



The ABS Project – Facts, Expertise and Coherence in ABS Implementation

Enabling Innovative Solutions to the Problems
of ABS Implementation



Photo: Edmund Barrow, 2002



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“When international policy is made, it reflects the assumptions and expectations of international negotiators. The problem for national governments is to find some way to apply ‘real life’ legal and practical tools that will achieve those objectives. This is not always possible.”

Dr. Rudolph Schlesinger

In 11 years since the Convention on Biological Diversity (CBD) entered into force, the world has seen significant co-operation and progress in addressing two of the Convention’s three objectives.

- In the realm of conservation, for example, the coverage area designated by national governments as “protected areas” has risen from around 5% of the Earth’s land area to over 11%.

(Statistics reported by the Vth World Parks Congress, Durban, RSA, Sept. 2003, see <http://www.iucn.org/themes/wcpa/wpc2003/index.htm>)

- Towards the attainment of the sustainable use objective, more than 155 countries (nearly 85% of the Contracting Parties to the CBD) have fully or partially adopted National Biodiversity Strategies and Action Plans (NBSAPs).

(Statistics compiled from the CBD Website, at <http://www.biodiv.org/world/nbsaps.asp>.)

In sad contrast to these areas of progress, only about 30 countries (less than 16% of Contracting Parties) have taken any of the “legal, policy, administrative [and other] measures” called for by the convention in order to address its vital third objective – equitable sharing of the benefits arising from the use of genetic resources. Nearly all of these countries are developing countries, and the primary measures they have taken relate to the “access” element of ABS.

(Statistics developed by the ABS Project in its first year of work.)

In 12 years of effort, including significant legal and policy negotiations (at national, regional and international levels), numerous private contractual arrangements, and an enormous volume of scholarly and advisory books, articles, papers, seminars and colloquia, very little recognizable progress has been made in coherently addressing ABS objectives and obligations. Although many opinions have been given regarding the reason for this lack of progress, no real answers or replicable solutions have been found.



Photo: Sabine Scherer

The ABS Project aims to provide factual and documented information about the implementation efforts to date, and the factors that have slowed and stopped progress. Working at the levels of both the international framework and national/regional implementation programmes, its ultimate goals are to give decision-makers and administrators a real practical understanding of what they can expect from an ABS regime, what can and cannot be done to implement it, and how new solutions and approaches can be found.

It represents a combined effort of **IUCN's Environmental Law Centre**, Bonn, with support from the **German Federal Ministry for Economic Co-Operation and Development (BMZ)** to provide legal and technical advice, evidence and support to the process of developing the ABS Regime, at the international, regional, national and sub-national levels.

In 2003, the work of the ABS Project has been directed at

- (1) helping national delegations to participate more effectively in all-important decisions regarding creation of an "international regime on ABS", and
- (2) assisting the further development of the Bonn Guidelines on Access and Benefit-sharing.

In particular, the project has focused on developing facts, to support a better understanding of the real reasons underlying the Contracting Parties' general inability to develop and implement an effective system for providing access and sharing the benefits.

This mandate has proven surprisingly difficult. Ingrained opinions are widely accepted, without knowing whether they are supported by factual data or not. In the first year of the project's operation, we have found that

- **Many widely accepted statements are not supported by the facts.** For example, it is strongly believed and supported that simpler and more flexible legislative provisions and administrative processes will foster ABS. Research indicates that this statement is not supported by fact. A country's ability to get ABS contracts bears no relation to the simplicity of its legislation – between neighbouring countries, the one with the most regulatory flexibility may not be chosen.
- **Existing examples of successful programmes are not replicable.** The frequently cited "success story" – the Costa Rican ABS programme and institutions – has been able to achieve its current level of success only with (still ongoing) international donor assistance amounting to many tens of millions of dollars – a benefit not likely to be available to most countries.
- **National and international law does not include the tools and concepts necessary to address ABS in a systematic, coherent and legally consistent way.** The most important conclusion of our initial research is that there is no framework in national or international law that is currently able to address the legal rights relating to genetic resources. Although difficult for non-lawyers to understand, there is a definite legal difference between "genetic resources" (the specimen's genetic information –

virtually identical to the GR in every other specimen of the same species) and "biological resources" (the physical specimens themselves.) Lacking basic legally accepted principles, it is not possible for countries to depend on normal contractual processes, documents and provisions, to protect their rights under ABS Agreements.

