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I had the privilege of working with Bruce Uviluq while at NTI, and looking at impact benefit agreements then. I also worked for Treasury Board Legal Services for a number of years, and have since switched back to working for Aboriginal organizations.

IBAs are becoming important not just for economic measures. They support cultural, social, and environmental goals and are very important.

What are IBAs?

- IBAs are contracts, with various names. They can be referred to as participation agreements, socio-economic agreements, capacity funding agreements, or exploration agreements.
- They are either:
 - **Resource development IBAs:** negotiated privately between Aboriginal organizations and companies
 - **Government IBAs:** Negotiated between Aboriginal organizations and governments, usually related to parks and conservation areas, as required by modern treaty agreements

What are IBAs for?

- IBAs are intended to provide:
 - Benefits to Aboriginal communities from resource development, or other activities in their territories
 - Ensure that any potential detrimental impacts from any of those activities are addressed

What can IBAs address?

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

There is no limit to what an IBA can address. Enforceability and dispute resolution are becoming more prominent.

Modern Treaty Agreements: Triggers for IBAs

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

Requirements for IBAs

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

Nunavut Land Claims Agreement

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

Resource Development IBAs

- IBA Research Network:
http://www.impactandbenefit.com/IBA_Database_List
- There are many examples of IBAs. The IBA Research Network has a listing of many IBAs between companies and Aboriginal organizations related to resource development. There are both IBAs connected to modern treaty agreements and with Aboriginal communities that do not have settled claims but have established traditional lands and interests.
- The Mary River IIBA is not confidential. This is an opportunity to examine the types of provisions included and see what's been developed. It is very comprehensive.

Modern Treaty	IBA
Tlicho Final Agreement, 2003	Snap Lake Project: Tlicho First Nations and De Beers Canada, 2006
Nunavut Land Claims Agreement, 1993	Meadowbank Mine: Kivalliq Inuit Association and Agnico-Eagle Mines Ltd.

Nunavut Land Claims Agreement, 1993	The Mary River Project: Qikiqtani Inuit Association and Baffinland Iron Mines Corporation
	<p>The Mary River IIBA can be found online at:</p> <p>http://www.qia.ca/apps/UPLOADS/fck/file/QIA%20-%20Baffinland%20-%20IIBA%20-%20Sept%206,%202013%20(signed%20and%20sealed%5D%20%20with%20Article...pdf</p>

Issues with Resource Development IBAs

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

IBAs with Government of Canada

- Many Modern Treaty Agreements require IBAs with government for the establishment of parks, protected or conservation areas.
- For example, Sections 8.4.4 and 9.4.1 of the *Nunavut Land Claims Agreement* requires IBAs prior to the establishment of a Park or Conservation Area.
- There is also a requirement to conclude IIBAs within five years for existing parks and conservation areas. For conservation areas already in place when the Nunavut Land Claim was negotiated, there should have been an IBA for those within five years of the signing of the agreement, but in some cases that has not occurred.

Examples of IBAs in Nunavut with Government

These are public documents, are available online.

- National Parks:
 - Auyuittuq, Quttinirpaaq and Sirmilik IIBA
 - Ukkusiksalik National Park (Wager Bay) IIBA
- National Wildlife Areas and Migratory Bird Sanctuaries IIBA
- Territorial Parks IIBA

Opportunities through IBAs

- National Wildlife Areas and Migratory Bird Sanctuaries IIBA, 2008:
 - 5 NWAs and 11 Migratory Bird Sanctuaries

- \$8.3 million over 7 years for tourism, Inuit education and employment assistance programs, community infrastructure, area co-management committees and other benefits
- 11 Inuit Communities to receive benefits

Arviat Community Eco-Tourism Initiative

- Community of approximately 2,850 people.
- IIBA contributions for Eco-Tourism Project are \$240,000 a year for five years.
- The goal is to *develop an internationally competitive and unique wildlife viewing and Inuit cultural experience.*
- Using IBA funds to leverage other funds. With seed money to find more business. This is a significant opportunity for small communities.
- At the negotiating table, it is easy to forget there are communities who could really benefit from these.
- Some results already seen in the areas of capacity building in the area of eco guide training, business training, cooking, historical interpretation, cultural performance; see online at: http://www.nunatsiaqonline.ca/stories/article/65674offering_an_authentic_inuit_experience/

Negotiation Difficulties

- More incentive for companies to conclude IBAs than governments. For companies an IBA is a tool to reach development goals.
- Government does not have the same incentive to conclude as business, thus we see longer negotiation periods.

Nunavut Example: Negotiation Issues

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

Stumbling Blocks

- Timeline for CHR IIBA negotiations:
 - Negotiations between 2004 and 2011
 - Approximately 10 negotiation sessions without agreement on an IIBA
 - ☞ Issues: Inuit organizations negotiating without knowledge of Government's financial mandate
 - ☞ Negotiation exercise costly for Inuit organizations
- The biggest issue is government financial mandate. Negotiations continue for a long time, Inuit organizations believe there is progress, and then learn that the financial mandate cannot possibly fund the benefits discussed.
- Negotiations are very costly for Inuit organizations. There is a sense that by the time negotiations conclude, benefits may not even match the actual amount spent by Inuit organizations in negotiating the IBA.

Making Treaty Obligations Work for Communities

- IBAs are important tools within modern treaties that bring economic opportunities to Aboriginal communities, as well as many other opportunities, including cultural support, social and community programs and environmental mitigation and monitoring.
- IBA obligations should be fulfilled to allow communities to benefit from resource development and government activities in their areas.
- These agreements are a great source of community, social, cultural support. Outstanding obligations – if met – would make a significant contribution to these communities.