

Best Practices for Impact Benefit Agreements: A Case Study of the Mary River Project

by
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Abstract

The purpose of this project is to identify the best practices for negotiating, implementing, and writing Impact Benefit Agreements, organize those best practices into an evaluation framework, and use this framework to evaluate a case study. Best practices were identified in twenty-seven academic articles, books, reports, and guides compiled through a literature review. These best practices became forty-six sub-criteria, organized under eleven themes called criteria. Each is ranked and scored using indicator questions. The evaluation results are used to identify strengths and weaknesses of the Impact Benefit Agreement and its surrounding context. In this study, the Mary River Project Inuit Impact Benefit Agreement was evaluated as a case study. The Mary River Project is an iron ore mining project located on Baffin Island in Nunavut. This case received an overall best practices adherence score of 84%, which shows that the project has many strengths but much room for improvement. Several recommendations for the agreement and surrounding context were identified using the evaluation results.

Keywords: impact benefit agreement; sustainable development; community development; best practices; Nunavut; resource development

*I dedicate this work to my husband Grant,
without whom I would have surely starved while working on this project.*

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List of Acronyms

AANDC	Aboriginal Affairs and Northern Development Canada
ACILC	ACIL Consulting
CARC	Canadian Arctic Resources Committee
CCAB	Canadian Council for Aboriginal Business
CCSI	Columbia Center on Sustainable Investment
<i>CEAA, 2012</i>	<i>Canadian Environmental Assessment Act, 2012</i>
IBA	Impact benefit agreement
ICMM	International council on mining and metals
IIBA	Inuit impact benefit agreement
INAC	Indigenous and Northern Affairs Canada
ISS	Indigenous support services
IQ	Inuit Qaujimajatuqangit (Inuit traditional knowledge)
EIA	Environmental impact assessment
EIS	Environmental impact statement
FPIC	Free, prior, and informed consent
JPCS	Jason Prno Consulting Services Ltd.
MRP	Mary River Project
MRP IBA	Mary River Project Inuit Impact and Benefit Agreement
Mtpa	Million tons per annum
NIRB	Nunavut Impact Review Board
<i>NLCA</i>	<i>Nunavut Land Claims Agreement</i>
<i>NPPAA</i>	<i>Nunavut Planning and Project Assessment Act</i>
NRCan	Natural Resources Canada
NTI	Nunavut Tuungavik Inc.
NWB	Nunavut Water Board
NWT	Northwest Territories
OISL	Oxfam IBIS in Sierra Leone
QIA	Qikiqtani Inuit Association
SFU	Simon Fraser University
SLTO	Social license to operate
TK	Traditional knowledge
UN	United Nations

Chapter 1

Introduction

Non-renewable resource extraction is prevalent worldwide. While major resource projects have been built for centuries, companies developing resource projects are increasingly required to pursue a higher standard of social and environmental responsibility. This often means acquiring a social license to operate (Cooney, 2017; Owen and Kemp, 2012). Social license (SLTO) is defined as community approval and stakeholder support for a project, and can be achieved and maintained by cultivating and sustaining a positive relationship with local communities, governments, and other stakeholders (Cooney, 2017). The increased demand for social responsibility is driven by the proliferation of community empowerment: international standards like “Free, Prior, and Informed Consent” catalyze company engagement with communities affected by their project, as these corporations seek increased social acceptability (Rodhouse and Vanclay, 2016).

One way of acquiring SLTO is by negotiating an impact benefit agreement¹ (IBA) between the project developer and the affected community. IBAs are negotiated contracts, usually signed between a project proponent and the community affected by the project. Government bodies may also be a signatory. The flexible yet contractual nature of IBAs gives this tool the potential to effectively acquire benefits for communities and to mitigate adverse effects of project development (O’Faircheallaigh, 2015). However, the success of IBAs is not inherent: the agreement’s content and the legal and policy context surrounding an IBA must be designed to produce desired results (O’Faircheallaigh 2015, 2016).

IBAs have the potential to be effective community development tools, but their success of IBAs is contingent on the context and makeup of the agreements: in practice, IBAs only sometimes achieve their desired outcomes (O’Faircheallaigh, 2016; O’Faircheallaigh and Gibson, 2012). The purpose of this report is to explore and identify best practices for negotiating, implementing, and writing IBAs. This report will outline an evaluation framework based on literature review findings. Finally, a case study IBA from Canada, where IBAs have been commonly used for decades (Browne and Robertson, 2009), will be evaluated.

1.1 Purpose and Objectives

The purpose of this report is twofold. The first task is to develop a best practices framework for evaluating impact benefit agreements; the second task is to test the framework by evaluating a case study.

¹ Impact benefit agreements may also be known by other names such as community benefit agreements, negotiated agreements, and community development agreements. For simplicity, the term impact benefit agreement will be used in this report.

1.2 Methodology

There are six steps in this methodology (Figure 1-1). First, a literature review of IBA processes and community-company relations is completed. Second, best practices for IBAs are identified from the literature review and used to create an evaluation framework. Third, a case study is selected and described. Fourth, the case study is evaluated with the framework. Fifth, evaluation results are analyzed to determine whether the case study adheres to best practice criteria. Finally, conclusions and recommendations, based on the analysis, are provided.

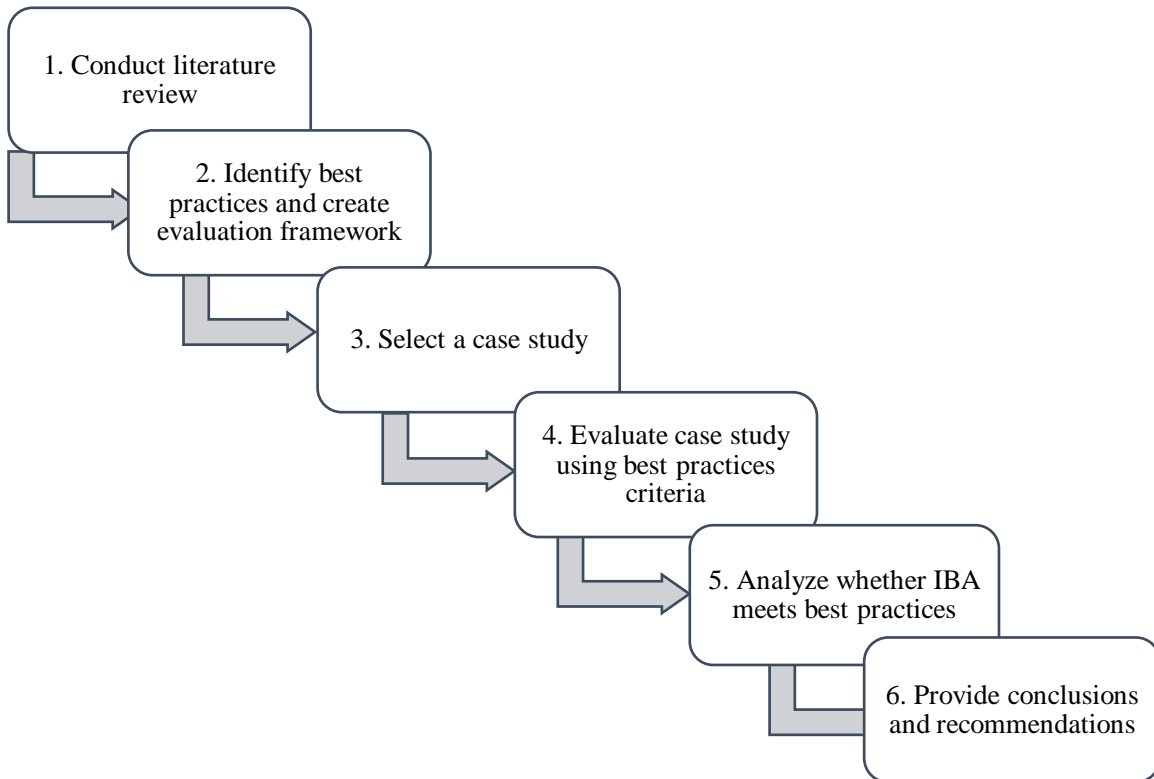


Figure 1-1. Report methodology

1.3 Structure of the Report

The report is divided into six chapters. Chapter one introduces the issue and outlines the methodology and organization of the report. Chapter two provides background information about the origins of impact benefit agreements and discusses their utility as benefit capture tools. Chapter three summarizes the reports, articles, and book chapters reviewed for this report and enumerates the evaluation framework criteria, sub-criteria, and indicators. Chapter four describes the case study that will be evaluated in chapter five. Chapter five describes the findings of the case study evaluation. Finally, chapter six summarizes identified strengths and weaknesses of the case study and provides final comments.

Chapter 2

Origin and History of Impact Benefit Agreements

2.1 Growing Popularity of Impact Benefit Agreements

Impact benefit agreements aim to grant benefits and minimize adverse impacts to communities affected by project development (O’Faircheallaigh 2015; World Bank 2010). While major development projects may have large aggregate economic benefits, these benefits are not necessarily received by local communities where the development occurs. Revenue from the project may accrue to owners living outside the community and employment opportunities may be taken by in-migrants and outside contractors (Gunton, 2003). Moreover, project benefits may be outweighed by the project’s social and environmental costs (Prior, Giurco, Mudd, Mason, and Behrisch, 2012). The local community may bear a disproportionately large share of the costs and a small share of the benefit; project benefits, such as jobs, may be detached from the local community or not commensurate with costs borne by locals (Söderholm and Svhamn, 2015). IBAs can be a tool to ensure that more project benefits remain in the local area and that local costs are identified and minimized, thereby reconciling distributional inequities.

The distributional effects of projects are being increasingly assessed because of heightened concern regarding environmental effects, increased pressure on companies to contribute to the communities they work in, more communication between communities about their experiences, and the high likelihood of large profits for project proponents (Söderholm and Svhamn, 2015). In fact, researchers have argued that mineral production will be slowed by growing social and environmental costs, and not because of mineral scarcity or technological standstills (Prior et al., 2012). Moreover, sustainable development ideas are increasingly prevalent in the resource industry, which has, in turn, elevated awareness of the social dimensions of mining (Solomon, Evie, and Lovel, 2008). As such, a project’s social acceptability is an increasingly recognized component of business risk that should be managed (Estevez, Franks, and Vanclay, 2012; Rodhouse and Vanclay, 2016). IBAs are useful because they can help acquire a SLTO by increasing local support for projects (World Bank 2010).

In recent history, there is evidence of increased renegotiation of the needs and rights of Indigenous peoples (ICMM, 2015). In addition to achieving social licenses, IBAs are a means for meeting the UNDRIP international standard of Free, Prior, and Informed Consent (FPIC) (UN General Assembly, 2007). FPIC refers to the human right of Indigenous peoples to self-determination, which includes, but is not limited to, the right to occupy, use, and control their traditional territory (Rodhouse and Vanclay, 2016). International standards like FPIC push companies to engage with communities, including Indigenous communities, affected by their project (Rodhouse and Vanclay, 2016). Communities are negotiating and signing IBAs because these agreements can engender community development and mitigate or compensate communities for environmental and social costs; companies are interested in IBAs because they are a tool for gaining community consent for a project (O’Faircheallaigh and Gibson, 2012; RESOLVE, 2015; Sosa and Keenan, 2001). Furthermore, the increasing prevalence of quasi-regulatory

frameworks from industry associations like ICMM and Minerals Council of Australia are evidence that corporate reputation is a key driver of sustainability and recognition of Indigenous rights in the resource development world (Solomon et al., 2008). IBAs are becoming more ubiquitous because they have the potential to build positive relationships between project proponents and local communities, secure local benefits for communities, relieve capacity strain in those communities and ensure adequate follow up of the EA process (Galbraith, Bradshaw, and Rutherford, 2007). As a result, IBAs have become legally or *de facto* mandated in many nations (Dupuy 2014; Sosa and Keenan, 2001).

The success of IBAs, however, is contingent on the context and makeup of the agreements: in practice, IBAs only sometimes achieve their desired outcomes (O’Faircheallaigh, 2016; O’Faircheallaigh and Gibson, 2012).

2.2 IBA Benefits

Historically, monetary benefits have been the dominant provisions negotiated in IBAs, but non-monetary benefits are becoming increasingly important (Söderholm and Svhamn, 2015; Sosa and Keenan, 2001). Monetary IBA provisions can include establishing and securing income for development or investment funds, creating a project equity sharing scheme, and establishing a royalty regime (Söderholm and Svhamn, 2015). Negotiated non-monetary benefits are more diverse, and may include infrastructure, employment, local business opportunities, and education and training for the community (Söderholm and Svhamn, 2015; ICMM, 2015; NRCan, 2014). In addition to simply acquiring benefits, IBAs can be used to distribute resource development benefits, protect the local culture and environment, and ensure that benefits fostered from project development do not cease with project closure (Loutit et al., 2016; ICMM, 2015).

2.3 IBA Process

The IBA process can be split into four general stages. The first stage is pre-negotiation. During this stage, the company and community meet and start building a relationship, a step regularly cited as fundamental for successful IBAs (Browne and Robertson, 2009; Fidler, 2010). Community engagement is a key component of this stage. Recent research has argued that local community involvement in project planning and implementation generates positive outcomes such as sustainable development and environmental conservation (Heisler & Markey, 2014; O’Faircheallaigh, 2016). Before negotiations begin, the community should identify their goals and needs (Sosa and Keenan, 2001). Equally important, the way the community and company engage regarding the project and IBA should be decided during this stage: a mutually beneficial negotiation process is often delineated and enshrined in a memorandum of understanding during pre-negotiations. Finally, it is during this stage that community or capacity constraints that may impede IBA success can be assessed and addressed. For example, the community may be provided with financial resources or technical expertise to assist them in identifying their needs and negotiating the IBA (Browne and Robertson, 2009; Gogal et al., 2006).

The second stage is negotiation. This is when the community and company sit down to negotiate and draft the agreement. Once the agreement is written, it should be approved

and signed by elected official(s) or leaders that legitimately represent all stakeholder groups (Gogal et al., 2006; World Bank, 2011).

The third IBA stage is implementation. It is during this stage that benefits and provisions written into the agreement come to fruition. A key component of this stage is monitoring whether the agreement is working as planned and ensuring that agreed-upon benefits are provided (O’Faircheallaigh, 2003; Browne and Robertson, 2009). During the implementation stage, the IBA should be able to be reopened as needed (O’Reilly and Eacott, 1999).

The final stage is conclusion of the IBA. Continuity of IBA benefits beyond project closure is an area in need of further research (Söderholm and Svhamn, 2015). Future research will likely focus on what benefits should be captured and what structures must be in place for communities to achieve long-term, sustainable development. While a lot of focus has been given to the use of IBAs as a tool to foster development, there is a gap in understanding the role IBAs need to play to foster sustained community development.

2.4 IBAs and EIA

IBAs are often linked to environmental impact assessment (EIA) (Galbraith et al., 2007). EIA is designed to identify and mitigate adverse environmental effects from project development (Boyd, 2003). Projects that trigger federal EIA in Canada are subject to the EIA process, as outlined in the *Canadian Environmental Assessment Act, 2012 (CEAA, 2012)*. As the *Constitution Act, 1867* does not mention the environment, jurisdiction is split between the federal and provincial governments (Kirchhoff, Gardner, and Tsuji, 2013). As a result, each province and territory has its own EIA legislation (Fidler 2008; Fidler and Hitch 2007; Hickey et al., 2010). The *Canadian Environmental Assessment Act, 1995* stipulated that communication and cooperation between Aboriginal peoples and responsible authorities is mandatory, and that the Minister must consult with affected First Nations regarding relevant projects (Wright and White, 2012). The *Constitution Act, 1982* recognizes and affirms Aboriginal and treaty rights and creates the duty to consult and accommodate these rights and interests. However, the enactment of *CEAA, 2012*, in conjunction with other governmental changes, has reduced opportunities for Aboriginal engagement despite the fact Aboriginal traditional knowledge can be considered in an assessment according to the *Act* (Kirchhoff et al., 2013; Wright and White, 2012). Common EIA failings are described in Galbraith, Bradshaw, and Rutherford (2007): EIA’s often have narrow scope, have inflexible design, lack focus on outcomes, overlook traditional knowledge, and lack adequate stakeholder participation. Moreover, EIA is often used as a guide on how to, not whether to, proceed with projects in Canada (Boyd, 2003; Galbraith et al., 2007). Canadian EIA is further criticized for lacking adequate follow-up mechanisms, failing to ensure an equitable distribution of benefits, and failing to involve First Nations communities in the management of environmental and cultural impact of the project (Peterson St-Laurent and Le Billon, 2015). Moreover, while EIA identifies possible negative impacts of development, it usually does not provide a mechanism to identify or manage broader socio-economic benefits of the project or their distribution (Prno, 2007). It is these deficiencies in the EIA process combined with increasing legal obligations to accommodate Aboriginal interests that have given rise to IBAs in Canada (Galbraith et al., 2007; Prno, 2007). Galbraith et al. (2007) suggest using IBAs and EIA in concert to mitigate the deficiencies of each instrument alone.

From a legal point of view, EIA and IBA are usually separate processes with different objectives: EIA is a governmental process that focuses on assessing and mitigating adverse environmental impacts, while an IBA is a negotiated agreement between a project proponent and First Nation or stakeholder that deals with a broader range of issues such as distribution of project benefits, capacity development, and collaborative governance in addition to mitigating environmental, social, and other impacts. In practice, the two processes often overlap (Fidler, 2008) and can be used together to establish then bind the project proponent to commitments (Galbraith et al., 2007). Linking IBAs to EIA can be advantageous for the communities experiencing resource development, especially if each process is transparent and communicative.

Despite overlapping in practice, the relation between EIA and IBA is not well defined in the literature and existing discussions are predominantly case-specific (Cox, 2013).

O'Reilly and Eacott (1999) suggest that an IBA should be signed before the EIA commences to ensure Indigenous people will be consulted throughout the EIA process. However, Caine and Krogman (2010) argue that signing an IBA before EIA is complete may be dangerous for the local communities, as it means agreeing to a project before knowing all potential impacts. Lukas-Amulung (2009) identifies a model where IBAs and EIA are integrated by developing a bilateral IBA-EIA coordination plan from the project's outset, sharing information between both processes, and fostering IBA-EIA coordination, especially during implementation, monitoring, and follow-up of each process. Finally, Fidler (2010) proposes evaluating the relationship between industry, communities, and the State to better determine how the IBA and EIA processes interact.

Chapter 3

Best Practices Literature

3.1 Introduction

This chapter develops best practice criteria for IBAs. The chapter contains summaries of IBA-related literature organized into three sections: Canadian IBA related literature, literature based on IBA research in other developed countries, and literature pertaining to IBAs in less developed countries. Each summarized article includes a description of the best practices or recommendations from that article. The reviewed literature includes work by academics, project proponents, and international, national, and local scale non-government organizations. There are a total of twenty-seven reports, guides, peer-reviewed articles, and book chapters summarized in this chapter. The best practices from the articles are then integrated into a comprehensive list of best practices.

It should be noted that this report does not distinguish between Indigenous and non-Indigenous communities in the creation of best practices. However, all the literature that was reviewed to inform the best practices includes reviews of IBAs signed by an Indigenous community and/or is focused on providing guidance for developing Indigenous community IBAs. The best practices identified in this report are, therefore, applicable to Indigenous communities.

3.2 Literature Review Methods

Literature for the review was collected using search engines and snowballing techniques. Google scholar and the Simon Fraser University library database were searched using the keywords “Impact Benefit Agreement,” “IBA,” “Indigenous,” “Aboriginal,” “Community Development Agreement,” “CDA,” “Negotiated Agreement,” “NA,” “Community Benefit Agreement,” “CBA,” “Community Development,” and “Evaluation” in various combinations. To collect documents that were not peer-reviewed, such as the International Council on Mining and Minerals (2015) and Rio Tinto (2016) reports, similar key terms were used to search Google. In addition, the Columbia Centre on Sustainable Investment’s (CCSI) directories on community guidance were consulted (CCSI, 2018a; 2018b). CCSI is an interdisciplinary research institution based out of Columbia University; it specializes in exploring and applying sustainable international investment ideas. The reference lists of all reviewed documents were subsequently consulted to identify additional related literature.

3.3 Best Practices for IBA Negotiation and Implementation in Canada

3.3.1 O’Reilly and Eacott, 1999

O’Reilly and Eacott (1999) encapsulate the proceedings of the 1998 Aboriginal Peoples’ Impact and Benefits Agreement Workshop. The workshop was organized by the

Canadian Arctic Resources Committee (CARC) a non-partisan research, public interest, and advocacy group (CARC, n.d.). This workshop hosted thirty-five participants from eighteen Northern Canadian Aboriginal organizations. The workshop was about IBA issues and experiences, and O'Reilly and Eacott's (1999) report summarizes presentations from Aboriginal organizations about their experiences with IBAs and recommendations from small group discussions that occurred during the workshop. Key findings of their report are summarized in in Figure 3-1.

Figure 3-1. Relevant points from IBA workshop
(adapted from O'Reilly and Eacott 1999)

<p><u>Preparing for Agreement</u></p> <ul style="list-style-type: none"> • Craft and agree to a Memorandum of Understanding. • Early consultation of Aboriginal organizations. • Ensure Aboriginal organizations have all the information and understanding needed to equitably negotiate. <p><u>Negotiations</u></p> <ul style="list-style-type: none"> • IBA is not confidential and is disseminated to community members so they can provide input. • If applicable, Aboriginal organizations should be allowed to negotiate collectively. • Aboriginal communities should be fiscally and structurally supported throughout negotiations. <p><u>Content of Negotiated Agreements</u></p> <ul style="list-style-type: none"> • The IBA is contingent on the current project size and scope; project changes should reopen negotiations. • Communities should not compromise governance or land monitoring powers. • IBA provisions should be enforceable but allow for adjustments if necessary. • There should not be a formula or standard approach to IBAs. • Aboriginal organizations should be aware of royalty and taxation interactions. <p><u>Training and Employment</u></p> <ul style="list-style-type: none"> • Begin skill inventories and community training and education early. • Have youth programs that foster self-confidence and motivation. • The community should create a future-looking strategy to diversify their economy. <p><u>Traditional Knowledge (TK)</u></p> <ul style="list-style-type: none"> • Specify how TK will be used. • Use TK for environmental management. <p><u>Implementation</u></p> <ul style="list-style-type: none"> • All parties should be committed to the IBA. • Parties should have a relationship built on mutual respect, dignity, and trust. • Build implementation provisions into the IBA. • Implementation processes should be reviewed periodically and adapted if necessary. • At least some of the IBA negotiators should participate in IBA implementation. • Publicize IBA outcomes. <p><u>Enforcement</u></p> <ul style="list-style-type: none"> • Enforcement should be jointly managed. • Write the agreement in enforceable language. • Have a clearly written dispute resolution process that includes penalties and incentives. <p><u>Environmental Assessment</u></p> <ul style="list-style-type: none"> • Involve the community in baseline assessments.

3.3.2 Sosa and Keenan, 2001

Sosa and Keenan (2001) provide an overview of IBAs based on existing literature and interviews with Aboriginal IBA negotiators and members of MiningWatch Canada, an advocacy group that promotes safe and sustainable mineral development (MiningWatch Canada, 2018). Further input was provided by the Canadian Environmental Law Association, an environmental justice advocacy group. Recommendations are summarized below (Figure 3-2).

Figure 3-2. Recommendations for IBAs
(adapted from Sosa and Keenan 2001)

1)	Negotiation team should include community representatives and environmental, legal, and mining experts.
2)	Secure funding: the IBA should have funding provisions and the company should cover some or all costs.
3)	The community and its members should have adequate time and resources to understand mining impacts and create a negotiation plan prior to IBA negotiations.
4)	Establish code of conduct prior to negotiations, perhaps by signing a memorandum of understanding.
5)	Ensure that environmental protection, community development, community training and education, and economic diversification are considered, either in the IBA or elsewhere.
6)	Avoid vague language in IBAs and clearly delineate responsibilities, targets, and the timeframes for meeting these responsibilities and targets; Aboriginal employment and economic development formulas; environmental standards; and contingency plans.
7)	Establish a conflict resolution mechanism.
8)	Maintain community-company communications and relationship.
9)	The community should not relinquish their sovereignty or right to object. The IBA should not state that its purpose is to show that the community supports the project.

