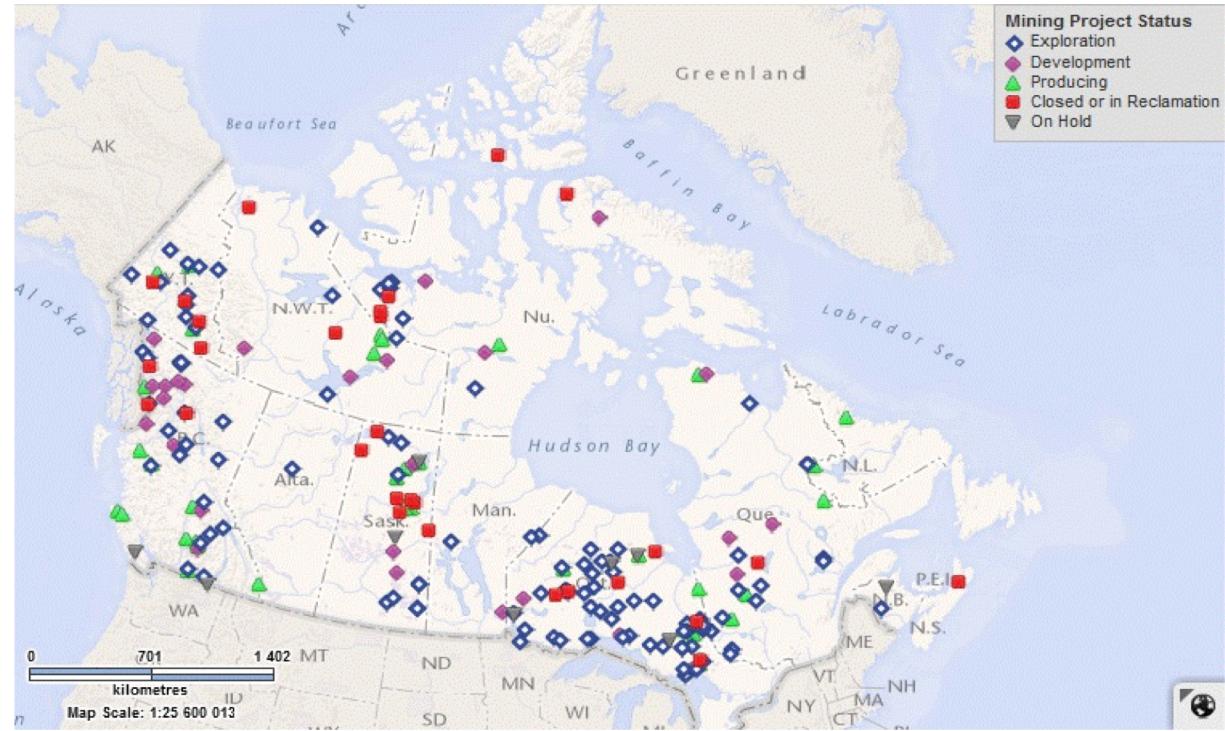


GENDER & IMPACT BENEFIT AGREEMENTS IN CANADA

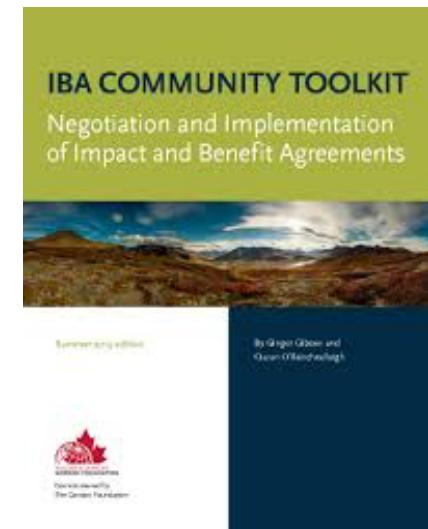
SARI GRABEN



WHAT IS AN IBA & WHAT IS THE QUESTION

An IBA is a contract between an Indigenous government and a proponent of a development project that outlines the commitments and responsibilities of the parties and details how benefits will be shared.

Research Question: In what ways are IBAs responsible for the unequal distribution of benefits to women and can they remedy it through the introduction of Indigenous legal traditions?



GAP ANALYSIS – WHAT WE KNOW

IBA's do not distribute benefits of resource development in equal measure to women

- Current social conditions - violent victimization, overcrowded housing, severe income inequality, single parenting, lower employment levels and inequalities in land distribution are existing inequalities in social and economic power that limit the capacity to benefit from IBAs and have the potential to worsen with resource development. (Stewart, Huntley & Blaney, 2001; Boyce, 2016)



FINDINGS FROM GAP ANALYSIS

ARE IBAS RESPONSIBLE?