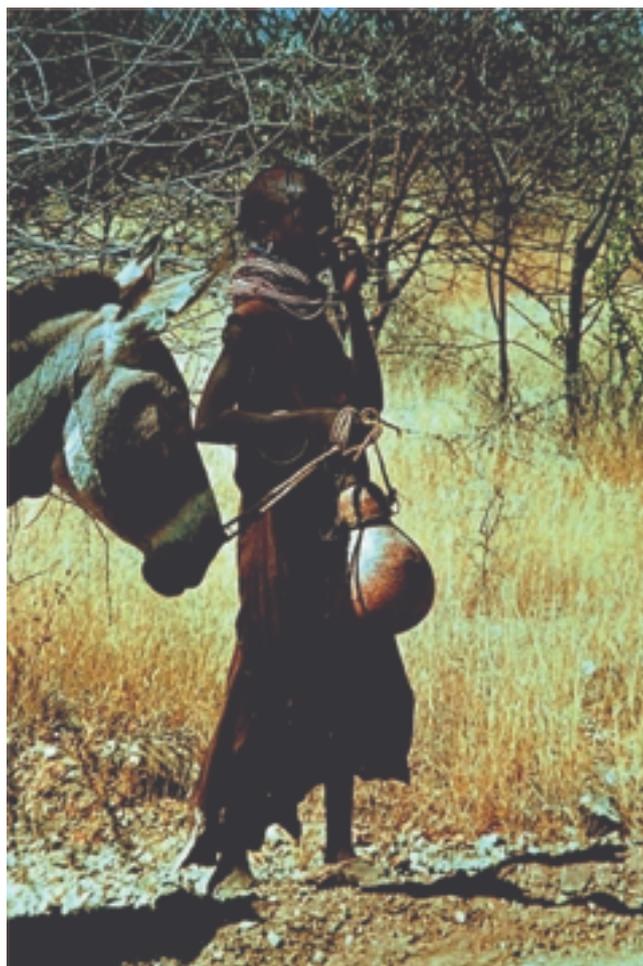


Photo: Edmund Barrow

The first year of the ABS Project has focused on providing real dependable, non-biased information that can be a basis for a better set of assumptions and expectations, as the world takes the next steps in the process of developing the ABS regime and making it effective.

During its first year of operation, the ABS PROJECT has focused on three kinds of activities:

International Exchange of Direct Experience

It has been essential to the ABS Project to obtain direct and complete support and evidence, through focused discussion forums and workshops, and participation in other processes. **First year:** In the first year of the Project, these included:

- Development of an international **ABS advisory panel**, currently numbering over 35 attorneys and administrators from 18 countries on 5 continents.
- Expert participation in regional forums addressing ABS including
 - SADC Meeting on Revision of the SABSP (Johannesburg)
 - Norway-UN Conference on Technology Transfer (Trondheim)
 - EU Strategic Action Plan – Development Co-operation (Brussels)
 - 2003 Management Workshop – IUCN West African Regional Office (Bissau)
 - IPGRI Latin American Workshop on Access and Benefit-Sharing Policy and Law (San Jose)

- Production of the “Latin American Expert Workshop on Certificates of Origin (Legal Provenance)” (Lima), Partners: SPDA, INE, INRENA
- Support to “International workshop on ABS Legislation – Pacific Rim”, (Davis, California)

In planning: These activities will continue in the 2nd and 3rd years of the project, when the project plans to convene –

- an Expert Group on “The Ex-situ Collections and the International Regime” (Bonn)
- a Working Group on “Directions for Development of Information and Options”
- a multi-organisational, multi-project collaboration programme “Access to ABS”

In addition, the ABS Advisory Panel will serve as advisors, trainers and intra-regional consultants, in technical support at national and regional levels.

Research and Information Development

Emphasising direct research supported by real evidence (rather than citations to other opinions), research focuses on law-related issues of ABS implementation, including

- legislative and institutional development,
- bi-lateral, regional and “like-minded” party negotiations,
- contractual negotiations,
- collection activities and their impact on regulation, communities, and contractual provisions,
- monitoring post-access use of genetic resources.

Priority focus has been on functional programmes and negotiations, and factual data from direct sources.

First year: Key outputs that are completed, include –

- “A Comparative Analysis on the Legislation and Practices on Access to Genetic Resources and Benefit-sharing (ABS): Critical Aspects for Implementation and Interpretation”, J. Cabrera
- “Biodiversity Access and Benefit-sharing in Arid Countries and Those with Low Diversity and High Endemism”, R. Wynberg, L. Haidar, W. Nasser, A. Garane
- “Access to Genetic Resources, and Sharing the Benefits of their Use: International and Sub-regional Issues”, N. Chishakwe and T. Young
- “Report of the Latin American Expert Workshop on Certificates of Origin (Lima)”, INE, INRENA, IUCN, SPDA
- “Summary Handbook for CBD Delegations: Options and

Process for the Development of an International Regime on Access and Benefit-sharing”, T. Young

In planning: This work will continue in 2004-2005, with the completion of other key documents (in process):

- “Guide to the Int’l Treaty on Plant Genetic Resources”, G. Moore & W. Tymowski (Partners: FAO, IPGRI), Summer 2004
- “Accessing Biodiversity and Sharing the Benefits: Lessons from Implementation”, S. Carrizosa, et al., eds. (Partner UC Davis)

New research programmes will address –

- Applying experience with regulating other markets to ABS
- Legal mechanisms for gaining access to technology for monitoring and oversight of post-access use of GR
- Analysing bi-lateral, regional and interest-based national alliances for ABS
- Developing guidance for integrating implementation of ABS, with implementation of the Cartagena Protocol, ITPGR, UPOV, international work on IPR and other instruments
- Developing options for consistent global legal principles to support coherent, legally effective ABS interpretation
- Integrating previously unconsidered positions – how to integrate programmes focused on preservation of knowledge through maximum availability, or open access to GR, into the global regime
- The project is also developing a database of ABS legislation and proposals

Co-operation and Synergy in Technical Assistance

After 12 years of expert publications, projects and technical advice, it is clear that there are many people around the world with potentially valuable contributions to be called on. It is the objective of the ABS Project not to reinvent useful material, but to synthesise it – to build in new directions on the basis of sound work of the past.

As a primary result of this perspective, **The ABS Project** has sought to bring together projects and institutions addressing ABS, and to integrate the use of their work into the overall project plan. Accordingly, the Project has developed or is developing partnerships with SPDA, INE, INRENA, UNEP, UNDP, SADC, IISD, IPGRI, FAO, FIELD, The Royal Botanic Gardens at Kew, and UNU-IAS.



Photo: John Scanlon

For more information about **the ABS Project**, visit our website at <http://www.iucn.org/themes/law/abs01.html> or e-mail the Project Manager at TYoung@iucn.org

Right: The IUCN Environmental Law Centre in Bonn, Germany is one of the world’s premier sources of law and policy information and technical assistance on conservation law.