3.3.3 Dreyer, 2004

Dreyer (2004) assessed the short-term and long-term benefits of IBAs using two agreements signed by the Red River Dene as case studies. Dreyer's evaluation framework is based on O'Faircheallaigh (2004) as well as a literature review of IBA experiences. Her method consists of the following steps: first, review each IBA and relevant archival reports, academic papers, videos, newspaper articles, radio interviews, news coverage, and statistics and files from all levels of government, including the Indigenous government; second, interview IBA negotiation and implementation participants; third, use results to identify factors associated with IBA success and failure; fourth, conduct a survey to gauge community perceptions of the IBAs' success; and, fifth, evaluate benefits by triangulating interviews, surveys, document reviews, and researcher participation in Ross River Dene meetings, resource management process, and daily life and community members' perceptions of benefits received. Benefits are defined as positive results at the community level, including employment, education, and cultural support. Dreyer's (2004) evaluation assesses the degree to which intended IBA benefits have been achieved in actuality. Finally, content, process, and contextual differences between the two IBAs are identified as either contributing to or detracting from the success of each IBA. Dreyer (2004) identified the negotiation process and document content as the two primary factors in IBA success. Community, industry, government, and project context all influence what IBA content and process is appropriate. The influence of these components is multidirectional (Figure 3-3).

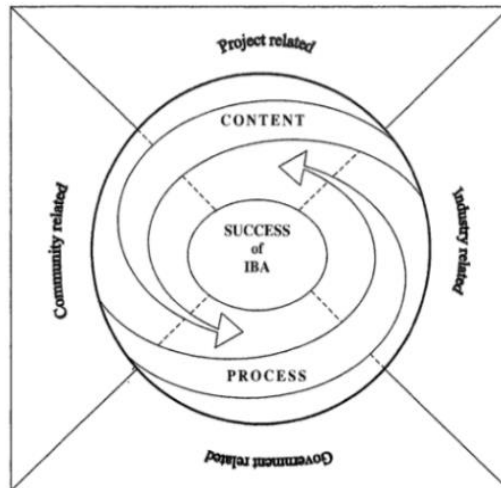


Figure 3-3. Negotiated Agreement evaluation framework (Dreyer, 2004)

Moreover, Dreyer (2004) lists recommendations for creating successful IBAs (Figure 3-4). The most important criterion for IBA success, according to Dreyer (2004), is full commitment from all parties throughout the agreement's lifespan.

Figure 3-4. Recommendations for successful IBAs
(adapted from Dreyer, 2004)

<p><u>Process</u></p> <ul style="list-style-type: none"> • The community should set negotiation goals before negotiations start. • Do a socio-economic baseline study and document heritage artifacts and use of the area. • Ensure IBA is understood and accepted by the community before it is signed. • Involve the community in the negotiation process. • Focus implementation efforts on the provision of benefits for community members. • Have ongoing communication between the community and the project proponent. <p><u>Content</u></p> <p>Ensure the agreement contains provisions for:</p> <ul style="list-style-type: none"> • employment, business, training, and advanced education opportunities; • cross-cultural training for both non-Indigenous and Indigenous employees; • a mine liaison officer in charge of Indigenous employment, training, and education; • Traditional Knowledge collection and use in project design and management; • community participation in monitoring environmental, social, and economic impacts; and • jointly managed communications and dispute resolution processes. <p><u>Additional Recommendations</u></p> <ul style="list-style-type: none"> • Plan for the project's short lifespan. • Do not exaggerate the project's economic benefits. • Prepare the community for the positive and negative socio-economic impacts of the project. • Offer community members training in transferable skills. • Create legislation that empowers Indigenous participation in major projects and their IBAs. • Provide funding for communities to participate in IBA negotiations.
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3.3.4 Gogal, Riegert, and Jamieson, 2006

Gogal, Riegert, and Jamieson (2006) provide a guide to community-project proponent relationships for Canadian project developers. The guide informs project developers about what to anticipate during negotiations with Aboriginal communities, what

provisions to include in the IBA, and how to minimize legal risk. The key factors for good community-project proponent relationships are described below.

Timing of Consultation

Aboriginal rights and expectations should be assessed before the project plans are finalized for three overarching reasons. First, consultation is only meaningful if identified issues and expectations can be addressed by allowing local communities to participate in the project's design. Second, communities need a lot of time, often months, to review and assess the project, communicate with all community members, and acquire consultation services if desired. Third, early engagement with communities increases the likelihood that they will support the project.

Cost Implications and Financial Provisions

Financial IBA provisions should be economically feasible for the company and commensurate with the project's scope. Further, Aboriginal rights, environmental impacts, other royalties, and past recompense for environmental damage should be considered.

Proper Parties

All affected Aboriginal groups must be consulted; this includes groups whose occupation or land use establishes Aboriginal rights. Further, ensure community negotiators and signatories are legitimate, and that their negotiation mandate has been approved by the community. Best practice is to include this mandate in the IBA.

Good Faith

Consultation must be done in good faith, meaning the project proponent has the intention of substantially addressing Aboriginal concerns and the Aboriginal group makes a reasonable effort to reach an agreement. It is recommended that the IBA includes a definition of consultation.

Business and Employment Opportunities

Local labour provisions should be discussed early in the IBA process. There should be provisions specific to local employment; topics should include training, facilitated hiring, and a cross-cultural issues management strategy. Moreover, Aboriginal businesses should be afforded extra weight in the bidding process and contracts should be scaled to local businesses' capacities. From the developer's perspective, employment and contract targets should not be binding, and ensure that failure to meet targets does not breach the IBA.

Capacity Building

Effective IBAs build community capacity. Capacity should be assessed early, and the project developer should host business skills workshops, promote education, fund scholarships for local students, and engage in joint ventures with Aboriginal businesses.

Enforceability

Ensure negotiations are perceived to be fair and include provisions that prohibit the community from bringing legal actions against the developer regarding the project. If possible, have the Crown sign off on the IBA and get negotiations officially approved as adequate consultation.

3.3.5 Fidler and Hitch, 2007

Fidler and Hitch (2007) assess the broad implications of using IBAs as a benefits acquisition tool: while the authors acknowledge that these agreements can be mutually beneficial for signatories, they question whether IBAs perpetuate injustices in the long term through inequality of resource distribution. Fidler and Hitch (2007) commence their study with a review of mineral development processes, environmental assessment, and IBAs. Based on their review, they develop a list of common provisions in IBAs (Table 3-1). The researchers' findings suggest that IBAs are primarily signed to meet the project developer's needs for certainty; recognition and reconciliation of Aboriginal interests safeguards the project. Additionally, Fidler and Hitch (2007) argue that confidentiality hinders the ability of Aboriginal groups to get a fair deal through IBAs by limiting groups' ability to consult and learn from past experiences. Non-confidential agreements benefit First Nations, so long as government support for communities remains intact.

Table 3-1. Common IBA provisions
(adapted from Fidler and Hitch 2007)

Provision	Objective	Exemplary Clauses
Employment	Increase employment opportunities	<ul style="list-style-type: none"> • Preferentially hire Aboriginal people • Recruit and retain employees for long-term work • Flexible schedule to accommodate traditional activities such as hunting
Education and Training	Increase opportunities through education and training	<ul style="list-style-type: none"> • Cross cultural training for both Aboriginal and non-Aboriginal employees • Apprenticeship and scholarship programs • Partnership with local schools and community colleges
Economic Development	Increase Aboriginal business development and contracting opportunities	<ul style="list-style-type: none"> • Direct tendering to Aboriginal communities • Unbundling contracts into simpler, smaller contracts
Socio-cultural support and communications structures	Support societal challenges, recognize and/or reaffirm aboriginal rights and historical cultural background	<ul style="list-style-type: none"> • Monitor social impacts with indicators • Fund community projects and physical infrastructure • Ongoing communication with community, potentially through regular forums
Environmental Monitoring and Protection	Ensure corporations copy with existing laws, regulations and incorporate additional environmental protection provisions into the IBA	<ul style="list-style-type: none"> • Emphasis on certain EA clauses • Obligations regarding abandonment and reclamation • Minimize activity in spiritually and culturally sacred areas, such as archeologically significant sites
Finance	Monetary settlements to compensate for surface or subsurface development	<ul style="list-style-type: none"> • Fixed cash payouts, variable cash payments, and suspension payments • Joint venture and development funds • Payout structuring to meet community needs: i.e. not a lump sum
Commercial Terms	Ensure contract has terms to reflect long-term planning and enforcement	<ul style="list-style-type: none"> • Dispute resolution • Force majeure • Confidentiality

3.3.6 Browne and Robertson, 2009

Browne and Robertson (2009) is a guide for communities developing Benefit Sharing Agreements, which can be considered synonymous to IBAs. The guide informs communities on how to foster respect, sustainability, and mutual profitability through IBAs. Browne and Robertson's (2009) methods were to: first, analyze court cases, academic literature, and IBAs from British Columbia and beyond; second, conduct interviews and a focus group to supplement their review; and, third, use their findings to develop a guide. The researchers' findings are:

- Good relations promote fair, long-term, and mutually beneficial IBAs.
- Start relationship building start early and include face-to-face time. Company and government representatives should spend time in the community, and First Nations should invest time in meeting and understanding the project proposal.
- Separate band governance from IBA negotiations, but ensure negotiating team is connected with the community so negotiations reflect community views and opinions.
- Community should have negotiation goals prior to negotiations.
- Monitor and report progress towards objectives.
- Heed project concerns brought up during negotiations and include solutions in the IBA.
- Assess and bolster parties' capacities prior to negotiation and, if needed, find funding to build capacity.
- Include a review and adaptation process in the IBA.

3.3.7 Canadian Council for Aboriginal Business, 2009

The Canadian Council for Aboriginal Business (CCAB) is a national non-profit organization that works to foster participation of Aboriginal businesses in the Canadian economy. In 2009, CCAB surveyed community-company relationships in Canada and reviewed data from their Progressive Aboriginal Relationship program to better understand how Canadian companies start, grow, and sustain positive relations with First Nations, Metis, and Inuit communities. The report's findings are based on analysis of thirty-eight companies' self-assessments of their Progressive Aboriginal Relationships, as well as an audit of these assessments by Excellence Canada, a non-profit organization that develops standards and recognizes organization excellence in Canada. Company employees at all levels of management are interviewed for the report. In addition, an inductive assessment about how to successfully initiate, build, and sustain positive relationships with Aboriginal communities was completed by analyzing and identifying themes from raw data. Subsequently, CCAB interviewed nine community and company representatives. Finally, themes identified through the assessment and interviews are compared to those in recent literature.

Four themes for positive company-Aboriginal relations are identified. First, positive relationships commonly employ a systematic, discussion-based communications process that allows the community to voice concerns and the company to get feedback about operations. Second, there is commonly a collaborative consultation mechanism that fosters partnership between the parties, joint ownership of issues, and bilateral solutions to problems. Third, an effort is made to understand and preserve each community's unique culture and a cultural awareness program for company employees exists. Fourth,

the relationship between the company and community fosters mutual benefits and is productive for both parties.

3.3.8 Knotsch and Warda, 2009

Knotsch and Warda (2009) identify good practices and process for negotiation, development, and implementation of IBAs by reviewing Canadian IBAs. The paper stems from discussions with representatives of four Inuit regions and Inuit national organizations about community benefits, sustainability, resource development, and IBAs in Canada's north. Eight practices that engender community benefits from resource development are identified:

- 1) learn about the IBA process and negotiation from others;
- 2) conduct community consultation before negotiations;
- 3) involve and communicate with the entire community;
- 4) have and pursue specific negotiation goals;
- 5) do not allow economic development or similar goals to overshadow community well-being;
- 6) ensure negotiation principals are acceptable to all parties;
- 7) continually monitor relationships; and
- 8) coordinate agreement implementation.

Knotsch and Warda (2009) also assess the future of IBAs. The researchers recommend that communities learn from each other. Moreover, they identify the following gaps in existing agreements: experienced and committed negotiators, benefit sharing with distant communities, contract award systems that favour Aboriginal businesses, training so community members can meet project labour needs, and social and health provisions. Social and health goals could be achieved through negotiating several IBAs at once: an economic benefits IBA negotiated with the project proponent, and a social and health benefits IBA with government. Finally, Knotsch and Warda (2009) state that IBAs should supersede, so as to not conflict with, union agreements.

3.3.9 Fidler, 2010

The purpose of Fidler's (2010) paper is to examine the relationship between government, industry, and First Nations during resource development, and to identify how EIA and IBA can co-exist and contribute to sustainable mineral development.

Fidler (2010) concludes that community consultation and benefit sharing should occur regardless of legal duty. Consultation should start early so that the relationship develops as a partnership and each party has leverage and bargaining power. Aboriginal culture and decision-making processes should be respected to help build trust by demonstrating that the partnership is legitimate and cognizant of both parties' short and long-term goals. As a case study, Fidler (2010) analyses the Tahltan Nations' experience with the Galore Creek Project and associated IBA. Informants from the Tahltan Nation, the project developer, the government, and environmental consultants were interviewed (Fidler, 2010; Fidler, 2008). Interview findings were then triangulated with the EIA baseline studies and reports, the project's IBA, and secondary data collected through a literature review.

A key finding of the study was that the IBA facilitated communication between the proponent and community by delineating a structured communication program. The

structured approach identified project effects on the environment and Aboriginal rights, title, and interest, and allowed time to brainstorm methods to minimize negative impacts. Fidler (2010) suggests that the program is successful because it outlines how the Tahltan Nation's support for the project can be attained and how their consent would be used in the company's application for regulatory approval.

Additional provisions in the IBA dealt with: environmental monitoring, heritage resources, traditional knowledge, permitting, ongoing review of a closure plan, and funding for training, scholarships, and contracting opportunities. Employment and education goals were collaboratively created and planned, which made them realistic and reflective of community goals. The Tahltan Nation was able to participate in project planning because the company provided monetary resources. Finally, the IBA authorizes the Tahltan Nation to be heavily involved in mine closure, including the ability to independently review the rehabilitated site before the company departs. Fidler (2010) argues the iterative nature of the EIA and IBA processes engaged the Tahltan Nation and fostered a successful community-company partnership; the community was able to influence mine design and planning through the IBA.

Overall, the paper suggests that engaging relevant stakeholders in mine planning through to mine decommissioning results in more sustainable mining. Early engagement can reconcile disparate stakeholder perspectives. However, IBAs should not replace the Crown's duty to consult or be a substitute or stand in for EIAs.

3.3.10 O'Faircheallaigh, 2003, 2010

O'Faircheallaigh's 2003 article identifies the characteristics of successful IBA negotiations and contracts. The paper is based on a review of policy implementation literature and Canadian and Australian IBAs (O'Faircheallaigh, 2003). The evaluation focuses on three topics: implementation, or that which gives effect to the agreement's provisions; monitoring, or the analysis and information regarding the state of implementation; and review, or the utilization of monitoring results to reconsider the appropriateness of initiatives and provisions.

Eleven necessities for successful IBA implementation are identified: adequate financial and human resources, empirical connection between policy initiatives and desired outcomes, clear and measurable goals, delineated implementation responsibilities, effective implementation frameworks, support from governing bodies, and regular monitoring. Additionally, four impediments to successful IBAs are diagnosed. First, resource and capacity constraints in Indigenous communities hinder negotiations and implementation. Second, negotiation timelines are often too short to adequately discuss implementation. Third, there are limited time and resources to explore systematic and contextual factors affecting implementation, such as political support and policy research. Fourth, negotiators are often non-Indigenous, temporary staff who do not participate in IBA implementation.

In 2010, O'Faircheallaigh builds on his previous work to identify strategies for successful IBA making for Canadian First Nations. The strategies are based on the authors research and experience analyzing IBAs (O'Faircheallaigh, 2008).

Map wider relationships

Identify how a contractual relationship with a mining company could affect community engagement with political, judicial, and regulatory systems. Do so as soon as possible so that threats, opportunities and challenges of the IBA can be prepared for.

Focus attention on key agreement provisions

In addition to substantive issues, such as economic benefits and project scale, focus on IBA process provisions, such as confidentiality and project support. Demands must not exceed what each party is able to offer; otherwise, it may be preferable to not have an agreement.

Avoid the 'negotiation bubble'

Recruit a community-based steering group to oversee negotiations and ensure community needs and goals are being addressed. Furthermore, have a negotiation budget that finances community meetings and a community representative on the negotiation team. Finally, a community-based social impact assessment should be conducted prior to negotiations.

3.3.11 Prno, Bradshaw, and Lapierre, 2010

Prno, Bradshaw, and Lapierre (2010) assess IBAs by comparing outcomes to objectives for fourteen agreements signed in Canada's Northwest Territories between 1996 and 2007. All IBAs were confidential, so the general aims of IBAs established by Galbraith, Bradshaw, and Rutherford (2007) were used as proxy objectives: IBAs are established to build positive relationships between the company and community, to secure benefits for Aboriginal communities, to relieve capacity burdens, and to follow-up the environmental assessment process.

IBAs were assessed by collecting and triangulating three datasets (Prno, 2007; Prno et al., 2010): a time series of socio-economic data; key informant interviews and ten focus group meetings conducted in three communities that signed IBAs.

Prno et al. (2010) find that IBAs achieve some positive outcomes. At the same time, community expectations of IBAs are growing, so the authors recommend either managing expectations or tailoring agreements. Community concerns about IBAs were categorized into three broad themes (Table 3-2).

Table 3-2. IBA concerns
(adapted from Prno et al., 2010)

<u>Issue</u>	<u>Concerns</u>
Benefits	<ul style="list-style-type: none"> • IBAs are mining-focused, so community members not involved in mining do not benefit proportionally. • Only non-management positions are available to Aboriginal workers. • Community benefits are not commensurate with mining profits. • Financial benefits framework should prefer profit sharing or royalties. • Aboriginal employment targets have not always been met.
Transparency and Community Involvement	<ul style="list-style-type: none"> • IBA details are not well known to communities as a result of confidentiality or poor communications; community members do not know whether they are receiving what they are entitled to. • There are no community-based IBA monitoring programs. • There is no opportunity for IBA renegotiation or amendment. • Youth are not meaningfully involved in decision-making.
Mining-related impacts	<ul style="list-style-type: none"> • Social issues have been created or exacerbated by mining. • Mining has created environmental issues.

- There should be regional limits on mining development.

3.3.12 Siebenmorgan and Bradshaw, 2011

Siebenmorgan and Bradshaw (2011) identify best practices for IBAs by assessing agreements made in Northern Ontario. Their goal is to identify how IBAs can be used to address the unique socio-economic conditions, cultural interests, and community development expectations of Aboriginal signatories. To conduct this study, the researchers reviewed government reports, ministers' statements, and other grey literature, then interviewed fourteen key informants, including chiefs, IBA negotiators, and IBA implementation officers, and attended an IBA practitioner workshop.

Siebenmorgan and Bradshaw (2011) identify that meeting community expectations for consultation, development, and outcomes of the project and IBA is an important factor for success. These expectations, and how to meet them, are listed in Table 3-3.

Table 3-3. Aboriginal expectations during IBA process
(adapted from Siebenmorgan and Bradshaw, 2011)

<u>Project Phase</u>	<u>IBA Phase</u>	<u>Proponent Tasks</u>	<u>Aboriginal Community Tasks</u>
Pre-Operation (Exploration and Feasibility)	Initial consultation and IBA negotiation	<ul style="list-style-type: none"> • Identify community expectations from consultation • Develop a Memorandum of Understanding with community • Make company mapping, surveys, and other resources available to community • Host community information meetings with senior company representatives present • Discuss ideal consultation and project development timeline • Identify and pursue additional ways to build partnerships 	<ul style="list-style-type: none"> • Assess community development objectives • Develop community-based mineral development and consultation guidelines for proponents • Seek community consensus regarding local interest in mining under different development scenarios • Elect community representatives to negotiate the IBA • Host regular community information sessions to inform band members of progress in IBA negotiations
Construction, Operation, and Closure	IBA Implementation	<ul style="list-style-type: none"> • Actively monitor strengths and weaknesses of company-community relationship • Address company-community relations issues as they arise • Identify ways to support community's ability or capacity to implement IBA provisions • Host frequent relation-building events 	<ul style="list-style-type: none"> • Monitor community perceptions of project and IBA • Communicate praise or grievances to company representatives and initiate dispute resolution processes if necessary • Refine existing mineral development policy as needed based on experiences

Rehabilitation	IBA Follow-up	<ul style="list-style-type: none"> • Ensure IBA provisions have been delivered • Evaluate the strengths and limitations of community engagement and IBA processes 	<ul style="list-style-type: none"> • Assess community members' perceptions and experiences of the project proponent over project life cycle • Further refine existing community development objectives and mineral policy based on experience with this project
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In addition, Siebenmorgan and Bradshaw (2011) develop recommended IBA process and content. The authors recommend signing a mineral exploration agreement, memorandum of understanding, and an IBA, in that order. IBA consultation and negotiation process should reflect and support community capacity. Suggested IBA content is listed in Table 3-4.

Table 3-4. Recommendations for IBA
(adapted from Siebenmorgan and Bradshaw, 2011)

<u>IBA Section</u>	<u>Recommendations</u>
IBA Purpose Statement	<ul style="list-style-type: none"> • Define intent of company and community to negotiate and implement mutually beneficial agreement. • Include a good faith agreement to negotiate an IBA that fosters community development. • State long and short-term objectives for each project phase. • Outline participation and process guidelines for IBA negotiation and implementation.
Financial Provision Statement	<ul style="list-style-type: none"> • Community should consult financial advisors before settling on IBA financial arrangements and best use of IBA funds. • Negotiate payment amount or revenue sharing rate with proponent. • Clearly establish what is confidential. • Appoint financial transparency committee to report on fund use and mitigate conflicts of interest. • Elect community trustees to manage and monitor IBA funds.
Training and Employment	<ul style="list-style-type: none"> • Negotiate and secure funding for training and employment. • Add stipulation to preferentially hire community members. • Fund a community education and training facility. • Develop an action plan for training, employing, and retaining a negotiated number of community members. • Host budgeting workshops for mine employees and community members. • Identify potential mine workers during the IBA negotiation phase. • Host community information meetings about employment and training. • Arrange for certification courses to be held within the community and transportation for community members who want training at regional centers. • Provide high school equivalency and other certification courses for community members at regional centers.

	<ul style="list-style-type: none"> • Develop culturally sensitive shift work that aligns with local traditional hunting practices and community events. • Mandate cultural sensitivity training for non-Aboriginal mine employees.
Business Development	<ul style="list-style-type: none"> • Establish a local fund for investing in local businesses and entrepreneurs. • Assess private enterprises operating in the community and identify businesses that need financial support or other services. • Agree to utilize local businesses for transportation or contracts when possible. • Identify local parties or organizations responsible for IBA development funds and community service management. • Fund professional community development consultation services and local institutional capacity building initiatives. • Develop a community development plan to strategically adopt and facilitate an enterprise culture within the community. • Company should underwrite community economic development staff.
Environmental Protection	<ul style="list-style-type: none"> • Recognize the significance of the local environment and natural heritage. • Have stricter tolerances than legislated environmental assessment and fund supplementary environmental assessment. • Delineate results and any additional measures required by community for unforeseen environmental impacts. • Fund institutional capacity of the community's lands and resources office to support preparation of an updated land use and development plan. • Develop and train a local environmental monitoring committee. • Allow regular community visits to mine site. • Community should identify environmental features and points of interest. • Company should annually report to the community about environmental quality at identified features and points of interest.
Community Well-Being	<ul style="list-style-type: none"> • Conduct a survey to identify community members concerns, interests, and perceived impacts that have to do with culture and well-being. • Create a socio-economic baseline and annual monitoring plan. • Have an annual community development and wellness workshop to identify how new concerns and ongoing issues should be addressed and reported on. • Company should underwrite a community wellness coordinator that oversees monitoring and develops strategies to manage socio-economic change. • Fund a community centre. • Develop a community-based school curriculum with local content. • Fund social service provisions that address local social services and related challenges. • Do community mapping and traditional territory identification. • Compensate traditional harvesters affected by mineral development. • Support the coordination of traditional celebrations and annual festivals.
Communications	<ul style="list-style-type: none"> • Find out what kind of relationship the community had with other companies that have worked in the area.

		<ul style="list-style-type: none"> Jointly create a protocol for community company interaction; include project liaisons that manage, record, and monitor all official communications. Outline sanctions and penalties in case of guideline breach.
Dispute Resolution		<ul style="list-style-type: none"> Negotiate a dispute resolution mechanism based on principals of mutual respect and partnership. The dispute resolution committee should include community and company members and an external mediator(s). Clearly state actions or inactions that breach the agreement. Develop a secondary list of actions that breach agreement in aggregate. Categorize issues as either acute/emergency or as long-term grievances. Issue and grievance classification should be contextually appropriate. Allow the dispute resolution committee to determine the dispute resolution process.
Project Life-Cycle	Consultation and Construction	<ul style="list-style-type: none"> Delineate project construction, operation, and closure timelines as well as timelines for expected IBA provision delivery. Have community information sessions to disseminate anticipated environmental and social impacts of the project. Consult the community regarding infrastructure development plans.
	Operation	<ul style="list-style-type: none"> Use transportation methods and dates that are suitable to the community. Agree, in a binding way, to retain a target number of Aboriginal employees regardless of commodity price fluctuations. Consult the community regarding mine closure and remediation plans. Set aside money for mine closure and remediation during operation.
	Closure and Remediation	<ul style="list-style-type: none"> Ensure closure and site remediation contracts include stipulations to preferentially employ community members. Carry out closure and remediation according to plan and allow a community based environmental organization to monitor progress.

