps the sharing and learning from existing IBAs may lead to a new generation of agreements. In any case, Inuit communities will likely need to explore ways to improve their well-being outside of the standard economic IBAs – and one way of preparing for this is to learn from existing Impact Benefit Agreements.

This executive summary exists as a separate document, and is available in English and several Inuit language dialects. The various language versions can be downloaded from our Web site, www.naho.ca/inuit, or hardcopies can be ordered from Inuit Tuttarvingat.



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We would like to express our particular appreciation to the participants of the Inuit-specific workshop for discussing the subject freely with the authors. We would also like to acknowledge all individuals who were willing to discuss the topic with us and for their prevailing sharing spirit. We thank NAHO for holding a roundtable on resource extraction and Mark Buell who spearheaded the NAHO-wide resource extraction initiative. We thank Dianne Kinnon for her valuable comments on the drafts of this report and Denise Rideout for her commitment to help in all aspects of production.



1. Introduction

By 2009, increasing evidence that the ice covering the earth's Arctic regions is melting has once again led to a boom in exploration, mining and other industrial activities in the Canadian Arctic. The delicate interplay between the costs of resource exploitation and transportation and the predicted gains of selling the extracted resources has become a promising enterprise in view of a soon-to-be ice-free shipping passage in the Arctic. Increased geological activities have confirmed that Canada's Arctic is indeed rich in natural resources, and possibly even richer than has been anticipated in previous decades. Predicting large reservoirs of minerals, gems or oil and gas make exploration activities much more likely. Resource extraction in the Arctic, therefore, depends on the prices for minerals, oil and gas traded at the world's markets, the amount of minerals expected to be extracted and the costs of actually extracting and transporting the resources from the Arctic environment. As we have asked in this paper, how does this relate to Inuit communities in the Canadian Arctic?



*The Arctic as seen from space
(Photo: stock photo)*

Resource exploitation is a long process. For example, resource extraction activities include drilling for oil and gas, open-pit and underground mining for minerals and gems. Extraction activities are usually categorized into several steps, guided by the nature of activity and the regulatory requirements of the country and jurisdiction in which the resource is located. In the case of mining, the process is generally divided into six phases: exploration, transition, development, mining, reclamation and closure, and post closure. While mines usually do not operate longer than 20 years, it can take many years before actual mining activities begin. In the meantime, the overall activity brings many people and much equipment into the area where the extraction takes place. The increased traffic and flow of goods and people into and passing through the communities has impacts on local populations and infrastructures.

Economic development based on non-renewable resource exploitation and extraction has implications for many parts of the Arctic ecosystems. Non-renewable resources are those that do not replace themselves after humans have extracted quantities from the earth, such as minerals, oil and gas. The activities necessary to collect the minerals have an impact on the physical environment. Any direct or indirect impacts on vegetation, water and wildlife are of particular importance to Inuit because the traditional (also named informal or subsistence) economy is based on hunting and harvesting and has provided Inuit with life's necessities for generations.

Economic development based on resource exploration and extraction has been a ‘double-edged sword’ for some regions where this kind of economy resulted in reduction of activities in the traditional economy, and therefore decreased the community’s economic self-sufficiency. On the other hand, obvious economic benefits from resource extraction such as income, jobs, training, spin-off industries, and increased spending in the region can considerably improve community life and self-sufficiency. The key here is to make sure that Inuit communities share in the benefits generated by this economic activity. The so-called “Impact and Benefit Agreements” (IBAs) are the tools used in Canada today to minimize negative impacts on and ensure benefits for Inuit.

Inuit Nunangat

Inuit in Canada have settled land claims in four regions. The term Inuit Nunangat refers to the homeland of Inuit in Canada and encompasses the four land claim settlement areas of Nunatsiavut, Nunavik, Nunavut and the Nunakput or Inuvialuit region. As shown on the map (Figure 1), Inuit Nunangat contains about one-half of Canada’s

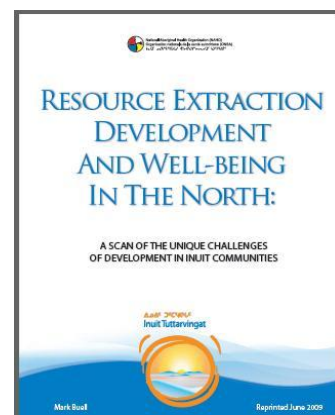
Figure 1



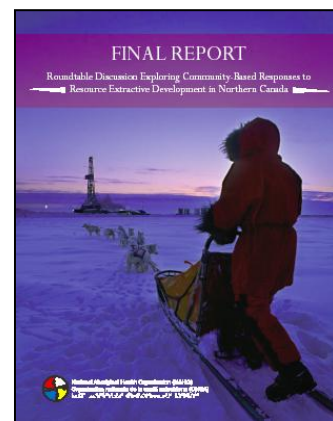
coastlines and makes up approximately 40 per cent of Canada's land. Inuit Nunangat forms the territory of Nunavut, the coastal part of the Northwest Territories, and a significant part of each of the provinces of Quebec and Newfoundland and Labrador.¹ The communities vary greatly in population size and range from a small place with less than 200 inhabitants (such as Sachs Harbour or Grise Fiord) to over 6,000 inhabitants (such as Iqaluit, the capital of Nunavut).

Background

In 2006, Inuit Tuttarvingat (then Ajunnginiq Centre) of the National Aboriginal Health Organization (NAHO) published a report summarizing the unique challenges of resource extraction development as reported in current literature and the news media (Buell, 2006). The report discusses Canadian and international literature dealing with impacts and benefits of resource extraction relating to Indigenous people. It also refers to guidelines and tools developed to help manage negative impacts and enable benefit sharing. Impact and Benefit Agreements, or IBAs, are one, among other tools, mentioned in this report.



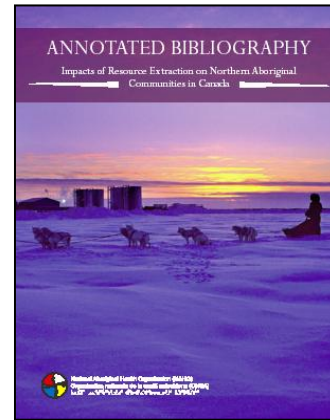
In March 2008, representatives from the four Inuit regions and Inuit national organizations met to discuss resource development in Inuit regions and its impact on community well-being. Prior to this meeting, the group had attended a roundtable with representatives of First Nations and Métis communities and organizations to discuss community responses to mining and resource development activities in Northern Canada. This roundtable was organized by the National Aboriginal Health Organization (NAHO). Several background papers, an annotated bibliography and a final report² are available on the NAHO web site.



¹ The concept of Inuit Nunangat is explained in: Inuit Tapiriit Kanatami and Inuit Circumpolar Council (Canada). (2007). *Building Inuit Nunaat – The Inuit Action Plan*. Ottawa. On June 10, 2009, the ITK Board of Directors approved changing the name to Inuit Nunangat, please see: <http://www.itk.ca/publications/maps-inuit-nunangat-inuit-regions-canada>

² Please find all documents in the list of references at the end of this paper, including the five background papers on: Cultural, Economic, Gender, Political and Social Considerations.

While the NAHO roundtable discussions concerned the broad impacts on health and well-being from activities related to resource development, such as mining and drilling for oil and gas, the Inuit-specific meeting focused on community benefits and sustainability. Following recommendations from that meeting, the authors prepared this paper discussing Impact and Benefit Agreements.



Framework

In this paper, we are taking a very broad approach. We consider population health together with community well-being. We are looking for elements that help a community to maintain itself and contribute to improving the health of its residents. Community health and well-being also depends on the health of the surrounding physical environment. The underlying goal of this approach is to find ways to improve the quality of life in communities and move toward communities that can be considered healthy. A healthy community continuously improves its physical and social environments, including the resources that people need to live and prosper.

The Public Health Agency of Canada (PHAC) lists several indicators as key determinants of health, such as employment, working conditions, income, social status, the environment, health services, and culture.³ The indicators selected to assess the health of a given population vary depending on the purpose of the assessment. The relationship between economic development and health seems obvious, and is also supported by population health research. Levels of income, employment and education are directly linked to the health status of communities and groups of people.

The paper analyzes Impact and Benefit Agreements (IBAs) as tools for community well-being. It attempts to link economic development with community well-being by applying the following premises:

- ◆ Economy is one of the determinants of health.
- ◆ Resource extraction is one sector of economic development.
- ◆ Economic development can contribute to improving population health.
- ◆ Economic development and health status of a population can contribute to community well-being.

³ Public Health Agency of Canada. *Determinants of Health, What makes Canadians Health or Unhealthy?* Retrieved September 5, 2008, from <http://www.phac-aspc.gc.ca/ph-sp/determinants/index-eng.php?option>

Methodology

The objective of this paper is to discuss the use of IBAs in the Arctic regions of Canada and provide examples of similar agreements in other countries, particularly in Australia. Special focus is given to the following aspects of these agreements:

- ◆ Identifying reasons for the existence of IBAs.
- ◆ Evaluating their efficiency based on communication with stakeholders.
- ◆ Reviewing elements of IBA content.
- ◆ Assessing possible options for improvement, particularly in the area of health and social development.

Three techniques were used to gather information for the analysis of Impact and Benefit Agreements: analyzing meeting notes from the NAHO roundtable and recommendations from the Inuit-specific meeting, scanning literature, and conducting interviews with key informants.

Meeting notes were collected from the NAHO *Roundtable Discussion Exploring Community-Based Responses to Resource Extractive Development in Northern Canada* and summarized for discussion at the Inuit-specific meeting titled *Economic Development for Healthy Communities*. Recommendations from this Inuit-specific meeting form the basis of this paper.

We conducted a document review and searched literature and news articles available on the Internet. To maximize the search results, the Web was searched in a variety of ways and individual sites were visited several times. Due to the fact that literature on this topic is dispersed and not all documents are available publicly, the authors cannot be certain that all relevant documents were obtained. The search was conducted to find documents in English only; however, if documents were retrieved in French or Russian, they were considered as well.

Following the literature review, we conducted interviews with key informants. Selected individuals involved with resource extraction in the Inuit regions were asked to provide their views on key issues, challenges and good practices. We spoke with 12 individuals working for Inuit governments, mining companies, regional economic development corporations, and the four regional Inuit land claims organizations. We made sure to gather input from all four Inuit regions and from regional as well as community perspectives.

A note on terminology: In the Canadian context, we refer to Aboriginal Peoples, the collective name for all of the original peoples of Canada and their descendants according to *Section 35* of the *Constitution Act* of 1982, and distinguish between First Nations, Métis and Inuit. In the international context, we use the term Indigenous peoples, based on the understanding created by the United Nations and its working groups in the context of the *Decade of the World's Indigenous Peoples*.

The term community is used in a broad sense and the specific meaning is clarified by the context in which the word appears. Community can mean a community of people sharing beneficiary status under a land claims organization or corporation. It may also mean an impacted physical community such as a hamlet or municipality.

