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ABS AS AN INCENTIVE FOR BIODIVERSITY CONSERVATION AND SUSTAINABLE USE

WHAT CAN WE LEARN FROM BUSINESS EXPERIENCES ON THE GROUND?

FINBOS VEGETATION IN THE Cederberg Wilderness Conservancy in South Africa

Fair and equitable sharing of benefits is one of the three, inherently interconnected objectives of the Convention on Biological Diversity (CBD). Studies show that, in practice, rules and arrangements on access and benefit sharing (ABS) are not as directly linked to positive impact on biodiversity conservation and sustainable use.

What is this document?

This document explores what are some of the concrete challenges of ABS as a tool for biodiversity, from the perspective of businesses negotiating permits and agreements on the ground, in the context of the BioInnovation Africa (BIA) Project implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) and beyond.

It also looks at some of the ways in which ABS implementation could address some of these challenges, particularly in the context of the post-2020 global biodiversity framework. This document is based on interviews and discussions with BIA project partners and other companies involved in ABS negotiations and agreements in African and other countries.

Growing levels of awareness

ABS has been instrumental in raising business awareness on biodiversity. Businesses explain how questions and concerns on evolving rules on ABS have triggered internal discussions on the importance of biodiversity as a source of innovation and inspiration. Efforts to assess the potential relevance of ABS rules have promoted greater transparency and traceability in value chains. ABS principles have also led to increased recognition of biodiversity-related dependencies and potential impacts and improved practices in supply chains for natural raw materials. Yet ABS rules or agreements are not considered an effective tool, in themselves, to advance biodiversity conservation or sustainable use.

Compliance versus engagement?

There are many reasons ABS “does not work” as a tool for biodiversity, not least the priority for businesses, which for ABS is legal compliance. There are now 245 ABS legal, policy or administrative measures published in the ABS Clearing House. Identifying which of these rules may apply and adhering to compliance for relevant research, product development, procurement, and other operations – as well as those of direct and indirect suppliers – is paramount. Priorities are established based on risks and customer demands. Consideration of opportunities to contribute to local livelihoods and efforts for biodiversity is necessarily limited, at least in the initial stages.



ABS AND BIODIVERSITY: THEORY AND PRACTICE

A recent BIA project report analyses the role of ABS in the conservation and sustainable use of biodiversity, as established in the CBD and encouraged by the Nagoya Protocol on ABS.¹ It notes that many countries have or are indeed developing rules or guidance that advance ABS as a tool in preserving biodiversity.

Yet the report concludes that the contribution of ABS to biodiversity has been limited. This is due to a range of factors, from gaps in governance to high levels of poverty and other development challenges in many biodiversity rich areas. Measures, finds the report, may be taken to make ABS work for conservation, but these measures must be concrete and functional. That is, measures must address the challenges and opportunities on the ground, including in relation to companies seeking to align efforts towards ABS compliance with their action and commitments on biodiversity.

¹ 'Connecting the dots... Biodiversity conservation, sustainable use and access and benefit sharing', February 2021, Sarah Laird (People and Plants International), Rachel Wynberg (University of Cape Town Deutsche) on behalf of the BioInnovation Africa Project of GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit).

The perils of pilot cases

ABS is often described as a process of learning by doing. Most countries are still developing or reviewing ABS rules, polishing tools, and procedures, raising awareness of various agencies and other stakeholders involved in ABS processes. Businesses engage in process of learning by doing, which can be rewarding but can also be lengthy, full of uncertainty, and result in unexpected difficulties and delays.

There is little incentive to further complicate ABS procedures by bringing in links to other projects and opportunities, even if these would be positive and impactful for stakeholders.

Indeed, companies often feel penalised for their proactiveness, with regulators showing a high level of suspicion of any information or idea provided and generating what is perceived as significant reputational risks merely for attempting compliance. As one company put it: 'we are seen as evil by governments.'

Biodiversity is not a priority

A key principle in ABS is mutually agreed terms for benefit sharing. Under the Nagoya Protocol, countries are encouraged but not required to direct benefits for conservation and sustainable use of biodiversity. Certain countries have pre-established parameters for benefit sharing, including specific monetary or non-monetary benefits designated for biodiversity-related projects.

