

BIODIVERSITY OFFSETS: LESSONS LEARNT FROM POLICY AND PRACTICE

LEARNING EVENT BRIEFING REPORT

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1 INTRODUCTION

The uptake of biodiversity offsets as a mechanism for mitigating the residual impacts of project development has rapidly increased in recent years. Whilst guidance for biodiversity offsets has been developed, it is widely acknowledged that successful implementation will hinge on overcoming myriad challenges on the ground.

With support from the Arcus Foundation, Fauna & Flora International (FFI) hosted a three-day offsets learning event at the Judge Business School in Cambridge, UK, from 13th to 15th July 2015. Its purpose was threefold: 1) build capacity for engaging in biodiversity offsets at site, landscape and national levels; 2) promote critical discussion about the potential of offsets to address residual impacts of development on ecosystems; and 3) explore the opportunities and risks that offsets present for biodiversity conservation and sustainable development.

Participants included FFI staff and partners, national governments, mining and energy sectors, environmental consultancies, financial lenders, NGOs and academic experts from 22 countries (Australia, Belize, Brazil, Finland, France, Georgia, Guinea, Indonesia, Italy, Kyrgyzstan, Liberia, Namibia, Nicaragua, Philippines, Singapore, South Sudan, Spain, Switzerland, Tajikistan, Uganda, USA and the UK). The format included presentations, plenary discussions, working group activities, conservation clinics, debates and panel discussion. Issues discussed ranged from legislation and policy to stakeholder engagement and quantification of impacts. This report summarises the main talking points from the event.

2 DISCUSSION POINTS

2.1 Misalignment of government priorities: conservation vs development

The disconnect between biodiversity conservation and economic development was a common concern among participants, with economic development and poverty eradication initiatives frequently prioritised by governments at the expense of biodiversity conservation. As population pressures continue to increase worldwide, global thinking is dominated by economic considerations, giving companies powerful bargaining positions to carry out development projects without appropriate mitigation of their impacts on biodiversity.



Within governments, conflicting attitudes towards land and resource use can cause disagreement between ministries with differing priorities, while changes in personnel can give rise to changes in previously agreed policy. Inter-ministerial cooperation and coordination, and more balanced power relationships between different ministries, were highlighted as crucial factors in addressing this disconnect.

Sustainability of offsets was another point of concern, with participants noting that as governments change over time and pressure for resources increases, guaranteeing their long-term protection from development is problematic. Furthermore, it was deemed essential that no-go areas be identified and set in stone before exploration licences or development plans are approved, though it was acknowledged that, where competing development priorities make no-go areas unlikely, compensation for development project impacts might be the best that can be hoped for.



2.2 Legislation and policy for biodiversity offsets

Significant variation in legislation and policy for biodiversity offsets between countries creates huge challenges for the successful implementation of offsets worldwide. A lack of appropriate environmental legislation poses a serious threat. Where legislation for offsets does exist, lack of enforcement can undermine success. This may be attributable to lack of resources in government departments, a lack of coordination between different ministries leading to misunderstandings about which department is responsible, and problems centred on corruption and a lack of incentives to enforce the law.

‘...without regulatory or government frameworks and effective compliance mechanisms, success in the offsets programme will be long in coming’¹

Failure to recognise national biodiversity strategies and commitments, and to consider how offsets could help to achieve biodiversity conservation targets and objectives, was highlighted as another missed opportunity in many countries. Similarly, misalignment of national agendas and legislation with offsetting best practice can result in inconsistencies in offset implementation, and failure to achieve the best potential gains for biodiversity conservation. One such example was highlighted in Mongolia, whereby current policy could actively discourage application of the mitigation hierarchy. The use of area-based metrics to calculate offset requirements, as in Mongolian offset policy, fails to account for a range of potential impacts including indirect and cumulative impacts, with the result that companies have less incentive to mitigate impacts that legislation does not require them to account for.

‘Offsetting and the whole mitigation hierarchy are often presented as technical challenges, when in fact they are deeply political. Who gets to decide what happens, and with what information? Who will benefit and who will lose? These questions need public debate...’