Organization of Document

This document is structured into seven sections, including the definition, purpose, content, process and parties involved in IBAs, as well as a comparison of the contents of several Canadian IBAs with each other, and with similar kinds of agreements in other countries. Particular attention is devoted to the learning process and good practices in negotiating, developing and implementing IBAs, including success stories and lessons learned.

Following the introductory chapter, Chapter 2 provides definitions and the purpose of IBAs with consideration of the parties involved in these agreements. The third chapter discusses the context within which IBAs evolved in Canada and the processes developed to accommodate the diverse interests of the parties involved. A look at the content of IBAs follows in Chapter 4 and includes discussion of agreements concerning the protection of lands and some comparison with Australian examples of similar agreements. Chapter 5 provides the reader with Inuit observations on IBAs, discussing purpose, practices and outstanding solutions from an Inuit perspective. A combined summary of the literature review and stakeholder opinions are presented in the chapter “Findings”. The closing chapter addresses the future of IBAs and possible areas for improvement.

The Appendix offers the reader an easy way to identify content of IBAs and compare agreements. Content and provisions of agreements are listed in three tables. Table 1 provides an overview of how IBAs are connected to Inuit Land Claims Agreements. Table 2 describes a sample of “Inuit Impact Benefit Agreements” in Canada, and Table 3 provides more detail of “Exploration or Conservation Agreements” in Australia.

2. Impact Benefit Agreements (IBAs): Definition and Purpose

In general, an IBA is defined as a *confidential* agreement negotiated in the context of resource development between a company, the relevant provincial or territorial government and affected Indigenous organizations. An IBA establishes the terms under which Indigenous people will benefit from a development project. Today, Indigenous communities or regional governments negotiate the proper use of their land, how to lessen or offset (mitigate) anticipated and non-anticipated damages, and ways to ensure maximum achievable economic benefit to the community.

Different forms of agreements have been introduced and signed in order to reduce damage to the Arctic's physical and human environments caused by industrial development. Canada, for example, has targeted the use of impact and benefit agreements (IBAs) to lessen or offset (mitigate) impacts and provide sustainability to Inuit and First Nations communities. In the Arctic region, IBAs have been a written precondition for almost any economic development activity. Their use has even been applied to national parks, eco-tourism and hydroelectric projects.

Increased use of IBAs signals a new era for mining companies in which it is no longer acceptable to develop natural resources in a manner that imposes significant environmental or societal costs at the local level while the benefits are enjoyed elsewhere (Nowlan, 2001, p. 65). To date, the negative impacts of resource development on Arctic communities have been largely in the areas of environmental damage and ongoing health problems. Industry has made progress in reducing pollution and other adverse aspects of mining. Obvious environmental concerns can be addressed during the environmental assessment stages of the project, but IBAs are primarily intended to ensure that Inuit benefit from mining and other developmental projects and are compensated for the expected negative impacts of those projects on communities, land and traditional way of life (O'Reilly and Eacott, 1999–2000).



Meadowbank Gold Project, Kivalliq District, Nunavut, located near the Hamlet of Baker Lake. (Photo: Agnico-Eagle Mines Ltd.)

Context

Since the 1970s, the Government of Canada has signed a range of agreements that have resulted in settling many land claims and establishing new (self-governing) territories based on resolved land claims where Indigenous people control access to minerals and receive royalties or compensation for mining and other developmental projects. Land claim agreements today contain clauses that protect and provide financial and social benefits to Indigenous communities (see Appendix, Table 1 for more discussion of land claims agreements).

Impact Benefit Agreements need to be seen in the context of the agreements on Indigenous land ownership and use, and the economic goals of resource extraction industries. The lands on which Indigenous peoples have been living has been for many years a source of contention between Indigenous peoples and the developed world. Unsettled issues, debatable treaties and controversial development only recently are gaining understanding and importance. Different countries have chosen diverse approaches to resolve the question of Indigenous ownership and use of traditional lands. Consequently, different legislative approaches are present to deal with the multitude of issues. In this paper, *Figure 2: Indigenous Agreements, International Development*, provides an overview of how other countries have negotiated land use and ownership with the residing Indigenous population.



*Hudson's Bay Company buildings in the North
(Photo: stock photo)*

Figure 2: Indigenous Agreements – International Developments

Ongoing progress in constitutional recognition and political representation, signing of international and national treaties and granting land and resources rights have enabled partnerships between Indigenous people, industry and governments to emerge. These legal developments have resulted in more attention being paid to various forms of impact benefit agreements in many countries. Along with Canada, Australia, New Zealand and the United States have recognized Indigenous land and resource rights.

Australia and **New Zealand** made several legislative attempts to reconcile nature conservation with development and land ownership, resulting in the signing of *exploration agreements* between Indigenous people and mining companies. Exploration agreements are between the applicant and the Indigenous group for consent to the granting of a mining exploration or retention license. Such agreements tend to be comprehensive, covering likely impacts of proposed exploration or conservation works on environment, infrastructure and human capital, including proposals for rehabilitation and minimizing negative social impact. On the other hand, *conservation agreements*, encompassing an entire array of nature parks and tourist agreements, typically have been signed with government agencies. Australia assists Aboriginal communities by providing templates of standard agreements for exploration and conservation.

In the **United States**, the 1971 *Alaska Native Claims Settlement Act* formally extinguished the native title in Alaska and provided for native fee simple (freehold) land title, compensation and recognition of customary rights for traditional subsistence activities. Aboriginal people and the regional corporations in Alaska hold the rights to subsurface minerals and have a veto over mining on their land.

However, the record of cooperation is uneven across the countries. In **Norway, Finland** and **Sweden**, Indigenous land issues have been treated as land use rather than land ownership issues (Yunkaporta, 2006). For example, Finland does not guarantee the Sami people rights to land, water and natural resources. The Sami people traditionally inhabit areas of settlement known as northern Norway, Finland, Sweden and the Kola Peninsula of Russia. Sweden has not signed the *United Nations Declaration for the Indigenous Peoples' Rights*. Only Norway has ratified the Convention on the rights of Indigenous and tribal people. Overall, Sami land usage rights remain unresolved and the respective governments show few signs of action.

Russia too has not made much progress. Instead, it worsened the Indigenous position with deforestation, poaching and mining activity. In Russia's Kola Peninsula, vast areas have already been destroyed by mining and smelting activities, and further development is imminent (Yunkaporta, 2006).

Please refer to the **Appendix, Tables 2 and 3** to find a description of the sample of Inuit Impact Benefit Agreements in Canada and Exploration or Conservation Agreements in Australia. It can be seen that Australia's agreements are much broader in nature than Canada's Inuit impact agreements. Moreover, while Canadian agreements are mainly between private parties, Australian agreements include government bodies.

Exploration, mining and other industrial activities are taking place in Arctic regions because this part of our Earth is rich in natural resources and has so far experienced relatively little extraction. Environmental consequences of a particular economic development in turn will have consequences for Arctic wildlife, as well as for many communities. In particular, discoveries of valuable resources have attracted much international attention.



Arctic Ptarmigan (Photo: stock photo)

The focus on Indigenous lands has gained attention of all stakeholders although for different reasons. Indigenous people themselves are interested in healthy sustainable communities. Industry would prefer smooth operation and a steady supply of experienced and trained human capital and to avoid long legal disputes. Government would strive to appease Indigenous leaders and at the same time perhaps get assistance in providing socio-economic programs. Finally, environmental organizations and ecological groups have stressed the

importance of maintaining existing diversity of life forms (biodiversity) and are interested in achieving greater public awareness and support for their ideals.

Internationally, various forms of impact benefit agreements are quite common in countries containing large Aboriginal populations. Among the Arctic countries, IBAs are used in Canada, occasionally in Russia, and sporadically in other European Arctic countries (Nowlan, 2001). Australia is exploring different forms of agreements focusing less on the details of individual impact and benefit agreements and more on the broader common law and legislative framework of native title rights within which IBAs are negotiated, usually with government participation. They are different from the Canadian IBAs in that they include ongoing cash payments to Indigenous peoples' representative bodies (O'Faircheallaigh, 1999–2000).

IBAs have many meanings and often carry different names. The chosen name may occasionally reflect the content of the agreement and may have different meaning to different people depending on the team sitting at the negotiating table. An IBA can mean impact benefit agreement, but it can also mean participation agreement, and it can mean just a benefit agreement (Indigenous Bar Association, 2004, p. 20).

An IBA can mean impact benefit agreement, but it can also mean participation agreement, and it can mean just a benefit agreement.

(Indigenous Bar Association, 2004, p. 20)

By and large, this meaning is tied to the regulatory framework that is in place, and that is usually based on a settled land claim and the ownership of surface and subsurface rights. Sosa and Keenan (2001) explain that, for example, the *Nunavut Land Claims Agreement* requires that an Inuit IBA be negotiated between the company and the involved Inuit organization prior to beginning a

“major development project” and the agreement also provides a list of the issues that are appropriate for inclusion in IBAs. On the other hand, the *Inuvialuit Final Agreement* in the Northwest Territories establishes provisions for the negotiation of different types of agreements that fulfil some of the functions of an IBA. The negotiation of a “participation agreement” is mandatory when permanent access is granted to Inuvialuit lands in order to undertake significant commercial activities such as mining (Sosa and Keenan, 2001, p. 7).

From the industry perspective, IBAs are seen as mutually beneficial, long-term relationships between mining companies and Aboriginal people. They are often described as a return of invested capital plus interest, a rate of return consistent with the high risk of investment, and security of long-term mineral development.

However, industry also thinks that the Aboriginal communities and their representatives often do not understand the industry perspective and adds that sometimes companies look for Aboriginal support for the project—especially at public hearings that inevitably precede the granting of licenses and permits (Wolfe, 2001, p. 4).

In this regard, some legal observers caution against explicit support for a development project, as it may weaken the bargaining position of Aboriginal groups with industry in the future (Morgan, 2002). In other words, it is not advisable to play all the cards at the beginning of negotiations.



Boat on shore near Rankin Inlet (Photo: stock photo)

From the government standpoint, IBAs “can also complement government policies and programs directed to socio-economic issues.”⁴ This may carry a risk of downloading of social programs, in particular when the government revenues are under strain. Interviewees for this report were clear that such risk of downloading of government programs exists (see section on Inuit observations).

From the legal perspective, IBAs are privately negotiated contractual arrangements between a company putting forward the proposal to explore and extract the minerals (called the ‘proponent’), and an Indigenous community, each side representing different and occasionally converging expectations. IBAs can be two-party or multi-party agreements. Although governed by the common law of contract, these agreements typically contain characteristics of both contractual and regulatory instruments, being either voluntary in nature or a precondition for the granting of a government license or permit. Kerr (2000) and Campbell et al. (2001) describe capacity building and participation or access agreements as types of impact benefit agreements. The private nature of impact benefit agreements makes them subject to confidentiality provisions.⁵

IBAs can focus solely on economic benefits or, more broadly, contain socio-economic and environmental clauses such as community capacity building, respecting traditions, and alleviating the ecological burden of the mine development. Depending on the region and the land claim settlement, different agreements stipulate the requirement for proponents to talk to people potentially affected by the project.⁶ Even without a legislative framework to guide the process in the North, IBAs are now widely accepted as standard practice for new mines (Kennett, 1999; Shanks, 2006). Indian and Northern Affairs Canada (INAC) may demand that an IBA be negotiated because of perceived significant social/environmental impact or to satisfy its obligation towards Aboriginal people where land claims are outstanding (see *Figure 3*). The negotiation of IBAs is now considered to be a factual, albeit unwritten, regulatory requirement in Canada’s North (Sosa and Keenan, 2001, p. 8).

