

# Impact and Benefit Agreements & Northern Resource Governance: What we know and what we still need to figure out

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## Introduction

Mineral exploration and extraction in areas like northern Canada has long been recognized as a source of economic activity and opportunity. In 2011, a recent peak year, exploration expenditures were \$4.2 billion across the country, while the total production of minerals, metals, and coal was valued at \$50.9 billion (Intergovernmental Working Group on the Mineral Industry, 2016). During such times, the sector has generated substantial wealth for mining firms, governments, servicing companies, employees, and, increasingly, communities proximate to a mine site. For example, in 2007, the owners of the Raglan Mine in northern Quebec issued a payment of \$16.7 million to the Inuit of Nunavik through Makivik Corporation. This payment was made as per the requirements of the Raglan Agreement, a contract signed in 1995 by the (then) owners of the mine, Falconbridge, and regional Inuit organizations on whose traditional lands the mine was built.

Since this time, equivalent agreements, commonly termed Impact and Benefit Agreements (IBAs), have increasingly been established across Canada, Australia, and, most recently, Greenland. IBAs are negotiated directly between mine developers and Indigenous communities with limited state interference. Indeed, outside of a few jurisdictions where IBAs are mandatory as a result of a completed land claim (e.g. Nunavut), their use is voluntary from a regulatory perspective. Nevertheless, IBAs have become institutionalized as firms have come to recognize that it is in their commercial interest to address evident gaps in the regulatory processes used to permit mine developments (Bradshaw & McElroy, 2014). Consistent with this observation, their de facto purpose is to deliver enhanced impact mitigation and tangible benefits to communities in exchange for community acceptance of a project (Kennett, 1999). Routinely, IBAs provide benefits such as payments, training and employment, and preferential treatment of community businesses; less routinely, IBAs offer a means for would-be impacted communities to influence project design and operation. For example, as a condition of their support for Inco's Voisey's Bay nickel mine, the Labrador Inuit Association secured limits on winter shipping to and from the mine in order to protect winter ice travel by Inuit hunters.

The growing use of IBAs by Canadian Indigenous communities over the past two decades should not be read as evidence of their unequivocal embrace or trouble-free use. In some instances, an IBA is simply not viewed as sufficient to mitigate or offset the anticipated impacts of mineral extraction. Such was the case for the Lutsel K'e Dene First Nation who, in the mid-2000s, expressed opposition to uranium exploration in the Thelon region of the Northwest Territories (NWT) even if supported by negotiated agreements. In instances where IBAs have indeed been used, community signatories have sometimes been frustrated by perceived withholding of benefits by the developer or some other failure of IBA implementation (O'Faircheallaigh, 2002); when this occurs, community protests and project slow-downs are possible. Such was the case for DeBeers Canada's Victor mine, whose supply lines were disrupted by an 18-day roadblock in February 2009 staged by members of the Attawapiskat First Nation. The protest developed

because certain portions of the community felt DeBeers Canada was not living up to the terms of their IBA. Community discontent was also evident for reasons that would seem to exceed the scope of the IBA. Though not explicitly a subject of negotiations, it was expected that local incidence of substance abuse, domestic violence, and other social ills would be reduced as average community incomes grew via mine-related employment; four years after IBA ratification, these social issues were still evident.

Hence, notwithstanding their growing use, IBA signatories and analysts alike regard IBAs as an imperfect governance solution. Of particular concern is: the uncertain position of IBAs in mine permitting, especially relative to regulatory processes like Environmental Assessment (EA) and the execution of the Crown's consultation obligations; the perception that Indigenous community well-being is not sufficiently improving through IBA-enabled mine developments, especially given limited use of adaptive management to address social impacts as they emerge within IBA-signatory communities; and growing concerns that IBAs represent a partial measure that allows the Crown to continue to avoid its obligations and thereby perpetuate ongoing injustice. Though these concerns represent a practice deficit, some also represent a deficit in our collective knowledge of IBAs, which ideally would be addressed through future research. In support of this end, this chapter reviews select scholarship focussed on IBAs to highlight what is known about IBAs and identify knowledge gaps, especially in northern Canada. What follows is a descriptive overview of three dominant areas of IBA scholarship: the relationship of IBAs to existing regulatory processes; IBA negotiation, implementation and effectiveness; and IBAs and the pursuit of social justice.