A general lack of capacity relating to biodiversity conservation and biodiversity offsets within governments in many countries was highlighted as a serious impediment to implementing best practice in accounting for project impacts.

¹ All quotes are from learning event participants.

2.3 Regulation of biodiversity offsets and environmental and social impact assessments

It was widely felt that clearer and more rigorous frameworks, standards and methodologies for biodiversity offsets should be developed in order to improve the effectiveness and practicability of offset design and implementation, and that greater emphasis should be placed upon regulation and enforcement. To that end, regulator organisations need to be established, with a mandate to enforce best practice, and monitor and report on offset outcomes.

Whilst best practice guidance for biodiversity offsets does exist (such as the Business and Biodiversity Offset Programme (BBOP) Standard on Biodiversity Offsets), the need for additional guidance on integration of environmental impact assessments (ESIAs) and offset project development was widely acknowledged. These two processes must be aligned so that EIAs feed directly into the design and implementation of offsets.

The ineffectiveness of EIA in mitigating impacts on biodiversity was widely acknowledged among participants. Moreover, whilst global best practice stipulates that EIAs be carried out before any project commences, in reality they often start too late and fail to take into account the full suite of impacts that a project may have on biodiversity and ecosystem services. This significant flaw must be addressed. Additionally, it was felt that companies need further guidance on how to conduct EIAs and incorporate their findings in an offset plan. Recommendations generally lack detailed information about how or why offsets should be developed, and more clarity is required regarding what steps and actions a company must take (i.e. application and documentation of application of the mitigation hierarchy) before and during development of an offset.

Further suggestions to improve ESIA processes included independent audits, building the capacity and resources of regulatory bodies, empowering communities to engage effectively in public consultation processes, making information and documentation more accessible to the public, improving communication of findings, increasing pressure from financial institutions to ensure that projects in which they are investing comply with ESIA best practice, improved consideration of seasonality and baseline timeframes, and ensuring greater transparency among all stakeholders.

2.4 Quantification of impacts to biodiversity and ecosystem services

There was broad agreement that appropriately defining impacts, as well as habitat baseline conditions, can be a significant challenge. Concerns around irreplaceability, and what qualifies as irreplaceable, were discussed, and there were uncertainties around how to ensure that the selection of species that can contribute towards an impact being classified as irreplaceable is fair and objective, and not just focused on large, charismatic species. Reservations about



approaches that focus only on 'critical' biodiversity features to determine the requirement for biodiversity offsets were heard. It was noted that a good understanding of an area's ecology was key to identifying appropriate indicator species that can be used as a way to quantify many species linked to one particular habitat. If the impacts of development on biodiversity and ecosystem function are to be reliably quantified, robust baseline data and expert knowledge are essential. It is vital to have good landscape

level data on habitat condition, and data on background rates of habitat loss and degradation.

Baseline data collection must also consider uncertainties around shifting baselines, and the impact that other, earlier developments may have already had on that habitat condition. In such cases, it was suggested that if a project will have impacts on biodiversity that require offsetting, those impacts must be discounted from any assessments conducted in future. In other words, subsequent projects must discount prior habitat degradation from their baseline.

Many participants expressed uncertainty and concern over the quantification of indirect and cumulative impacts. Given the inherent difficulty of accurately assessing and quantifying a development's indirect impacts, it was felt that companies were likely, wherever possible, to abdicate responsibility for these. Whilst it can be a challenge to pinpoint the source of indirect impacts, wide-ranging stakeholder consultation and engagement during impact assessment processes can help to prevent biases when accounting for impacts. For cumulative impacts, carrying out a thorough landscape level assessment can help to give a clear idea about what is happening more broadly and provide different projections, which will help to develop an understanding of the potential for future alteration in the landscape. This is essential in the planning of offsets. Effective landscape level planning requires clear communication between government departments. Participants questioned where responsibility for cumulative impacts should lie, and what the duty and liability of the government would be in such situations.