3.3.13 Natural Resources Canada, 2014

For the 2014 Energy, Mines, and Minerals conference, Natural Resources Canada (NRCan), a branch of the Canadian federal government, compiled a compendium of twenty-two case studies delineating best practices for preparing and engaging communities throughout mine development. This compendium builds on NRCan's precursor report *Aboriginal engagement in the mining and energy sectors: case studies and lessons learned* (NRCan, 2008). The 2014 report was written by the Intergovernmental Working Group on the Mineral Industry, which is made up of provincial, territorial, and federal government officials, and was reviewed by an external advisory committee consisting of academics, industry experts, and members of Aboriginal organizations. NRCan (2014) recommends the following general best practices for engaging communities in mining development:

- 1) early and sustained relations between government, industry, and the community;
- 2) focus on engendering collaboration, respect, and trust throughout mineral development;
- 3) company should underwrite community capacity building and job training initiatives;

- 4) project proponent and their community engagement employees should do their best to understand and respect the local culture and context; and
- 5) environmental monitoring should be done by an independent agency and involve community members.

The report's other best practices are summarized by project stage. Prior to exploration, NRCan (2014) recommends project proponents develop a communications and engagement plan with local communities. During exploration, NRCan (2014) suggests multi-year, area-based permitting, whereby a First Nations community is consulted about a geographical area and the many possible projects that may occur there to prevent consultation fatigue and curb community resource use. Furthermore, best practice is to collaboratively develop a long-term area plan and signing an exploration agreement between the company and the community.

During project development, NRCan (2014) recommends that social and environmental mining-related concerns should be addressed through a collaborative planning process involving the community, government, and industry. It is recommended that IBAs are completed prior to government permitting.

While the project is in operation, NRCan (2014) recommends holding regular meetings where the community can voice input and concerns about the project. Progress towards the agreement should be measured and reported to the community and public. Before the mine closes, the report recommends collaboratively creating a land reclamation plan. Land restoration plans should aim to employ local communities and foster a mutual commitment to responsible development.

3.3.14 Gordon Foundation, 2010, 2015

In 2010, Gordon Foundation, a charity dedicated to water protection and northern community empowerment, produced a toolkit for community negotiators and consultants engaged in negotiating IBAs. The document intends to guide communities through IBA negotiations and inform them on the tools and resources they can use to address issues concerning IBA processes and content. An updated version was released in September 2015. The toolkits delineate three phases of IBA negotiation: preparing for negotiations and establishing a negotiating position; conducting negotiations and creating agreements; and implementing agreements and maintaining relationships, and ultimately provide a best practices list for the community for each stage of negotiation (Figure 3-5).

Figure 3-5. Best practices by IBA negotiation phase
(adapted from Gordon Foundation, 2015)

<p><u>Best practices when preparing for negotiation</u></p> <ul style="list-style-type: none"> • Form a negotiation structure. • Develop a long-term strategic plan that considers community goals. • Decide on what data is needed in the short, medium, and long term. • Plan how incoming data will be managed, filed, and stored. • Decide who will have access to the data and how confidentiality will be maintained. • Tell consultants how information should be analyzed, presented, and distributed to the negotiating team and community. • Budget and seek funds from the project proponents, the government, and/or foundations. • Establish the community's baseline conditions. • Define how information will be communicated.
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- Establish a single point of contact.
- Never let an individual discuss issues alone with the proponent: always have at least two people present.
- Assess and employ the community's bargaining position in negotiations.
- Determine community objectives and use this to develop a strong negotiation position.

Best practices while negotiating and reaching agreements

- Define the negotiation committee and team members' roles.
- Create negotiation rules.
- Form a negotiation agenda based on community goals and aspirations.
- Agree on negotiation tactics and strategies.
- Document all negotiations, conversations, and verbal agreements.
- Pay attention to what happens between meetings.
- Focus on company-community relationship building.
- Craft legal provisions using legal input.
- Identify options for all substantive provisions that are needed to meet community goals and protect community interests.
- Agree on substantive provisions to maximize community benefits while minimizing costs.
- Ensure there is broad community support for the agreement; if there is not, return to the negotiating table.
- Ratify the agreement and use the occasion to cement community-company relations.

Best practices for implementing agreements and maintaining relationships

- Establish clear goals for agreement implementation.
- Build strong, culturally appropriate institutional structures for implementation.
- Develop implementation plans and review them often.
- Identify who is responsible for implementing various parts of the agreement.
- Build in transition plans for employee turnover.
- Ensure there are champions of the agreement in the community and in the company.
- Negotiate resources for agreement implementation, including funds, experts, staff, and information.
- Anticipate staffing, program, and policy needs and start to build the capacity for them.
- Build in penalties and incentives and then use them to motivate action.
- Develop a system for monitoring implementation of the agreement.
- Build in an easy-to-use system for amending parts of the agreement that are most likely to be affected by changing circumstances.
- Anticipate and plan for external circumstances that could influence implementation success.
- Use the agreement to build a strong relationship.
- Involve the company in local activities in order to build trust.

3.4 Best Practices for IBA Negotiation and Implementation in Other Developed Countries

3.4.1 Indigenous Support Services and ACIL Consulting, 2001

In September 2001, the Australian Minerals and Energy Environment Foundation recruited Indigenous Support Services (ISS) and ACIL Consulting (ACILC) (2001) to identify best practices for agreements between mining companies and Indigenous peoples. ACILC is a consulting firm that specializes in economic, public policy, and business strategy. ISS works with Indigenous communities to develop policy, plans, and project management strategies. The report reviews case studies to identify key concerns, priorities, and problems from company and community perspectives. Further, the report

identifies good practices for negotiating and implementing agreements that are equitable, in the interest of the affected communities, and promote fair sharing of benefits between industry and community. Data for the report comes from review of approximately 140 agreements, in-depth case studies of a small number of those agreements, and the experiences of ISS and ACILC team members. Report recommendations are listed in Figure 3-6.

Figure 3-6. Good practices for agreement negotiation, content, and implementation
(adapted from ISS and ACILC, 2001)

<p><u>Negotiation phase good practice</u></p> <ul style="list-style-type: none"> • Engage Native Title Representative Bodies early and seek their advice before and during negotiations. • Ensure the entire company, including the CEO and board, are committed to negotiations. • Do not approach negotiations with a win-lose attitude: the aim should be to find common ground and mutually beneficial solutions to challenges. • Ensure negotiations are held with the right people; seek advice on who these people are. • Provide clear information on the project and its impact. • Consultation should: <ul style="list-style-type: none"> • Be commensurate with project scale and impact; • Employ clear and effective channels of communication; • Consider the social, cultural, economic, and geographic circumstances of Indigenous stakeholders; • Have appropriate timeframes for the cultural needs of the Indigenous parties; • Allocate resources to negotiations so Indigenous groups can participate fully and appropriately; and • Have the same team of well-trained negotiators throughout the process. <p><u>Agreement Content Good Practices</u></p> <ul style="list-style-type: none"> • Indigenous employment and job training should be an agreement priority. • Include provisions that promote education in the community, like attendance incentives or scholarships. • Identify the right people with whom to trust compensation funds, and ensure funds are invested and disturbed well. A trust fund is one option. • Have an equity arrangement for mining ventures and other joint business ventures. • Include mechanisms to protect Indigenous heritage in culturally appropriate ways. <p><u>Implementation Good Practice</u></p> <ul style="list-style-type: none"> • Agreement implementation should be given as much attention as negotiations and content. • If resources allow, employ a coordinator to oversee implementation. Regardless, a committee should meet periodically to oversee agreement implementation. • Govern implementation in a culturally and geographically appropriate and representative way. • Indigenous representatives on implementation committees should have long enough terms to gain experience or be trained in the skills required to serve on these bodies.
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3.4.2 O’Faircheallaigh, 2002

O’Faircheallaigh’s (2002) book critically assesses and develops a new approach to policy evaluation using Australia’s uranium policy and its impacts on Aboriginal peoples as a case study. Two uranium mining IBAs are analyzed. The researcher uses an alternative, comparative model of policy evaluation; this framework examines the goals of actors and stakeholders over time and compares these findings to policy outcomes. This methodology reveals temporal changes in stakeholder goals and resolves issues around the questions of whose goals are being evaluated, thereby allowing conclusions to be drawn from multiple perspectives. Further, O’Faircheallaigh (2002) found that this

methodology recognizes the political nature of evaluation, is easier to apply than traditional policy evaluation, and is easier to evaluate post hoc.

O’Faircheallaigh (2002) identifies that the following factors are connected to implementation failure: equivocality in the IBA or relevant legislation; inadequate penalties or sanctions for non-compliance; failure to consider issues extraneous to the agreement that impact implementation; and failure to establish an overseer of implementation and capacity building. In addition, inadequate agreement support from high-ranking company employees or insufficient community support can lead to IBA implementation failure.

Furthermore, the following issues, in combination, were found to frustrate community development and company-community relations: high staff turnover, inadequate consultation, poor community understanding of the agreement, poor employee training on local customs and agreement provisions, lack of financial training for the community members, and government funding withdrawal subsequent to IBA signing.

3.4.3 Oxfam Australia, 2010

Oxfam Australia is a branch of the non-profit organization Oxfam International and is centered on tackling world poverty. In 2010, Oxfam Australia published a guide to help communities understand their right to Free, Prior and Informed Consent, which defines the right of Indigenous peoples to consultation and participation in decision-making about projects that occur on their traditional territories or affect their Indigenous rights. This guide is included in this report because FPIC is the international standard for consultation regarding projects on Indigenous groups’ traditional territory. Oxfam Australia (2010) outlines the steps communities should take to achieve FPIC:

- Investigate the planned project’s proponent so as to know who should be seeking community consent.
- Request information from the project developer in the local language(s) so community members can understand the project’s impact and be able to give consent, influence project design, and decide on demands.
- Hold informative community discussions with all community members, including women in children, to educate about the project, its impacts, and its benefits. Project developers should inform communities about the agreements they make with other communities and allow for inter-community collaboration.
- Community consultation should start early and continue through each stage of project planning.
- Seek independent advice on the project and do not rely solely on developer information.
- Collectively make decisions using traditional decision-making processes. Ensure the IBA is in writing, legally binding, and in the local language(s). Seek agreement-making expertise if necessary.
- Have ongoing community-developer communications about the project and progress towards commitments. Joint monitoring, a grievance mechanism, and concern-raising platform are recommended.

3.4.4 Rudolph et al., 2015

Rudolph et al. (2015) examine policies and practice of community benefit sharing around offshore energy structures. Using a benefits-community-impacts framework (Figure 2-7), the researchers evaluate various community benefits models. To do the evaluation, the authors define benefits and communities of interest. Rudolph et al. (2015) understand benefits as achieving one or more of the following five goals: sharing a project's positive outcomes, recognizing that a community is hosting a project, increasing local support for a project, recognizing a project's local impacts, and compensating for a project's local impacts. In practice, benefits are usually understood to be a combination of two or more of these ideas. Beneficiary communities can be defined as local communities, communities in the area, communities of interest, affected communities, or a community organization. The chosen benefit model should be tailored the unique way benefits are understood and beneficiary communities are defined in each context.

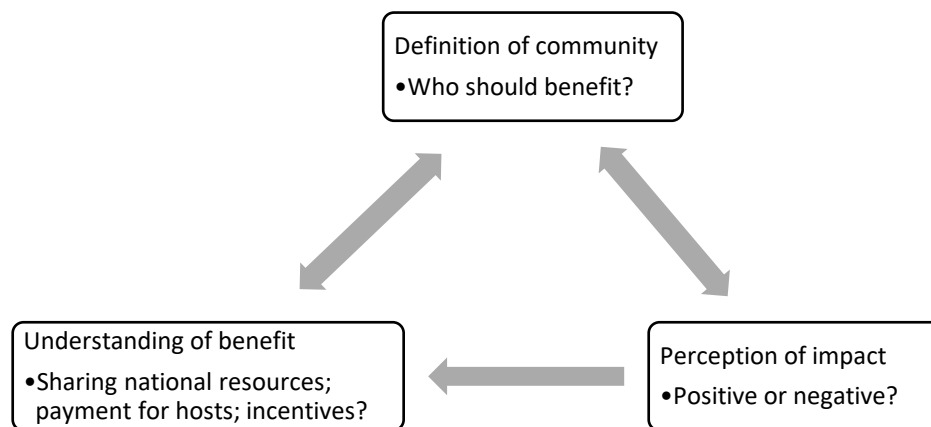


Figure 3-7. Community-benefits-impacts framework (Rudolph et al., 2015)

Rudolph et al.'s (2015) case studies are from the UK, USA, Denmark, Germany, the Netherlands, South Korea, and Canada. Most studies concern offshore wind developments, but there are also studies of community agreements regarding tidal energy, carbon capture and storage, and offshore oil and gas projects. Data was collected through stakeholder interviews, policy analysis, and secondary data analysis. The framework depicted in Figure 3-7 was used to sort projects, understand case studies, and analyze data. Using this information, Rudolph et al. (2015) made a series of recommendations (Figure 3-8).

Figure 3-8. Recommended good practices for delivering community benefits
(adapted from Rudolph et al. 2015)

- Have non-restrictive guidance: allow developers to provide benefits at their own discretion so that benefits can be selected based on appropriateness for the project and local context.
- Benefits should be dependent on the financial means of the developer.
- Decide on benefits during the planning stage. A direct community investment by the project developer is recommended.
- Make sure that all affected communities are benefitting communities and allow local stakeholders to participate in the community identification process.
- Consult about fund delivery early in the project planning process: a locally managed community fund should be set up and operationalized as soon as planning consent is given.

- Engage with the local community early and thoroughly to address interests, concerns, and needs.
- Support community capacity building initiatives so as to maximize community benefits: groups require finances, skills, and knowledge of community benefit model options to make an informed decision about what is best for their community.
- Keep the benefit distribution process simple, flexible, and responsive to local interests. The community benefit scheme should be tailored to the local context.
- In addition to direct benefits, indirect community benefits should be pursued. Indirect benefits include employing local companies and soft benefits, such as education programs, that continue to benefit the community even after the project is over.

3.5 Best Practices for IBA Negotiation and Implementation in Developing Countries

3.5.1 World Bank, 2010

In 2010, the World Bank (2010) published a study that aimed to identify the building blocks of successful IBAs and assess the context and conditions that foster successful agreement implementation. The study includes an IBA-related literature review and subsequent interviews with stakeholders from the mining industry, government, legal community, non-governmental organizations, and community-based organizations. Using the findings, the key building blocks of successful IBAs were identified (Figure 3-9). Recommendations for engendering these building blocks were developed during a World Bank workshop held in June 2010. The final content of the report is derived from the interviews and workshop, and bolstered with IBA case studies from Ghana, Papua New Guinea, and Argentina. The report also included recommendations for the timing of IBA activities (Figure 3-10).

Figure 3-9. Building blocks of successful IBAs
(adapted from World Bank, 2010)

General recommendations

- Start negotiations early in the mine life cycle; during exploration is best.
- Creating trust takes time but is critical to success.
- Process is as important as product: the agreement is only as good as the methods used to develop it.
- Include a “potential to withdraw” clause in the memorandum of understanding.
- There should be continuous public consultation throughout the IBA’s lifetime.
- Establish an inclusive governing body tasked with signing and implementing the IBA.
- IBA should be negotiated and signed early enough that it can be included in the mine budget.
- Monitor and review the IBA regularly.
- Consider mine closure and its impact on the community from the outset.
- The IBA should clearly identify specific obligations and responsibilities of each stakeholder.
- Create an effective resolution framework that allows grievances or disputes to be raised and dealt with.

Stakeholder Participation Recommendations

- Stakeholder capacity should be assessed early to promote capacity development before negotiations start and ownership of negotiation outcomes in the community.

- Stakeholders should be involved in pre-IBA process decisions.
- Planning and negotiations be participatory; promote project awareness promotion in the community, joint decision-making, and stakeholder ownership of project.
- Vulnerable or marginalized groups should participate.
- Include all stakeholders, including NGOs and government.

Community identification recommendations

- Identify communities through impact and risk-based assessment as well as self-identification.
- Qualified communities should be reviewed and adjusted periodically.

Funding and Expenditure Requirements

- Don't make payments for community development via the government unless the fund is regulated.
- Strategically plan and implement development expenditure to maximize community benefits.
- Establish a community-based or private foundation to implement IBA development initiatives and allocate funds. Select appropriate implementation mechanism for the context.

IBAs and local development plans

- Nest IBA within a separate, broader development plan for the area.
- Employ revenue sharing to broaden the reach of IBA benefits.

Accountability, Transparency, and Monitoring

- IBA should be monitored with appropriate metrics.
- Monitoring should contribute to ongoing evaluation and improvement of the IBA and its content.
- Information regarding IBA implementation should be disclosed.
- Include the community, the company, and independent moderators in IBA review.

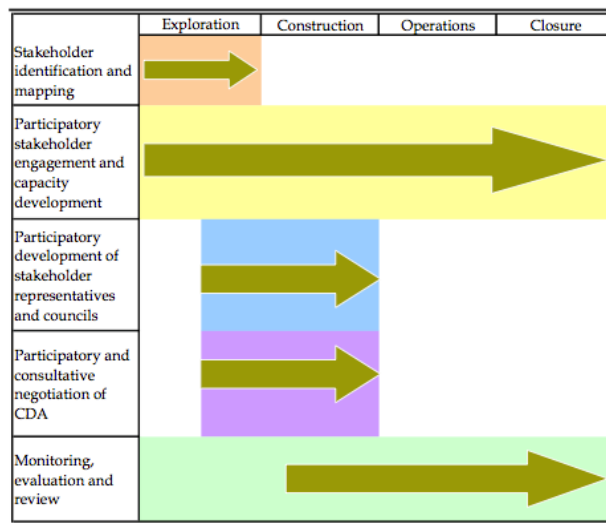


Figure 3-10. Best timing practices for IBAs (World Bank, 2010)

3.5.2 World Bank, 2011

The goal of the World Bank's (2011) study is to assess the utility of IBAs as a corporate social responsibility tool. The study defines a good IBA as one where: the outcome is arrived at through fair negotiation, the communities or their representatives are engaged in negotiations, the outcome is formalized in a written document, the IBA's intention is to create mutual obligations between parties, and the agreement includes provisions that address broader development objectives in addition to financial compensation. The report does not assess IBA implementation.

The World Bank's 2011 report utilizes information from secondary sources, interviews with professionals in the extractive sector, and case studies. First, a desktop review was conducted to gather information about IBAs. Interview questions were developed using literature review findings, and interviews were conducted with industry professionals, experts in IBA design and implementation from Africa, South America, Asia, and Australia. Subsequently, the research team reviewed several agreements. Three of these reviews are outlined in detail in the report.

The document is separated into four main sections: a brief overview and history of IBAs; a guide to deciding which communities should partake in IBA negotiations; a discussion of government, company, and community capacity to create and implement IBAs; and information about role of stakeholders in negotiation, formation, and implementation of IBAs. Key findings of the report are summarized below.

Conditions for Effective IBAs

According to this study, the following conditions improve IBA success:

- 1) the agreement process is inclusive of all stakeholders;
- 2) is seen as fair and equitable by all members and representatives of communities that are party to the agreement;
- 3) all parties are committed to the agreement and its objectives; and
- 4) each party understands and accepts their obligations under the agreement, sees the agreement as having value, and acts so as to reinforce and affirm the agreement.

Furthermore, the World Bank (2011) argues that objectives, needs, and commitments should be clearly outlined in the agreement, and recommends that each party to the agreement understands their own and the other parties' needs. Moreover, the agreement should delineate agreement governance and resources for agreement provisions. Effective governance arrangements ensure transparency, accountability, and successful achievement of the agreement's objectives (World Bank, 2011). Finally, the IBA should be periodically monitored and reviewed.

Determining the Coverage of the Agreement

Impacted communities should be identified and invited to IBA negotiations.

Communities can be identified by their connection to land or by being impacted by the development (World Bank, 2011). The World Bank (2011) report underscores that negotiators and signatories of the agreement should be seen as legitimate by the community.

Community engagement, including engaging vulnerable and marginalized groups, should start as early as possible and continue throughout the project's life cycle (World Bank, 2011). The report recommends negotiating in the local language(s) and translating the

agreement. According to the report, the best practice is for project proponents to engage with communities and facilitate information exchange.

Capacity

The report found that in successful IBAs all signatories were able to participate constructively, support the agreement throughout its lifetime, and follow through on commitments (World Bank, 2011). IBA signatories need capacity, or need access to organizations that have capacity, to implement development initiatives. If there is a large capacity gap, the World Bank (2011) recommends that developers postpone IBA negotiations, limit agreement scope and utilize other tools to promote community development, or establish an effective process for IBA review and amendment.

3.5.3 International Council on Mining and Metals, 2015

The International Council of Mining and Metals (ICMM) created a toolkit of good practices for mitigating negative mining impacts for Indigenous peoples. ICMM is an international mining organization comprised of mining companies and regional and commodity organizations. The organization sets standards to promote more sustainable mining practices and foster development (ICMM, 2018). ICMM's 2015 guide was created in response to growing recognition of the distinct rights and interests of Indigenous Peoples and the historical disadvantages and discriminations Indigenous communities have endured (ICMM, 2015). As a result of their historically relegated status, Indigenous groups have disproportionately experienced the negative effects of mining projects (ICMM, 2015). The guide aims to inform corporations on how to avoid negative impacts and foster benefits for the communities they work in; ICMM (2015) delineates thirteen tools for doing so (Table 3-5). Some tools are a series of steps to follow to best achieve a best practice, such as engagement or creating a dispute resolution framework, while others are lists of recommended practices around a particular issue.

Table 3-5. Good practices toolkit for Indigenous peoples and mining
(adapted from ICMM, 2015)

<u>Tool</u>	<u>Steps</u>
Tool 1: Apply principles of good engagement	<ol style="list-style-type: none"> 1) Take the time to genuinely, respectfully listen to the community. Affirm the relationship before getting down to business. 2) Allow adequate time for discussions: have a flexible timeline and give community time to understand the project and its consequences and to build trust. 3) Learn about, respect, and participate in local customs and celebrations. 4) There should be open, clear, frequent, and accessible communication. Communicate and consult according to community preferences. 5) Communicate in the local language, particularly if the community does not speak the dominant national language.
Tool 2: Build company engagement capacity	<ul style="list-style-type: none"> • All company employees, including management and the CEO, should understand and be committed to the agreement. • All staff engaging with the community should be experienced or trained to successfully work with Indigenous peoples. • Prioritize identifying and training community members to be advisors. Postpone hiring for this role until a community-backed hiring committee is created that can select suitable staff.

	<ul style="list-style-type: none"> • Pay attention to gender power imbalances and mitigate exclusion of women.
Tool 3: Deal with challenges in the identification and recognition of Indigenous land rights	<ol style="list-style-type: none"> 1) Research the project area's history. 2) Work to understand the legal context around Indigenous rights in the area. 3) Ask local experts and the community about traditional land rights in the area. These may or may not be legally recognized. 4) Create a knowledge base to disseminate information about customary land ownership to staff and decision makers. Pay careful attention to rights that are not legally recognized, overlapping land ownership, and disconnected Indigenous groups who are still traditional owners of the land.
Tool 4: Engage in accordance with Indigenous peoples' decision-making processes	<ol style="list-style-type: none"> 1) Identify key Indigenous decision makers and decision-making processes. 2) Ensure inclusivity: use traditional decision-making structures whenever possible, but also work outside of those processes if they fail to meet international human rights or exclude marginalized groups such as women, youth, and the elderly. 3) Document the processes and protocols that the community and company agree upon. Habitually review and update the engagement plan and ensure it is consistent with the community's and the project's broader management plans. 4) Build capacity of traditional decision-making bodies. Ensure community members and employees have the capacity and technical knowledge to fully understand the project, or can access training.
Tool 5: Dealing with the challenges of engagement	<p>The company should:</p> <ul style="list-style-type: none"> • Show respect for local culture; • Use a trusted intermediary to facilitate initial meetings; • Create opportunities for community members to interact with employees; • Acknowledge, apologize, and seek remedy for past mistakes; • Be honest about risks and benefits of resource extraction; • Highlight the company's standards, processes, and practices that keep it accountable for upholding environmental, social, and health standards, and allow the community to get involved in these processes; • Find out about and honour historical commitments to the community; and • Listen to the community's concerns and questions. <p>To manage community expectations about the project:</p> <ul style="list-style-type: none"> • Ensure that communication is clear, transparent, and consistent; • Have ongoing consultation and communication; and • Record commitments and progress towards those commitments. <ul style="list-style-type: none"> • Ensure staff are aware of language barriers and are trained in local customs and etiquette.