### **IBAs and regulatory processes**

In one of the first papers to systematically assess the emergence of IBAs in the context of existing regulatory processes, Galbraith et al. (2007) suggested that IBAs be seen as 'supraregulatory' governance instruments in that they necessarily function alongside, though are seldom officially a part of, public regulatory systems. The relationship of IBAs to regulatory processes such as Environmental Assessment (EA), the consultation obligations of the Crown, and, most recently, legislation that aims to increase the transparency of payments made by extractive sector firms to governments, including indigenous ones, is a complicated one, but one that has attracted scholarship.

For many scholars, it is noteworthy that IBAs have emerged in two jurisdictions, Canada and Australia, where regulatory processes governing mining, such as Environmental Assessment (EA), are relatively progressive. Evidently such systems, even in places like the Mackenzie Valley, NWT where EA is conducted through a co-managed board, offer insufficient protection and opportunity for Indigenous communities. This assertion is supported by the content of - and even more obviously the label - an Impact and Benefit Agreement. Before an Indigenous community will support and enable a mine development, it must reach an agreement with the

developer (an *Impact Agreement*) on how the impacts of mine construction and operation will be managed beyond that required through regulatory processes. This can be done through, for example, mutually agreed-upon changes in project design, enhanced impact mitigation provisions, and enabling community involvement in environmental monitoring. Though some of these provisions may seem routine and even disingenuous (see Noble and Birk, 2011), the establishment of an agreement, and hence ongoing relationship, between a mine developer and a local Indigenous community to limit, measure, and manage impacts is significant in that it serves to overcome a disconnected permitting process: one process and administrative body determines the suitability of a proposed mine development; and a second process and administrative body monitors outcomes following project approval. This is problematic in itself, but made more so by the *ex ante* nature of EA, which requires that a binary decision (yes/no) be made based on probabilistic forecasts (O’Faircheallaigh, 1999). The continuity created by an agreement ensures that unforeseen changes are properly identified and managed, and thereby provides more assurance to a community than does a disjointed regulatory system; this seems to hold true even with the advent of more stringent follow-up provisions in EA.

Of equal importance, an Indigenous community has no reason to support and enable a mine development without coming to an agreement with the developer (a *Benefit Agreement*) on the delivery of benefits to locals, such as employment and training, mine business contracts, and direct financial payments. Though other benefits may ultimately deliver more wealth to a community, payments tend to attract the greatest attention in negotiations. Payments can take a variety of forms, including equity interest, royalties based on profits, royalties based on the value of production, royalties based on the volume of outputs, and fixed payments; often, communities will secure fixed payments to cover their costs of IBA administration, coupled with some form of profit-sharing (Gibson & O’Faircheallaigh, 2010). Rather than complement public regulatory systems, this second aim of an IBA makes up for these systems’ most glaring limitation: though locals inevitably experience a disproportionate share of project impacts, regulatory systems governing resource extraction do not privilege locals in terms of capturing project benefits, even where those locals hold special rights. For example, the creation or enhancement of the positive impacts of development or not mentioned in the *Canadian Environmental Assessment Act, 2012*; its concern is merely the avoidance, mitigation, or compensation of adverse ones.