With regard to implementation of the mitigation hierarchy and calculation of offset requirements for significant residual impacts after all appropriate avoidance, minimisation and restoration activities have been implemented, time lags for restoration activities were seen as a potential issue, in that they could enable companies to reduce their calculated residual impact without providing assurance that future restoration activities will be successful.

A key principle of the BBOP standard is that there must be ecological equivalence between the biodiversity and ecosystems impacted by a development project and the biodiversity goals of the offset project. This includes equivalence with respect to quantity, space and time. This 'like-for-like' requirement was highlighted as a potential obstacle to offset implementation, given the difficulty in identifying genuinely like-for-like offset sites. In situations where offset site selection is limited, it may be necessary to identify multiple projects that, collectively, meet the offset needs. Species-banking systems, commonly implemented in the USA, are another example of where multiple developments requiring offsetting can feed into one central offset system, obviating the need to find a local 'equivalent' offset site.

2.5 Recognition of social and cultural values: the intangibles

Quantifying the impact of development on social and cultural values and traditions is not easy. There were concerns that offsets fail to take sufficient account of these factors, due primarily to a lack of understanding about these values among decision makers. It was felt that developers too often try to railroad communities into alternative livelihoods, imposing their own ideas about what successful development *should* look like, without reference to those directly affected. It was suggested that the early steps of avoidance and minimisation in the mitigation hierarchy should be equally applied when considering social and cultural impacts of project development

Wide stakeholder consultation is essential when considering how to offset a project's potential impacts on social and cultural values. The concerns of affected communities must be addressed through direct consultation and participatory processes, noting that social science approaches to such assessments will differ from scientific assessments and that accounting for such values appropriately presents real challenges and it may not be possible or appropriate to apply metrics.

In trying to understand social baseline situations, it will also be important to take account of access to resources, rather than focusing exclusively on people's current activities, and to understand and consider what rights local communities could potentially lose under a development project scenario.



Recommendations to improve success in this context included: ensuring that all community engagement follows a free and prior informed consent (FPIC) approach; promoting compliance with the International Finance Corporation's Performance Standards (IFC PS), noting that these provide existing best practice around the assessment and management of environmental and social risks and impacts (PS1) and indigenous peoples and cultural heritage (PS7 and PS8, respectively); engagement of assessment with relevant country experience and appropriate sensitivities; improving guidance on consultation processes and social aspects of impact assessments; and ensuring that Environmental and Social Impact Assessments are carried out in parallel, with risks identified in each being integrated. Previous lessons learnt from initiatives such as REDD+ were also highlighted as helpful in improving the effectiveness of social assessments to account for values such as cultural ecosystem services.

2.6 Offset financing and the role of financial institutions

Participants including those from financial institutions discussed the financing of biodiversity offsets. There is a perceived lack of understanding and technical capacity within lender organisations around offsets and accounting for impacts on biodiversity, and uncertainty regarding how best practice standards should be applied. Delays in verifying whether project plans fall short of best practice standards often mean that there is no time to investigate avoidance and other mitigation opportunities before resorting to offsets.



Lender banks have minimal leverage over companies once a loan is repaid. It was recognised that the reputation of lender banks is directly linked to that of the company to whom they lend. Blacklisting companies that fail to maintain commitments may help to improve compliance, but by the time non-compliance comes to light, the original investment decision makers may have moved on, and some institutions have short memories. Companies need to recognise that a strong reputation for managing biodiversity and offsets effectively, rather than just talking a good game, can significantly increase the willingness of lenders to finance future projects, and that lenders consider previous performance of companies when making investment decisions.

Another weakness of many financing agreements is that financing for the actual offset is not built in, potentially reducing the likelihood of long-term success. Furthermore, the involvement of multiple stakeholders, including governments, can mean that the lender bank has limited

leverage to enforce offset implementation, since it may have no contract with the stakeholder that fails to honour its commitment.