⁴ Kennett, S.A. (1999a). *A Guide to Impact and Benefit Agreements*. Canadian Institute of Resources Law, University of Calgary, as cited in *Government of Canada, Aboriginal Business and International Trade*, Par. 3.8. <http://napoleon.ic.gc.ca/gol/abotrade/site.nsf/en/at00112.html>

⁵ See the glossary section in: The University of Melbourne, 2007, <http://www.atns.net.au/extglossary.asp?GlossaryID=211>

⁶ *Mackenzie Valley Resource Management Act; Canadian Environmental Assessment Act; Inuvialuit Final Agreement; Gwich’in Comprehensive Land Claim Agreement Act; Sahtu Comprehensive Land Claim; Nunavut Land Claim; Nunavik Land Claim; and Sanarrutik Agreement* each contain such clauses.

Figure 3: IBAs and Environmental Impact Assessment

As exploration and mining can cause unspecified environmental damage during various stages and long after the project has been completed, there is a need to minimize the negative impact that sometimes cannot be avoided. Damages at times cannot be clarified or assessed until long after the actual work has been completed. Although mining came a long way in terms of reducing the more obvious environmental impacts, much needs to be done to reduce the negative effects of water contamination or risks to wildlife, etc., to alleviate the unintended environmental and social consequences.

Impact benefit agreements attempt to define and evaluate those unforeseen or unavoidable impacts, and offset them by providing benefits to those whose lives will be affected in all the stages of the mining process, while at the same time offering access and opportunity to the benefits of economic development. As Klein et al. (2004) have put it, this may help explain why these agreements are called “impact and benefit agreements.”

IBA Stakeholders

In Canada, IBAs began to be negotiated in the mid-1970s, usually as agreements between the federal or provincial government and industry. Since then, land claim settlements enabled Aboriginal communities to negotiate and influence the content of IBAs directly. Mining industry attitudes also changed. Today, industry sees that having a successful IBA negotiation is a key contributor to the success of the mining project (Sosa and Keenan, 2001; Wolfe, 2001).

At present, IBAs may be negotiated between a company, different levels of government (provincial or territorial) and affected Aboriginal people or organizations. However, the most common are IBAs directly settled between industry and the Aboriginal communities. Although government has been known to intervene in IBA negotiations, it officially has no formal role in the process (Kennett, 1999b, p. 15). Despite this, the government may influence the process, for example, by withholding permits, requiring regulatory compliance and setting long timelines for negotiations.⁷ This may result in a relationship that is adversarial in nature rather than complementary or supportive (Laboucane, 2008).

⁷ During the Canada-Aboriginal Peoples Roundtable on Negotiation, as a critical issue in the negotiation process, Inuit formulated that “Timelines for negotiations are too long and result in a loss of capacity and work, sometimes through delays and federal government stalling. When the government comes to the table with internal mandates and interpretations, it limits the latitude for negotiations.” (Canada-Aboriginal Peoples Roundtable, 2005, p. 20).

Figure 4: Overview of the Roles of Stakeholders

Government	♦ Regulatory function
Industry	♦ Consent-seeking ♦ Approval-seeking
Aboriginal Community	♦ Right- and title-holders ♦ Beneficiary and potentially 'injured' party
All Stakeholders	♦ Share the motivation of building a sustainable Arctic community

It is interesting to examine corporate motivation in entering the IBAs, whether it is purely corporate social responsibility (CSR) or for economic reasons. According to Lapierre and Bradshaw (2008), the driving factors for business to get involved are government pressure, ethics and improved profitability (pp. 3–5). The research indicates that industry has widely accepted the benefits of IBAs. Company press releases and studies underline benefits associated with IBAs that are properly negotiated and implemented. Industry has also realized that successful IBAs help their corporate reputation as a socially responsible member of the community, which in the long term translates into more predictability of doing business with the Aboriginal community and more profits.

For example, some firms heavily advertise their community investment, and keep a visible presence in the local communities or promote themselves as a premier Canadian mining company based on their social commitment, rather than on their business success. Examples of this practice are Diavik Diamond Mines Incorporated and Tahera Diamond Corporation and how these companies profile themselves in their annual reports and on their Web sites (*Diavik Sustainable Development Report, 2006*; Tahera Web site).

Risk avoidance also has been suggested by firms as a motivation for IBAs, as evidenced by companies indicating that 'legal compliance' is only a minimum standard to adhere to (*Teck Cominco Sustainability Report, 2006, BHP Billiton Sustainable Development Report, 2006; Inmet Code of Conduct, 2006*). For example, both BHP Billiton and Inmet Mining Corporation recognize that exceeding regulatory requirements offers a means of reducing business uncertainty and risk (*BHP Billiton Sustainable Development Report, 2006; Inmet Code of Conduct, 2006*).

It is important to indicate the differing roles each stakeholder is playing. Government performs a mostly regulatory function, industry's role is consent- and approval-seeking, and the Aboriginal community, as right- and title-holders, perform the role of both beneficiary and potentially 'injured' party. At the same time, all stakeholders, each with their own understanding, share the motivation of building a sustainable Arctic community: government with its trustee duties, industry seeking corporate profits and Indigenous right-holders seeking benefits for the use of their land, yet aiming at profit sharing and wider socio-economic gains.

Stakeholder Attitudes

Government

Attitudes toward mining and other developments in the Arctic have changed noticeably in the past decades. The Canadian federal and provincial governments' "duty to consult" Indigenous right-holders has been established through several past legal challenges. The Courts further directed the Crown toward full and complete settlement and reconciliation with the Aboriginal Peoples of Canada. Many government Web sites list newly prepared negotiating guidelines to assist with the process. Some guidelines have been criticized (e.g., Alberta), while others are thought to be improving on content and procedures (e.g., Saskatchewan) and drawing on Aboriginal expertise in their preparation (Rappaport, 2006). There is still a need for more progress in the area of guideline and template preparation that government can achieve working in close cooperation with Aboriginal communities and industry.

Industry

The same duty to consult and obtain informed consent applies to industry proponents. The resource industry now strongly believes that the consent/approval of a mining venture and partnership with Aboriginal communities contributes to the profitability and the ultimate success of the operation. A review of corporate plans clearly indicates, "Working with Aboriginal people and their communities has become a critical component of corporate operational planning" (Laboucane, 2008, p. 1) .

Communities

Aboriginal groups strengthened by legally settled claims are also hopeful that their economic and social future can be improved. For example, Inuit have to balance traditional values, social and environmental concerns with practical economic benefits that mining projects will bring. Traditional industries cannot fully support Aboriginal communities, and Inuit, among other affected Aboriginal Peoples, want to build

sustainable and healthy communities that, among other things, preserve traditional ways of life. Achieving economic sustainability is a complex and arduous process. However, legal empowerment is giving Inuit a bargaining tool that can be used to the community's advantage. IBAs can assist the process if properly utilized (i.e., with all the right clauses and preconditions included in the agreement).



Fish drying (Photo: stock photo)

3. Impact Benefit Agreements (IBAs): Process

Despite the fact that IBAs have been in existence for many years, there are not many research studies discussing the negotiation process in detail. The studies available were mainly published in the 1990s, followed by new publications in the early 2000s, such as those initiated by the National Roundtable on the Environment and the Economy (NRTEE), the Public Policy Forum, a few academic pieces and some industry-focused research. The limited amount of published information on IBAs is understandable as negotiations are usually confidential. However, it is possible to find general descriptions or ‘snippets’ of the content and other data from press releases, as well as Web-based information such as company and community Web sites.

Documents that include an analysis usually cover IBAs already inactive or coming close to an end; thus, it is difficult to gauge the degree of detail of the agreements. A number of seminars, roundtables and other gatherings occur every year to discuss negotiating IBAs, but again those are mostly private events sharing only general knowledge. As there are many challenges still in the Courts, a number of legal offices have been set up dealing entirely with negotiating, claim settling or other Aboriginal land claim issues. Legal personnel are analyzing implications and advising Aboriginal clients how to best position themselves when dealing with industry. Again, all or most of the information is covered by client privilege and confidentiality clauses.

Inuit Land Claim Agreements and IBAs

All Arctic exploration and mining activity needs to comply with the government requirement that some form of agreement be negotiated **prior** to the exploitation of natural resources. Decision-making on IBAs typically lies with Inuit regional corporations. Yet there are subtle differences among the regional approaches depending on the content of the land claim agreement (see *Table 1*).

Both Nunavut and Nunatsiavut governments specify the use of IBAs as a precondition to development projects. For the Nunavut government, IBAs are required for major projects involving capital and labour investments promoting sustainability beyond the operating life of the mine. The Nunatsiavut government requires IBAs for any large-scale development. IBAs are not required for quarries on Labrador Inuit Lands.

The *Inuvialuit Final Agreement* requires that participation agreements be negotiated where the use of the surface is more than casual or temporary. Such an agreement would include guaranteed and fair compensation by the developer for any damage to Inuvialuit lands.

The use of IBAs signals a recognition that historic mining practices are no longer acceptable and that it is now necessary to move towards a more equitable and sustainable approach to mineral development.

In Nunavik, the existing *Sanarrutik Agreement* encourages and facilitates the signing of agreements between Makivik Corporation and the mining companies. These agreements are concerned with remedial measures and monitoring, financial arrangements, employment and contracts. Mining development on Nunavik territory will also be subject to the applicable environmental and social protection regulations (*Sanarrutik Agreement*, 2006).

In all four Inuit regions, the decision whether to proceed with IBA negotiation resides with Inuit corporations and governments. The use of IBAs signals a recognition on the part of all stakeholders that historic mining practices are no longer acceptable, and that it is now necessary to move towards a more equitable and sustainable approach to natural resources development. See *Table 1* at the end of this paper for the basic characteristics of Inuit land claims agreements and their relationship to impact benefit agreements.

Bridging Different Expectations

The project typically starts with the proponent (industry) expressing interest to the community in the development of a certain land area. Prior to IBA negotiation and before granting operating permits/licenses, proper consultations are required to take place according to the legal framework that is in place (treaty, land claim, etc.) Environmental assessment is often the first step.