Many scholars have pointed to the need to better define the relative roles of IBAs and regulatory processes such as EA (e.g. Kennett, 1999; Fidler and Hitch, 2007; Galbraith et al., 2007; Diges, 2008), and some have even offered guidance for integrating the two processes (e.g. Lukas-Amulung, 2009; Gibson and O’Faircheallaigh 2010, Noble and Birk, 2011). These calls and prescriptions stem from a recognition that the public conduct of EA and private negotiation of IBAs regularly overlap and can sometimes interact in problematic ways. Lukas-Amulung (2009) notes from her research of development processes in the Northwest Territories that EA and IBA negotiations tend to overlap in three key areas: the scoping stage; the deliberation stage; and the

resolution stage (see Figure 1). In some instances, interaction is overt. For example, Shanks (2006) identifies cases where EA panels have recommended that IBAs be in place as a condition of regulatory approval. Similarly, Fidler (2009) notes that an explicit element of the IBA signed in support of the proposed Galore Creek mine in northern BC outlined how the Tahltan First Nation and mine proponent would collaborate to achieve EA approval.

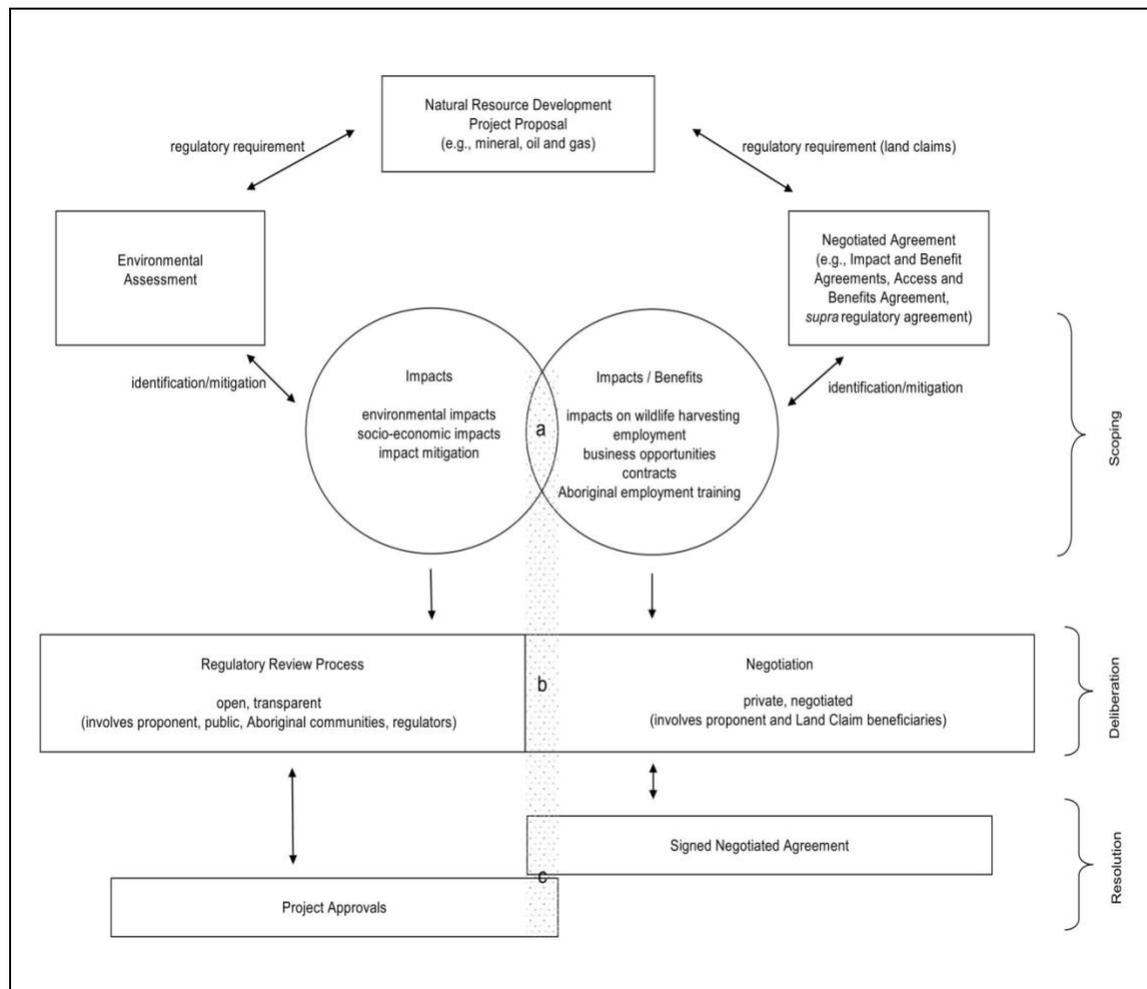


Figure 1. A conceptualization of the overlapping relationship between negotiated agreements (NAs) and environmental assessment EA) in the Northwest Territories. Potential overlaps are indicated by the shaded area. The overlaps in the environmental assessment and negotiated agreements processes exist in: (a) the scoping stage, when project impacts and benefits are identified; (b) the deliberation stage, when regulatory review of the EA and the negotiation of the NAs occur; and (c) the resolution stage, when project approvals are granted and NAs are signed (Lukas-Amulung, pg. 32, 2009).

To address problematic interactions between IBAs and EA, scholars have conceptualized normative models of integration, and considered the place of IBAs in regional planning. For

example, Lukas-Amulung (2009) proposes the establishment of a bilateral IBA-EA coordination plan at the early stages of a proposed project to enable information sharing between the processes, and the coordination of monitoring provisions post-approval. Echoing this suggestion, Noble and Birk (pg. 19, 2011) discuss the potential benefits of linking “negotiated agreements and associated monitoring programs with EIA-based follow-up practices in support of improved community engagement and project impact management”. For Gibson and O’Faircheallaigh (2010), a critical challenge for communities lies in ensuring information arising from IBA