	<ul style="list-style-type: none"> • Ensure engagement team includes people who speak the local language and women. • Conduct consultation and disseminate project information in the local language. • Ensure that engagement continues over time by creating an engagement plan and having strategies to deal with staff turnover.
Tool 6: Impact avoidance and mitigation	<ol style="list-style-type: none"> 1) Undertake baseline studies and have impact assessments for environmental, social, health, and human rights impacts. 2) Avoid or mitigate negative project outcomes during the project design stage. 3) Compensate for negative impacts on location, livelihood, or culture. 4) Preserve, enhance, and manage impacts on cultural heritage. 5) Partner with the community to protect and rehabilitate the environment.
Tool 7: Strengthen the community asset base	<ul style="list-style-type: none"> • Make a commitment to Indigenous employment: create an Indigenous employment policy, have cultural training for employees, have an Indigenous employment officer, and address barriers to Indigenous employment. • Contract businesses that employ, are owned by, or create opportunities for Indigenous people. • Attract and recruit Indigenous employees by using culturally appropriate communication and hosting education programs. • Retain Indigenous employees by ensuring work schedule allows for cultural activities and obligations. • Educate and mentor Indigenous workers so that they can be employed at all levels of the company. • Create business opportunities for local businesses and support them by helping them: achieve company standards for contractors, access finances, and learn to craft legal agreements. • Identify and create needed infrastructure and services. • Ensure resources are in place to sustain any development beyond mine-closure.
Tool 8: Baseline studies and impact assessments	<ul style="list-style-type: none"> • Complete baseline studies on the current state and historical trends of the area, including a social map and cultural heritage assessment. • Considering context, assess the project's impact, including who will be impacted and the magnitude and nature of the effects.
Tool 9: Make agreements	<ol style="list-style-type: none"> 1) Identify who should be party to the agreement, then establish intentions for the agreement by communicating each party's aims, expectations, and confidentiality terms. 2) Negotiate agreement, including financial, employment, environment, social, and cultural provisions. Focus on avoiding and mitigating impacts, developing sustainably, and the community's goals. 3) Establish a community-company relationship governance strategy. Options include a jointly-managed implementation and dispute committee, a trust, ongoing monitoring and public reporting, and regular agreement review.
Tool 10: Good faith negotiation	<ol style="list-style-type: none"> 1) Understand the concept of good faith negotiation. 2) Provide unconditional support to communities so they can build their knowledge and capacity. 3) Practice good faith negotiation: both parties should act in good faith and avoid oppressive or coercive behaviour.

Tool 11: Working to obtain consent: a suggested process across corporate engagement	<ul style="list-style-type: none"> • Take all reasonable steps to secure FPIC: consent seeking process should be consistent with the engagement plan, there should be no coercion or pressure on the community, and the community should be fully informed about the scale and nature of the project. • When obtaining consent, identify and avoid adverse impacts if possible and obtain consent for the adverse impacts when they are not avoidable. • Define and record what constitutes consent and identify who provides it. • If consent is not obtained, the company needs to critically consider whether to stay involved in the project, regardless of state approval.
Tool 12: Designing and implementing grievance mechanisms	<p>Grievance mechanism should:</p> <ul style="list-style-type: none"> • be culturally appropriate, • have a transparent recording system, • have criteria to assess complaints, • review and assess grievances, • have multiple resolution approaches, • track outcomes, • contain a feedback and refinement system, and • be rights compatible. <ul style="list-style-type: none"> • Ensure communities have no obstacle to using the mechanism. • Establish the grievance mechanism early, • Find ways to build trust in the mechanism's legitimacy. • Create organizational structure and mindset to support the mechanism. • Involve a third party when and if necessary.
Tool 13: Steps towards consensus	<ol style="list-style-type: none"> 1) Convening: identify parties that should be part of the consensus and have all participants agree upon the make-up of the group and facilitator. 2) Clarify responsibilities: create an adaptable timeline with absence contingencies. 3) Deliberate. 4) Decide: respect cultural decision-making processes to the extent that they are not exclusive. Document the decision and process. 5) Implement: if helpful, ratify.

3.5.4 RESOLVE, 2015

RESOLVE is part of the “solutions network” and promotes collaboration and consensus building in public decision making (RESOLVE, 2015). Their 2015 report, “FROM RIGHTS TO RESULTS,” assesses company-community agreements to identify the best elements and relationship terms to include in IBAs. The study looked at agreements from seven Latin American countries: Bolivia, Brazil, Colombia, Mexico, Nicaragua, Peru, and Suriname. To build the report, the research team conducted twenty-seven in-depth interviews with practitioners and observers from company, community, human rights, and political perspectives and surveyed thirty-seven IBA experts. The report analyzes information according to five broad themes: governmental policies on Indigenous rights; the impact of international norms, trends, and expectations on IBAs; the importance of

relationship management; factors contributing to agreement success or failure; and compensation and benefit content of IBA.

According to the RESOLVE (2015) report, successful agreements essentially provide the company access to the project site and a social license to operate in return for mitigating the project's negative impacts and sharing project benefits with affected communities.

During negotiations, the study recommends:

- 1) ensuring that the community's negotiator and signatory are seen as legitimate by the community;
- 2) giving community members adequate time to interpret, understand, discuss, and comprehend the project and its impact;
- 3) that communities utilize the tools of FPIC and the option of rejecting the agreement and project to protect their interests; and
- 4) publicly disclosing the agreement.

Government presence and policy were positive drivers of IBA negotiation and implementation success (RESOLVE, 2015). According to RESOLVE (2015), governments should create resource development rules that clearly outline expectations for consultation, revenue sharing, and company-community relations. Moreover, mandating consultation as part a requirement for license and permits ensures that IBA negotiations occur prior to project construction or irreversible development (RESOLVE, 2015). The government should provide institutional support for both companies and Indigenous peoples while maintaining neutrality (RESOLVE, 2015).

The report proposes that agreement management works best in a long-term co-governance structure (RESOLVE, 2015). The report recommends systematic monitoring and evaluation of the IBAs and creating a mechanism to deal with non-compliance. Parties should have clear roles and access to resources for successful negotiation and implementation of the IBA (RESOLVE, 2015). RESOLVE (2015) recommends evaluating past agreements to help improve new ones.

According to RESOLVE (2015), all parties should aim to create trust and build a good company-community relationship. It is important to have an established communications framework, to employ local people and businesses, to build capacity among all parties, and to ensure there is a community plan to spend the incoming funds effectively. IBAs should be approached in a comprehensive and structured way. RESOLVE (2015) recommends researching how the project will affect the community and what measures should be taken as a result. It is important that these measures are feasible and practical in the community's context. Throughout agreement negotiations and implementation, there should be ongoing company-community communication and joint decision-making (RESOLVE, 2015).

To avoid IBA failure, companies should mitigate environmental damages, understand and address the community's needs and priorities during consultation, and consider external factors that may affect implementation. The most cited reasons for failed agreements are inadequate community consultation during negotiations, failure to plan for agreement implementation, changing conditions, a lack of mechanisms for IBA review or amendment; and a lack of good faith from parties during negotiation.

Additional good practices identified by RESOLVE (2015) are taking a long-term perspective in the IBA, a structured approach to relationships, and involving the community in IBA formation and implementation. The research team recommends

establishing a community development foundation that will continue post-project. A collaborative IBA process aimed at understanding impacts, monitoring implementation, and involving stakeholders throughout the project is key to success. Finally, it is important that all parties understand the others clearly and find commonality in expectations for the development (RESOLVE, 2015).

3.5.5 Rio Tinto, 2016

The Rio Tinto (2016) report describes best practices for negotiating and implementing IBAs. They identified best practices, those that result in the best social outcomes for the local Indigenous groups, based on company experiences; Rio Tinto (2016) is a multi-national mining company. Rio Tinto created this report to inform their employees and other mining-sector companies. Five dimensions of successful agreement are delineated below.

Know and understand

- Know the local and Indigenous community, context, decision making processes, authority structures, issues, and priorities.
- Build a knowledge base of the potential impacts of the operation.
- Identify and understand the legal requirements, prevailing rights, potential procedure, and agreement making options in each context.

Plan and implement

- Develop an agreement making strategy.
- Integrate agreement commitments into all internal plans, policies, and procedures.
- Implement agreement undertakings effectively to contribute to Rio Tinto global Communities target.
- Ensure internal alignment across the business.

Inclusive engagement

- Ensure that all affected communities are consulted and involved.
- Engage internally with all functions to ensure broad commitment to the agreement.
- Forge strong relationships with the local community.
- Support the community to engage in an informed way and on an equal footing to the company.

Report and communicate

- Use direct, culturally-appropriate and accessible means of communicating.
- Communicate the importance and obligations of the agreement internally.
- Report and communicate internally and externally on agreement intent and performance.

Monitor, evaluate, review, and improve

- Set targets and indicators to monitor and evaluate progress with the agreement.
- Build capacity for participatory monitoring where appropriate.
- Conduct independent reviews of the agreement and its outcomes.
- Adjust programs and operational plans in response to agreement reviews.
- Use project-level complaints processes and Communities reviews to improve performance.

3.5.6 Oxfam IBIS in Sierra Leone, 2016

Section 139(1) of Sierra Leone's *Mines and Minerals Act, 2009* mandates IBA negotiation with the primary host community, yet many mineral rich Sierra Leonean communities' residents continue to live in poverty (Oxfam IBIS of Sierra Leone (OISL), 2016). To address this, the National Minerals Agency, the institution responsible for implementing the *Mines and Minerals Act, 2009*, led an IBA working group to develop a mandatory IBA development framework that could be established by the *Mines and Minerals Act, 2009*. The workshop group included stakeholders from government, mining sector, international development partners, and civil society organizations. OISL is the Sierra Leone chapter of Oxfam IBIS, a subsidiary of Oxfam International that focuses on providing education, facilitating access to resources, and strengthening education policies in Africa and Latin America (Oxfam IBIS, n.d.). OISL (2016) created a community guide to creating IBAs based on workshop findings. The guide aims to be a simple and informative template that provides direction to communities throughout the IBA process. The guidelines are listed in Figure 3-11. The authors emphasize that each IBA process should be different because it should be contingent on community and project context.

Figure 3-11. IBA formation recommendations
(adapted from OISL, 2016)

Stakeholder and community mapping:

- Identify communities and families that will be affected by the mine.
- Decide on community and company representatives for each stage of the process and how these parties will engage with each other.
- Collaboratively create community consultation plan. This plan should include timeframes and delineate how to build project awareness, chose a community development committee, and engage community members.
- Only sign agreements that prepare the community for the IBA process before actual IBA negotiations begin.

Community capacity and organization:

- Identify community needs and ask for training and knowledge about IBAs before the negotiation process.
- Establish a community development committee with a broad selection of community stakeholders, a secretariat, and a technical group.
- Model IBA process on the tenets of FPIC to achieve broad-based community understanding and consent.

Community preparation of the agreement:

- Prioritize community demands so that they reflect the impacts and interests of various stakeholders; consider the needs of women, children, and vulnerable groups.
- Resettled people should have top priority for consultation and needs assessment. Have a resettlement plan based on community consultation and international best practices so that vulnerable families have the best chance for successful resettlement and inter-community conflicts are avoided.
- Communities must decide how they want to benefit. Consider short- and long-term benefits that require direct financial resources as well as some that are non-financial, such as job creation.

Constructing and negotiating a community development agreement:

- Communities should have access to relevant technical and legal assistance so that they can fairly and equally participate in the IBA process.

- Projects coming out of the IBA should be prioritized by their attention to the needs of women, youth, and other marginalized groups so they promote broad and shared community benefits.
- Do not transfer privileges to any specific individuals in the community: benefits should target the whole community.

Implementation of the community development agreement:

- IBA should include a plan that outlines activities, indicators, and timelines. The plan should be regularly monitored and assessed.
- IBA must include high fund management standards: include provisions for transparency, external audits, open bidding on contracts, and a bank account. Develop community capacity as soon as possible to comply with these standards.
- Include a conflict resolution committee that mediates disputes between the community and the company or within the community.

Review of the community development agreement:

- IBA should be reviewed at least once every five years, but changes should be made more immediately if necessary. New risks, opportunities, and challenges should be included in agreement when it is reviewed.
- Ministry of Mines and Mineral Resources and the local council shall facilitate the process of review, which should begin at least six months before the five-year period is up.

3.5.7 Loutit, Mandelbaum, and Szoke-Burke, 2016

Loutit, Mandelbaum, and Szoke-Burke (2016), from the Columbia Centre for Sustainable Investment, aim to identify leading practices for IBA content and process. To do this, the authors reviewed publicly available IBAs and conducted a secondary literature review. The IBA-making process is studied by looking at three stages: pre-negotiation, research and consultation, and negotiation and endorsement of final agreement. While monitoring and implementation of the agreement are highlighted by Loutit et al. (2016) as important phases in the IBA process, they are beyond the scope of their study. The leading practices identified by the authors are described below.

Research and consult widely to identify all communities and the individuals who will represent them during IBA negotiations

Loutit et al. (2016) state that the following communities may need to be considered when identifying who should be at the negotiation table: those with recognized legal title of the land the project is on or is near, those without recognized legal title who may be affected, and those who may experience downstream effects from the project. The authors also suggest that companies do anthropological and demographic research to ensure all appropriate communities are included in negotiations. Finally, it is recommended that project proponents guarantee that communities and their members, including marginalized groups, have legitimate and adequate negotiators to represent them (Loutit et al., 2016).

Have a precursor agreement and provide support to communities preparing for negotiations

Loutit et al. (2016) underscore that negotiations should occur on a level playing field, which includes securing funding for communities early on if it is necessary. These funds can be provided by the company, government, or both (Loutit et al., 2016). Moreover, signing a precursor agreement, such as a memorandum of understanding, is recommended to establish rules for negotiation (Loutit et al., 2016). Finally, Loutit et al.

(2016) recommend that the role of government is decided early on, and that companies provide cross-cultural training to their employees to support cultural understanding of the local community.

Facilitate the community's articulation of a negotiating position

When a community has a negotiation position, it helps all parties better understand and address the community's priorities and interests (Loutit et al., 2016). To assist communities, Loutit et al. (2016) recommend that project proponents give communities ample time and information to determine their position.

Ensure community participation and informed decision-making during negotiations and other processes

Loutit et al. (2016) state that participatory planning and agreement making is a leading IBA practice. During the IBA-making process, community members should be informed about the project and participate in decision making (Loutit et al., 2016).

Ensure that benefits shared extend beyond financial compensation

There should be financial and non-financial IBA benefits (Loutit et al., 2016). Financial benefits should establish stable and comprehensive streams of income, while non-financial benefits can include provisions for jobs, linkages, education, and infrastructure, among other matters (Loutit et al., 2016). Loutit et al. (2016) state that employment benefits should include training, if necessary, as well as preferential hiring of local people. Similarly, business contracting provisions should develop the local supply chain. Finally, if building infrastructure for the project, the leading practice is to design this infrastructure and finance its maintenance according to community needs (Loutit et al., 2016).

Ensure strong, accountable governance arrangements to facilitate implementation, monitoring, review, and needed adjustment of the agreement

Loutit et al. (2016) recommend that IBAs include a provision regarding how the agreement is governed. Governance protocol may include a management committee, and it is recommended that the provision includes financial management structures and processes for dispute resolution, monitoring, and enforcing the IBA (Loutit et al., 2016). Furthermore, community capacity should be supported so community members can be involved with ongoing IBA implementation and monitoring. Loutit et al. (2016) suggest tying the IBA to the company's arrangements with the state so that a breach of the IBA can be more easily handled.

Plan for mine closure and legacy issues

IBAs should protect the local environment and ensure that the project's socioeconomic benefits do not cease with project closure (Loutit et al., 2016). The authors found that many agreements mentioned closure and rehabilitation of the project site, but did not provide a detailed plan for how this would occur. Loutit et al. (2016) recommend creating a detailed action plan and a closure taskforce charged with guiding the end-of-project transition.

IBAs should generally not be confidential

Confidential clauses, according to Loutit et al. (2016), can hinder a community's ability to seek advice from the media or other stakeholders. Moreover, confidential agreements are not available to be studied by researchers or other communities to identify what makes for effective IBAs (Loutit et al., 2016).

3.6 Best Practice Criteria

A list of best practices for IBAs was developed from the literature review (Table 3-6). Recommendations from the literature were recorded and integrated into a single list to eliminate overlap and duplication. These recommendations are organized under eleven themes, forty-six sub-criteria, which are defined as best practices, and eighty-six indicators. Germane indicators for each sub-criterion were created in the form of questions, using logic and recommendations from the literature, to help apply the sub-criteria in the evaluation. The framework was further refined during the case study evaluation to address issues that arose in the application. Criteria were refined to eliminate overlap, which resulted in some sub-criteria movement from one criterion to another. In addition, the wording of sub-criteria and indicators was refined during the case study evaluation to improve clarity.

An effective IBA is found to be one that: is empowering, respects local culture, has broad commitment, has open communication, is enforceable, builds capacity, is monitored, is adaptive, is equitable, is comprehensive, and is implemented.

Table 3-6. Best practice criteria

<u>Criteria</u>	<u>Sub-Criteria</u>	<u>Indicator</u>	<u>References</u>
1. Is empowering	1.1 Every affected community is a participant in the IBA-making process.	<ul style="list-style-type: none"> • Were communities with legal rights at or around the project site consulted? • Were communities with unrecognized legal rights at or around the project site consulted? • Were communities who may experience downstream effects of the project consulted? 	Gogal et al., 2006 Knotsch and Warda, 2009 Fidler, 2010 World Bank, 2010 World Bank, 2011 ICMM, 2015 Rudolph et al., 2015 Rio Tinto, 2016 OISL, 2016 Loutit et al., 2016
	1.2 Vulnerable and marginalized groups are included in the IBA-making process.	<ul style="list-style-type: none"> • Were any women, youth, or elder groups included in the IBA-making process? • Was the IBA negotiator / negotiation team representative of marginalized interests (i.e. did the team include people from marginalized groups or was the team elected in a collaborative or democratic way)? 	Sosa and Keenan, 2001 Knotsch and Warda, 2009 Oxfam Australia, 2010 Prno et al., 2010 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 ICMM, 2015 OISL, 2016 Loutit et al., 2016
	1.3 Community sovereignty is maintained.	<ul style="list-style-type: none"> • Does the community relinquish any rights, such as governance or land monitoring powers, in the IBA? 	O'Reilly and Eacott, 1999 Sosa and Keenan, 2001 RESOLVE, 2015

	1.4 IBA funds are managed by the recipient community.	<ul style="list-style-type: none"> Are the IBA funds managed by the recipient community? 	World Bank, 2010 Rudolph et al., 2015 OISL, 2016
2. Respects local culture	2.1 Project employees take part in cross-cultural training.	<ul style="list-style-type: none"> Is there cross-cultural training available to project employees? Is cross cultural training mandatory for all employees? 	O'Faircheallaigh, 2002 Dreyer, 2004 Gogal et al., 2006 Fidler and Hitch, 2007 CCAB, 2009 Siebenmorgan and Bradshaw, 2011 ICMM, 2015 Loutit et al., 2016
	2.2 Traditional or community knowledge is included in the project design and management.	<ul style="list-style-type: none"> Is traditional knowledge collected or known by the project designers? Is traditional knowledge used to design the project? 	Dreyer, 2004 Fidler, 2010
	2.3 Employment schedules accommodate community members' cultural needs.	<ul style="list-style-type: none"> Are employee work schedules designed to suit cultural needs? 	Fidler and Hitch, 2007 Siebenmorgan and Bradshaw, 2011 ICMM, 2015
3. Has broad commitment	3.1 The IBA is negotiated in good faith.	<ul style="list-style-type: none"> Is there a signed good faith agreement or clause in IBA? 	Gogal et al., 2006 Siebenmorgan and Bradshaw, 2011 ICMM, 2015 RESOLVE, 2015
	3.2 The community-company relationship is trusting and is maintained.	<ul style="list-style-type: none"> Do both the community and the company see the other party as trustworthy? Is there regular face-to-face interaction between company employees and community members? 	O'Reilly and Eacott, 1999 Sosa and Keenan, 2001 Browne and Robertson, 2009 CCAB, 2009 Gordon Foundation, 2010 World Bank, 2010 NRCan, 2014 ICMM, 2015 RESOLVE, 2015 Rio Tinto, 2016
	3.3 The community's negotiator and IBA decision maker is seen as legitimate by the community.	<ul style="list-style-type: none"> Is the community's negotiator and IBA decision maker selected in a culturally legitimate way? 	Sosa and Keenan, 2001 Gogal et al., 2006 Browne and Robertson, 2009 Gordon Foundation, 2010 O'Faircheallaigh, 2010

			<p>Siebenmorgan and Bradshaw, 2011 World Bank, 2011 ICMM, 2015 RESOLVE, 2015 OISL, 2016 Loutit et al., 2016</p>
	3.4 The company is committed to the agreement's success.	<ul style="list-style-type: none"> Are employees, including upper-level employees, committed to and engaged with the IBA? 	<p>Knotsch and Warda, 2009? ISS and ACILC, 2001 O'Faircheallaigh, 2002 World Bank, 2011 ICMM, 2015 Rio Tinto, 2016</p>
	3.5 The role of an IBA in the project approval process is clear.	<ul style="list-style-type: none"> Is project approval contingent on concluding an IBA with the impacted community? 	<p>O'Faircheallaigh, 2002 Dreyer, 2004 Gogal et al., 2006 RESOLVE, 2015</p>
	3.6 The IBA does not replace government's role in supporting the community.	<ul style="list-style-type: none"> Does the IBA affect governmental support of the community in any way? 	<p>O'Faircheallaigh, 2002 Fidler and Hitch, 2007</p>
4. Has open communication	4.1 A precursor agreement, such as a memorandum of understanding, is signed.	<ul style="list-style-type: none"> Is there a signed, public precursor agreement that outlines the objectives and process of negotiating an IBA, and that doing so will be in good faith? 	<p>O'Reilly and Eacott, 1999 Sosa and Keenan, 2001 Knotsch and Warda, 2009 Gordon Foundation, 2010 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 NRCan, 2014 Loutit et al., 2016</p>
	4.2 The IBA, precursor agreement (if available), monitoring results and all other IBA relevant information are public.	<ul style="list-style-type: none"> Is the agreement publicly available? Are the IBA's monitoring results publicly reported? Are the agreement and monitoring results available in the local language(s)? 	<p>O'Reilly and Eacott, 1999 Fidler and Hitch, 2007 Knotsch and Warda, 2009 Oxfam Australia, 2010 Prno et al., 2010 World Bank, 2010 World Bank, 2011 NRCan, 2014 RESOLVE, 2015 Rio Tinto, 2016 Loutit et al., 2016</p>
	4.3 Communication between signatories	<ul style="list-style-type: none"> Is there a regularly scheduled meeting that community 	<p>Dreyer, 2004 Fidler and Hitch, 2007 CCAB, 2009</p>

	continues throughout project.	<p>members and company employees can attend?</p> <ul style="list-style-type: none"> • Are community members and company employees able to bring up and discuss matters and grievances at this meeting? • If applicable, is communication able to be done in the locally spoken language(s)? 	<p>Oxfam Australia, 2010 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 NRCAN, 2014 ICMM, 2015 RESOLVE, 2015 Rio Tinto, 2016</p>
	4.4 There is continuity in who is involved with the IBA making and implementation process?	<ul style="list-style-type: none"> • Is there staff continuity throughout IBA negotiation and governance? 	<p>O'Reilly and Eacott, 1999 O'Faircheallaigh, 2002 O'Faircheallaigh, 2003 Gordon Foundation, 2010 ICMM, 2015</p>
5. Builds capacity	5.1 The IBA has provisions to organize and fund capacity building initiatives.	<ul style="list-style-type: none"> • Is there a job training provision? • Is there a governance capacity supporting provision? • Is there an education provision? • Is there a business development provision? • Is there a community development provision? 	<p>ISS and ACILC, 2001 Fidler and Hitch, 2007 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 NRCAN, 2014 ICMM, 2015 Rudolph et al., 2015 Loutit et al., 2016</p>
	5.2 There is a dedicated person in charge of employment and training of the local community.	<ul style="list-style-type: none"> • Is there a dedicated person in charge of employment and training of the local community? 	<p>O'Faircheallaigh, 2002 Dreyer, 2004</p>
	5.3 Capacity building provisions should be locally available.	<ul style="list-style-type: none"> • Are job training and capacity building initiatives located within the community(s)? 	<p>Siebenmorgan and Bradshaw, 2011 NRCAN, 2014</p>
	5.4 Each party's capacity, including gaps compared to future needs, is assessed prior to negotiations.	<ul style="list-style-type: none"> • Is the community capacity assessed early in the IBA-making process? • Are any identified capacity gaps addressed? • Is the company's capacity assessed early 	<p>O'Reilly and Eacott, 1999 O'Faircheallaigh, 2002 Gogal et al., 2006 Browne and Robertson, 2009 World Bank, 2010 World Bank, 2011 ICMM, 2015 RESOLVE, 2015</p>