Nunavut shoreline (Photo: stock photo)

Despite everyone's best efforts, negotiation is not an exact science. Complex issues arise often related to unsettled or partially settled claims or shared responsibilities. Thus, it is important that negotiation is an inclusive process that involves all affected communities. For example, Inuit indicate that:

"negotiations should have a process, in which a clear direction or vision (e.g., better quality of life for Inuit) is the focus, with a time frame and finances that are based on obligations, issues and needs, [...] not driven by unilateral predetermined financial limits that cannot address inflationary factors, emerging issues and the real length and costs of implementation processes [and finally that] all parties must be accountable for moving the process forward and operate from the basic principle of clearly defined good faith" (Canada-Aboriginal Peoples Roundtable, 2005, p. 21).

The industry's strategic goals in negotiations include an efficient and preferably fast approval process that leads to profits from the future operation. A proponent's team will have a better chance of achieving those objectives if the team members are knowledgeable about Inuit concerns and are respectful of cultural and social values. Knowledge and mutual respect is seen to assure faster resolution of challenges that are encountered.

The goal of communities, Inuit or other Aboriginal groups is to negotiate the proper use of land, mitigate anticipated and non-anticipated damages and ensure maximum achievable economic benefit to the community.

Overall, the negotiating process can bring hope and boost expectations, while raising a multitude of concerns. The process will take a community from ensuring the proper spread of information, mapping and assessing factors of impact to negotiating best possible outcomes. Different groups in the community will have different concerns and expectations. For example, Inuit women are concerned with social issues (e.g., abandonment, substance abuse, losing cultural/family values), impacts on education (e.g., youth abandoning higher education for immediate employment) and



Qulliq (Photo: stock photo)

other social concerns related to development. Youth might perceive the proposed operation as ‘a way out’ or a chance for a better life elsewhere.

Developing Understanding

The negotiating process typically begins with a memorandum of understanding (MOU), followed by an action and implementation plan. At this stage, the timetable and budgeting (consultation, negotiation, legal services) are prepared and funding is requested. The negotiation process will then focus on agreeing to equitable benefits to Inuit in return for cooperation, ongoing support and access to land and resources. Financial aspects of negotiations will also include royalties, profit sharing and equity participation. The community may counter with ‘way-of-life’ concerns (e.g., burial grounds, fishing, whaling and hunting, environmental concerns, social issues, etc.). Other issues may include (but not be limited to) traditional land use, human capital, health and social development, and economic prospects for the community.

For Aboriginal Peoples in Canada, the process of IBA negotiation presents the recognition of authority within a particular territory. This recognition would appear to be a major motivation for communities to negotiate IBAs (Prno, 2007). Successful IBAs are those that understand and respect Indigenous landowners, their culture and traditions. Maintaining respect and trust over the term of the project is perhaps the greatest challenge of all, as often people who are sent to consult and negotiate with Aboriginal people have no idea of Aboriginal attitudes, rights or customs (Laboucane, 2008).



Meadowbank Gold Project, Kivalliq District, Nunavut, located near the Hamlet of Baker Lake. (Photo: Agnico-Eagle Mines Ltd.)

4. Impact Benefit Agreements (IBAs): Content

Common Elements in IBAs

The content of IBAs is constantly evolving and there are many provisions that could be negotiated and included in an IBA. Australia, for example, has pioneered the development of standardized templates for provisions to be included in an IBA. Australia provides Aboriginal communities with options of template agreements that can be adjusted to reflect specific needs and circumstances. It is worth noting that the existence of a template is not binding and does not preclude other types of agreements and negotiations.

Typical elements of such templates are shown in *Figure 5*. The template provides the minimum required content for conducting an effective negotiation. This includes the rights and responsibilities of the respective parties, basic economic benefits, employment and training, and environmental protection.

Figure 5: Australia - an IBA Template for Mining Activities

The typical template contains the following elements:

- ◆ Defining the respective rights and responsibilities of the representative body and the explorer (i.e., an exploration and mining company) including that the company will have guaranteed access to the agreement area.
- ◆ Identifying 'no-go' areas.
- ◆ Describing the procedures the explorer will put in place to avoid environmental damage (e.g., protection and rehabilitation of the environment).
- ◆ Requiring the explorer to provide the Aboriginal community with the opportunity for training and employment.
- ◆ Stating the amount of compensation payable to the Aboriginal community.

Source: *Agreements, Treaties and Negotiated Settlements Project*, Indigenous Studies Program, University of Melbourne, 2007,
<http://www.atns.net.au/subcategory.asp?subcategoryID=151>

Figure 6: Contents of Impact Benefit Agreements (Nunavut)

1. **Human capital development:** e.g., training at all levels, preferential hiring, employment rotation reflecting Inuit needs and preferences, scholarships, labour relations.
2. **Business development:** e.g., provision of seed capital, expert advice, notification of business opportunities, and preferential contracting practices.
3. **Social development:** e.g., housing, accommodation and recreation, safety, health and hygiene, access to facilities constructed for the project such as airfields and roads, outpost camps.
4. **Culture:** e.g., language of workplace; identification, protection and conservation of archaeological sites and specimens; information flow and interpretation; cross-cultural training.
5. **Environment:** e.g., environmental concerns and disruption of wildlife, including compensation for wildlife disruption.
6. **Exploration, production and closure:** e.g., implications of mine closure on the community, relationship to prior and subsequent agreements, co-ordination with other developments.
7. **Contractual clauses:** e.g., arbitration and amendment provisions, implementation and enforceability, and dispute resolution mechanisms.

Sources: *After Kennett, 1999a, 1999b, p. 7; Shanks, 2006, pp. 37–38.*

Compared with Australia, there is a lack of recognized templates for negotiating IBAs in Canada. In addition, in many cases the agreements are confidential, which makes scrutiny of their contents impossible. The existing attempts at toolkits are sometimes criticized as “an insult to Aboriginal people who are struggling to deal with mining impacts and issues in their territories”.⁸ Toolkits often provide useful guidelines on activities conducted at different stages of the project, but may be too superficial for effective use and direct application.

⁸ http://www.miningwatch.ca/index.php?/Economic_Development/Toolkit_critique

In general, Canadian negotiating principles focus on adding ‘value’ (e.g., long-term socio-economic development, community participation) and fostering goodwill. Thus, contemporary IBAs not only deal with a range of issues of human resources management (employment, training), but also with profit sharing, compensation, environmental regulation, and social progress.

Among the provisions are social provisions that specify industry’s social, health, cultural, and community support. IBAs often have provisions that require industry to provide social and community assistance and counselling for employees and their families; fund community projects; and support physical infrastructure and cultural activities in the workplace and community. It is difficult to assess or evaluate how Inuit communities are using these provisions. Based on the interviews for this report (see *Inuit Observations on IBAs*), it is likely that social wellness elements of the IBA content are utilized to a lesser extent than the employment and economic development provisions.

IBAs and Sustainable Development

Building sustainable Aboriginal communities appears to be a natural fit with IBA content. All the elements of an IBA typically have social and economic sustainability as a long-term goal. However, what has been called “the great Australian paradox”, for example, is that the traditional owners of the land are the poorest people living on it, especially as these lands are resource rich.⁹ Finding ways to create sustainable communities across regional and remote Australia has been a constant challenge for the Australian government for the last 50 years.



Deception Bay, Raglan Mine, Nunavik, located near the northern villages of Salluit and Kangiqsujuaq (Photo reproduced by kind permission of Xstrata)

⁹ Minerals Council of Australia. (2008). *Sustainable Indigenous Communities Forum*.

Figure 7: Definitions of Sustainability

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (Brundtland Commission, 1987)

“The right to develop must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” (Principle 3, *Rio Declaration on Environment and Development*, 1992).

“[...] driven by a shared desire to enhance the contribution that mining and metals can make to social and economic development. Participants have, in our belief, discovered many shared values including the realizations:

- ◆ **that successful mining and metals processing operations require the support of the communities in which they operate;**
- ◆ **that respect for these communities and a serious engagement with them is required to ensure that mining and metals processing are seen as beneficial for the community and the company;**
- ◆ **that successful companies will respect fundamental human rights, including workplace rights, and the need for a healthy and safe workplace; and**
- ◆ **that successful companies will accept their environmental stewardship responsibilities for their facility locations.”**

(International Council on Mining and Metals, ICMM Toronto Declaration, 2002)

“Sustainable communities are defined as towns and cities that have taken steps to remain healthy over the long term. Sustainable communities have a strong sense of place. [...] These communities value healthy ecosystems, use resources efficiently, and actively seek to retain and enhance a locally based economy.”

(Institute for Sustainable Communities, <http://www.iscvt.org/FAQscdef.html>)

The issues are quite similar in Canada. Governments see IBAs as having potential for achieving the desired degree of sustainability. Still, not much is known about IBAs’ perceived effectiveness and their actual impact on community sustainable development, in particular when considering the cyclical nature of mining and exploration (Sosa and Keenan, 2001, p. 21). Despite the growing use of such agreements, there is a scarcity of evaluations of the effectiveness and benefits for

affected communities. The secrecy of the agreement is partly responsible for the lack of publicly available research on IBA outcomes in training, employment or contracting.

A few recent studies attempted to gather data and provide such assessment. Of those that are available, some are quite skeptical. For example, the Public Policy Forum's literature research stated that there were still many issues to explore, including greater transparency of the negotiation process and of the contents of IBAs. Moreover, IBAs may lead to greater disparities among the Aboriginal communities, such as unequal distribution of benefits among the communities; inability to provide necessary training for Aboriginal people to grasp new economic opportunities; and inadequate consideration of traditional knowledge in environmental decisions.¹⁰



Recording meteorological data at Xstrata Nickels Raglan operation in Nunavik (Photo: reproduced by kind permission of Xstrata)

This is not to say that IBAs cannot contribute to the development of a sustainable Inuit community. It underscores the complexity of issues that stakeholders expect an IBA to address and what they have to grapple with. IBAs cannot be completely 'bulletproof' as they operate in an ever-changing global world. Today's issues of climate change may be different tomorrow. As well, the economic conditions in which an IBA is being implemented may be very different from those when it was negotiated. It is important to account for these dynamic factors when defining and negotiating the content of impact benefit agreements. It is believed that a properly designed and executed IBA can help achieve a greater economic diversity of the Inuit community and contribute to an environmentally friendly, healthy and educated society. Such a society would enjoy equitable access to resources and strong community participation in decision-making. These are the founding features of a sustainable community.

¹⁰ Kerr, A. (2000). *Impact and Benefits Agreements as Instruments for Aboriginal Participation in Non-renewable Resource Development: A Report on Selected Case Studies*. Compass Consulting, National Roundtable on the Environment and the Economy, as cited in Shanks, G. (2006). *Sharing in the Benefits of Resource Development: A Study of First Nations – Industry Impact Benefits Agreement*. Ottawa: Public Policy Forum , p. 40.