negotiations and the EA process is iterative, with one informing the other in a manner that leverages optimal benefits in a time-sensitive environment. Certainly, as argued by Caine & Krogman (2010), IBA negotiations and especially ratification should be informed by EA, especially with respect to the identification of the likely impacts of a proposed project impacts; however, contemporary EA processes should also be informed by the deliberations that ideally precede IBA negotiations through which an Indigenous community crafts a vision for the future that they hope to realize through partnering on a development. This argument is consistent with those of O’Faircheallaigh (2007; 2010), Siebenmorgen and Bradshaw (2011) and Fidler and Noble (forthcoming), who see benefit in linking or at least placing IBA negotiations within larger scale, collaborative land-use planning processes. In a related vein, O’Faircheallaigh (2010) draws attention to the wider, problematic implications of agreement-making for Indigenous communities, including: limiting access to judicial systems to exercise Indigenous or even basic citizen rights because of binding commitments in a signed IBA; dissuading participation in a political campaign or strategy that runs counter the interests of the project partner; and altering a community’s relationship with the Crown with respect to funding of programs and fulfillment of the Crown’s consultation and accommodation duties.

This latter issue is especially complex, and remains an area in need of further analysis. The Crown’s Duty to Consult and Accommodate stems from the Supreme Court of Canada’s 2004 ruling in *Haida Nation v British Columbia (Minister of Forests)*, which established that the Crown is obliged to consult and seek to accommodate the needs of Aboriginal peoples when it contemplates actions or decisions (e.g. the permitting of a mine) that may affect an Aboriginal person’s Aboriginal or Treaty rights. Consistent with the Court’s ruling, Gogal et al. (2005) note that a mine proponent does not owe an independent duty to consult Aboriginal peoples; however: the Crown may delegate the procedural aspects of consultation to industry, which they have routinely done (Garton, 2009; Cameron and Levitan 2014); an IBA is an obvious form of accommodation as was made explicit in the 2012 signing of an *Accommodation Agreement* by Avalon minerals and the Deninu Kue First Nation in support of the Nechalacho Rare Earth Elements Project; and it is ultimately in the commercial interest of firms to ensure that these duties are fulfilled given that, should the Crown fail to do so, a proposed project can be stalled.