“ The government asked for additional investment when we brought up biodiversity conservation

However, in cases in which benefit sharing is negotiated, biodiversity conservation does not appear to be a priority for providers, whether local producers or regulating authorities. Rather, priorities for benefit sharing focus on more tangible, direct benefits such as payments, investment, or infrastructure. Companies do not feel in a position to question priorities or push for biodiversity conservation.

Defining the use of benefits is seen to be the prerogative of providers – questioning this may weaken relationships or lead to additional demands. This is especially true when benefits to be shared are limited, which is true in most of the cases.

Transaction costs

Finally, another obstacle to ABS becoming a tool for conservation is that ABS processes often imply significant costs for companies – and the reference not to benefit sharing but to transaction costs.

Transaction costs include:

- the time required for company staff to gather information, lead, and follow the process, and engage colleagues, suppliers and partners;
- legal and technical advice, both internationally and locally;
- translation, representation, and application fees;
- travel and meeting expenses, not only for itself but also often for government and local provider representatives;
- training and awareness-raising events usually required at local level, and opportunity costs of delays.

“ Internal and external costs of legal compliance processes currently significantly outweigh the benefits of that being shared

As one international company representative put it: ‘internal and external costs of legal compliance processes currently significantly outweigh the benefits of that being shared’.

Some of the interviewees did notice that support from projects such as the GIZ BIA project have been important in reducing transaction costs and facilitating negotiations with local rightsholders. ‘Without the support of GIZ we would have stopped long time ago with the process of ABS permit negotiations’.

Living in harmony with nature: what role for ABS?

In December 2022, the second part of the fifteenth conference of the parties to the CBD is expected to adopt the post-2020 global framework on biodiversity, to drive and guide actions across society on biodiversity. Fair and equitable benefit sharing is central to its 2050 vision of a world living in harmony with nature and many of its targets – not only those dealing with ABS but also many others looking at nature’s contribution to people, rights, and equity issues.

On ABS, business sees an opportunity for momentum towards new, more practical approaches. There is growing recognition of the value of facilitating access while streamlining ways to share benefits. More and more stakeholders call for simplified systems to take ABS into the mainstream, rather than limit it to a few, complex cases. Business is more and more engaged in international discussions, but also willing to contribute to national exchanges and processes seeking to find effective solutions for ABS implementation. In this regard, the post-2020 framework’s whole of government and whole of society approach is a unique opportunity.

ABS has the potential to be a tool for biodiversity and advance many other public policy goals, but that requires engaging with ministries and agencies working not only on biodiversity but also on economy, trade, agriculture, research and innovation, gender, and other topics. The most effective benefit sharing does not come from agreements, but from broader, longer term partnerships. Similarly, developing and implementing ABS rules requires input and engagement of a range of stakeholders, from international and small local business to indigenous peoples, local communities, university, research institutions, and other civil society organisations.





DRYING MARULA, NAMIBIA

Moreover, it is important to recognise that ABS is not the only and may not be the main tool through which business contributes to the conservation and sustainable use of biodiversity. Business is now actively engaged in a range of initiatives on biodiversity, covering ethical sourcing practices, science-based targets, biodiversity action

plans, regenerative agriculture, deforestation-free supply chains, living incomes, and multiple values of nature. Many of these measures, be it on a voluntary or regulatory basis, are seen to be more efficient and meaningful for promoting biodiversity conservation. Such measures can be implemented faster and with less transaction costs. ABS may have a role, but only if it develops to provide more than an opportunity for a case study or for limiting risks of non-compliance.

For business, the sense of urgency on biodiversity conservation and sustainable use is increasing. It is an opportunity for ABS, but only if it takes up the challenge to become a workable, impactful mechanism.

Other points highlighted in interviews:

- High transaction costs mean that business is primarily engaging in ABS for strategic projects that justify or may provide return on investment. Other, less strategic projects that require ABS are generally put on hold, unless they are seen as test cases with more limited commercial risks.
- ABS-related costs and delays already cause diversion of investments into “Nagoya-free” R&D processes (e.g., activities or plant species not covered by ABS rules). For instance, some South African companies are sourcing natural raw materials from neighbouring countries to export to Europe and to avoid onerous ABS requirements. Other companies see Madagascar as a no-go country for R&D projects given uncertainties caused by delays in adopting implementing legislation.
- All interviewees noted that a change is required towards a more business positive narrative on ABS.

The BioInnovation Africa partnership

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