TWO SCHOLARSHIPS

LOCATING IBA'S IN PRIVATE LAW THEORY [NO]

- Legal Discourse on IBA's is technical but agnostic
- Shielded from direct association with Indigenous governmental authority and control even if used to meet constitutional obligations related to the duty to consult and addressing Aboriginal Rights.
- Any pragmatic limitations for private or public empowerment are seen as a matter of (market) choice by owners (rather than domination)
- Provisions that address impacts on Indigenous women are similarly constructed as a product of choice

LOCATING IBAS IN INDIGENOUS FEMINIST THEORY (CRITICAL) [YES]

- IBA's are undertakings for a collective Indigenous public good that must attend to the diverse needs of that public.
- IBA's processes are constructed so as not to be representative - processes do not capture the diverse and divergent views of Indigenous women
- IBA provide substantive goods that do not benefit women
- The range of recommended solutions assume or reject the premise that IBA's are capable of addressing the needs of Indigenous women impacted by resource extraction



WHAT WE DON'T KNOW

How IBA terms and clauses create an inequitable result

Can Indigenous law affect terms and clauses could remedy the result

PRELIMINARY GENDER IMPACT ASSESSMENT

Method: Indigenous Feminist: an Intersectional approach to analyze the terms of widely available IBAs

Intersectional - feminist critiques but focuses on decolonization and Indigenous sovereignty as unique factors that impacts analysis

- Account for the social & political locations occupied by Indigenous women
- Account for the ways colonial oppression and racism impact Indigenous women differently than their male counterparts
- Account for the use of Indigenous laws in ways that are gendered

QUESTIONS FOR DEVELOPMENT AND FOR TROUBLING

Can neo-liberal and critical Indigenous feminism be reconciled?

If not, how to identify the potential uses and ultimately the limits of IBAs as participatory tools and as tools that can be equitable for Indigenous women?

If we see IBAs as procedural mechanisms and substantive mechanisms for feminism does that change expectations?

How to generate terms that can be measured and assessed over time and by whom?



REPRESENTATION CLAUSES

Outline powers and authority of each signatory

The Council of the First Nation is the duly constituted council on behalf of the First Nation under the Indian Act [and under the First Nation's constitution];

It has good and sufficient power, authority and right to enter into and perform its obligations under this agreement;

The First Nation has taken all steps required '...by the First Nation's traditional law and procedures' to authorize the agreement'.

This agreement is, upon execution, a valid and legally binding obligation of the First Nation, and

A First Nation Band Council Resolution approving the execution of this agreement will be delivered concurrently with this agreement.

Scholarship about the participation of women in the negotiation and ratification of IBA's directly maps on the purpose and effect of the representation clauses

- women are largely excluded from negotiating agreements - negatively effects outcomes for women in achieving benefits from IBA's and having their impacts addressed
- There are no best practices for consulting with women within communities or how to incorporate different types of needs/dissent
- No established evaluations of whether traditional methodologies increase representation or decrease it.

PROJECT SCOPE

Clauses which define what constitutes the project, including infrastructure

Highlights project commitments of a community and development intentions

Identifies phases of a project (initial and advanced exploration, construction etc)

Absence of women in defining project scope impacts naming and claiming for women.

- Men's use of land is often compensated (ie. Traplines, seasonal homes) but don't often reflect on women's uses as compensatory or protected



ENVIRONMENTAL MANAGEMENT

Customized management of mining projects during their construction, operation, decommissioning and rehabilitation.

Goal – create the greatest possible control or influence by the community over environmental management of the project and its subsidiary projects as is feasible.

Prevent parties being caught between conflicting requirements of regulation, government and contractual obligations.

Lacunae in literature on the interplay between impacts on indigenous women with impacts on the environment or their role in environmental management regimes

- No understanding of women's roles in identifying environmental issues or advocating for them
- No empirical study but anecdotal accounts show unequal amount of women participate in committees tasked with environmental management.
- Unsophisticated understanding of how management regimes affect environmental protection and the prerequisite conditions for efficacy. No understanding of women's roles

Absence of women in environmental decision-making through IBA's has been identified in the scholarship as problematic - particularly where environmental degradation can jeopardize the prosperity of traditional social roles (preparing medicine, food and cultural materials) and ensuring community safety

SOCIAL AND CULTURAL PROTECTION

Measures to protect cultural heritage

- incorporates descriptions of what is to be protected as well as a protocol and strategies for research and surveys, maintaining cultural heritage, and notification mechanisms

Scholarship on social and cultural protection related to impacts to women seem completely at odds of what is meant by social and cultural protection in IBA's

- **There is a consensus in the literature that women are impacted at disproportionate levels by social issues associated with mining**
 - e.g. an increase in alcoholism combined with general tensions in the community could lead to increased domestic violence; inflation caused by extraction projects can impact female-lead households at a disproportionate rate)
 - Indigenous women “stand to gain the least and lose the most” as a result of mineral development projects.

OUTCOMES

SSHRC Insight Development Grant Proposes to:

- Develop a Theoretical model that captures the use of IBAs for women's issues
- Develop a Gender Impact Assessment of several IBAs
- Propose language for IBAs that can be used by those in practice, developed for alternative needs, or used for the purposes of discussion.



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