Conservation or Alternate Land Use Agreements

Negotiations between the Canadian federal government and Inuit organizations have resulted in impact and benefit agreements for protected areas. These uses of land, which are alternative to mining, are based on a long-term vision of how the land will be used and which activities are permitted on these lands. This type of IBA agreement allows for the creation of a national park in exchange for economic opportunities, employment and preservation of the natural eco-system.¹¹

Typically, these formal agreements have been signed by the federal government and the affected community. A first Canadian example is an agreement signed in 1999 between the Government of Canada and the Qikiqtani Inuit Association for the cooperative management of three national parks in Nunavut (Auyuittuq, Sirmilik, and Quttinirpaaq). According to observers, this event marked the start of a greater role for Inuit of Nunavut in park management, and a new era of collaboration with Parks Canada (Gertsch et al., 2003, p. 1). The IBA for the three parks was quite comprehensive. On the economic side, it covered Inuit career opportunities, training and retention of employees, a Nunavut National Park Scholarship, and other benefits such as first priority for a park business license and an Inuit Tourism Development Strategy. The agreement also addressed social issues such as protection of wildlife, free entry into the park, water rights, and removal of carving stone.¹²

There is also an IBA for Ukkusiksalik National Park of Canada in Nunavut, which was established in 2003. The agreement provided the Kivalliq Inuit with a \$3-million economic development grant, a youth scholarship fund and a strong say in planning and operating the park (Bell, 2003).

In 2008, the first whale sanctuary in the North was established in Nunavut, based on a concept of an IBA. The deal will help to set up a local tourist industry while Inuit retain the traditional use of all protected lands (including hunting). The Niginganiq (Isabella Bay) deal was negotiated between the Government of Canada, Nunavut Tunngavik Inc., three regional Inuit associations, and the Nangmoutaq Hunters and Trappers organization for three new national wildlife areas on and around Baffin Island. The areas

¹¹ For example, see *Labrador Inuit Impacts and Benefits Agreement*, http://www.nunatsiavut.com/pdfs/Signing%20Ceremony/Impact%20and%20Benefits%20Agreement_english.pdf or the most recent (2008) *Inuit Impact and Benefit Agreement for National Wildlife Areas and Migratory Bird Sanctuaries in the Nunavut Settlement Area (Isabella Bay)*. http://findarticles.com/p/articles/mi_pwwi/is_200808/ai_n28035073?tag=content;col1

¹² Government of Canada and Qikiqtani Inuit Association (1999). *Inuit Impact Benefit Agreement for Auyuittuq, Quttinirpaaq and Sirmilik National Parks*. Background information available at http://www.pc.gc.ca/pn-np/nu/ayuittuq/plan/index_E.asp

will protect local species and habitat including the bowhead whale national wildlife areas and migratory bird sanctuaries in the Nunavut Settlement Area.

The Niginganiq IBA includes government funding to support environmental conservation and economic development in Nunavut, which would include an *Inuit Tourism Providers Fund*. Other benefits include training related to environmentally friendly tourism services; training young Inuit for careers in wildlife conservation; training for Inuit from communities adjacent to new national wildlife areas; employing Inuit as field assistants in research and monitoring programs related to Environment Canada's protected areas; and compensation for accidental, defence or illegal kills of wildlife.



Auyuittuq National Park (Photo: stock photo)

The other land uses that might be considered under IBAs involve hydroelectric projects granting compensation for flooding of the land and other environmental problems. In 2008, the Newfoundland and Labrador government and the Innu Nation reached an agreement in principle, which gives the First Nation rights on 70,000 square kilometres of Labrador land and an ownership stake in the proposed Lower Churchill River Hydroelectric Project. The *Tshash Petapen*, or *New Dawn* agreement, also gives the band compensation for land lost from flooding when the existing Upper Churchill Hydro Project was constructed in the 1960s (*The Tshash Petapen Agreement - New Dawn Agreement*, 2007).

However, Australia has a long tradition in this area. Australia signed many agreements for the protection and conservation of biodiversity or for the protection of areas of natural, cultural and scientific significance, and Aboriginal cultural significance. Agreements are traditionally signed between government and Indigenous people. The agreements can be voluntary, but they still are binding on the parties and heirs to the land.¹³ In addition, Australia's negotiators can utilize a standard (template) to sign a conservation agreement that is intended for use with land that has been declared an Indigenous Protected Area. The purpose is joint management of land with the objective

¹³ See the glossary section in: The University of Melbourne, 2007, <http://www.atns.net.au/extglossary.asp?GlossaryID=271>

of enhancing the conservation of the land's biodiversity and to protect its cultural heritage values. Aboriginal title rights are also protected.



Aurora Borealis (Photo: stock photo)

5. Inuit Observations on IBAs

The following section summarizes observations made during the *Economic Development for Healthy Communities* workshop organized by Inuit Tuttarvingat of NAHO in March 2008, and collected in follow-up interviews with key stakeholders. The discussions particularly focused on the impact of IBAs on the social well-being of Inuit communities, but also covered good practices in negotiating and implementing IBAs and outstanding issues and problems. The observations largely conform with the report’s findings from the literature: that the confidential nature of negotiations results in a lack of sharing and learning. It was also observed that the narrow focus of IBAs on direct economic benefits and payouts happens at the cost of excluding social- and health-oriented investments.

The issues discussed in interviews with key stakeholders are presented below.

Building Healthy Communities

There is general agreement that when negotiating IBAs, priority should be given to social and health issues. Inuit respondents believe that more social programs will lead to the improved well-being of the community — and health and well-being are a prerequisite for developing strong communities.

To date, the majority of IBAs have focused more on jobs and training of Inuit employees than on community health and wildlife issues. The implicit reason for this is the difficulty in bringing together on the Inuit side all the right people with the expertise required for the negotiations (i.e., wildlife experts, archeologists, health professionals, etc.). Social programs resonate well with Inuit and there is ‘talk’ about including health programs in IBAs. However, it is no more than talk and social and health issues are usually seen as a government, (i.e., jurisdictional) responsibility.

Social benefits (culture, environment, wildlife) are difficult to negotiate, possibly a result of how the negotiations are structured—focusing on major economic developments. According to key informants for this report, priority social issues are housing, counselling and child care. An example of an important investment in well-being is building an arena. A community arena is viewed as having a positive impact on community health. An arena can improve relationships among community members, provide access to recreation for both adults and children and solve many immediate problems related to the community.

The dearth of housing is particularly important. There is little funding for serviceable lots and for capital infrastructure projects such as water, sewer and roads (e.g., grading equipment). In most IBA cases, money goes to the community trust where it often sits without being spent. There are suggestions to make a larger share of that money more accessible for community purposes by applying it to support culture and improve social infrastructure. However, the community needs to make a decision to divert the funds to such purposes often at the cost of reduced payouts.

Social and health issues generally fall within territorial or provincial government responsibilities and Inuit community associations often do not want money for what is known to be a government responsibility. In addition, there is a concern that government may cut back on services should the community receive program dollars from another sector. On the other hand, developers are reluctant to include social issues in an IBA because they also think those issues are a responsibility of government.

Overall, the community leaders face the challenging task of how best to allocate the IBA money in services. Community leadership is pressed about delivering benefits to the community but with an increase in population, transportation and other impacts of resource extraction activities, there is increased demand on health and social services. There is also consideration of a possible backlash effect—the more IBA money that goes to social and health issues, the greater the concern that government will spend less on community needs.

Good Practices

According to participants who were interviewed, a primary objective of an IBA is to insure the certainty of Inuit benefit. For this purpose, respondents have identified the following good practices:

- ◆ Being as specific as possible: it is important to define the needs and set up achievable objectives while avoiding broad interpretations of the implementation. This practice supports narrowing the focus of the IBA agreement.
- ◆ Ensuring that the principles of negotiations are mutually acceptable to the parties. This gives the community an ability to achieve a properly structured agreement that can provide for resolving differences. There is a role for properly structured IBAs to resolve differences. IBAs can break the mould of the workplace and change the culture of the mine.

- ◆ Monitoring the relationships on an ongoing basis because the agreement is medium term, typically ranging from seven to 10 years.
- ◆ Conducting in-depth community consultations prior to negotiations by listening to people, and preferably visiting each Inuit community that is potentially affected. Representatives should sit at the table providing feedback and trying to resolve issues and differences in an open manner. Being open includes asking for concerns and agreeing to disagree.
- ◆ Being open and honest in communicating the agreement development: meetings should involve not only the workers, but also the entire community. A strong representation from outside of the mining company with the capacity to make changes and decisions is required. Focusing on priority goals—training and employment are typical priority goals because of the limited opportunities for Inuit, but they should not overshadow community well-being objectives.
- ◆ Ensuring effective coordination is very important for both the company and Inuit group. It is good to have an Inuit employment coordinator on the company side. Each IBA should have a permanent overseer position within the respective Inuit government or organization.
- ◆ Feeling empowered (as landowners) in the negotiation and sticking to objectives: for example, if the goal is to ensure hiring preferences for Inuit, it is important that this goal is achieved.
- ◆ Learning from experience and approaches of others: in particular, it is important to learn more about the exact process of negotiating IBAs. Learning methods may include networks, seminars and conferences, and study tours with Inuit organizations that have developed specific approaches to facilitate fair and mutually acceptable agreements by the parties.

Outstanding Issues

Respondents have selected a number of issues that they consider outstanding and demanding careful consideration in negotiating IBAs. These include trade union agreements, contracting processes, overlap and duplication of effort, shortage of experienced and committed negotiators on the Inuit side, training provisions, and the adjacency principle.

- ◆ The adjacency principle dominates in IBAs—it means that the first community to benefit is the one located closest to the mine. There is nothing wrong with communities closest to the mine being the first to benefit, but there should be sharing with other communities as well. The issue here is building a sharing

culture in which direct beneficiaries are willing to support communities that are more distant.

- ◆ There also is an issue of trade unions whose members are employed in the construction and operation of the mine. An example is that a union may wish to modify an existing IBA. This is especially an issue with large mining projects where there are many trade unions on the mining site, each representing a different agreement. Thus, IBA negotiations need to ensure that the IBA is a supreme agreement in relation to company-union agreements. This requires open communication with unions to secure their participation early on when negotiating IBAs.
- ◆ The contracting process is a major issue because of challenges in timing and giving preferential bidding opportunities to Inuit. When it comes to getting ready to mine and a company is under time pressure to secure contracts, the consultative process might be still underway as it is a naturally slow process even if there is need to move quickly. A related area that needs attention is ensuring that the agreement is honoured by subcontractors and that they follow the hiring procedures outlined in the agreement.
- ◆ IBAs are a very narrowly defined legalistic process. Making process and content more public and more inclusive would better serve the needs of community and company, and avoid overlap and duplication. For example, in some IBA provisions Inuit representatives are trying to guarantee things that are generally not objectionable to the company, which creates a waste of effort. By opening up and consulting with others, negotiators will be able to arrive at an agreement that is more transparent to all parties and requires less modification in the future. Still, Inuit leaders advise that safeguards be built into an IBA.
- ◆ There are not enough experienced and committed people to work on IBA negotiations. Negotiators are highly trained experts and are limited in number. One reason is that the time required on the project is extremely demanding. It is not easy to find an expert who can commit to spending a full year away from home. Thus, this issue requires special attention.
- ◆ The final outstanding issue is the training of Inuit employees. Companies need geologists, engineers and skilled technicians to move the project ahead on schedule. Inuit workers cannot be trained on a 'just-in-time' basis but rather need training toward needed job and skills profiles to build professional careers. Typically, IBAs include many provisions related to training. However, these provisions say little about when the training is to take place or about the length and content of the course. Training-specific provisions need to be included in the IBA. Usually government will give money and pay for the training-related courses. Therefore, partnering with government is necessary when developing

training for Inuit so that Inuit are trained quickly and in the North. IBAs can be formulated to reflect the need to work in partnership.