		<p>in the IBA-making process?</p> <ul style="list-style-type: none"> • Are any identified capacity gaps addressed? • Is the government's capacity assessed early in the IBA-making process? (if applicable) • Are any identified capacity gaps addressed? (if applicable) 	OISL, 2016
	5.5 Each party's capacity, including needs, is assessed prior to and during IBA conclusion and implementation.	<ul style="list-style-type: none"> • Is community capacity assessed to ensure the community can fully participate in implementation and take advantage of benefits? • Are any identified capacity gaps addressed? • Is company capacity assessed to ensure the company can fully participate in implementation? • Are any identified capacity gaps addressed? • Is government capacity assessed to ensure the government can fully participate in implementation and take advantage of benefits? (if applicable) • Are any identified capacity gaps addressed? (if applicable) 	<p>O'Reilly and Eacott, 1999 O'Faircheallaigh, 2002 Gogal et al., 2006 Browne and Robertson, 2009 World Bank, 2010 World Bank, 2011 ICMM, 2015 RESOLVE, 2015 OISL, 2016</p>
	5.6 The community is given adequate time, resources, and information to effectively participate in the IBA-making process.	<ul style="list-style-type: none"> • Is the community given enough time to fully understand the project and participate in the IBA-making process? • Does the community have sufficient funding to participate in the IBA-making process? 	<p>O'Reilly and Eacott, 1999 ISS and ACILC, 2001 Sosa and Keenan, 2001 O'Faircheallaigh, 2003 Dreyer, 2004 Gogal et al., 2006</p>

		<ul style="list-style-type: none"> Does the community have enough information to understand the project and make informed decisions in the IBA-making process? 	Browne and Robertson, 2009 Fidler, 2010 Gordon Foundation, 2010 O'Faircheallaigh, 2010 Oxfam Australia, 2010 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 World Bank, 2011 NRCan, 2014 ICMM, 2015 RESOLVE, 2015 OISL, 2016 Loutit et al., 2016
6. Is equitable	6.1 No community member is worse off as a result of the project, after mitigation and compensation.	<ul style="list-style-type: none"> Is there a provision to ensure that any member of the community adversely impacted by the project is fully compensated for the adverse effect? 	Prno et al., 2010 Siebenmorgan and Bradshaw, 2011
	6.2 Financial benefits are scaled to the total project benefits. ²	<ul style="list-style-type: none"> Are financial benefits proportional to project benefits? Are financial benefits connected to project output? 	Prno et al., 2010 Rudolph et al., 2015
	6.3 Financial benefits are delivered to suit community needs.	<ul style="list-style-type: none"> Is the financial benefit delivery method a mix of fixed and variable cash payouts? 	Fidler and Hitch, 2007 Siebenmorgan and Bradshaw, 2011 Rudolph et al., 2015 OISL, 2016 Loutit et al., 2016
	6.4 Contracts are designed for, and favour, local businesses.	<ul style="list-style-type: none"> Do local businesses have an advantage in the contract bidding processes? Are contracts unbundled? 	Gogal et al., 2006 Fidler and Hitch, 2007 Knotsch and Warda, 2009 Siebenmorgan and Bradshaw, 2011 ICMM, 2015 RESOLVE, 2015 Loutit et al., 2016
	6.5 Community members are preferentially hired.	<ul style="list-style-type: none"> Are there provisions that support hiring community members? 	ISS and ACILC, 2001 Fidler and Hitch, 2007 Prno et al., 2010

² Due to the inchoate nature of the literature about what is appropriate financing for IBAs, this sub-criterion must be left vague. A current CIRD project is addressing this gap and its results can hopefully be used to refine this sub-criterion upon publication.

		<ul style="list-style-type: none"> • Are there provisions that support advancement of community members? • Are there provisions that support retention of community members? 	<p>Siebenmorgan and Bradshaw, 2011 NRCan, 2014 ICMM, 2015 RESOLVE, 2015 OISL, 2016 Loutit et al., 2016</p>
7. Is comprehensive	7.1 The IBA addresses all project phases: construction, operation, and closure and reclamation.	<ul style="list-style-type: none"> • Does the IBA address the construction, operation, closure, and reclamation phases of the project? • Is there a closure and remediation plan? • Are parties jointly responsible for the creation and implementation of the closure and remediation plan? 	<p>Fidler, 2010 Siebenmorgan and Bradshaw, 2011 NRCan, 2014 ICMM, 2015 RESOLVE, 2015 Loutit et al., 2016</p>
	7.2 The IBA includes employment, business contracting, training and education, financial, cultural, and environmental provisions.	<ul style="list-style-type: none"> • Are there provisions addressing the following: Employment? Business contracting? Capacity building, training and education? Environment? Finances? Culture? Community development? 	<p>Dreyer, 2004 CCAB, 2009 Knotsch and Warda, 2009 Prno et al., 2010 Siebenmorgan and Bradshaw, 2011 NRCan, 2014 ICMM, 2015 Rudolph et al., 2015 Loutit et al., 2016</p>
	7.3 The community has its own goals and development plan, which the project is only a part of.	<ul style="list-style-type: none"> • Is there a development plan for the area? • Is there funding for provisions that have a post-project timeline (i.e. infrastructure, community development projects, etc.)? 	<p>O'Reilly and Eacott, 1999 Dreyer, 2004 Knotsch and Warda, 2009 Gordon Foundation, 2010 Prno et al., 2010 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 ICMM, 2015 RESOLVE, 2015 Loutit et al., 2016</p>
8. Is enforceable	8.1 The IBA includes a dispute resolution mechanism.	<ul style="list-style-type: none"> • Is there a provision for dispute resolution in the IBA? • Is dispute resolution a jointly run process? 	<p>O'Reilly and Eacott, 1999 Sosa and Keenan, 2001 Fidler and Hitch, 2007</p>

			World Bank, 2010 Siebenmorgan and Bradshaw, 2011 Rio Tinto, 2016 OISL, 2016 Loutit et al., 2016
	8.2 The IBA is a legally binding document.	<ul style="list-style-type: none"> Is the IBA legally binding on the signatories? 	Oxfam Australia, 2010 OISL, 2016
	8.3 The IBA is jointly governed with a clearly outlined framework.	<ul style="list-style-type: none"> Is there a clear IBA governance structure? Is the IBA jointly governed? 	ISS and ACILC, 2001 Fidler, 2010 World Bank, 2010 World Bank, 2011 Loutit et al., 2016
	8.4 The IBA's provisions have measurable targets.	<ul style="list-style-type: none"> Do the following provisions have measurable targets: Employment; Business contracting; Environmental protection; Cultural protection; Finances; Training and education; and Community development? 	Fidler and Hitch, 2007 World Bank, 2010
	8.5 There are penalties for non-compliance with the IBA.	<ul style="list-style-type: none"> Are there penalties for non-compliance with the IBA? 	ISS and ACILC, 2001 Gordon Foundation, 2010 Prno et al., 2010 Loutit et al., 2016
9. Is implemented	9.1 Each provision is included in an implementation plan.	<ul style="list-style-type: none"> Are the following provisions included in an implementation plan: Employment provisions; Contracting provisions; Training and education provisions; Community development provisions? 	O'Reilly and Eacott, 1999 ISS and ACILC, 2001 O'Faircheallaigh, 2003 Gordon Foundation, 2010 Siebenmorgan and Bradshaw, 2011 RESOLVE, 2015 OISL, 2016 Loutit et al., 2016
	9.2 There is funding for IBA implementation.	<ul style="list-style-type: none"> Is there funding to implement employment, business contracting, environment and culture protection, financial, training and education, community development, and closure and 	Gordon Foundation, 2010

		reclamation provisions?	
	9.3 There is an overseer of IBA implementation.	<ul style="list-style-type: none"> Is there a person or committee in charge of implementing the IBA? Is the implementation person or committee paid? Is the implementation person or committee unbiased or accountable to both the community and the company? 	ISS and ACILC, 2001 Sosa and Keenan, 2001 O’Faircheallaigh, 2002 Knotsch and Warda, 2009 Gordon Foundation, 2010 World Bank, 2010 RESOLVE, 2015
	9.4 The implementation process is collaboratively designed.	<ul style="list-style-type: none"> Did the community and the company collaborate to design the IBA implementation process? Is each party’s role in IBA implementation made clear? 	O’Reilly and Eacott, 1999 Sosa and Keenan, 2001 O’Faircheallaigh, 2003 Knotsch and Warda, 2009 Fidler, 2010 Gordon Foundation, 2010 World Bank, 2010 ICMM, 2015 RESOLVE, 2015 Loutit et al., 2016
10. Is monitored	10.1 Progress towards IBA objectives and project impacts are periodically monitored.	<ul style="list-style-type: none"> Are the following monitored? Employment outcomes; Business contracting outcomes; Environmental impacts; Cultural impacts; Socioeconomic impacts; Training and education outcomes; The company-community relationship; and Community perception of project. 	O’Reilly and Eacott, 1999 ISS and ACILC, 2001 Fidler and Hitch, 2007 Browne and Robertson, 2009 Knotsch and Warda, 2009 Gordon Foundation, 2010 Prno et al., 2010 World Bank, 2010 Siebenmorgan and Bradshaw, 2011 World Bank, 2011 NRCan, 2014 RESOLVE, 2015 Rio Tinto, 2016 OISL, 2016 Loutit et al., 2016
	10.2 The community and the company jointly monitor the project and the IBA.	<ul style="list-style-type: none"> Is the community involved in monitoring? 	Dreyer, 2004 Oxfam Australia, 2010 Prno et al., 2010 World Bank, 2010

		<ul style="list-style-type: none"> Is the company involved in monitoring? 	Siebenmorgan and Bradshaw, 2011 Rio Tinto, 2016
	10.3 A baseline assessment of the environmental, cultural, and socioeconomic conditions of the community is conducted.	<ul style="list-style-type: none"> Is there a baseline environmental assessment? Is there a baseline socioeconomic assessment? Is there a baseline cultural assessment? Is the community involved in all the baseline assessments? 	O'Reilly and Eacott, 1999 Dreyer, 2004 O'Faircheallaigh, 2010 Siebenmorgan and Bradshaw, 2011 ICMM, 2015
	10.4 There is adequate funding for monitoring.	<ul style="list-style-type: none"> Does the IBA include a provision to fund project and IBA monitoring? 	
11. Is adaptive	11.1 IBA deficiencies that have been identified in monitoring must be mitigated.	<ul style="list-style-type: none"> Is there a provision requiring monitoring results to be mitigated? 	World Bank, 2010 Rio Tinto, 2016 OISL, 2016
	11.2 There is a process for amending the agreement.	<ul style="list-style-type: none"> Is there a process by which the parties can re-open the IBA for negotiation? 	O'Reilly and Eacott, 1999 Browne and Robertson, 2009 Gordon Foundation, 2010 Prno et al., 2010 RESOLVE, 2015 OSIL, 2016

Chapter 4

Case Study Context

4.1 Case Study Evaluation

The framework described in chapter 3 is used to evaluate a Canadian IBA case study. Baffinland's Mary River Project on Baffin Island in Nunavut was selected because the project is in operation and therefore there is evidence on how the IBA is working, the IBA is relatively recent, and most of the information on the IBA and the project necessary to complete the evaluation are in the public realm. As with in case study, it is important to emphasize the findings from this evaluation may not be applicable to other cases because of unique features. For example, this case study has some specific characteristics including having a well-defined governance structure of duly elected representation that existed before this project, a relatively self-contained low-density population, and a mandatory obligation to prepare an IBA under Nunavut law (*Nunavut Land Claims Agreement (NLCA)*, s. 26.2.1).

4.2 Canadian Legal Context

IBAs are de facto mandatory, but not legislatively required in most of Canada (O'Reilly & Eacott, 1999; Sosa & Keenan, 2001). Notable exceptions are Nunavut, where IBAs are mandatory on Inuit-owned land (Bowes-Lyon et al., 2009; *NLCA*, s. 26.2.1) and the Northwest Territories (NWT), where benefits must be negotiated for oil and gas development (*Oil and Gas Operations Act*, S.N.W.T. 2014, s. 17) and a participation agreement must be signed before development on Inuvialuit land (*Inuvialuit Final Agreement*, s. 10). That said, while there is a legal requirement for the Crown to consult and accommodate Aboriginal interests in Canada, this requirement does not extend to industry outside of the exceptions noted above, and, in fact, cannot be replaced by industry consultation and accommodation of Aboriginal peoples (Lawson Lundell LLP, 2005; *Haida Nation v. British Columbia*, 2004). However, the legal implications of inadequate consultation combined with augmented community empowerment and burgeoning international standard of FPIC (Rodhouse & Vanclay, 2016) mean that there is an incentive for industry to ensure Aboriginal interests are accommodated prior to resource extraction. The rise of IBA prevalence in parts of Canada where they are not legislatively required may be an outcome of this.

4.2.1 Consultation and Aboriginal Land Rights in Canada

The *Royal Proclamation, 1763* was the first legislative acknowledgement of what is now called Aboriginal title in Canada: Aboriginal peoples hold title through the use and occupancy of the land. The *Constitution Act, 1867*, s 91(24), put "Indians and the lands reserved for the Indians" under the jurisdiction of the Federal Government. Subsequently, the *Constitution Act, 1982* recognized and affirmed Aboriginal and treaty rights and became the basis of the duty to consult. Section 35(1) of *The Constitution Act, 1982* affirms responsibility of governments in Canada to Aboriginal peoples. If Aboriginal

rights or title exist, so does the duty of the Crown to adequately consult and accommodate the Aboriginal group whose rights will be impacted by a decision. The Crown's consultation and accommodation requirements are sometimes, but not always, outlined in treaties if they exist (Muldoon et al., 2015). In practice, there are three forms of consultation in Canada: The Crown's legal obligation, a regulatory requirement through EIA, and voluntary industry initiatives (Fidler & Hitch, 2007). Failure of the Crown to satisfy its fiduciary duty to meaningfully consult may result in costs to industry in the form of legal expenses and project delays. As a result, businesses are espousing consultation to certify that the duty to consult is fulfilled and avoid future legal issues and delays (Sosa & Keenan, 2001). IBA consultation is often done prior to Crown consultation, which, according to Wright (2013) could mean that impact benefit agreements are de facto replacing the Crown's role in consultation. Nevertheless, while proponents can bring all relevant stakeholders together to discuss a project, industry cannot take the place of government representatives in the consultation and accommodation process; the Crown is still required to consult and accommodate (*Haida Nation v. British Columbia*, 2004; Wright 2013).

4.3 Nunavut Legal Context

4.3.1 Governance in Nunavut

All governing bodies in Nunavut work under the *Nunavut Land Claims Agreement*. Following enactment of this agreement, Nunavut governance has been described as occurring in an Inuit way: according to Inuit values and cultural principles (White, 2009). Governance in Nunavut is complex and involves the territorial government, Aboriginal governments, the federal government, and many community governments (White, 2009). Additionally, there are five management boards in Nunavut: the Nunavut Impact Review Board (NIRB), the Nunavut Planning Commissions, the Nunavut Water Board, the Nunavut Wildlife Management Board, and the Surface Rights Tribunal (Bowes-Lyon et al., 2009; White, 2009). These boards include Inuit and government organization members, thereby giving the Inuit partial control over Nunavut's land, water, wildlife, and development (Bowes-Lyon et al., 2009). Although there is a territorial government in Nunavut, the federal government retains a lot of authority (White, 2009). This is evidenced, for example, by the fact that the Minister of Indigenous and Northern Affairs Canada (INAC), formerly Aboriginal Affairs and Northern Development Canada (AANDC), has final say in the NIRB's impact review process (NIRB, 2017). However, researchers contend that the recommendations of Nunavut's boards are normally accepted by the Minister of INAC (White, 2009).

4.3.2 Nunavut Tuungavik Inc.

The Tuungavik Federation of Nunavut, now known as Nunavut Tuungavik Inc. (NTI) was created in 1982 to negotiate the *Nunavut Land Claims Agreement* (Bowes-Lyon et al., 2009; White, 2009). NTI is an Inuit land claims organization that represents all eastern Inuit, and has been hailed as the largest and most influential Aboriginal government or land claims organization in Canada (White, 2009). NTI's president and vice presidents are elected by direct vote by all Nunavut Inuit aged 16 and over (White, 2009). The organization works closely with the Governments of Nunavut and Canada to

promote and enforce Inuit interests (White, 2009). The Nunavut Government and NTI outline their relationship and responsibilities to one another in the *Clyde River Protocol* (White, 2009).

Three recognized regional Inuit organizations exist within NTI: the Kivalliq Inuit Association, the Kitikmeot Inuit Association, and the Qikiqtani Association (Baffinland, 2012b; Williams, 2015). The NTI board of directors is made up of the NTI president and representatives from each of the regional Inuit organizations (Baffinland, 2012b).

4.3.3 The Nunavut Land Claims Agreement

The *Nunavut Land Claims Agreement (NLCA)* was signed on May 25, 1993 by the Federal Government, the Government of the Northwest Territories, and NTI (White, 2009). *NCLA* was enacted April 1, 1999 through the *Nunavut Land Claims Agreement Act* and is constitutionally enshrined in section 35 of the *Constitution Act, 1982* (MRP IBA, 2013; White, 2009).

The *NLCA* and corresponding *Act* grant legal title to 350,000 km² to the Inuit, including some mineral rights (McPherson, 2003). Secured legal title came at the expense of Aboriginal title to other areas of traditional Inuit territory (Bowes-Lyon et al., 2009). Today, the Inuit have legal title to approximately 17.7% of the Nunavut settlement area, and more than 10% of the titled area includes mineral rights (McPherson, 2003; Bowes-Lyon et al., 2009). NTI receives 100% of royalties from Inuit-owned mineral development and 50% of the first 2 million CAD and 5% of subsequent royalties, per annum, from all other Crown-owned mineral development in Nunavut (*NLCA*, s. 27.2.1). Overall, the *NCLA* gives Inuit greater decision-making authority and ability to benefit from mining projects in Nunavut: through this agreement, the Inuit are able to employ environmental impact assessments and impact benefit agreements as benefit capturing tools (Bowes-Lyon et al., 2009).

4.3.4 Legislated IBA Requirement in Nunavut

Section 26 of the *NLCA* outlines IBA³ requirements, including negotiation and arbitration guidelines and matters to include in the document (Figure 4-1; Figure 4-2). Major projects may not go ahead in Nunavut without a signed IBA (*NLCA*, s. 26.2.1). Nunavut mandates IBAs to maximize socio-economic benefits from resource development for the people of Nunavut and ensure that any detrimental impacts on Inuit are mitigated (Baffinland, 2014c; Bowes-Lyon et al., 2009). IBAs must be developed and signed with representatives of impacted communities (Baffinland, 2014c; Mary River Project Inuit Impact Benefit Agreement (MRP IBA), 2013).

³ IBAs made with Inuit communities in Nunavut are called Inuit Impact Benefit Agreements, but are referred to as IBAs in this report for simplicity.

Figure 4-1. Principles of IBA negotiation and arbitration (*NLCA*, s 26.3.3)

- Benefits shall be consistent with and promote Inuit cultural goals;
- Benefits shall contribute to achieving and maintaining a standard of living among Inuit equal to that of persons other than Inuit living and working in the Nunavut Settlement Area, and to Canadians in general;
- Benefits shall be related to the nature, scale, and cost of the project as well as its direct and indirect impacts on Inuit;
- Benefits shall not place an excessive burden on the proponent and undermine the viability of the project; and
- Benefit agreements shall not prejudice the ability of other residents of the Nunavut Settlement Area to obtain benefits from major projects in the Nunavut Settlement Area.

Figure 4-2. Matters considered appropriate for Inuit benefits (*NLCA*, Sch 26-1)

1. Inuit training at all levels.
2. Inuit preferential hiring.
3. Employment rotation reflecting Inuit needs and preferences.
4. Scholarships.
5. Labour relations.
6. Business opportunities for Inuit including:
 - (a) provision of seed capital;
 - (b) provision of expert advice;
 - (c) notification of business opportunities;
 - (d) preferential contracting practices.
7. Housing, accommodation, and recreation.
8. Safety, health, and hygiene.
9. Language of workplace.
10. Identification, protection, and conservation of archeological sites and specimens.
11. Research and development.
12. Inuit access to facilities constructed for the project such as airfields and roads.
13. Particularly important Inuit environmental concerns and disruption of wildlife, including wildlife disruption compensation schemes.
14. Outpost camps.
15. Information flow and interpretation, including liaison between Inuit and proponent regarding project management and Inuit participation and concerns.
16. Relationship to prior and subsequent agreements.
17. Co-ordination with other developments.
18. Arbitration and amendment provisions.
19. Implementation and enforceability, including performance bonds and liquidated damages clauses.
20. Obligations of subcontractors.
21. Any other matters that the Parties consider to be relevant to the needs of the project and Inuit.

Figure 4-3 outlines the IBA process in Nunavut. IBA negotiations must commence at least 180 days before the proposed start-up date of any major project (*NLCA*, s. 26.4). Once concluded, the IBA contract must be submitted in written form and approved by all parties and the Minister of INAC (Baffinland, 2014c; *NLCA* s. 26.4.2). The IBA comes into effect 30 days after submission to the Minister unless it is deemed that the IBA does not conform to *NLCA*, s. 26.3, in which case the Minister provides a written reason not approving the IBA. If the IBA is not approved, the parties have seven days to submit a new IBA, which is again reviewed by the Minister of INAC and, if approved, takes effect

seven days after submission (*NLCA*, s. 26.8). IBAs are enforceable under the common law of contract (*NLCA*, s. 26.9).

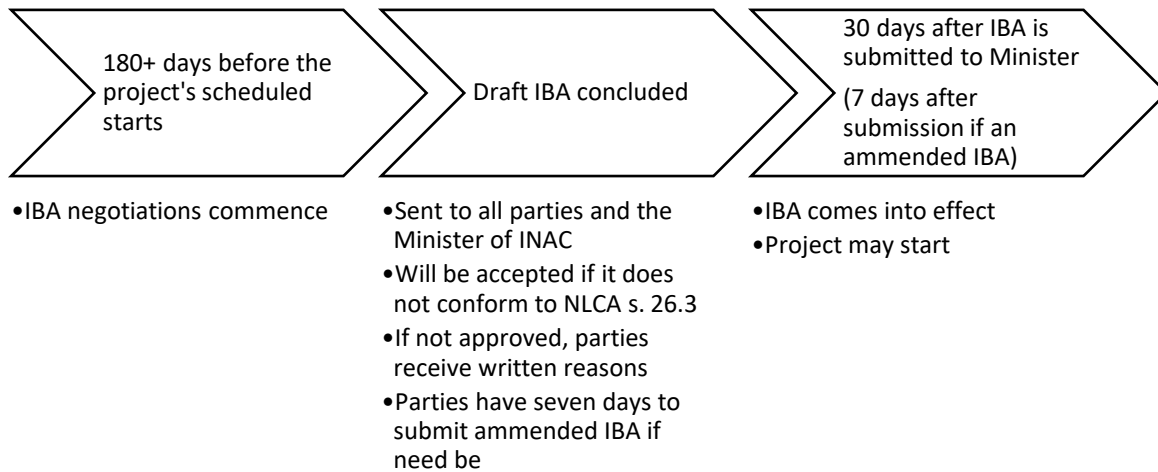


Figure 4-3. IBA process in Nunavut

4.3.5 Impact Assessment in Nunavut

When large scale development projects are proposed in the Nunavut Settlement Area, the first step is for the Nunavut Planning Commission to determine whether the project conforms to the relevant land use plan (*Nunavut Planning and Project Assessment Act* (*NPPAA*), *SC 2013*, s 77). Second, the Nunavut Planning Commission determines whether the project should be screened by the Nunavut Impact Review Board (NIRB) (*NPPAA*, *SC 2013*, s 78). The NIRB has 45 days to screen the project and must include a public commenting period during that time (NIRB 2017). The NIRB may also return the project application to the proponent for clarification (NIRB, 2017). Pursuant to the *NPPAA*, s. 92(1), the NIRB submits their screening decision to the Minister of INAC, who has final say regarding the necessity of an impact review (Williams, 2015).