2.7 What responsibilities does a company have?

Many questions were posed about companies' responsibilities for offsets. In particular, it was felt that a preoccupation with cost reduction often affects a company's willingness to invest in voluntary offsets (i.e. that are not mandated by national legislation) or to commit to robust offsetting practice (i.e. where offsets are mandated through national legislation or are a requirement of conditions attached to a loan agreement) to reduce its impacts on biodiversity. Furthermore, even where a company commits to that investment, it can be reluctant to take responsibility for ensuring the long-term management of those offsets. It was acknowledged, however, that some development projects are subject to external pressures and drivers such as political agendas, in which case a company may not have sufficient control of its own development plans to ensure that certain impacts are reduced. From a company's point of view, there must be an incentive to engage with biodiversity and with offsets. Reputation is considered a key driver for responsible biodiversity management, though companies are wary that engagement with offsets could potentially be viewed as greenwashing and result in negative publicity.



Offset development and implementation must align with government priorities and frameworks and companies can face difficulties in trying to balance the needs of NGOs and civil society with those of governments with whom they might have contractual obligations. Further obstacles to implementation include concerns over liability, a lack of firm commitments to a project at a very early stage in its lifecycle, leading to uncertainty about long-term investment, and difficulties in determining and quantifying potential impacts at the outset of a project.

2.8 Communication and information sharing

Participants were adamant that more honest, transparent communication and information sharing between companies would help to increase the likelihood of offset success. There is an overall desire for data to be shared more broadly, with suggestions that this should be obligatory for any ESIA process. A level playing field with regard to data sharing, which would reduce the potential risk of misuse of data by competitors, was deemed helpful in improving processes such as landscape planning and decision making.

2.9 Closing thoughts

'The need for an emphasis on the mitigation hierarchy' has been highlighted through this event.

'Biodiversity Offsetting is a good concept that can translate into improved conservation only if a) the key actors (private sector, especially in the extractive sector, and governments) value and integrate it into their policies and practices, and b) developers see the business case. Very effective drivers are required to make offsets functional.'

'There is only finite space to create offsets. We cannot pretend that there is some kind of parallel universe with unlimited space to create offsets for developments. The planet is finite so this tool [offsetting] can only go on for so long until all the possible offset space has run out.'

There is a temptation to view offsets as our best option in the face of rapid development worldwide, but initiatives that focus on reducing demand for resources are equally vital in minimising the impact on ecosystems.

It is crucial that offsets are considered only as a last resort (after making every possible effort to avoid, minimise and reduce impacts on biodiversity and, where feasible, to make good any damage through ecological restoration) and that offsetting is used alongside other conservation strategies to address the impacts of development on biodiversity.

3 ACKNOWLEDGEMENTS

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This document is one of a series of outputs from FFI's assessment of biodiversity offset policy and practice.

Available online at:

www.fauna-flora.org/initiatives/business-biodiversity-resources/

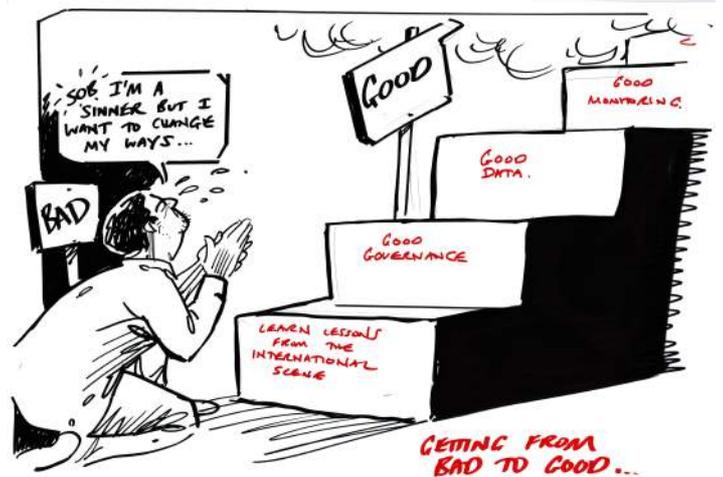
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