To summarize, Inuit representatives agree that, despite certain shortcomings discussed in this report, IBAs are still the best instrument a community has in order to share in the mining company's profits. However, communities need to be proactive and better foresee what is happening on their lands. In this regard, IBAs need to become tools for awareness building and for contributing to the development of healthy communities.



The tundra outside of the community of Arviat, in the Kivalliq region of Nunavut (Photo: Inuit Tuttarvingat)

6. Findings

This report points to descriptions and a variety of definitions, ambiguous legal frameworks, and many contextual issues that may impact an IBA's long-term ability to contribute to community well-being. Although Inuit and industry officials seem to agree that IBAs present a high value to both, questions remain regarding stakeholder attitudes and involvement. Unfortunately, sources describing the successes or failures in the negotiation and implementation of IBAs are limited.

However, emerging issues are beginning to stimulate research and discussion among the stakeholders and experts. The research shows an array of issues that need to be addressed to improve effectiveness, enforceability and the legal framework of the impact benefit agreements. The issues most often mentioned and questioned include:

- ♦ **Transparency of the process and content:** Stakeholders are generally not interested in making negotiations and financial arrangements public knowledge so there is little scope for learning about good practices and how to avoid the pitfalls of negotiating IBAs.
- ♦ **Negotiating challenges:** Secrecy of negotiations, lack of widely accepted guidelines, need for knowledge and expertise (including on the part of the Aboriginal representation), and diversity of projects and participant communities make negotiations increasingly challenging for both Inuit leaders and industry (Status of Women Council of the NWT, 2006).
- ♦ **Legal framework:** Enforceability of signed contracts requires strengthening. IBAs need to include safeguards such as penalty clauses for non-performance and procedures for dispute settlement.¹⁴
- ♦ **Impact:** IBAs are expected to produce sustainable communities in the long term (O'Reilly, 1999–2000). Until now, there has not been any well-documented evaluation of the impact of an IBA on Inuit or any other Aboriginal community.
- ♦ **Broad Inuit involvement:** All groups and populations affected by the development need to participate and have their say. There needs to be an open consultation giving an opportunity for Arctic communities to actively participate and directly voice concerns about the perceived socio-economic impact of the agreement.

¹⁴ IBAs sometimes are seen as countering global trends such as free trade, the free flow of capital and less regulation. Governments in Canada have been reluctant to support IBAs' role as tools for sustainability, especially where Aboriginal communities are without land rights agreements.

In general, studies of IBAs stress the lack of best practices and templates for negotiations advocating more safeguards of process and content. The focus is also on validating IBAs as a leading tool in the approval process for all major land uses and resource developments.

Standardizing the process might be challenging at best as it is unclear whether industry or Aboriginal counterparts actually prefer private contractual arrangements. However, stakeholders seem to agree that there is a need to create “a public consensus”, and a “clear and stable regulatory environment where the roles and responsibilities of all interests are known and defined” (Shanks, 2006, p. 55).

Industry is concerned with complex regulatory systems and adversarial relationships governing IBAs. At the same time, industry overwhelmingly has accepted IBAs as a way to conduct business.

Aboriginal negotiators are concerned with a multitude of social issues—the push-and-pull factors¹⁵—that need addressing in order to produce sustainable and healthy communities and the underlying issue of what will happen to the land and its inhabitants once the resources are gone.

The other outstanding issue is government attitude toward the newly found profitability of Arctic communities. Will their success mean withdrawal of government funding of many social and health programs?

It has been stressed that the issue of *traditional rights* is not up for negotiation. The focus should be on good communication and mutually acceptable principles. Content is affected by the expertise and bringing the right people to the table.

Finally, it is interesting to note that in spite of many years of IBA existence, the issues appear to remain the same as at the outset. It would be advantageous to improve the learning by more publicly opening up the process of developing IBAs, as suggested by those interviewed for this report.



Agreement is reached (Photo: stock photo)

¹⁵ People, especially youth, are ‘pushed’ away because of lack of opportunities, employment and education and are ‘pulled’ back seeking spiritual solace and kinship.

Addressing community well-being is one such area that awaits inclusion and where there is an outstanding need for improvement. Regardless of government policies, the ongoing reality is limited government funding that may be even further reduced should the IBAs have an onus on delivering, for example, health care. How much additional health care services the resource extraction industry can provide or whether it should be involved at all in this area is a matter for follow-up research. The industry already provides counselling, substance abuse programs and other wellness-related ventures. Transparency and enforcement might be of issue as the progress on health/social programs is more difficult to quantify. In any case, Inuit communities negotiating or receiving such benefits would always have to be equal partners in the process.



Smoke stack in the Arctic (Photo: stock photo)

7. Where to Go From Here

Can an IBA be a tool to help the community in the future? Based on this review and the interviews, the answer is positive—but this has to be a flexible tool. Over the IBA lifetime, things will change and many new factors will have to be included in an IBA to ensure smooth operation and, at the same time, enabling the community to function as well. Maybe, once the community has engaged in negotiations of an IBA with, for example, a mining company, the community also would need to start negotiating a parallel IBA with the provincial/territorial or federal government to set social development objectives that work towards not only the long-term sustainability of the community, but also help the community live through the changes that the mining activity will bring. This three-way negotiation, however, would need to centre around community benefits as a common goal to be an attractive option.

In this context, can private IBAs be viewed as a tool for the long-term sustainability of Inuit communities? For example, the conservation agreements for parks are clearly of a longer-term nature as they are not constrained by the economic conditions in which resource markets operate. The issue is the magnitude of benefits that a given type of IBA can provide. The benefit of resource-extraction IBAs between industry and Inuit will likely provide a more immediate and higher financial benefit to the community than the conservation agreements. Conservation agreements signed by government and Inuit are long term and likely have a low return in immediate benefits. In addition, the long-term benefits are difficult to express in monetary terms. Therefore, private IBAs will likely be more short-term oriented and more risky than the conservation agreements, which may make it more difficult to measure their contribution to achieving sustainable Inuit communities in the long term—unless they include contributions such as physical infrastructure or intentionally designed longer term funds or programs.



Dog sledding in the North (Photo: stock photo)

One scenario could be the concept of two independent agreements. One is an economic IBA between the resource-extraction industry and Inuit that is more short term and risky, but enjoys high economic benefits. The other is a social IBA that is more health, social development and infrastructure oriented—such an agreement would be underwritten by a government body (federal, provincial or territorial). The social IBA

would capitalize on the benefits of a private economic agreement and turn it into more long-term oriented social benefits for Inuit.

There may be other scenarios, such as the development of monetary funds with a defined purpose or other ways of enabling equal partnerships. Although this topic is beyond the scope of the present report, it is another urgent area for research and analysis.

A warming climate has increased international activities in the circumpolar Arctic and is creating much hope for reduced costs of shipping and trade. However, it is not necessarily a positive message for the resource extraction industry. Resource extraction in the Arctic is expected to become more expensive. The melting of permafrost increases the risk of slumping soil and prevents the use of ice roads. Both are aspects that will call for alternate and more expensive solutions such as flying materials into the operation area. Putting this into the context of the cyclical nature of resource extraction, it may affect how the impact and benefit agreements are negotiated in the future. For example, not only might the costs of extraction be higher in the future, but also significantly lower prices for mineral resources in economic downturns (a situation that we are witnessing today) may constrain the operation of an impact benefit agreement.



Stone cairn on Baffin Island (Photo: stock photo)

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Appendix:

Tables Providing Overviews on IBA Contents

Table 1: Inuit Land Claims Agreements and IBAs: An Overview

Table 2: Inuit Impact Benefit Agreements: Canada

Table 3: Indigenous Agreements: Australia



Tables Providing Overviews on IBA Contents

Table 1: Inuit Land Claims Agreements and IBAs: An Overview

In Canada, all Arctic exploration and mining activity on land needs to comply with government requirement that some form of agreement be negotiated **prior** to the exploitation of natural resources. Decision making on IBAs typically lies with the Inuit regional corporations. Yet there are subtle differences among the regional approaches depending on the content of the land claim agreement.

Inuit Territory	Description
<p>Nunavut (<i>Eastern Arctic</i>)</p> <p>Nunavut Tunngavik Incorporated (NTI) was set up as a private corporation in 1993 to ensure that promises made in the <i>Nunavut Land Claims Agreement</i> of 1993 are carried out.</p>	<p>According to the <i>Nunavut Land Claims Agreement</i>, an Inuit Impact Benefit Agreement (IIBA) must be finalized before a major development project can begin. The agreement stipulates that “a Crown or private sector water exploitation or resource development project that entails more than 200 person years of employment during a five year period or has a capital cost in excess of CAN \$35m (1986 dollars)” needs to have an IBA (Glyndemann, 2002).</p> <p>A timeline for negotiation of the IBA is established with options for voluntary and compulsory arbitration when conflicts arise. All parties have an obligation to negotiate the IBA in good faith.</p> <p>The Nunavut agreement also contains a resource royalty sharing provision that says Inuit will annually receive 50 per cent of the first \$2 million of resource royalty received by the government and 5 per cent of any additional royalty received in that year.</p>
<p>Inuvialuit (<i>Western Canadian Arctic</i>)</p> <p>Inuvialuit Corporate Group, composed of Inuvialuit Regional Corporation (IRC) and its subsidiary corporations, represents Inuit communities in the Inuvialuit Settlement Region.</p>	<p>The <i>Inuvialuit Final Agreement</i> (IFA), signed and passed into law in 1984, stresses preservation of “Inuvialuit cultural identity and values within a changing northern society” and equal and meaningful participation in the northern and national economy and society; protection and preservation of the Arctic wildlife and biological environment (Inuvialuit Development Corporation, 2007).</p> <p>The IFA gives subsurface rights to oil, gas and minerals, harvesting rights, and financial compensation to Inuvialuit. IRC is directly controlled by Inuvialuit beneficiaries and includes among its wholly owned subsidiaries, the Inuvialuit Petroleum Corporation. “The <i>Inuvialuit Final Agreement</i> (IFA) requires that participation agreements be negotiated where the use of the surface is more than casual or temporary” (Keeping, 1999-2000). The agreement should guarantee payment by the developer of fair compensation to the Inuvialuit for such access, for any damage to Inuvialuit lands and for any offal in the value of their interests in their lands. This may include an appropriate land rent (not to include royalty revenues) and specific terms and conditions respecting the nature and extent of the land use for which the access is being sought.</p>