The NIRB facilitates project review, if this is required (Williams, 2015). Under *NPPAA*, s. 89.1, a project review is required if the project may have significant, adverse ecosystem, socio-economic, wildlife, or Inuit harvesting impacts; will cause public concern; or involves novel technological innovations. There is no mandatory environmental assessment for projects over a certain threshold. The impact review includes environmental and socioeconomic impacts and the extent of these impacts on the community or region (Williams, 2015). There are three review phases (Figure 4-4): first, guidelines for what must be included in the environmental impact statement (EIS) are determined by the NIRB and sent to the proponent. According to Williams (2015), these guidelines are based on the general protocol for completing an EIS in Nunavut but are adjusted for each project and according to community consultation. Second, the proponent submits a draft EIS, which is reviewed publicly and by the NIRB. Third, the proponent submits a final EIS, which is reviewed by the NIRB, then publicly reviewed (Williams, 2015). Information gathered during this assessment process is used to decide whether the project should proceed and what, if any, conditions should apply. Then, a final recommendation is made by the NIRB to the Minister of INAC, who makes the final decision (Williams, 2015). If approved, projects receive a Project Certificate (NIRB,

2017). NIRB's project review process and the IBA process occur simultaneously in Nunavut.

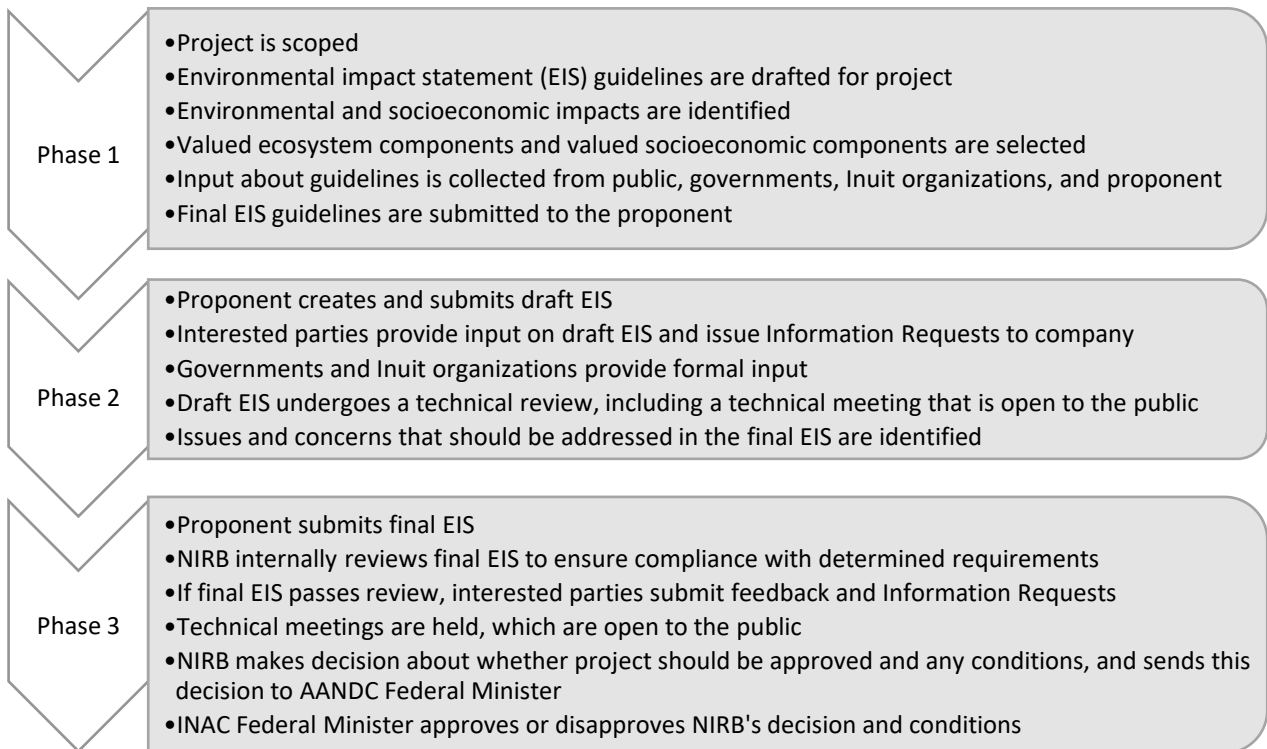


Figure 4-4. Project review process in Nunavut
(adapted from Williams, 2015)

If the project requires NIRB monitoring, the term and conditions of this monitoring will be in the Project Certificate, the screening decision, or any Nunavut Water Board approvals (NIRB, 2017). Monitoring, according to the NIRB (2017), aims to measure the project's environmental and socioeconomic effects on the Nunavut Settlement Area, to assess whether the project's resource use and land use adhere to terms and conditions, to gather baseline information so that terms and conditions of land and resource use approvals can be enforced, and to assess whether actual impacts are the same as predicted impacts.

4.3.6 Water Licensing in Nunavut

Water in Nunavut is protected, managed, and regulated by the Nunavut Water Board (NWB) (NWB, 2017a). Following NIRB and INAC approval of a project's EIS, the proponent may be required to apply to the NWB for authorized use or for one or more Type A or Type B water licenses (NWB, 2017b; Figures 4-5; 4-6). According to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (SC 2002, c 10, Sch. 2)*, activities utilizing less than 50m³ of water per day require authorized use but no license, activities that require between 50m³ and 300m³ of water per day must apply for a Type B license, and activities that use more than 300m³ of water daily require a Type A water license. Acquiring a Type A water license requires extensive public review so that those who will be affected by a project's water use understand the project's water requirements

(Figure 4-5). Furthermore, the Type A water license requires constant monitoring of the affected water to ensure compliance with federal and territorial requirements (Baffinland, 2014c).

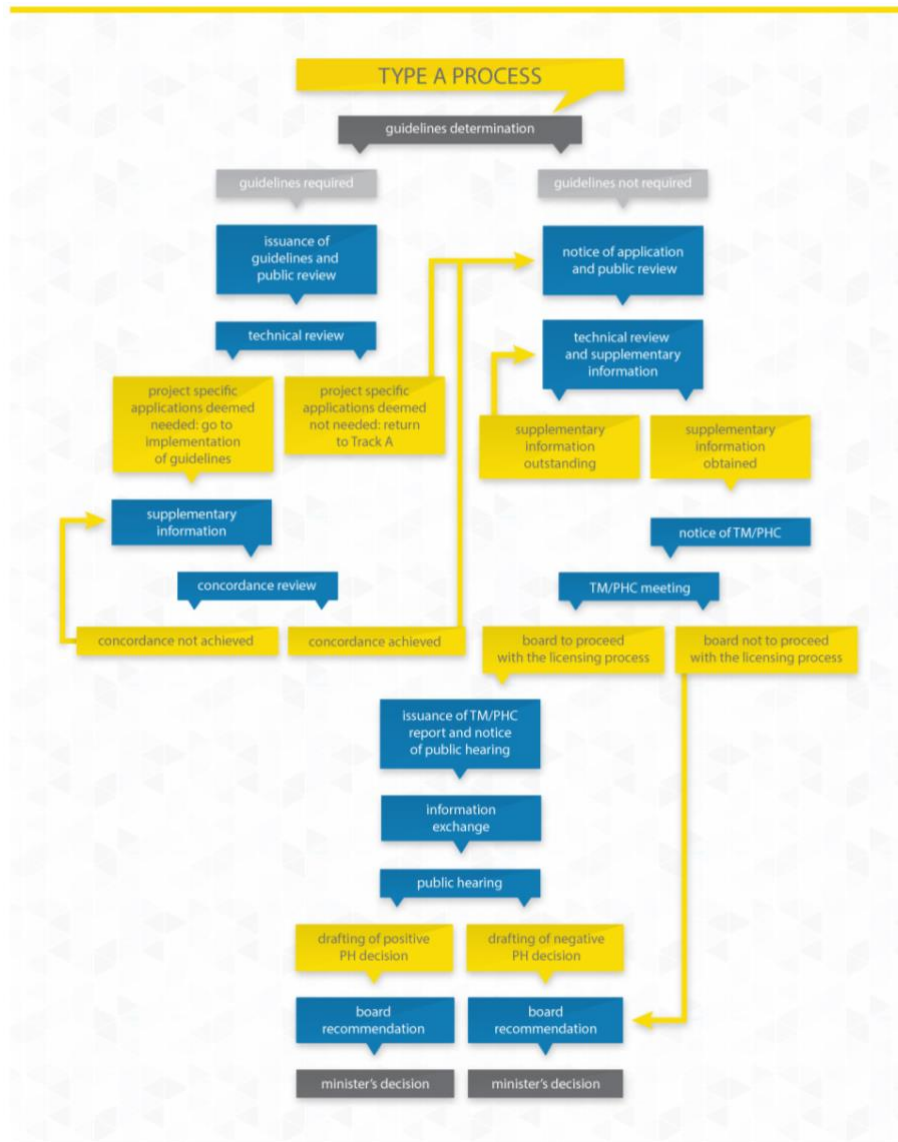


Figure 4-5. Type A process (NWB, 2017b)

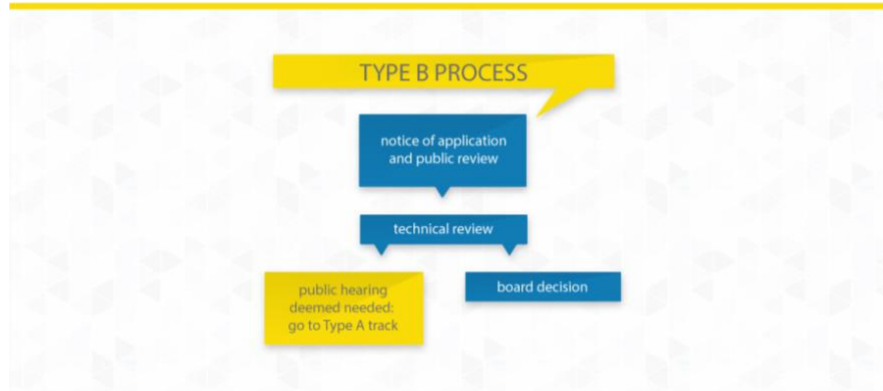


Figure 4-6. Type B process (NWB, 2017b)

4.4 The Qikiqtani Inuit Organization and Impacted Communities

4.4.1 The Qikiqtani Inuit Association (QIA)

Baffin Regional Inuit Association, QIA's predecessor, was formed in 1975 (Baffinland, 2012b). The QIA was founded in 1996 and became a registered Inuit society in 1997 (Baffinland, 2012b). QIA is a non-profit land claim and community organization that aims to protect and promote Inuit rights and values (Baffinland, 2012b; Williams, 2015). The association represents over 14,000 Inuit from thirteen communities in the Qikiqtani, or Baffin, region (QIA, 2017a). These communities are in the high arctic, Baffin Island, and the Belcher Islands (QIA, 2017a; Figure 4-7).



Figure 4-7. Communities represented by the QIA (QIA, 2016)

The QIA board consists of sixteen members: an elected community director from each community represented by the QIA, as well as a president, a vice-president, and a secretary-treasurer (Williams, 2015; QIA, 2017b). A full organizational structure is in Figure 4-8. In addition to the board and departments, there are two sub-organizations under the QIA: the Kakivak Association, which focuses on community economic development and small business development, and the Qikiqtaaluk Corporation, the development corporation of QIA (QIA, 2017a).

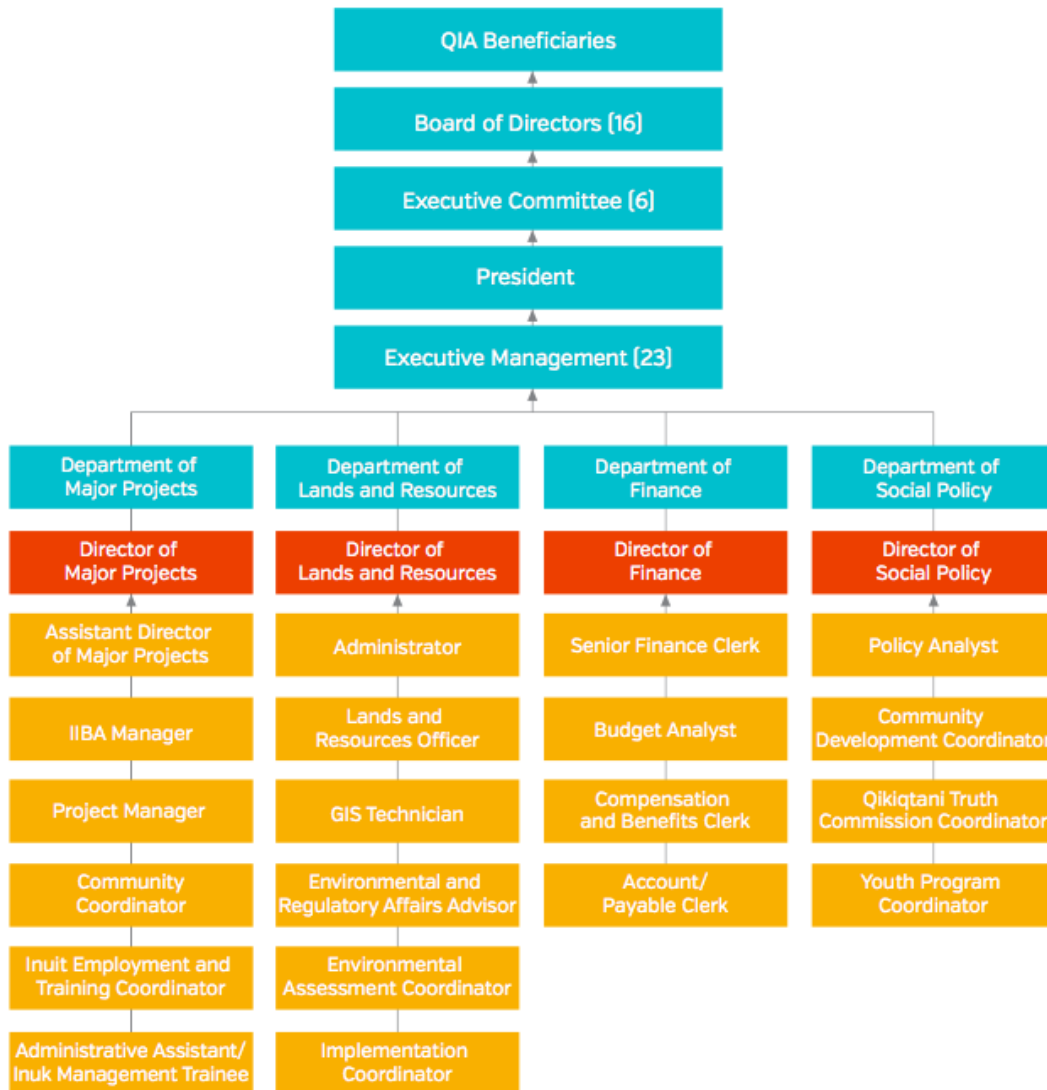


Figure 4-8. Organizational structure of the QIA (QIA, 2016)

4.5 The Mary River Project

The Mary River Project (MRP) is an iron ore mine in the Qikiqtani Region, Baffin Island, Nunavut, Canada (Baffinland, 2014a). As a major project located on Inuit-owned land in Nunavut (Baffinland, 2014d), the project proponent had to acquire a signed IBA, undergo environmental impact assessment, and acquire water licenses. Moreover, some of the MRP is on land where mineral rights are Inuit-owned (Nunatsiaq News, 2013b), meaning royalties are paid to NTI.

Under Article 39 of the *NLCA*, the QIA is the Designated Inuit Organization with jurisdiction over the MRP's location. Five communities, all represented by the QIA, are identified by Baffinland as being most affected by the MRP because they have socio-economic or ecosystemic ties to the area or the project has direct impact on their traditional land use. These communities are Pond Inlet, Arctic Bay, Clyde River, Hall Beach, and Igloolik (Baffinland, 2010; Baffinland, 2014e, Figure 4-9). These communities, known as the North Baffin Island Communities, are predominantly young, low-income, and Inuit (Statistics Canada, 2017; MRP IBA, 2013). Pursuant to *NLCA* Article 26, the MRP IBA was negotiated between Baffinland Iron Mines Corporation (Baffinland) and the QIA (Baffinland, 2014d; MRP IBA, 2013). The IBA was signed on September 6, 2013 by the QIA president, QIA negotiator, Baffinland President, and Baffinland Vice President, Project Director (MRP IBA, 2013).

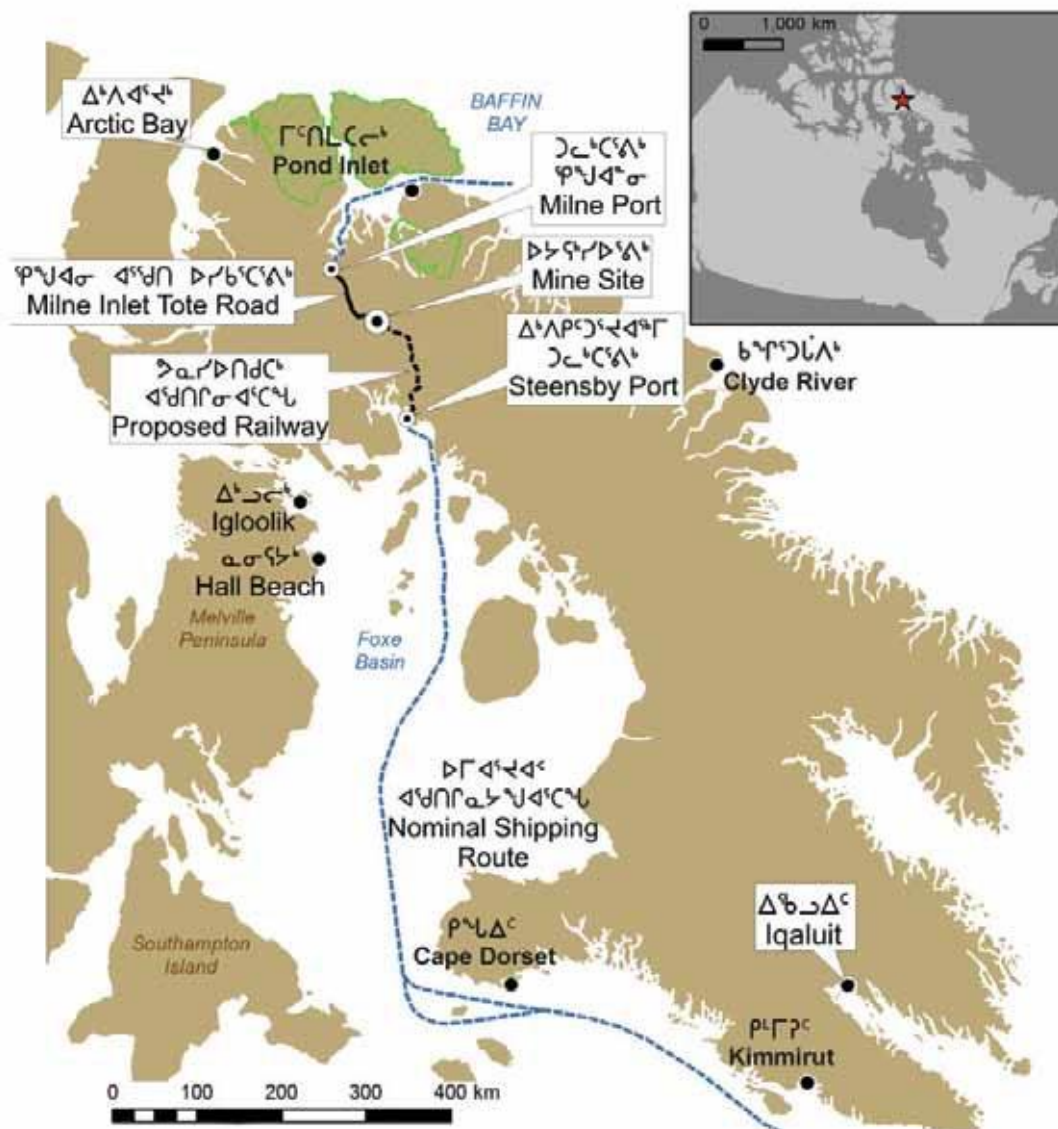


Figure 4-9. Mary River Project and North Baffin Island communities (Baffinland 2013)

The MRP site contains an estimated 350 million tons of iron ore (Baffinland, 2014b; NWT & Nunavut Chamber of Mines, 2015). The MRP is an estimated \$4 billion-dollar investment with a planned operating lifetime of 21 years. Only the Early Revenue Phase of the project has been built to date.

The Early Revenue Phase is a 3.5 million tons per annum (Mtpa) operation, \$750 million dollar investment with three main components: the mine, Milne Port, and a 148km road between the mine and Milne Port (Brown, 2014). The road, Tote road, is the longest on Baffin Island (Baffinland, 2013; Brown, 2014). After being mined and hauled along Tote road, ore is stockpiled at Milne Port, which located at Milne Inlet on the northern shore of Baffin Island (Moore, 2015; Figure 4-9). During the three ice-free months of the year, the ore is shipped from Milne Port to ArcelorMittal smelting plants in Europe (Brown, 2014; Moore, 2015). During the 2017 season, fifty-six ships transported 4.1 million tons of iron ore from Milne Port (NWT and Nunavut Chamber of Mines, 2017). At 67% iron ore grade, there is no need for tailings ponds at the MRP (Baffinland, 2013).

The Early Revenue Phase employed an estimated 400 to 600 person-years during construction and 210 people during operations (Baffinland, 2013). By 2015, 612 people had gone through employment training or presentations and 316 people had taken the Work Ready Program, which covers fly-in/fly-out work sites, rotations, home finances, and the stresses of working away from home (according to the NWT and Nunavut Chamber of Mines, 2015a). As of April 2018, there are 602 direct jobs at the mine (NWT and Nunavut Chamber of Mines, 2018). In 2017, there were 1181 FTE jobs, which includes direct employment at the mine and indirect employment through mine contractors (Jason Prno Consulting Services Ltd. (JPCS), 2018). There is a community liaison officer, hired by Baffinland, in each North Baffin Island Community (Baffinland, 2014e). The MRP preferentially hires from these communities (MRP IBA, 2013).

The original MRP plan included a mining and shipping capacity of 18 Mtpa of iron ore, more than five times Early Revenue Phase operations (Baffinland, 2013). The full project was estimated to employ 1700 to 2700 people during construction and 950 during operations (Baffinland, 2012a). Additional components of the proposed project included Steensby Port, a new port on the southern side of Baffin Island, and a 150km railway connecting the mine site to Steensby Port (Baffinland, 2012a; Baffinland, 2013). Pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, the MRP applied for one Type A and two Type B water licenses (Baffinland, 2014c). The MRP proposal went through the NIRB's impact review process and received Project Certificate No. 005 (MRP IBA, 2013; Williams, 2015). NIRB monitoring responsibilities for the Mary River Project are laid out in that certificate (NIRB, 2012).

However, recent decline in iron prices (U.S. Geological Survey, 2017) have resulted in changes to the project's development plan. Already, low iron prices have resulted in wage cuts (Bell, 2015). As a more permanent response to lower prices, Baffinland has amended the MRP development plan to build a railroad from Milne Port to the mine site in phase 2 (Baffinland, 2017). In addition, phase 2 envisages an extension to the ore shipping season to ten months of the year and to allow freight shipments year-round (Baffinland, 2017; Ducharme, 2015).

A timeline of the MRP from conception to first shipment is in Table 4-1.

Table 4-1. Mary River Project timeline

July 1962	High quality iron ore first discovered (Baffinland, 2014a)
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2005	Baseline assessments and studies about the project start (Baffinland, 2014b)
March 30, 2008	Baffinland submits a development proposal for the MRP to the NIRB (Williams, 2015)
April 30, 2008	NIRB receives confirmation that the project adheres to the North Baffin Regional Land Use Plan (Williams, 2015)
September 15, 2008	NTI and Baffinland sign exploration agreement for the parcel that would later host the Mary River Project (NTI, 2008)
February 11, 2009	Minister of AANDAC communicates that the MRP should go through the NIRB's review process (Williams, 2015)
March-June 2009	Community scoping sessions occur (Williams, 2015)
November 16, 2009	NIRB sends Baffinland their EIS guidelines (Williams, 2015)
2011	Baseline assessments and studies specific to the EIS are carried out (Baffinland, 2013)
January 23, 2011	Draft EIS submitted to NIRB (Baffinland, 2014c)
February and March, 2011	Technical meetings begin and stakeholders submit information requests to Baffinland (Williams, 2015)
April 26, 2011	Baffinland submits response package to information requests (Williams, 2015)
November 6-10, 2011	Pre-hearing conference held (Williams, 2015)
February 13, 2012	Final EIS submitted to NIRB (Baffinland, 2014c; Baffinland, 2013)
March 20, 2012	Information requests submitted to Baffinland (Williams, 2015)
April 19, 2012	Baffinland responds to information requests (Williams, 2015)
April 30, 2012	Technical meetings occur (Williams, 2015)
July 16-28, 2012	Final hearings in Iqaluit, Igloolik, and Pond Inlet (Williams, 2015)
December 28, 2012	NIRB approves MRP and issues Project Certification No. 005 (Baffinland, 2014c)
January 13, 2013	Baffinland applies to amend project and include an early revenue phase (Baffinland, 2014c)
Q2, 2013	Construction of early revenue phase begins (Conference Board of Canada, 2015)
July 15, 2013	Mary River Project received Type A water license (Baffinland, 2013b)
September 6, 2013	Mary River Project IBA is signed (Baffinland 2014d)
September 13, 2013	Baffinland announces official construction decision (Nunatsiaq News, 2013a)
March, 2014	NIRB submits recommendation for approval of amended project to AANDC (Baffinland 2014c)
April 14, 2014	Baffinland receives the <i>Murray Pyke Corporate Award</i> for contributing to social and economic development of a community, region, or Nunavut in general (NWT and Nunavut Chamber of Mines, 2014a)
April 29, 2014	Minister of AANDC approves the early revenue phase of the MRP and necessary changes to Nunavut Regional Land Use Plan to accommodate shipping (Baffinland, 2014c)
May 28, 2014	NIRB issues amended Project Certificate No.:005 to Baffinland (NWT and Nunavut Chamber of Mines, 2014b)
September 8, 2014	Iron ore mining began (NWT and Nunavut Chamber of Mines, 2015a)
August 10, 2015	First shipment of iron ore to Europe (Baffinland, 2015b)

4.6 The Mary River Project Impact Assessment Process

The initial MRP impact assessment evaluated the full 18Mtpa MRP plan. Baseline assessments for the project began in 2005 (Baffinland, 2014b). These assessments were used to create a development proposal, submitted by Baffinland to the NIRB on March 30, 2008 (Williams, 2015).