Mining firms’ commercial interest in IBAs is made clear in Lapierre and Bradshaw (2008), who, in addition to identifying the business case for IBAs, argue that the industry has moved from

reluctant acceptance of the need to negotiate an IBA to embracing the opportunity to partner with Indigenous communities proximate to a proposed mine site because of their need for infrastructure and labour, their desire to avoid protests, and their larger, often global, reputation. Most recently, relations between firms operating mines and their partner Indigenous communities in Canada have been tested by the passing of the *Extractive Sector Transparency Measures Act* (2014), which requires Canadian companies to disclose payments to aboriginal governments, formed through confidential IBAs. This legislation has not been well received by Indigenous governments in Canada (see NRCAN 2014 Public Consultation Comments) and creates new tension and questions pertaining to the role of government in IBAs.

Notwithstanding considerable attention to understanding better the relationships between IBAs and state-led regulatory processes, further research is needed to address a number of pertinent questions, such as:

- How do communities understand their legal rights? How does this impact their approach to IBA negotiations?
- How does industry approach IBA Negotiations? Is it to have a rights-based discussion or is it based on “how much money will it take to get the project the green light?”? Does this matter?
- Does legal context from region to region impact the negotiation and content of an IBA?
- Are IBA negotiations recognized as de facto replacements for the Crown’s Duty to Consult and Accommodate? If so, what are the implications for Indigenous communities and industry?
- How are legal and cultural norms around the concept of FPIC changing in Canada, and what might this mean for IBA negotiations?
- Is there the potential to harmonize EA and IBA processes? Is there interest?

### **IBA negotiation, implementation and effectiveness**

When members of the Attawapiskat First Nation blocked the supply route to the Victor Mine in February, 2009, they expressed outwardly what members of IBA signatory communities have routinely felt inwardly. Though IBAs have undoubtedly filled some notable gaps in existing regulatory systems, there is widespread recognition in the world of IBA practice and the IBA research community that IBAs could be doing more to advance community interests. For example, Prno et al. (2010) reported on the effectiveness of a number of IBAs negotiated in support of three diamond mines in the Northwest territories. While the IBAs were generally found to be meeting their broad objectives, especially with respect to the delivery of benefits, the authors identified some deficiencies, especially around building trust with mining firms, relieving capacity strains, and enabling follow-up and adaptive management when problems arise. As might be expected, the authors discovered highly varied opinions on the effectiveness of the IBAs from agreement to agreement, community to community, and sometimes focus

group to focus group within a single community. For example, the region's first agreements, signed in haste in support of the Ekati mine, were viewed with pride by some focus group participants and barely veiled contempt by others (e.g. "[They exist] to shut us up... They threw [the IBA] at us; take it or leave it!". Prno et al. 2010, p.5).

Efforts to make sense of IBA effectiveness, and especially problematic performance, have rightly directed attention to IBA negotiation and implementation. Reflecting the former, O'Faircheallaigh and Corbett (2005) showed that negotiations can severely impact the terms and, ultimately, progressiveness of resultant IBAs; indeed, the authors revealed too many instances where negotiated agreements contained provisions of less significance than existing regulatory requirements! These kinds of extreme outcomes are less likely given efforts to improve the knowledge base and bargaining power of communities seeking to negotiate an agreement (see Gibson and O'Faircheallaigh, 2010). Nevertheless, many scholars argue that power imbalances at the negotiating table will always be problematic (e.g. Caine and Krogman, 2010; Szablowski, 2010; St-Laurent and Le Billon, 2015), and factors beyond the negotiating table will continue to affect an IBA's content. This latter point is well shown in O'Faircheallaigh's (2015) comprehensive review of the practice of IBA negotiation, which, among other things, reveals how economic, social and political contextual variables like institutional frameworks and the state of regional economies can impact IBA content.