Inuit Territory	Description
	<p>The terms and conditions may also include:</p> <ul style="list-style-type: none"> ◆ Costs associated with any Inuvialuit Land Administration inspection of the development work sites and the nature and scope of such inspection. ◆ Wildlife compensation, restoration and mitigation. ◆ Employment, service and supply contracts. ◆ Education and training of Inuit. ◆ Equity participation and other participation benefits. <p>Any proposed development, including oil or gas development, is subject to an environmental screening and review process, which provides for participation by Inuvialuit, territorial and federal government representatives (Olynyk and Bergner, 2002, pp. 10-11).</p>
<p>Nunavik <i>(Nunavimmiut of Northern Quebec)</i></p> <p>Makivik Corporation of Nunavik acts in the best interests of Inuit in Nunavik.</p>	<p>The <i>Nunavik Inuit Land Claims Agreement</i> to be resolved in 2011 provides constitutionally protected land and resource rights to promote long-term economic and social development. It does not contain a self-government component (Indian and Northern Affairs Canada, 2007). Nunavik Inuit are entitled to receive royalties annually from the Government of Canada based on resource development in the Nunavik Marine Region. Nunavimmiut will be able to participate in the development of land use plans for resource use and development in the Nunavik Marine Region and the consideration of applications for project proposals in the area.</p> <p>Additionally, the Government of Quebec signed a 25-year partnership <i>Sanarrutik Agreement</i> with the Inuit of Nunavik to ensure economic and community development in northern Quebec. In the mining sector, the <i>Sanarrutik Agreement</i> commits the Government of Quebec to facilitate and encourage the signing of agreements between Makivik Corporation and mining companies on the restoration of abandoned mining sites, financial arrangements, hiring and the awarding of service contracts (Sanarrutik Agreement, 2006).</p> <p>Nunavik Inuit will be guaranteed participation in the management of wildlife in the settlement area through the creation of a Nunavik Marine Region Wildlife Board. Nunavik Inuit will also be participating in land use planning, which will give them greater control over how development will proceed in the NMR. Management of land use planning and environmental evaluation in the NMR will be coordinated with the existing regimes in Nunavut. Certainty with respect to land title and resource use will provide a more stable environment for future development and investment in the area. Settlement of the land claim is intended to promote the long-term economic, social and political development of Nunavik Inuit. Negotiations are intended to accommodate the interests of Nunavik Inuit, governments, third parties and non-Aboriginal residents of the Nunavik land claim area.</p>

Inuit Territory	Description
<p>Nunatsiavut <i>(Labrador Inuit Settlement Area and Labrador Inuit Lands in Atlantic Canada)</i></p> <p>The Nunatsiavut Government represents Inuit and Kablunangajuit [an Inuttitut term for individuals of partial Inuit ancestry, also referred to as ‘settlers’].</p>	<p>The Labrador Inuit Land Claims Agreement of December 1, 2005, specifies that IBAs must be negotiated between the Nunatsiavut Government and developers before mining projects may proceed in Labrador Inuit Lands and before major developments may proceed in the Labrador Inuit Settlement Area (LISA) outside Labrador Inuit Lands (LIL).</p> <p>The Nunatsiavut Government is entitled to receive 25 per cent of provincial government revenues from subsurface resources in Labrador Inuit Lands. In the Settlement Area outside Labrador Inuit Lands, the Nunatsiavut Government will receive 50 per cent of the first \$2 million and 5 per cent of any additional provincial revenues from subsurface resources. Revenues received from subsurface resources in the Settlement Area outside Labrador Inuit Lands will be capped at an amount that, if distributed equally among all Labrador Inuit, would result in an average per capita income for Labrador Inuit that equals the Canadian average per capita income(Nunatsiavut Government).</p> <p><i>Inuit Impact and Benefit Agreements (IIBA)</i> are to be negotiated between a developer and Labrador Inuit will be required for developments on LIL and for major developments in LISA outside LIL. A major development is any development that entails capital expenditures of \$40 million or 150 person-years of employment in any five-year period (Labrador Inuit Association).</p>

Table 2: Inuit Impact Benefit Agreements: Canada

Table 2 provides descriptions of sample Inuit Impact Benefit Agreements in Canada. In comparison with Table 3, it can be seen that Australia's agreements are much broader in nature than Canada's Inuit impact agreements. Moreover, while Canadian agreements are mainly between private parties, Australian agreements include government bodies.

The purpose of Table 2 is to provide opportunity for a brief overview of content referring to community health and well-being in Canadian impact and benefit agreements. The content in this table is based on information from various sources as referenced and also relies on text found in the *Agreements, Treaties and Negotiated Settlements database*, <http://www.atns.net.au/>, at times taken word by word or summarized by the authors.

Agreement Description	Content	Comments
<p>Lupin Gold Mine – the Ulu Project Echo Bay Mines Ltd. and Kitikmeot Inuit Association (Nunavut, 1996)</p> <p>The first IBA negotiated under the <i>Nunavut Land Claim Agreement</i>.</p> <p>The Ulu project is a proposed underground gold mine with 1.5 million tonnes of reserves at 0.374 troy ounces of gold per tonne. As a satellite operation, it is proposed to truck its ore over a 100-km winter road to the Lupin gold mine in central NWT.</p> <p>http://www.carc.org/pubs/v25no4/2.htm</p>	<p>Echo Bay Mines had a good working relationship with the Kitikmeot Inuit Association (KIA) and needed Inuit cooperation to move forward with Ulu. KIA encouraged Echo Bay to speak with and consult the smaller communities. Representatives from KIA and from the affected communities, an advisor, technical experts, and, where needed, lawyers have been involved in negotiations.</p> <p>The IBA included creation and development of Inuit businesses; development of an Inuit content formula for contracts; financial assistance and advance payments from Echo Bay for small Inuit businesses; social and educational programme assistance from Echo Bay; and establishment of an implementation panel.</p> <p>This negotiated IBA established some important principles for future negotiations:</p> <ul style="list-style-type: none"> ◆ Major developments on Inuit-owned lands would add "value" to affected communities. ◆ IBAs would be considered a strategic and long-term economic development tool to help build corporate capacity for Inuit. ◆ IBAs should be considered an instrument for fostering goodwill and should provide the foundation for Inuit and developers to "work together" from project inception, through production, and finally to completion ◆ There should be adherence to an "Inuit content" factor in considering and evaluating tenders for mine services in order to provide a strong incentive for all potential contractors to 	<p>By 1996, the Lupin Gold Mine, which opened in 1982 and employed about 45-50 Kitikmeot Inuit, was no longer extracting sufficient gold to be cost effective. The Ulu project was to extend Lupin's life by six-to-seven years, so the Ulu IBA, signed in September 1996, was important for jobs at Lupin. Lupin had not required an IBA because it is located outside Kitikmeot Inuit land and began production before the <i>Nunavut Land Claim Agreement</i>; Ulu required an IBA because it is located on Inuit-owned land.</p>

Agreement Description	Content	Comments
<p>Raglan IBA (1995, Nunavik) Xstrata Nickel, formerly Falconbridge and Makivik Corporation</p> <p>First Inuit IBA signed in Canada, the agreement includes profit sharing and guaranteed contributions to the Inuit of Nunavik over the next 18 years, as well as training initiatives and other economic development plans.</p> <p>Early discussions between Falconbridge and the Inuit were not fruitful or promising. The company approached the two closest Inuit villages and wanted to contribute to their community and focus narrowly on civic improvements. The communities were not happy with the limited approach to consultation, and asked Makivik Corporation to intervene on their behalf. The Inuit concerns were centred on environment, employment and preservation of traditions.</p>	<p>provide employment to Inuit.</p> <p>Direct benefits:</p> <ul style="list-style-type: none"> ◆ Priority of employment and awarding contracts to Inuit enterprises. ◆ Monetary compensation and profit-sharing payments. ◆ Establishment of an implementation committee and arbitration process (mitigation, monitoring of the environment). 	<p>The IBA does address monitoring of environmental impacts (water quality, fish habitat, etc.).</p> <p>The industry perspective focuses on hiring and training qualified Inuit (career counselling, employee assistance programs and scholarships) and cross-cultural training (communication, team building and conflict resolution) vital to smooth mine operation. Flexible work schedules to accommodate the cultural needs of Inuit employees, exceptions from strict firearms policy for hunting and fishing, access to a freezer and complex kitchen to store and prepare their country food.</p> <p>IBA does not address the monitoring of social impacts (long-term childcare, substance abuse, racial discrimination, slower promotion and communication and language issues).</p>
<p>Diavik Diamonds Project Participation Agreement (NWT 2000)</p>	<p>Employment, workforce development and cultural and community well-being.</p> <p>Apprentice training, Aboriginal mine training through the Aboriginal Skills and Employment Program and a scholarship program.</p>	<p>Building worker confidence, raising skill levels and enabling career advancement through focused Aboriginal leadership training.</p> <p>Under ‘Cultural and Community Well-being’, the company committed to work on policies and cultural awareness, community well-being and employee wellness.</p>
<p>Voisey’s Bay Nickel Mine IBA (NL 2002)</p>	<p>Preference for training, employment and business opportunities.</p> <p>Prior consultation to any development and exploration proposals and on any measures to preserve, protect or rehabilitate the</p>	<p>Negotiations aided by the cautious use of legal system and levelling the playing field by enriching environmental</p>

Agreement Description	Content	Comments
	<p>environment.</p> <p>Inuit retain the right to enter the area for the purposes of hunting, trapping, fishing and gathering, for food, social and ceremonial purposes. They also maintain rights to personal and domestic water use, and to the establishment of temporary camps.</p>	<p>measures and smart selection of negotiators and efficient use of fundraising efforts.</p> <p>Process empowered and ensured full participation of Inuit people.</p> <p>Safeguards in place prior to the exploration.</p> <p>A well-executed consultative process and full community participation.</p>
<p>Jericho Diamond Project IBA, Tahera Diamond Corporation and the Kitikmeot Inuit Association (NU 2004)</p>	<p>Training and education: scholarships, community information.</p> <p>Employment target: to achieve 60% of Inuit employment by year five of the operation.</p> <p>Business and contracting: expanding opportunities to Inuit communities.</p> <p>Access to facilities and roads: Gasoline or emergency shelter and food to Inuit hunters active in the project area, as long as the requests are reasonable and on a sporadic basis.</p>	<p>Unrealistic employment target.</p> <p>Very general objectives.</p>
<p>Doris North Advanced Exploration IBA, Miramar Hope Bay Ltd. (NU 2006)</p>	<p>Local employment, training and business opportunities arising from construction and operation of the mine.</p> <p>Provisions for special considerations and compensation for traditional, social and cultural matters, and effects on Inuit water rights.</p>	<p>Very generic agreement – Nunavut Industrial Relations Board initially refused to endorse Miramar’s application, asking the company to supply more information in five areas: wildlife monitoring, water management, the use of a lake for tailings disposal, the design of the jetty and the socio-economic impact of the project. After four and a half years of hearings and discussions, the board recommended to accept proposal.</p>
<p>Meadowbank Project Advanced Exploration IBA (NU 2006), Cumberland Resources and Kivalliq Inuit Association – KIA</p>	<p>Training and education to promote employment of Inuit and remove barriers to employment identify skills and qualifications.</p> <p>Monitoring and mitigating negative impacts, promoting <i>healthy</i></p>	<p>Improving capacity of and increased contracting with Inuit owned firms.</p> <p>Promoting economic, social and cultural</p>

Agreement Description	Content	Comments
	<p>Inuit communities and economic development: physical and mental health, alcohol and drug abuse, relationships, family issues, migration, loss of Inuktitut language and culture, job satisfaction, finances, effect of long-distance employment on employees and their families and other impacts of the project on Inuit of Baker Lake, and will include recommendations to address negative impacts.</p>	<p>wellness. Including post-closure Inuit Wellness Strategy. Providing KIA with funding for business development assistance (workshops and related business programs).</p>
<p>Ekati Diamond Mine IBA (NWT 1998)</p>	<p>Priority hiring, employee training, preferential business opportunities, cash payments and scholarships.</p>	

Table 3: Indigenous Agreements: Australia

Table 3 provides description of the sample of Exploration or Conservation Agreements in Australia. It can be seen that Australia’s agreements are much broader in nature than Canada’s Inuit impact agreements. Moreover, while Canadian agreements are mainly between private parties, Australian agreements include government bodies.