As mentioned above, the first step in environmental assessment in Nunavut is to determine if the proposed project adheres to the relevant regional land use plan, which, in this case, is the North Baffin Regional Plan (Williams, 2015). The NIRB gave confirmation of plan adherence to Baffinland on April 30, 2008 (Williams, 2015). On February 11, 2009, the MRP got approval to begin the environmental evaluation process (Williams, 2015). That year, community scoping sessions were held and the NIRB gave Baffinland guidelines for the MRP's EIS (Williams, 2015). According to Baffinland, additional baseline studies and scoping sessions for their EIS were carried out in 2010 (Baffinland, 2013). These culminated in a draft EIS submitted to the NIRB in January 2011 (Baffinland, 2014c). Shortly after submission of the draft EIS, information requests from stakeholders were gathered. A response package was submitted by Baffinland to the NIRB in April 2011 (Williams, 2015).

On February 13, 2012, a final draft EIS was submitted by Baffinland to the NIRB (Baffinland, 2013). Final NIRB hearings regarding the MRP EIS were held in Iqaluit, Igloolik, and Pond Inlet in July 2012 (Williams, 2015). Additional information requests for Baffinland were gathered and also responded to in 2012 (Williams, 2015). The NIRB approved the MRP and issued a Project Certificate 005 on December 28, 2012 (Williams, 2015).

On January 13, 2013, Baffinland applied to change the MRP development schedule. The proposal was to build the Early Revenue Phase ahead of the full MRP (Baffinland, 2013). This change called for an amended, but not entirely new, EIS (Baffinland, 2013).

Construction of the MRP began in the second quarter of 2013 (Conference Board of Canada, 2015). The amended MRP project plan, including the Early Revenue Phase, was approved on April 29, 2014 (Baffinland, 2014c).

4.7 The Mary River Project IBA Process

Due to confidentiality, information about the process leading up to the MRP IBA is less available compared to information regarding the project's EIA process. According to the *NLCA*, IBA's must be in negotiation at least 180 days prior to project start (Figure 4-3). In the case of the MRP, however, it appears that negotiations started much earlier. A memorandum of understanding, which outlined economic provisions later included in the IBA, was signed on March 31, 2009 (Memorandum of Understanding, 2009). The full Mary River Project Inuit Impact Benefit Agreement was signed on September 6, 2013 (MRP IBA, 2013). A commercial production lease was also signed on the same date (Murphy, 2013). The commercial production lease deals with rent, boundaries, water use fees, quarry concession, environmental conditions, QIA authority to inspect and audit, required plans and reporting, and financial security provisions (Nunatsiaq News, 2013b). Reportedly, the commercial production lease and IBA were under negotiation for seven years (Murphy, 2013). Following IBA signing, Baffinland announced the MRP construction decision on September 13, 2013 (Nunatsiaq News, 2013a).

4.8 Mary River Project Phase 2

Changes to the MRP were submitted as part of a phase 2 project proposal in 2014. In April 2015, the new proposal, which included the need for ice breakers, was originally determined to not be in compliance with the North Baffin Regional Land Use Plan (NWT and Nunavut Chamber of Mines, 2015c). However, exception was given by the Minister of INAC, and on July 14, 2015, MRP phase 2 was given approval to go through the impact assessment process (Baffinland, 2015a; NWT and Nunavut Chamber of Mines, 2015c). On February 3, 2017, the initial phase 2 proposal was submitted (Baffinland, 2017). Phase 2 is currently moving through Nunavut's regulatory process for major projects (Bell, 2017). Baffinland held informational sessions in all five North Baffin Island Communities in May and June of 2017 (Leite, 2017). As this proposal is a departure from the original MRP proposal, the QIA plans to reopen the IBA for renegotiation if phase 2 is accepted by the NIRB (Ducharme, 2015).

Chapter 5

Analysis and Findings

5.1 Introduction

This chapter provides an evaluation of the Mary River Project and its IBA based on the best practices criteria outlined in chapter 4. The evaluation includes a verbal assessment for each sub-criterion and a final rating using a four-point scale. The rating system used to evaluate the case study is based on scoring methodology developed by the Sustainable Planning Research Group at Simon Fraser University and has been used by researchers Ellis, Gunton, and Rutherford (2010).

The evaluation framework consists of indicators nested within sub-criteria, which are nested within criteria. Each criterion consists of at least two sub-criteria. Nested within each sub-criterion is at least one indicator. Indicators are in question format and are used to score sub-criteria. Once all sub-criteria are scored, scores are summed to give the project a final score. Sub-criteria and criteria are ranked, and sub-criteria are given a score on the following four-point scale:

- **Fully met**, showing no deficiencies, **scores 3**;
- **Largely met**, showing no major deficiencies, **scores 2**;
- **Partially met**, showing one major deficiencies, **scores 1**; and
- **Not met**, showing two or more major deficiencies, **scores 0**.

The Mary River Project IBA (MRP IBA, 2013) was the primary document used for this evaluation. In addition, the following documents were reviewed: Mary River Project environmental impact statement (Baffinland, 2010), Popular summary of Mary River Project final environmental impact statement (Baffinland, 2012a), Popular summary of early revenue phase addendum to final environmental impact statement (Baffinland, 2013), North Baffin Regional Land Use Plan (Nunavut Planning Commission, 2000), Proposal for addendum to the North Baffin Regional Land Use Plan in relation to the Mary River phase 2 expansion project (Baffinland, 2017), *The Magnetic North* article in the Globe and Mail (Brown, 2014), Nunavut Impact Review Board Project Certificate No.: 005 (NIRB, 2012), Qikiqtaaluk socioeconomic monitoring committee 2016 annual meeting report (Qikiqtaaluk socioeconomic monitoring committee, 2017), 2017 Socio-economic monitoring report for the Mary River Project (JPCS, 2018), 2017 annual project review forum report (QIA and Baffinland, 2017), and Andrew Williams's master thesis *Governmentality and mining: Analyzing the environmental impact assessment for the Mary River Mine, Nunavut, Canada* (Williams, 2015). The following organizations' websites were searched for relevant information: QIA, Baffinland, NIRB, the Government of Nunavut, Nunavut Trust, NWT and Nunavut Chamber of Mines, and Nunavut Tunngavik Inc. Finally, CIM Magazine, CBC News, MiningNorth Magazine, and NunatsiaqNews were scoured for pertinent articles about the Mary River Project.

5.2 Limitations of the Study

There are several limits to this type of study, some of which have been highlighted in similar studies done by Ellis (2008) and Joseph, Gunton, and Rutherford (2015). The first challenge is that the evaluation framework was created between September 2016 and March 2017, and the bulk of the Mary River Project IBA evaluation took place between May and September 2017. However, IBA literature and the Mary River Project are constantly evolving. The literature review and case study review were limited to the information available during those periods and the amount of information that one researcher can feasibly collect and synthesize in a limited amount of time. As many reports and articles were reviewed as possible, and more recent reports were added as they became available, but some relevant information may not have been reviewed and new information may become available that may alter the findings.

The second limitation is that this evaluation is exclusively based on a review of published literature. This approach provides a fairly comprehensive picture of the state of affairs at the Mary River Project, as reviewed documents were published by either or both Baffinland and QIA, and many reviewed documents were published by independent third parties. However, some information, such as the state of the relations between Baffinland and the QIA, is difficult to discern without further study, such as interviews.

A third challenge is that the evaluation and identification of deficiencies is a subjective judgement made by the evaluator. The evaluation framework is as comprehensive as possible, and the process and reasoning for creating the evaluation framework was outlined as transparently as possible, but ultimately the decision of what indicators, sub-criteria, and criteria to use is subjective. Similarly, the scores assigned to criteria and sub-criteria during the evaluation of the MRP IBA are at the discretion of the researcher. Although subjective discretion is limited by the provision of explicit evaluation sub-criteria and indicators, different evaluators may reach different conclusions. This limitation can be addressed by increasing the number of evaluators and conducting a collaborative evaluation that includes signatories to the IBA and other stakeholders. A fourth limitation is that the best practice criteria have not been fully tested to determine their validity; further testing of these criteria is required to establish the causal connection between indicator and outcome. This list should be thought of as principles to be improved upon and adapted to each context within which they are applied (Joseph, Gunton, and Rutherford, 2015).

Finally, lack of specificity around finance-related sub-criterion 6.2 is a limitation. The literature regarding what financial tools should be used in the IBA context or how to determine what financial tools best suit different communities' needs, is inchoate. Current studies are being conducted to better understand this gap in the literature, but results are not yet available to include in this report.

5.3 Is Empowering

The first evaluation criterion is that IBAs should be empowering. This criterion is divided into four sub-criteria and seven indicators (Table 5-1). Three sub-criteria (1.1, 1.3, and 1.4) are met. Sub-criterion 1.1 is met because the QIA has representatives from all five affected North Baffin Island Communities; the sub-criterion regarding sovereignty (1.3) is met because no community rights were relinquished; and the sub-criterion concerning IBA funds (1.4) is met because the funds acquired through the IBA are explicitly under

the communities' direct control. Sub-criterion 1.2 is not scored because the extent that vulnerable groups participated in the IBA negotiation process is not delineated in any of the reviewed documents and is therefore unknown.

Table 5-1. Evaluation of the criterion that the IBA is empowering

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
1.1 Every affected community is a participant in the IBA-making process.	<ul style="list-style-type: none"> Were communities with legal rights at or around the project site consulted? Were communities with unrecognized legal rights at or around the project site consulted? Were communities who may experience downstream effects of the project consulted? 	The five closest communities are represented the QIA, who is party to the IBA. Each community has a community director who sits on the QIA board of directors. The QIA represents other communities and Inuit in the high arctic and on Baffin Island.	None	Met
1.2 Vulnerable and marginalized groups are included in the IBA-making process.	<ul style="list-style-type: none"> Were any women, youth, or elder groups included in the IBA-making process? Was the IBA negotiator / negotiation team representative of marginalized interests (i.e. did the team include people from marginalized groups or was the team elected in a collaborative or democratic way)? 	The QIA's social policy is to include as many people as possible in any complex decision making. A youth and elders from each community must attend the annual project review forum.	The extent to which vulnerable groups were given the opportunity to participate during negotiations is unknown.	Unknown
1.3 Community sovereignty is maintained.	<ul style="list-style-type: none"> Does the community relinquish any rights, such as governance or land monitoring powers, in the IBA? 	No rights were relinquished in the IBA.	None	Met
1.4 IBA funds are managed by the recipient community.	<ul style="list-style-type: none"> Are the IBA funds managed by the recipient community? 	The Ilagiiktunut Nunalinnullu Pivalliajutsait Kiinaujat Fund is managed by the QIA. Two Inuit Employment and Training Coordinators, one of which works for Baffinland and the other for QIA, jointly manage the Business Capacity	None	Met

		and Start Up Fund. IBA payments go from Baffinland to the QIA.		
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5.4 Respects Local Culture

The second evaluation criterion is that IBAs should respect local culture. This criterion is divided into three sub-criteria and five indicators (Table 5-2). Two sub-criteria -cross cultural training (2.1) and incorporation of traditional knowledge (2.2) - are largely met. Cross-cultural training is provided to employees, but the deficiency is that it is not compulsory. Traditional knowledge is collected, but the deficiency is that its use is voluntary. One sub-criterion- employee scheduling (2.3) - is met: employee schedules can be tailored to Inuit cultural needs, such as hunting schedules, as long as MRP labour requirements are met. In addition, employed elders are onsite and cultural activities, such as hunting and trapping, are allowed during leisure time.

Table 5-2. Evaluation of the criterion that the IBA respects local culture

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
2.1 Project employees take part in cross-cultural training.	<ul style="list-style-type: none"> Is cross-cultural training available to project employees? Is cross cultural training mandatory for all employees? 	Baffinland provides voluntary cross-cultural recognition programs to all employees during work hours. 612 employees had taken some form of cross cultural training as of early 2015 (NWT and Nunavut Chamber of Mines, 2015).	Cross cultural training may not be mandatory.	Largely Met
2.2 Traditional or community knowledge is included in the project design and management.	<ul style="list-style-type: none"> Is traditional knowledge collected or known by the project designers? Is traditional knowledge used to design the project? 	Inuit traditional knowledge (IQ) is collected by Baffinland for the purpose of designing and developing the MRP. The IBA states that IQ is take into consideration in all project decisions.	There are no guidelines delineating IQ use; use appears to be voluntary.	Largely Met
2.3 Employee schedules accommodate community members' cultural needs.	<ul style="list-style-type: none"> Are employee work schedules designed to suit cultural needs? 	Employment rotations are planned in conjunction with Inuit employees and the QIA Inuit Employment and Training Coordinator. Agreement states that the schedule should suit Inuit needs and preferences, so long as MRP's labour	None	Met

		requirements are met. In addition, Baffinland employs elders to teach Inuktitut and other traditional skills and crafts, as well as help Inuit transition into working at the mine (NWT and Nunavut Chamber of Mines, 2014c). Employees are able to hunt and trap on-site during their leisure time (JPCS, 2018).		
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5.5 Has Broad Commitment

The third evaluation criterion is that the parties are strongly committed to the IBA. This criterion comprises six sub-criteria and seven indicators (Table 5-3). The evaluation indicates that all four evaluated sub-criteria are met. The QIA is seen as legitimate by the impacted communities and the communities are committed to the agreement, thereby meeting sub-criterion 3.3. The sub-criterion about company commitment to the IBA (3.4) is met by Baffinland's presence on MRP IBA government boards. The other two sub-criteria – clear IBA role (3.5) and no government abdication of responsibilities (3.6) – are met by the clear IBA guidelines in the *NLCA* (3.5) and the fact that neither the Canadian nor Nunavut governments have decreased funding to the five North Baffin Island Communities (3.6). Two sub-criteria could not be evaluated due to lack of information.

Table 5-3. Evaluation of the criterion that the IBA has broad commitment

Sub-criteria	Indicators	Assessment	Deficiency	Rank
3.1 The IBA is negotiated in good faith.	<ul style="list-style-type: none"> Is there a signed good faith agreement or clause in IBA? 	An agreement clause states that parties must act in good faith in dealings with each other.	Unknown whether this occurs in reality.	Unknown
3.2 The community-company relationship is trusting and is maintained.	<ul style="list-style-type: none"> Do both the community and the company see the other party as trustworthy? Is there regular face-to-face interaction between company employees and community members? 	There is a yearly forum attended by Baffinland, QIA, community members, and the public.	It is unknown whether the parties see each other as trustworthy.	Unknown
3.3 The community's negotiator and IBA decision	<ul style="list-style-type: none"> Is the community's negotiator and IBA decision maker selected in a 	The IBA must be approved by the QIA board before signed. The board has an	None	Met

maker is seen as legitimate by the community.	culturally legitimate way?	elected representative from each impacted community.		
3.4 The company is committed to the agreement's success.	<ul style="list-style-type: none"> Are employees, including upper-level employees, committed to and engaged with the IBA? 	The Baffinland president is on the executive committee that governs the MRP IBA.	None	Met
3.5 The role of an IBA in the project approval process is clear.	<ul style="list-style-type: none"> Is project approval contingent on concluding an IBA with the impacted community? 	No major project may commence before an IBA is signed under article 26.8 of the Nunavut Land Claims Act.	None	Met
3.6 The IBA does not replace government's role in supporting the community.	<ul style="list-style-type: none"> Does the IBA affect governmental support of the community in any way? 	Federal per capita spending in Nunavut continues to increase (Department of Finances Canada, 2017) and there is no indication that territorial government's allocation of funds to relevant communities has changed since construction of the MRP (Government of Nunavut, 2017).	None	Met

5.6 Has Open Communication

The fourth evaluation criterion is that IBAs foster open communication. This criterion has four sub-criteria measured using eight indicators (Table 5-4). Two sub-criteria (4.2 and 4.3) are met, one (4.4) is largely met, and one (4.1) is partially met. The sub-criteria regarding publically available documents (4.2) and regular communication between signatories (4.3) are met because the MRP's memorandum of understanding, IBA, and monitoring reports are publicly available; and there are yearly forums, which are attended by both IBA signatories and the public. Regarding sub-criterion 4.4, the IBA is governed by the executive committee, but there is no formal process for turnover and no requirements for outgoing committee members to train incoming members, resulting in a score of largely met. Finally, one sub-criterion, a precursor agreement, is partially met because, while there is a memorandum of understanding from before the IBA was signed, there is no evidence indicating that there was a pre-negotiation agreement.

Table 5-4. Evaluation of the criterion that the IBA has open communication

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
4.1 A precursor agreement, such as a memorandum of	<ul style="list-style-type: none"> Is there a signed, public precursor agreement that outlines the objectives and process of negotiating an 	There is a 2009 memorandum of understanding outlining	No pre-negotiations information found.	Partially Met

understanding, is signed.	IBA, and that doing so will be in good faith?	economic provisions to be included in the IBA.		
4.2 The IBA, precursor agreement (if completed), monitoring results and all other IBA relevant information are public.	<ul style="list-style-type: none"> Is the agreement publicly available? Are the IBA's monitoring results publicly reported? Are the agreement and monitoring results available in the local language(s)? 	The agreement and monitoring results are public and available in Inuktitut and English.	None	Met
4.3 Communication between signatories continues throughout project.	<ul style="list-style-type: none"> Is there a regularly scheduled meeting that community members and company employees can attend? Are community members and company employees able to bring up and discuss matters and grievances at this meeting? If applicable, is communication able to be done in the locally spoken language(s)? 	There is an annual Forum that the public and community members are invited to. Community members are invited to speak at the Forum. All communication materials regarding the agreement and its implementation, including yearly forum reports, are available in Inuktitut and English. Moreover, there is a liaison office in each community.	None	Met
4.4 There is continuity in who is involved with the IBA making and implementation processes?	<ul style="list-style-type: none"> Is there staff continuity throughout IBA negotiation and governance? 	QIA and Baffinland presidents signed the IBA and co-chair the executive committee, which governs IBA implementation. Executive committee members are employed positions, and not elected, but there still may be turnover. There is no formal process identified for educating new employees on the IBA.	No turnover facilitation plan found.	Largely met

5.7 Builds Capacity

The fifth evaluation criterion is that IBAs should build the impacted community's capacity. This criterion is divided into six sub-criteria and twenty-two indicators (Table 5-5). All six sub-criteria are met. The positive results in this criterion stem from IBA provisions that support capacity building initiatives (5.1), the existence of Inuit Employment and Training Coordinators (5.2), the availability of training programs in impacted communities (5.3), and the long period over which the IBA was negotiated (5.6). Furthermore, success on this criterion is bolstered by support provided to QIA throughout the negotiation and implementation processes (5.4 and 5.6) and the numerous training programs provided within North Baffin Island Communities and throughout Nunavut (5.3 and 5.5).

Table 5-5. Evaluation of the criterion that the IBA builds capacity

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
5.1 The IBA has provisions to organize and fund capacity building initiatives.	<ul style="list-style-type: none"> • Is there a job training provision? • Is there a governance capacity supporting provision? • Is there an education provision? • Is there a business development provision? • Is there a community development provision? 	There are provisions supporting job training, governance capacity building, education, business development, and community development.	None	Met
5.2 There is a dedicated person in charge of employment and training of the local community.	<ul style="list-style-type: none"> • Is there a dedicated person in charge of employment and training of the local community? 	There are two Inuit Employment and Training Coordinators: one based at Baffinland and one at QIA.	None	Met
5.3 Capacity building provisions should be locally available.	<ul style="list-style-type: none"> • Are job training and capacity building initiatives located within the community(s)? 	Training programs are offered in Nunavut (Arctic College, for example), and Baffinland supports local community education through donations. Some job training is, has been, and will continue to be available in communities. Work ready programs have been and will be held in North Baffin Island Communities (JPCS, 2018). Business and community capacity building initiatives are funded through IBA provisions.	None	Met
5.4 Each party's capacity, including gaps compared to future needs, is assessed prior to negotiations.	<ul style="list-style-type: none"> • Is the community capacity assessed prior to the IBA-making process to ensure the community has capacity to negotiate? • Are any identified capacity gaps addressed? • Is the company's capacity assessed prior to the IBA-making process to the 	QIA received support and technical expertise during negotiations. No indication that the company capacity needed to be assessed or augmented.	None	Met

	<p>company has the capacity to negotiate?</p> <ul style="list-style-type: none"> • Are any identified capacity gaps addressed? • Is the government's capacity assessed prior to the IBA-making process to ensure the government has the capacity to negotiate? (if applicable) • Are any identified capacity gaps addressed? (if applicable) 			
5.5 Each party's capacity, including needs, is assessed prior to and during IBA conclusion and implementation.	<ul style="list-style-type: none"> • Is community capacity assessed to ensure the community can fully participate in implementation and take advantage of benefits? • Are any identified capacity gaps addressed? • Is company capacity assessed to ensure the company can fully participate in implementation? • Are any identified capacity gaps addressed? • Is government capacity assessed to ensure the government can fully participate in implementation and take advantage of benefits? (if applicable) • Are any identified capacity gaps addressed? (if applicable) 	<p>Technical advisors are provided as needed to the management and executive committees to ensure all members can fully participate in IBA implementation and benefits. In addition, the QIA, with support from Baffinland, Kakivak, and the federal and territorial governments leads the Qikiqtani Skills and Training for Employment Partnership to train Inuit for mining jobs at the MRP, and Baffinland offers apprenticeship programs. The capacity of local people and businesses is assessed periodically. Baffinland, with the Mining Industry Human Resources Council, is piloting a second work ready program in North Baffin Island Communities (JPSC, 2018). A first work ready program was offered in 2012/2013 (JPSC, 2018).</p>	None	Met
5.6 The community is given adequate time, resources, and information to	<ul style="list-style-type: none"> • Is the community given enough time to fully understand the project and 	<p>Community scoping starting in March of 2009, and construction of the early revenue phase started in</p>	None	Met

effectively participate in the IBA-making process.	participate in the IBA-making process? <ul style="list-style-type: none"> Does the community have sufficient funding to participate in the IBA-making process? Does the community have enough information to understand the project and make informed decisions in the IBA-making process? 	2012. The QIA had access to technical advisors throughout IBA negotiations and the NIRB process (Williams, 2015).		
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5.8 Is Equitable

The sixth evaluation criterion is that the IBA is equitable. In this case, equitable is defined as achieving an economic Pareto improvement, whereby no community member is made worse off by the project, and local communities receive an equitable share of the project's economic benefits. This criterion contains five sub-criteria and nine indicators (Table 5-6). One sub-criterion -favourable contracts for local businesses (6.4)- is met by the Designated Inuit and North Baffin Inuit Firms lists and the weighting of Inuit ownership during the bidding process. The sub-criterion of hiring local peoples (6.5) is only largely met because the Minimum Inuit Employment Goal has not been met. The two finance related sub-criterion -scaled to project (6.2) and delivered to suit community needs (6.3)- are partially met: major deficiencies are the low royalty rate and the complete reliance on royalty payments once MRP production starts. One sub-criterion, 6.1, was not evaluated because whether any community members are made economically worse off by the MRP remains uncertain.