IBA implementation has similarly been a subject of research and prescription. One of the earliest contributions, O'Faircheallaigh (2002), drew attention to the many causes of weak IBA implementation, such as inadequate resources, weak language and institutional arrangements, an absence of specific penalties for non-compliance, staff turnover, etc.. Many of these concerns were used by Gibson and O'Faircheallaigh (2010) to develop prescriptions for improved IBA implementation. More specifically, the authors identified eight factors internal to agreements that are known to contribute to their successful implementation, and consequently the effectiveness of an IBA: 1) clear goals; 2) institutional structures for implementation; 3) clear allocation of responsibilities; 4) adequate resources; 5) penalties and incentives for compliance; 6) monitoring; 7) review mechanisms; and 8) capacity for amendment. Fidler and Noble (forthcoming) examine the scholarly basis of these eight factors. Though they identify a healthy number of articles for each (see Table 1), they raise concerns about the empirical basis of the existing scholarship and the tendency for authors to repeat one another's claims.

Table 1: Factors that contribute to successful IBA implementation as identified in Scholarship

Factors	Description	Key Sources
1. Clear goals	Precision and clarity in the way that goals and intended outcomes are stated in the agreement is critical in ensuring smooth implementation. Is there ambiguity? Is language precise?	O'Reilly 2000, Sosa and Keenan 2001, Weitzner 2006, O'Faircheallaigh 2007, Prno 2007, Woodward and Company 2009, Gibson and O'Faircheallaigh 2010, Prno et al. 2010, Siebenmorgen and Bradshaw 2011, Wright 2013, Dylan et al. 2014
2. Institutional structures for implementation	Implementation cannot be expected to occur as an add-on role for the parties to the agreement. New structures such as committees specifically tasked with implementation will be necessary to drive the agreement forward.	Keeping 1998, Sosa and Keenan 2001, Galbraith et al. 2007, Lewis 2009, Gibson and O'Faircheallaigh 2010, Wright 2013
3. Clear allocation of responsibilities	Clearly state who is responsible for doing what, and make sure that the responsible person or organization has the authority required. Essential to have both company and community champions of the agreement.	Isaac and Knox 2004, Klein et al. 2004, Weitzner 2006, Fidler and Hitch 2007, O'Faircheallaigh 2007, Diges 2008, Lewis 2009, Gibson and O'Faircheallaigh 2010, Noble and Fidler 2011, Siebenmorgen and Bradshaw 2011
4. Adequate resources	Dedicated resources, including: a) <i>Funds</i> to hire, e.g., technical experts to review environmental reports; b) <i>Resources</i> may include staff and access to experts or information; c) <i>Training &amp; Capacity</i> to engage in policy work.	O'Reilly 2000, Sosa and Keenan 2001, O'Faircheallaigh 2007, Diges 2008, Lewis 2009, O'Faircheallaigh 2010, Woodward and Company 2009, Gibson and O'Faircheallaigh 2010, Wright 2013, Caine and Krogman 2010, Prno et al. 2010, Noble and Fidler 2011, Siebenmorgen and Bradshaw 2011
5. Penalties and incentives for compliance	This type of adaptive management is about ensuring appropriate responses if the intent of the agreement is not met.	O'Reilly 2000, Gogal et al. 2005, Hitch 2005, Weitzner 2006, Caine and Krogman 2010, Gibson and O'Faircheallaigh 2010
6. Monitoring	Provisions for monitoring might include a requirement for regular reporting of data and a list of performance indicators that will be used to track the progress under the agreement.	Public Policy Forum 2005, Woodward and Company 2009, Prno et al. 2010, Gibson and O'Faircheallaigh 2010, Caine and Krogman 2010, Noble and Birk 2011, Siebenmorgen and Bradshaw 2011, Wright 2013
7. Review mechanisms	Periodic review as well as commitments to fund the review and a process for the findings to be considered and acted upon	O'Reilly 2000, Prno 2007, Lewis 2009, Woodward and Company 2009, Gibson and O'Faircheallaigh 2010, Caine and Krogman 2010, Siebenmorgen and Bradshaw 2011
8. Capacity for amendment	Process for amendment that is not too onerous or problems will not be addressed. Amendments can be important for a few reasons: a) the relationship between the company and community is dynamic, which can result in unanticipated situations that need to be addressed; b) the body of knowledge, understanding and approaches to IBAs is frequently changing; c) the alternative to amendment, dispute resolution, is expensive and disruptive.	Keeping 1998, Weitzner 2006, Diges 2008, Knotsch and Warda 2009, Lewis 2009, Prno et al. 2010, Gibson and O'Faircheallaigh 2010, Caine and Krogman 2010, Wright 2013

Source: Fidler and Noble, Forthcoming

O’Faircheallaigh (2015) addresses this empirical deficit somewhat and draws attention to some other considerations for successful implementation of company-community agreements including measures to: address mine ownership changes or simply managers’ changing priorities; maintain good community-company relations; and ensure senior managers focus on implementation issues on a regular basis.