The purpose of Table 3 is to provide opportunity for a brief overview of content referring to community health and well-being in Australian agreements. The content in this table is based on information found in the *Agreements, Treaties and Negotiated Settlements database*, <http://www.atns.net.au/>, at times taken word by word or summarized by the authors.

Agreement Description	Contents	Comments
<p>Standard Exploration Template Agreement</p> <p>A standard template is to be used to assist Aboriginals to negotiate specific agreements. Templates can be tailored to their specific needs and circumstances. The <i>Exploration Agreement</i> is designed to be used for negotiations between a mining operations explorer and a native title representative body acting on behalf of Aboriginal Communities.</p>	<p>Defines the respective rights and responsibilities of the representative body and the explorer, including that the explorer will have guaranteed access to the agreement area.</p> <p>Identifies ‘no-go’ areas.</p> <p>Stipulates the procedures the explorer will put in place to avoid environmental damage.</p> <p>Prescribes that the explorer will provide the Aboriginal Community with the opportunity to quote for work.</p> <p>Includes the compensation payable to the Aboriginal Community.</p>	
<p>Standard Conservation Template Agreement</p> <p>A standard template to be used in agreements between the Commonwealth Minister for the Environment and Heritage and Indigenous communities, Land Councils or other Indigenous bodies in relation to management of Aboriginal land under the Indigenous Protected Areas Program</p>	<p>Provides a mechanism for long-term land use agreements to be developed.</p> <p>Aims at enhancing the conservation of the land’s biodiversity and protection of its cultural heritage values.</p> <p>Provides for Commonwealth Government funding, although the funded organization must look for additional funding sources.</p> <p>Sets out requirements for financial accountability and reporting procedures.</p>	
<p>Ranger Uranium Project: Section 44 Exploration Agreement, 1978</p>	<p>Defines payments to be made by way of royalties for mining on Aboriginal land and other payments.</p> <p>Outlines environmental requirements (operation, access,</p>	

Agreement Description	Contents	Comments
	<p>rehabilitation, health monitoring).</p> <p>Includes provisions for employment and training (to adjust working hours and conditions to suit the needs and culture of Aboriginal employees).</p> <p>Provides for local business development: support and encouragement is to be given to the setting up of and the use of local Aboriginal enterprises and businesses providing goods and services to the mine operation.</p> <p>Includes control of liquor.</p> <p>Ensures protection of rights of traditional owners to exercise their traditional use or occupation.</p> <p>Includes protection of sacred sites.</p> <p>Provides instruction for non-Aboriginal employees and the promotion of knowledge, understanding and respect of Aboriginal culture.</p>	
<p><i>Tanami Mining Exploration Agreements, 1983</i></p>	<p>Includes:</p> <ul style="list-style-type: none"> ◆ provisions on compensation; ◆ direct payments; indirect payments of royalty equivalents via the Northern Territory government; ◆ a community trust fund; ◆ medical treatment of traditional owners at mining camps; ◆ assistance for traditional owners when traveling through country via mining camps; ◆ at times ad verbatim or summarized by the authors. financial assistance for the administration of the agreement; ◆ training and employment; ◆ environmental protection and rehabilitation; ◆ and cross-cultural training of employees. 	<p>The agreements contain strong provisions detailing that all heritage sites within the active mining areas.</p> <p>Areas that are being intensively explored must be identified and fenced off.</p> <p>Employee training aims to contribute to understanding of heritage sites and to ensure cross cultural awareness.</p> <p>Environmental protection provisions reflect the wishes of the traditional owners and adhere to best practice initiatives in the mining industry. They include minimal disturbance of ground; no interference with natural water systems; retention of natural vegetation as well as rehabilitation of</p>

Agreement Description	Contents	Comments
		land; prevention of harm to wildlife; and monitoring and reporting of the natural environment and any impacts.
<p>Mount Stretton Deed for Exploration Agreement, 1995</p> <p>Snowdrop Creek Deed for Exploration, 1995</p> <p>Wetji River Deed for Exploration, 1995</p> <p>Willowra Deed for Exploration, 1995</p>	<p>Agreements negotiated under the standard exploration template agreement include:</p> <ul style="list-style-type: none"> ◆ Protection and rehabilitation of the environment. ◆ Training for Aboriginal people. ◆ Mining. ◆ Compensation. <p>Compensation is payable to the traditional Aboriginal owners via the Northern Land Council (NLC) and includes the reimbursement of costs for Council members or traditional Aboriginal owners for their responsibilities under the deed.</p>	
<p>South Nicholson River Agreement, 1998</p>	<p>Provides for a liaison structure, heritage and cultural protection, community benefits, training, employment, and also for land rents, profit interest and regional development if mineral discovery and mine development occurs.</p>	
<p>Giants Reef Exploration Pty Ltd Edna Beryl Agreement, 1998</p> <p>The agreement is historic as it is the first agreement under the <i>Land Rights Act</i> between the Warumungu People and a mining company.</p>	<p>The Agreement has strong provisions covering protection of sacred sites and employment and training of local Aboriginal people.</p>	
<p>Alice Springs to Darwin Railway Agreement, 1998</p> <p>Negotiations represented the first serious attempt by the Territory Government to negotiate with native titleholders.</p> <p>The agreement was reached in stages, with first the development of a fairly detailed framework agreement and a final agreement that was built upon the framework agreement. The framework agreement provided for an assessment to be undertaken of the proposed impact of the railway</p>	<p>Agreement included:</p> <p>Compensation for leasehold acquisition, which is not based merely on land value, but includes elements for cultural and spiritual values.</p> <p>Compensation for extraction of materials for construction of the railway, and restoration of the extraction areas.</p> <ul style="list-style-type: none"> ◆ Funding for a community development fund. ◆ Government to minimize or improve negative impacts identified by the railway impact assessment. ◆ Economic and social issues including: employment and training of Aboriginal people; opportunities for Aboriginal people to provide goods and services to the project; 	<p>Two issues ensured the speedy conclusion of the agreement:</p> <ul style="list-style-type: none"> ◆ Sacred site clearance – early consideration of this issue substantially reduced the time required for negotiations. ◆ The unified Aboriginal negotiating position that saw the Land Councils as the only representatives for native titleholders, with no divisions and no competing interests.

Agreement Description	Contents	Comments
upon Aboriginal communities and their way of life. Each agreement was presented to native titleholders/traditional owners for careful scrutiny through a series of regional meetings.	<ul style="list-style-type: none"> ◆ Aboriginal input into the design of the project to minimize impacts. ◆ Appropriate cross-cultural training. ◆ Employment of Aboriginal liaison officers during the construction phase. ◆ Ongoing consultation with Aboriginal communities and the Land Councils. 	
<p><i>Benda Bluff & Collara Mts Exploration Agreement, 1999</i></p> <p><i>Stokes Range Exploration Agreement, 1999</i></p> <p><i>Mt Lean Agreement, 2000, Arnhem Land, NortProject</i></p> <p>Three Comprehensive conjunctive exploration agreements providing for exploration access on Aboriginal freehold land.</p>	The Agreements include liaison structure, heritage and cultural protection, community benefits, training, employment, and provisions for land rents, profit interest and regional development if mineral discovery and mine development.	
<p><i>Wunara Exploration Deed, 2000</i></p> <p>A Native Title exploration access agreement on Native Title Aboriginal freehold land</p>	Provisions include heritage protection, liaison, work program clearances, environmental protection and rehabilitation, employment and training, and a commitment to negotiate a mining agreement in good faith.	
<p><i>Exploration Agreement between Bootu Creek Resources Pty Ltd and Local Aboriginal Groups, 2002</i></p> <p>A template agreement with objectives to enable grant to Bootu Creek Resources of exploration licenses in a manner consistent with the rights and interests of the Local Aboriginal Groups.</p>	The agreement is intended to ensure that exploration is undertaken in such a way that it accords understanding and respect according to Aboriginal tradition for the interests of the Local Aboriginal Groups and their members affected by the exploration; minimizes the deleterious impact upon the Local Aboriginal Groups, their members and the environment; and contributes to <i>the social and economic well-being</i> of the Local Aboriginal Groups.	
<p><i>Mereenie Oil and Gas Agreement, 2002</i></p> <p>A previous 21-year agreement for the area recently expired and the newly signed agreement will run for a further 21 years.</p>	The agreement includes sacred site protection, increased employment opportunity for the traditional owners, and enterprise development.	Even though the earlier agreement contained provisions relating to Indigenous employment, not one Aboriginal person was employed throughout the 21 years the agreement was in operation.
<p><i>Cudbugga Creek Voluntary Conservation</i></p>	Agreement guarantees permanent protection of important	

Agreement Description	Contents	Comments
<p>Agreement, 2004</p> <p>The agreement was signed by a private landholder in the Eurobodalla Shire and the New South Wales National Parks and Wildlife Service (NWPS) (on behalf of the New South Wales Minister for the Environment). The VCA provides long-term protection for 30 hectares of coastal forest, woodland and Coila Lake frontage.</p>	<p>habitat for native flora and fauna, as well as significant Aboriginal heritage values.</p> <p>Agreement includes Management Plan, which covers matters relating to weed control, regeneration issues, feral animals, erosion control, grazing, buffer zones, gates and fencing, flora and fauna management, productive yield, Aboriginal heritage, fire management, education, and development.</p>	
<p>Oxygen Farm Conservation Agreement, 1995</p> <p>A joint agreement between the New South Wales State Minister for the Environment and the Oxygen Farm Association to preserve vegetation communities, protect flora and fauna species of regional conservation significance, protect scenic amenity and water quality</p>	<p>Agreement envisages the undertaking of consultation with local Aboriginal communities and of Aboriginal site surveys on the Oxygen Farm for the purpose of determining whether any sites of cultural heritage significance exist.</p>	