Table 5-6. Evaluation of the criterion that the IBA is equitable

Sub-criteria	Indicators	Assessment	Deficiencies	Rank
6.1 No community member is worse off as a result of the project, after mitigation and compensation.	<ul style="list-style-type: none"> Is there a provision to ensure that any member of the community adversely impacted by the project is fully compensated for the adverse effect? 	There is a fund to support communities who lose hunting fauna from the project and provisions to allow traditional activities to continue around the project. There is also a community development project projects aimed at fostering equity between communities and generations.	Results from socio-economic monitoring report suggest possibility that at least one community member may be worse off (JPCS, 2018): lack of certainty that no community member is worse off.	Unknown

6.2 Financial benefits are scaled to total project profitability.	<ul style="list-style-type: none"> Are financial benefits proportional to project benefits? Are financial benefits connected to project output? 	The QIA receives 1.19% of net sales revenue from the MRP, from which the advanced payments and extension payments can be deducted. If additional impacts are identified, more compensation may be negotiated.	The royalty is a small portion of total project benefits.	Partially Met
6.3 Financial benefits are delivered to suit community needs.	<ul style="list-style-type: none"> Is the financial benefit delivery method a mix of fixed and variable cash payouts? 	Payments are fixed prior to construction and royalty-based once production starts. Pre-production fixed payments are subtracted from later royalty payment.	After production starts, fixed payments cease and payments become completely royalty based, so there is some uncertainty about the magnitude of payments.	Partially Met
6.4 Contracts are designed for, and favour, local businesses.	<ul style="list-style-type: none"> Do local businesses have an advantage in the contract bidding processes? Are contracts unbundled? 	There is a list of Designated Inuit firms that the executive committee identifies as Inuit owned or operated and capable of providing goods or services to the project. The contract assessment framework gives Inuit and Baffin Island companies an advantage during the bidding process. This is done by adjusting bids using an Inuit Content Factor based on Inuit or Baffin Inuit ownership, Baffin Inuit employment, proportion of wages accrued by Baffin Inuit, purchases from Inuit, and whether the contractor's head office is on Baffin	None	Met

		<p>Island (see MRP IBA, 2013, s. 6.11 for more information). Contracts are unbundled to make them more accessible to North Baffin and Inuit firms. Inuit owned businesses have been awarded contracts, including air transport and sealift construction (NWT and Nunavut Chamber of Mines, 2013). Moreover, there is an Inuit Procurement and Contracting Strategy.</p> <p>In 2017, 18 contracts with a total value of \$387.3 million were awarded to Inuit owned firms and joint ventures (JPCS, 2018).</p>		
6.5 Community members are preferentially hired.	<ul style="list-style-type: none"> • Are there provisions that support hiring community members? • Are there provisions that support advancement of community members? • Are there provisions that support retention of community members? 	<p>Yes, there are provisions that support hiring, advancement, and retention of local Inuit workers. In 2017, North Baffin Inuit worked 9.6% of total hours worked on the MRP, and Iqaluit Inuit worked 3.5% of total hours; 13.9% of MRP employees and contractor employees are Inuit, which is a decrease since the high of 20.3% in 2013 (JPCS, 2018). Employment numbers are lower than anticipated, some Inuit promotions occur, and turnover rate for Inuit is 6% higher than for non-Inuit. There is an Inuit human resources strategy.</p>	<p>Minimum Inuit employment goal is 25%, so not being achieved and there is high Inuit turnover rate. However, the Inuit human resources strategy is aimed at addressing this deficiency.</p>	Largely met

5.9 Is Comprehensive

The seventh evaluation criterion is that the IBA is comprehensive. This criterion comprises three sub-criteria and four indicators (Table 5-7). One sub-criterion regarding

the breadth of IBA provisions (7.2) is met. Sub-criterion 7.1, which deals with addressing all phases of the project, is only partially met because the MRP IBA is valid until project termination and does not address closure or reclamation. The final sub-criterion (7.3) that specifies the need for a complementary community development plan is largely met: a development plan exists for the area, but funding for the *Ilagiiktunut Nunalinnullu Pivallaijutisat Kiinaujat* community development fund is guaranteed for only the first six years of the MRP.

Table 5-7. Evaluation of the criterion that the IBA is comprehensive

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
7.1 IBA addresses all project phases: construction, operation, and closure.	<ul style="list-style-type: none"> Does the IBA address the construction, operation, closure, and reclamation phases of the project? Is there a closure and remediation plan? Are parties jointly responsible for the creation and implementation of the closure and remediation plan? 	The IBA is valid until project termination.	IBA does not deal with mine closure or reclamation.	Partially met
7.2 IBA includes employment, business contracting, training and education, financial, cultural, and environmental provisions.	<ul style="list-style-type: none"> Are there employment, business contracting, capacity building, environment and culture protection, financial, and community development provisions? 	There are provisions for all of these topics in the IBA.	None	Met
7.3 The community has its own goals and development plan, which the project is only a part of.	<ul style="list-style-type: none"> Is there a development plan for the area? Is there funding for provisions that have a post-project timeline (i.e. infrastructure, community development projects, etc.)? 	There is a development plan for the area. The funding for the community development fund is guaranteed for only six years, although that does not mean fund will disappear.	Development fund contribution guaranteed for only six years.	Largely met

5.10 Is Enforceable

The eighth evaluation criterion is that the IBA is enforceable. This criterion has five sub-criteria and seven indicators (Table 5-8). The sub-criteria that there is a dispute resolution framework (8.1), that the IBA is legally binding (8.2), and that the IBA is jointly governed (8.3) are met. Two sub-criteria -provisions have measurable targets (8.4) and explicit penalties for non-compliance (8.5)- are partially met. The deficiency in sub-criterion 8.4 is that only employment and finance provisions have measurable targets. For

sub-criterion 8.5, the deficiency is a lack of penalties for non-compliance for all IBA provisions other than employment and financial provisions: other instances of non-compliance must be addressed through the dispute resolution process.

Table 5-8. Evaluation of the criterion that the IBA is enforceable

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
8.1 The IBA includes a dispute resolution mechanism.	<ul style="list-style-type: none"> Does IBA have a dispute resolution provision? Is dispute resolution a jointly run process? 	There is a dispute resolution process involving the management committee and executive committee. Each of these committees contain an equal number of QIA and Baffinland members, including each organization's president.	None	Met
8.2 The IBA is a legally binding document.	<ul style="list-style-type: none"> Is the IBA legally binding on the signatories? 	The agreement is legally binding in Nunavut.	None	Met
8.3 The IBA is jointly governed under a clearly outlined framework.	<ul style="list-style-type: none"> Is there a clear IBA governance structure? Is the IBA jointly governed? 	The IBA is governed by the executive committee, which has an equal number of QIA and Baffinland members.	None	Met
8.4 IBA provisions have measurable targets.	<ul style="list-style-type: none"> Do employment, business contracting, environment and culture protection, financial, training and education, and community development provisions have measurable targets? 	There is a Minimum Inuit Employment Target and explicit financial targets. Provisions for local training, contracting local businesses, education, environment and culture protection and community development do not have explicit targets.	Local training and education, local business contracting, environment and culture protection and community development provisions do not have clear, measurable targets.	Partially met
8.5 There are penalties for non-compliance with the IBA.	<ul style="list-style-type: none"> Are there penalties for non-compliance with the IBA? 	There are penalties for not complying with the employment and financial provisions of the agreement. Non-compliance with other provisions must be addressed through the dispute resolution process.	No outlined penalties for non-compliance with some components of the IBA, so issues must be addressed through dispute resolution.	Partially met

5.11 Is Implemented

The ninth evaluation criterion is that the IBA is fully implemented. This criterion is divided into four sub-criteria and seven indicators (Table 5-9). Three sub-criteria - appropriate implementation plan (9.1), overseer of implementation (9.3), and collaborative implementation planning (9.4)- are met. One sub-criterion, funding for implementation (9.2), is partially met, with the deficiency being that only some IBA provisions are guaranteed funding and there is no funding allocated to closure and reclamation.

Table 5-9. Evaluation of the criterion that the IBA is carried out

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
9.1 Appropriate provisions are included in an implementation plan.	<ul style="list-style-type: none"> Does the implementation plan cover employment, business contracting, training and education, and community development provisions? 	There is an implementation strategy for employment, contracting, training and education, and community development.	None	Met
9.2 There is funding for IBA implementation.	<ul style="list-style-type: none"> Is there funding to implement employment, business contracting, environment and culture protection, financial, training and education, community development, and closure and reclamation provisions? 	There is an implementation budget, which is set by the executive committee every year. Some, but not all, provisions must be included in the implementation budget. There is no mention of funding for closure and reclamation.	Not all provisions are included in the implementation budget and there is no funding for closure and reclamation.	Partially met
9.3 There is an overseer of IBA implementation.	<ul style="list-style-type: none"> Is there a person or committee in charge of implementing the IBA? Is the implementation person or committee paid? Is the implementation person or committee unbiased or accountable to 	The executive committee, which is equally made up of QIA and Baffinland members, is in charge of implementing the IBA. Their remuneration is paid by Baffinland, but they are accountable to both IBA signatories.	None	Met

	both the community and the company?			
9.4 Implementation process is collaboratively designed.	<ul style="list-style-type: none"> Did the community and the company collaborate to design the IBA implementation process? Is each party's role in IBA implementation made clear? 	Implementation is managed by the executive committee, which contains an equal number of QIA and Baffinland members. Each party's role in IBA implementation is delineated in the MRP IBA.	None	Met

5.12 Is Monitored

The tenth evaluation criterion is that IBA implementation is monitored. This criterion is divided into four sub-criteria and eight indicators (Table 5-10). According to the evaluation, three sub-criteria are met, and one -providing baseline information (10.3)- is only partially met. The IBA has provisions to monitor whether it is meeting its objectives, and both the community and company are involved in monitoring through the management committee and yearly forum. A baseline assessment was completed for the MRP, but a deficiency is that neither the methodology nor the degree of community involvement was delineated in the assessment.

Table 5-10. Evaluation of the criterion that the IBA is monitored

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
10.1 Progress towards IBA objectives and project impacts are periodically monitored.	<ul style="list-style-type: none"> Are the following monitored? Employment outcomes; Business contracting outcomes; Environmental impacts; Cultural impacts; Socioeconomic impacts; Training and education outcomes; The company-community relationship; and Community perception of project. 	Employment, business contracting, training and education, social outcomes, environmental and socioeconomic impacts, and cultural and social policies at the worksite are monitored and reported on yearly (JPCS, 2018). Community perceptions of the project and the relationship may be assessed at the yearly forum.	None	Met
10.2 The community and company jointly	<ul style="list-style-type: none"> Is the community involved in monitoring? 	Both the company and the community are involved in monitoring through	None	Met

monitor the project and the IBA.	<ul style="list-style-type: none"> Is the company involved in monitoring? 	provisions in the IBA and through the Mary River socio-economic monitoring working group (JPCS, 2018).		
10.3 A baseline assessment of the environmental, cultural, and socioeconomic conditions of the community is conducted.	<ul style="list-style-type: none"> Is there a baseline environmental assessment? Is there a baseline socioeconomic assessment? Is there a baseline cultural assessment? Is the community involved in all the baseline assessments? 	A baseline assessment was released in 2010 (Baffinland, 2010). The baseline does not assess state of culture in the area.	Baseline assessment does not include state of culture and no indication of methodology or community involvement.	Partially met
10.4 There is adequate funding for monitoring.	<ul style="list-style-type: none"> Does the IBA include a provision to fund project and IBA monitoring? 	There is funding for all monitoring provisions and for the executive committee, which receives monitoring reports.	None	Met

5.13 Is Adaptive

The eleventh and final evaluation criterion is that the IBA is adaptive. This criterion consists of two sub-criteria and two indicators (Table 5-11). One sub-criterion, identified deficiencies must be mitigated (11.1), is met, as the MRP IBA stipulates that new or greater project impacts identified through monitoring must be addressed. The other sub-criterion, process for amending the agreement (11.2), is only largely met. The deficiency with the amending the agreement criterion (11.2) is that, while some IBA provisions may be reviewed and changed if one party finds grounds for renegotiation, other provisions can only be renegotiated if both parties mutually agree to do so.

Table 5-11. Evaluation of the criterion that the IBA is adaptive

<u>Sub-criteria</u>	<u>Indicators</u>	<u>Assessment</u>	<u>Deficiencies</u>	<u>Rank</u>
11.1 IBA deficiencies that have been identified in monitoring must be mitigated.	<ul style="list-style-type: none"> Is there a provision requiring monitoring results to be mitigated? 	If the IBA is not meeting its objectives or if there are unforeseen adverse impacts from the project, then the management and mitigation plans must be reviewed, and new measures implemented to address deficiencies. Recommendations and actions to address those recommendations are	None	Met

		delineated in the annual project review forum report.		
11.2 There is a process for amending the agreement.	<ul style="list-style-type: none"> Is there a process by which the parties can re-open the IBA for negotiation? 	Yes: some articles in the agreement are reviewed every three years or when the project's scope changes. If parties find grounds for renegotiation, some articles may be renegotiated. Other articles, however, can be renegotiated only if both parties mutual agree to do so. In addition, a dispute resolution process exists.	Some articles can only be renegotiated if both parties agree to do so, even if one party has grounds for renegotiation.	Largely met

5.14 Evaluation Summary of the MRP IBA

The MRP IBA receives an overall score of 104 out of 126, indicating 83% adherence to recommended best practices for IBAs (Table 5-12). Out of the forty-six best practice sub-criteria, twenty-nine are met, six largely met and eight partially met. No sub-criterion is unmet. Four sub-criteria were rated as unknown because there was inadequate information to score them fairly. These sub-criteria were omitted from the criteria score and the overall adherence percentage. As a word of caution, the overall score of 83% is helpful in providing a summary assessment to compare IBAs but it should be interpreted with caution because it assumes equal weighting of all of the best practice sub-criteria in calculating the score. While this is a necessary assumption given the lack of research on the relative importance of the criteria, future research may show that some criteria are more important than others and hence should receive greater weight in the aggregate score. In addition, a good IBA should meet all of the best practice criteria so that any score below 100% could be considered unsatisfactory. Therefore, it is more important to focus on the disaggregated ratings provided by the evaluation by sub-criterion to identify the individual strengths and weaknesses of the IBA relative to the overall score. The advantage of an aggregated adherence score is that it allows for a quick, rudimentary comparison between IBAs.

The evaluation shows that the MRP IBA has several strengths, including its empowering nature, the commitment of the QIA and Baffinland to the agreement, and the IBA's capacity building provisions. The evaluation also highlights some weaknesses of the agreement. With two major deficiencies each, the equity and enforceability criteria are the IBA's greatest weaknesses; the sub-criteria that project benefits are scaled to total project profitability and that benefits are delivered to suit community needs were each only partially met, and some provisions lack measurable targets or penalties for non-compliance. Other major deficiencies are the lack of a pre-negotiation agreement to provide a framework for negotiation, failure to address closure and reclamation of the MRP, and an inadequate baseline assessment. Minor deficiencies exist for the six sub-criteria that received scores of largely met (Table 5-12).

Table 5-12. Evaluation summary of the Mary River Project IBA

Criteria	Sub-Criteria	Rank	Score
1) Is empowering	1.1 Every affected community is a participant in the IBA-making process	Met	3
	1.2 Vulnerable and marginalized groups are included in the IBA-making process	Unknown	-
	1.3 Community sovereignty is maintained	Met	3
	1.4 IBA funds are managed by the recipient community	Met	3
2) Respects local culture	2.1 Project employees take part in cross cultural training	Largely met	2
	2.2 Traditional or community knowledge is included in the project design and management	Largely met	2
	2.3 Employee schedules accommodate community members' cultural needs	Met	3
3) Has broad commitment	3.1 The IBA is negotiated in good faith	Unknown	-
	3.2 The community-company relationship is trusting and is maintained	Unknown	-
	3.3 The community's negotiator and IBA decision maker is seen as legitimate by the community	Met	3
	3.4 The community is committed to the agreement's success	Met	3
	3.5 The role of an IBA in the project approval process is clear	Met	3
	3.6 The IBA does not replace government's role in supporting the community	Met	3
4) Has open communication	4.1 A precursor agreement, such as a memorandum of understanding, is signed	Partially Met	1
	4.2 The IBA, precursor agreement (if available), monitoring results and all other IBA relevant information are public	Met	3
	4.3 Communication between signatories continues throughout project	Met	3
	4.4 There is continuity in who is involved with the IBA making and implementation processes	Largely met	2
5) Builds capacity	5.1 The IBA has provisions to organize and fund capacity building initiatives	Met	3
	5.2 There is a dedicated person in charge of employment and training of the local community	Met	3
	5.3 Capacity building provisions should be locally available	Met	3
	5.4 Each party's capacity, including gaps compared to future needs, is assessed prior to negotiations	Met	3
	5.5 Each party's capacity, including gaps compared to future needs, is assessed	Met	3

	prior to and during IBA conclusion and implementation.		
	5.6 The community is given adequate time, resources, and information to effectively participate in the IBA-making process.	Met	3
6) Is equitable	6.1 No community member is worse off as a result of the project	Unknown	-
	6.2 Financial benefits are scaled to total project profitability	Partially met	1
	6.3 Financial benefits are delivered to suit community needs	Partially met	1
	6.4 Contracts are designed for, and favour, local businesses	Met	3
	6.5 Community members are preferentially hired	Largely Met	2
7) Is comprehensive	7.1 IBA addresses all project phases: construction, operation, and closure	Partially met	1
	7.2 IBA included employment, business contracting, training and education, financial, cultural, and environmental provisions	Met	3
	7.3 Community has its own goals and development plan, which the project is only a part of	Largely met	2
8) Is enforceable	8.1 The IBA includes a dispute resolution mechanism	Met	3
	8.2 The IBA is a legally binding document	Met	3
	8.3 The IBA is jointly governed under a clearly outlined framework	Met	3
	8.4 IBA provisions have measurable targets	Partially met	1
	8.5 There are penalties for non-compliance with the IBA	Partially met	1
9) Is implemented	9.1 Appropriate provisions are included in an implementation plan	Met	3
	9.2 There is funding for IBA implementation	Partially met	1
	9.3 There is an overseer of IBA implementation	Met	3
	9.4 Implementation process is collaboratively designed	Met	3
10) Is monitored	10.1 Progress towards IBA objectives and project impacts are periodically monitored	Met	3
	10.2 The community and company jointly monitor the project and IBA	Met	3
	10.3 A baseline assessment of the environmental, cultural, and socioeconomic conditions of the community is conducted	Partially met	1
	10.4 There is adequate funding for monitoring	Met	3

11) Is adaptive	11.1 IBA deficiencies that have been identified in monitoring must be mitigated against	Met	3
	11.2 There is a process for amending the agreement as required	Largely met	2

Overall:

104/126 – 83%

5.15 Recommendations for Improving the Mary River Project IBA

Recommendations for how to improve the MRP IBA so it better adheres to best practices are listed in Figure 5-1.

Figure 5-1. Recommendations to improve the Mary River Project IBA

1. Mandate community involvement and IQ utilization in decision-making.
2. Make cross-cultural training mandatory for all employees working at the MRP.
3. Create and sign a MOU outlining rules for future negotiations.
4. Develop a turnover policy for the executive and management committees.
5. Evaluate community financial benefits from the Mary River Project relative to overall project benefits and revise financial provisions as required to ensure an equitable sharing of benefits between the community and the project developer.
6. Add a minimum yearly IBA payment.
7. Implement the Inuit human resources plan and continue to refine it until MIEG is met.
8. Explicitly plan for mine closure and reclamation in the IBA.
9. Update North Baffin Island Regional Plan and ensure it extends beyond Mary River Project closure.
10. Create measurable implementation targets for all components of IBA.
11. Add non-compliance penalties to more provisions.
12. Specify required funding for all IBA initiated programs, including closure and reclamation initiatives.
13. Conduct a baseline study of local culture and involve the communities in that assessment.
14. Open all IBA clauses for renegotiation.

Chapter 6

Conclusions

6.1 Summary and Lessons Learned about the Framework

This report delineates an evaluation framework derived from recommended IBA practices identified in a literature review of Canadian and international IBAs. The framework has eleven criteria, forty-six sub-criteria, and eighty-eight indicators. The sub-criteria scores are aggregated to evaluate the degree to which an IBA and surrounding context adhere to best practices, and can be used to identify deficiencies in an IBA and the process used to develop and implement the IBA.

The evaluation framework was used to assess a case study: the Mary River Project IBA. The case study illustrates that the evaluation framework provides a comprehensive assessment of the IBA and identifies weaknesses and deficiencies that need to be addressed to improve the IBA. With a total score of 104 out of 126, or 83% adherence, the evaluation revealed that the MRP IBA adheres to many of the recommended best practices for IBAs. However, there is room for improvement. The evaluation framework identified suggestions to mitigate deficiencies in 13 of the 46 best practices sub-criteria. The evaluation framework is therefore a good tool for preparing and evaluating IBAs.

6.2 Contribution

Frameworks and guidelines on how to construct and implement IBAs are readily available in the academic and general literature. This framework builds on that literature in two ways. First, this framework synthesizes a diverse set of literature. No other single article or guide includes all the criteria or sub-criteria that have been identified in this report. Table 6-1 summarizes what criteria are listed in each piece of literature. Even the two articles that contain ten of the eleven criteria, Siebenmorgan and Bradshaw (2011) and Loutit et al. (2016), include only twenty-two and twenty of the forty-six sub-criteria, respectively. Second, this framework includes a detailed set of sub-criteria that provide a clearer definition of the best practices and allows for a more comprehensive and transparent evaluation of the IBA along with a ranking system to quantify the qualitative information available about IBAs and their context that allows for a more comprehensive and transparent evaluation of the IBA and mitigation measures to address any deficiencies in the IBA. There is no other work on IBAs that provides this type of comprehensive evaluation framework.

Table 6-1. Summary of Best Practices from Literature

Article	Criteria										
	1	2	3	4	5	6	7	8	9	10	11
From Canada											
O'Reilly and Eacott, 1999	x		x	x	x		x	x	x	x	x
Sosa and Keenan, 2001	x		x	x	x			x	x		
Dreyer, 2004		x	x	x	x		x			x	
Gogal, Riegert, and Jamieson, 2006	x	x	x		x	x					
Fidler and Hitch, 2007		x	x	x	x	x		x		x	
Browne and Robertson, 2009			x		x					x	x
Canadian Council for Aboriginal Business, 2009		x	x	x			x				
Knotsch and Warda, 2009	x		x	x		x	x		x	x	
Fidler, 2010	x	x			x		x	x	x		
O'Faircheallaigh, 2003, 2010			x	x	x				x	x	
Prno, Bradshaw, and Lapierre, 2010	x			x		x	x	x		x	x
Siebenmorgan and Bradshaw, 2011	x	x	x	x	x	x	x	x	x	x	
Natural Resources Canada, 2014			x	x	x	x	x			x	
Gordon Foundation, 2010, 2015			x	x	x		x	x	x	x	x
From Other Developed Countries	1	2	3	4	5	6	7	8	9	10	11
Indigenous Support Services and ACILC, 2001			x		x	x		x	x	x	

O'Faircheallaigh, 2002		x	x	x	x				x		
Oxfam Australia, 2010	x			x	x			x		x	
Rudolph et al., 2015	x				x	x	x				
From Other Developing Countries	1	2	3	4	5	6	7	8	9	10	11
World Bank, 2010	x		x	x	x		x	x	x	x	x
World Bank, 2011	x		x	x	x			x		x	
International Council on Mining and Metals, 2015	x	x	x	x	x	x	x		x	x	
RESOLVE, 2015	x		x	x	x	x	x		x	x	x
Rio Tinto, 2016	x		x	x				x		x	x
Oxfam IBIS in Sierra Leone, 2016	x		x		x	x		x	x	x	x
Loutit, Mandelbaum, and Szoke-Burke, 2016	x	x	x	x	x	x	x	x	x	x	

6.3 Final Remarks

Impact benefit agreements can be a powerful tool: they have the potential to engender equitable sharing of resource development benefits, catalyze community development, and adhere to the ideals of FPIC. IBAs are more flexible than legislation, and their participatory nature can make them more effective than corporate social responsibility initiatives (O'Faircheallaigh, 2015). The effectiveness of an IBA, however, is inextricably linked to the quality of the agreement, the context within which the IBA exists, and the dedication with which the agreement is implemented. The best practice criteria identified in this report are an important step in the process of understanding what is required for a successful IBA. In addition to providing a method to evaluate IBAs, this framework gives stakeholders a framework that may help them strategize during the negotiating, rewriting, or implementing phase of their IBA. The IBA evaluation framework from this report is as a tool for stakeholders to diagnose and remediate IBAs and surrounding circumstances. The evaluation of the MRP IBA, for example, clearly shows the agreement's strengths and weaknesses, as well as ways to improve the IBA.

In the end, IBAs are a tool that can help achieve equitable benefit sharing, acquire a SLTO, and achieve FPIC; accomplishing these purposes should be the central focus of Impact Benefit Agreements.

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