While weak negotiation and implementation clearly explain some communities’ frustrations with IBAs, some of these frustrations can also be attributed to communities’ growing expectations of benefit delivery, coupled with their failure to make explicit a number of implicit expectations (Siebenmorgen and Bradshaw, 2011). For communities, the decision to sign an IBA, and thereby tacitly embrace the mineral economy, is a significant one; such decisions are only made because community members anticipate improving outcomes over time, not just with respect to employment and income, but also community well-being (Knotsch and Warda, 2009). Research on the experiences of IBA-signatory communities has revealed a number of community well-being concerns, especially as a result of new monies and the rotational work schedule, such as increased family stress, substance abuse and crime, and mental health impacts such as depression (Gibson, 2008; Peterson, 2012; Shandro et al., 2011). IBA negotiators are evidently aware of these issues and IBAs increasingly make reference to community well-being as an overarching goal of the agreement; however, few if any IBAs contain concrete provisions that ensure that such issues can be effectively managed (Jones and Bradshaw, 2015). Impact monitoring is improving (Klinck et al. 2016), but adaptive management of problematic outcomes is often insufficient (Jones and Bradshaw, 2015).

Though, in response to calls (e.g. Prno and Bradshaw, 2008; Caine and Krogman 2010), some important research has been completed on IBA negotiation, implementation and effectiveness, it remains an area in need of attention if IBAs continue to be promoted as a way to resolve competing interests, obtain consent, and deliver beneficial outcomes (Gibson and O’Faircheallaigh 2010). In particular research is needed to address questions such as:

- How variable are IBA negotiations and implementation?
- How much information sharing occurs among communities and among companies, and how does this impact IBA negotiations?
- What are contemporary and historical constraints to effective IBA negotiation and implementation, and how can they be addressed?
- What are the governance and capacity issues that have to be addressed to improve IBA negotiation and implementation?
- Are IBAs benefiting communities? Are they meeting their explicit and implicit aims, especially around community well-being?
- Are IBAs benefitting industry? Are they meeting their explicit and implicit aims?

## **IBAs and Social Justice**

For IBA scholars, and even more so for Indigenous community leaders making use of IBAs as a means of asserting interests and securing benefits, a fundamental question is never far from mind: are IBAs redressing historical injustices or perpetuating further injustice? Given the significance of past injustices experienced by indigenous peoples as a result of mineral exploration and mine construction, operation and abandonment (see, for example, Gibson and Klinck, 2005; Sandlos and Keeling, 2015), the use of IBAs evidently constitutes progress over a dismal past with respect to impact mitigation, benefit delivery and self-determination. Indeed, for some (e.g. Sosa, 2011; Boreal Leadership Council 2012; 2015; Bradshaw and McElroy, 2014; Nunatsiavut Government, 2016), an IBA even has the potential to serve as an expression of an Indigenous community's free, prior and informed consent (FPIC) to a major projects proposed within its territories.

This *relative* progress argument was adopted by O'Faircheallaigh (1999, p.76) in an early review of IBAs in which the author noted that "Social Impact Assessment and negotiation processes [e.g. IBAs]...can help shift the balance of power toward those who are relatively weak... [These] processes involve providing communities with information and a capacity to apply that information, and this can significantly enhance their relative power." The author recently repeated the *relative* progress claim in O'Faircheallaigh (2013). Nevertheless, critics have raised important challenges about their use. One set of criticisms reflects problems of IBA practice that give rise to injustice, and yet holds out the possibility for – indeed seeks to enable - refined usage; another set of criticisms places IBAs at the centre of an evolving and unjust neoliberal governance regime and, in even worse light, within a longer history of colonialism.

