

POLICY BRIEF

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Potential pitfalls of access and benefit-sharing policy and legislation on non-timber forest product harvesting in the Zambezi Region, Namibia

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Voices for BioJustice

Working towards the equitable and
sustainable use of biodiversity

INTRODUCTION

Non-timber forest products (NTFPs) provide multiple benefits for consumers, countries providing the biological material, companies processing and marketing them, and the rural communities for which they bring income opportunities (Wynberg & Van Niekerk, 2014). However, the governance of NTFPs is challenged by the varying objectives of multiple stakeholders, including but not limited to, conservationists, consumers, development agencies, pharmaceutical companies, traders and exporters. These objectives include the environmental sustainability of harvesting, maximising profit from trade, economic development and social justice for harvester communities.

International environmental regimes have led the way in answering to environmental sustainability and social justice through multilateral treaties that aim to conserve and sustainably use biodiversity with equitable sharing of benefits arising from their use. These include the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1992 Convention on Biological Diversity (CBD), and the supplementary 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation. While these treaties promote environmental sustainability and social justice, they are not prescriptive in how to achieve these outcomes, nor do they answer to the often conflicting objectives of maximising profit and economic development.

At the national level, policy and legislation relating to NTFP use most often seeks to regulate use to ensure environmental sustainability. However, the CBD and Nagoya Protocol include an additional focus to protect local communities from exploitation by industries using these resources. While access and benefit-sharing (ABS) policies and legislation are implemented through regulations, these are almost always developed and implemented at the national level by the State. Therefore, they do not often consider the local context, and are typically poorly implemented because of limited government resources and capacity (Wynberg & Laird, 2007). In addition, these regulatory frameworks are often complex with several measures implemented by various actors who often have differing or conflicting interests (sustainability, social justice, profit, economic growth) that result in mismatched expectations of outcomes and unintended consequences (Wynberg & Hauck, 2014).

In June 2017, the Access to Biological and Genetic Resources and Associated Traditional Knowledge Act (2 of 2017) was passed by the Namibian Parliament. As ABS gains traction in Namibia, understanding of the local institutions and processes of NTFP harvesting in communal areas can inform policymakers such that those communities most dependent on benefits from NTFPs, do not suffer from misguided policy development and implementation. This brief examines current issues around devil's claw harvesting in the Zambezi Region that require consideration in light of the new Act.

Non-timber forest products (NTFPs) continue to be of great importance to poor, rural communities around the world. They are of significance because in many instances they are the only source of income and provide an alternative livelihood to subsistence farming which is increasingly threatened by climate change. NTFPs are crucial to these households and yet governments are at risk of pursuing policies that may undermine the ability of harvesters to access and benefit from these resources. These policies, while intended to protect traditional knowledge holders from expropriation and exploitation, in practice can diminish benefits to harvesters through over-regulation and limited understanding of local institutions and processes. This may hold especially true in communal areas with deeply-embedded and powerful traditional leadership. An analysis of the current issues around devil's claw harvesting in the Zambezi Region of Namibia provides important insights into the local institutions and processes that can guide the development of appropriate policy and associated regulations for harvesters living in communal areas.



INSTITUTIONAL COMPLEXITY AT THE LOCAL LEVEL

Devil's claw harvesting in the Zambezi Region is governed by multiple institutions, including the Ministry of Environment, Forestry and Tourism (MEFT), the Ministry of Agriculture, Water and Land Reform (MAWL), traditional authorities, headmen and other customary leaders, the local NGO Integrated Rural Development and Nature Conservation (IRDNC), conservancies, community forests and harvesters.

As the historical traditional leaders and land administrators in communal areas, the power of traditional authorities is both socially-embedded and reinforced by legislation that recognises them as governing bodies for ethnic communities.

Conservancies and community forests afford legal rights to communities to sustainably use wildlife and forest resources on communal land respectively. For registration, they require authorisation from traditional authorities and have management committees that include both customary leaders and members of the community. Irrespective of the management rights afforded to conservancies and community forests, traditional authorities maintain power in decision-making processes and demand benefits from conservancy and community forest enterprises. Given the cultural power of the traditional authorities, most communities fear some form of retribution if they openly challenge such demands.