Exemplifying the former, research has drawn attention to a number of problematic aspects of IBAs from a social justice perspective, such as: their confidentiality, which limits knowledge sharing between communities impacted by mining and those contemplating local mine development, and sometimes even limits communications within a community negotiating an IBA; power imbalances that manifest in unjust tactics used in their negotiation; the inevitable emergence of conflict and division within communities, and between communities and their larger governance institutions; the marginalization of certain voices in communities; the challenge of disbursing monies within collective societies; their lack of dynamism relative to the desire of communities to offer ongoing consent; the failure to manage what are now well-known impacts of mine development for Indigenous community well-being; and their too often failure to meet community expectations, which can lead communities to question their decision to negotiate an IBA (Sosa and Keenan, 2001; O'Faircheallaigh, 2006; 2010; 2012; Caine and Krugman, 2007; Gibson and O'Faircheallaigh, 2010; Prno et al. 2010; Siebenmorgen and Bradshaw, 2011; Jones and Bradshaw, 2015; St-Laurent and Le Billon, 2015).

In addition to drawing attention to problematic elements within IBAs, Caine and Krogman (2010) and O’Faircheallaigh (2010) effectively move discussions of IBAs into the larger context of community sovereignty, Crown-community relations, and even meanings of democracy. This larger context is given more attention by those critics of IBAs who have identified their use as part of neoliberal governance and a colonial history marked by cultural erosion, environmental dispossession, and loss of autonomy (e.g. Cameron & Levitan, 2014; St-Laurent and Le Billon, 2015). The question of autonomy is a particularly compelling one. Whereas O’Faircheallaigh (2010, p.71) extols IBAs for enabling “access to mining income [which] can provide Aboriginal groups a degree of autonomy from the state... adding to their negotiating power in dealing with the state in relation, for instance, to service delivery, land title and management, and governance”, Cameron & Levitan (2014) suggest that IBAs have simply shifted Indigenous communities’ dependence to corporations and allowed the state to retreat even further from fulfilling its fiduciary obligations; for the authors, IBAs have allowed the honour of the Crown to remain unfulfilled.

These latter arguments echo those of, for example, Slowey (2001) and Coulthard (2014), who draw attention to state-enabled processes of Indigenous self-determination that create ‘neocolonization’ rather than decolonization. Such writings offer important new terrain for IBA scholarship and create new opportunities to problematize IBA practice. To this end, Jones and Bradshaw (2015) acknowledge the complicity of IBAs in enabling mine developments and perpetuating historical injustices, and fault IBA negotiators for their lack of attention to indigenous conception of health and especially its historical determinants. In response, however, they challenge these negotiators, as well as other relevant governance actors, to understand better, and then account for within IBAs and other contemporary governance processes, the complexities that inform Indigenous well-being, and especially legacies of colonialism. Problematically, the means by which this might be done are still in their infancy.

Intuitively, then, a number of knowledge gaps exist with respect to IBAs and social (in)justice, none of which are easily addressed, such as:

- Are IBAs a counterbalance to historical injustices or do they perpetuate them? Is autonomy from the state welcome?
- Do communities feel pressured to negotiate an IBA? Are community members aware of IBA negotiations when they happen? Do they have sufficient opportunities to contribute?
- What are alternatives to IBAs that might create greater opportunities for communities in terms of both economic development and social justice?

## **Conclusions**

To repeat from this chapter’s introduction, the growing use of IBAs by Canadian Indigenous communities over the past two decades should not be read as evidence of their unequivocal

embrace or trouble-free use. And though considerable scholarship has developed over the past two decades around IBAs, many questions surrounding their use remain. This chapter has aimed to reveal these in hopes of driving further research and refined practice. This dual aim fits well with ReSDA's overall goal of examining ways to build the potential for sustainable resource development in the Canadian north for years to come.

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