While MEFT oversees conservancies and community forests, the Ministry is constrained by limited capacity and resources which has resulted in IRDNC playing a pivotal role in supporting conservancies and community forests.

This institutional complexity at the local level requires careful consideration in the development and implementation of ABS policy and law if harvesters are not to be exploited or excluded.

For example, in defining “right holders” in a benefit-sharing agreement, conservancies and community forests, as the natural resource management institutions, could be considered appropriate. According to the Act:

“local community” means a group - (a) living or having rights or interests in a distinct geographical area within Namibia with a leadership structure and it may include natural resource management organisations such as conservancies and community forest committees”.

However, management committees may not be immune to unscrupulous benefit-sharing agreements and/or corruption. Therefore, care should be taken to ensure that benefits are negotiated with the resource providers themselves, and that these are clearly articulated in agreements and well-understood by all parties. Current trade agreements for devil's claw between conservancies/community forests and exporters clearly state the amount to be paid to harvesters per kilogram and the amount to be paid to the conservancy/community forest, thus eliminating risk of exploitation by management.

Given the limited resources of MEFT in the Zambezi Region, knowledgeable third-parties such as IRDNC would be required to help facilitate the negotiation, development and understanding of benefit-sharing agreements. This is because the new Office of Biological and Genetic Resources and Associated Traditional Knowledge would likely be unfamiliar with the local context and pre-existing conditions.

There are also large areas of the Zambezi Region that remain unregistered. To an external stakeholder, the traditional authority of a community in these areas may seem the most obvious and accessible right holder. Moreover, the Act is not prescriptive in this regard. However, unless specific provision was made in the agreement for harvesters, the true value of the benefits may not reach the community members but instead remain captured by traditional authorities only.



INTEGRATION OF CONSERVANCIES AND COMMUNITY FORESTS

In the Zambezi Region, several community forests have overlapping borders with conservancies but are not collaboratively managed. Integration of conservancies and community forests has been poor, and community forests lag in developmental support. However, community forests have clear legal rights to manage and sustainably use all forest resources.

With respect to NTFPs, this places the community forests in a better position over the conservancies whose rights are limited to wildlife. Without community forest rights, communities in conservancies may

be at risk of exploitation by traditional authorities who can challenge conservancy leadership.

Local communities' understanding of legal rights with respect to the Traditional Authorities Act, the Nature Conservation Amendment Act and the Forest Act is limited. Additional ABS legislation may further blur understanding, particularly regarding biotrade versus bioprospecting.

To this effect, the government should consider how the management of conservancies and community forests can be effectively and efficiently integrated.



Devil's claw buying event in Lubuta Community Forest, Zambezi Region.
Credit: Jessica Lavelle

ETHNIC COMMUNITY CONFLICT OVER LAND AND ACCESS TO RESOURCES

The history of land in the Zambezi Region is complicated and ethnic community land boundaries remain contested. Under the German and South African colonial administrations, the government only recognised two chiefdoms (Mafwe and Masubia) as traditional authorities. Following independence, four traditional authorities recognised in the region, each with a perceived area of communal land under their jurisdiction (Mafwe, Mayeyi, Mashi and Masubia). However, it remains that the traditional authorities are in conflict regarding these boundaries. This is because their legal jurisdiction is confined to members inhabiting a common communal area, with no provision for establishing spatial boundaries. Newer traditional authorities are thus perceived to have unrightfully claimed land.

Access to resources is inextricably linked to who governs the land. While conservancies and community forests have legally defined boundaries, those areas that are not registered are subject to undefined customary boundaries. In the case of devil's claw, conflict over these boundaries has already limited benefits for harvesters who require registration as a conservancy or community forest for government and NGO support.

Also, in these communal areas harvesters are required by law to obtain permission from their relevant headmen or traditional authorities to apply for a harvester permit. This has been used by traditional authorities and headmen as an opportunity to extort a fee from harvesters before providing the necessary signature.

With ABS agreements, harvesters not only run the risk of usurped benefits but may also be subject to exploitative access control to resources by the traditional authorities. Indirectly, conflict between neighbouring traditional authorities over land may also delay agreements being put in place.

CONTESTED TRADITIONAL KNOWLEDGE

The Zambezi Region is home to multiple ethnic communities, with indigenous San as the first inhabitants. Most San in the region do not have a traditional authority and live in Bwabwata National Park, jointly managed by MEFT and the Kyaramacan Association. With little documentary evidence, the history of ethnic communities in the Zambezi Region is unclear, and this has been exacerbated by multiple changes in power and migrations between areas and across borders.

As a result, traditional knowledge is both shared across ethnic communities and unique to a community. It is to be expected that there will be claims to traditional knowledge from various sources and it may not always be possible to determine a specific “right holder”. Provision must be made for multiple right holders such that access and benefits can still be enabled.

In addition, with respect to traditional knowledge within an ethnic community, it would be necessary to include all conservancies, community forests and unregistered areas collectively of the same ethnic community. This approach was applied in the establishment of a trust for *Commiphora wildii* harvesting in the Kunene Region, a plant highly valued for its perfume qualities (Galloway et al., 2016).

BIOTRADE OF NTFPs

The new legislation includes both biological and genetic resources, however should not be subject to the same regulations. Many rural households depend on the income they receive from biotrade of NTFPs which in the case of devil’s claw, is approximately N\$3 000 per harvester per annum¹.

As has been the case in Zimbabwe and South Africa, over-regulation of NTFPs through ABS can further marginalise poor communities (Wynberg et al., 2015). In developing policy and associated regulations, it is necessary to interrogate whose interests will be served. Also, caution must be exercised by the State seeking to generate revenue at the cost of poor communities and small businesses.

While natural resource management has been decentralised, the State now seeks to centralise biotrade and bioprospecting. The imposing of additional fees and levies on biotrade products such as devil’s claw will most likely diminish benefits to harvesters as costs to traders and exporters increase. An alternative scenario is an increase in illegal harvesting and/or corruption to avoid fees and burdensome bureaucracy.



Devil’s claw flower (*Harpagophytum* spp.). Credit: Dave Cole

¹N\$3 000 = US\$180/€155 (www.xe.com 24/07/2020)

RECOMMENDATIONS

- Extensive consultation and awareness campaigns should be undertaken in communal areas prior to policy development and implementation. These campaigns should be developed in partnership with NGOs who are familiar with local contexts and should include relevant stakeholders such as MEFT, MAWL, traditional authorities, headmen and other customary leaders, conservancies, community forests and community members.
- Regulatory clarity on bioprospecting versus biotrade is required. Government should create awareness and disseminate information among stakeholders to improve understanding of ABS and clarify distinctions between biotrade and bioprospecting.
- Policies and laws should be formulated to tackle the issue of expropriation of traditional knowledge and exploitation of communities for bioprospecting but should not hinder economic opportunities from biotrade with burdensome and expensive regulation processes.
- The capacity of relevant MEFT staff should be developed to improve understanding of institutional complexity, local governance, policy implementation and stakeholder consultation.
- Increased support should be given to regional MEFT staff tasked with facilitating benefit-sharing agreements and issuing permits.
- Where conservancies and community forests co-exist, the integration of their management should be supported and accelerated.
- Local communities' understanding of access and benefit-sharing rights should be strengthened.



Devil's claw on drying net in Masida Community Forest, Zambezi Region. Credit: Dave Cole

CONCLUSION

The importance of NTFPs to rural livelihoods in Namibia cannot be underestimated. While ABS policies and legislation can be powerful tools to prevent the historical exploitation of local communities and traditional knowledge, unintended consequences can quickly arise with over-regulation and misinterpretations of “local communities” and “traditional knowledge”. In the development of policy and laws caution should be exercised in overprescribing processes, especially for biotrade. The local context requires careful consideration when right holders are defined in the development and implementation of benefit-sharing agreements.

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