

# **SOUTH AFRICA'S ABS FRAMEWORK AND APPROACH TO DEALING WITH TK ASSOCIATED WITH INDIGENOUS BIOLOGICAL RESOURCES**

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**Date: 24-25 May 2018**

**Third ABS dialogue on key Challenges and Practical ways forward for the full implementation of the Nagoya Protocol and its contribution to the 2030 Sustainable Development Goals**

**Hotel Geneve, Mexico City**



**Biodiversity and Conservation**

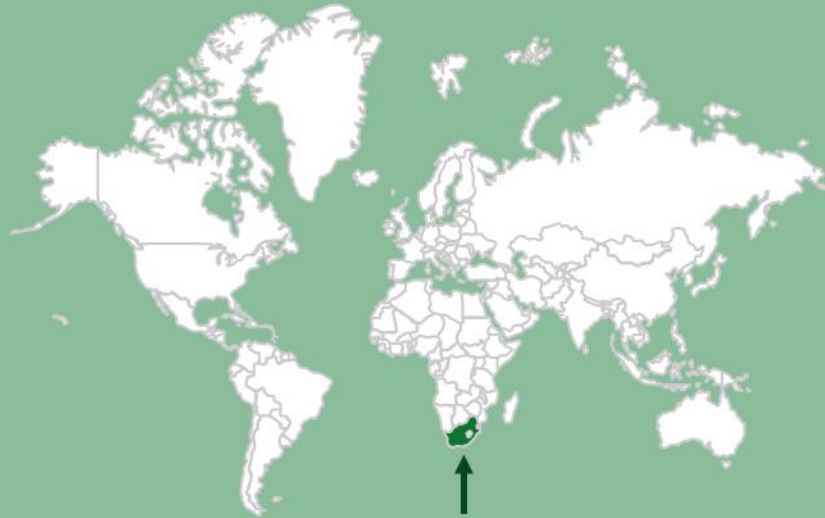


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# SOUTH AFRICAN BIODIVERSITY

3<sup>rd</sup> most biodiverse country in the world



South Africa

2% of the  
world's land area

7% of the  
world's reptiles,  
birds and  
mammals



10% of the  
world's plants



15% of the  
world's coastal  
marine species



# SOUTH AFRICAN BIODIVERSITY

- One of South Africa's greatest assets.
- Rich in Indigenous Biological Resources and cultural diversity.
- Rich with Traditional Knowledge on properties of plants, seeds, algae & other IBRs.
- SA's BRs & TK is desired by non-commercial & commercial sectors to develop new scientific information / commercial products.



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# RELEVANT FRAMEWORK LEGISLATION IN SOUTH AFRICA



## Ratification

02 November 1995

10 January 2013

Constitutional mandate

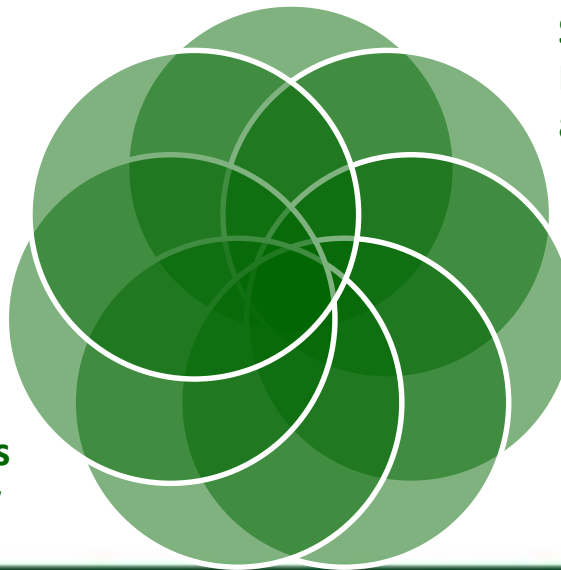
Constitutional Concurrent  
Mandate- 9 x Provincial  
Ordinance

White Paper on Conservation &  
Sustainable Use of South Africa's  
Biodiversity of 1997-  
administered by DEA

NEMA (1998), NEMBA  
(2004), BABS Regulations  
(2008 – amendments 2015),  
TOPS, CITES- administered  
by DEA

Patent Amendment Act (2005)-  
administered by DTI

Indigenous Knowledge Systems  
Policy (2004) -administered by  
DST



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# OVERALL POLICY OBJECTIVES

1) To redress the injustice of the past in order to achieve socio-economic development goals ~ ***fair & equitable benefits sharing.***

2) To provide regulatory framework for bioprospecting / biotrade activities ~ attain conservation & sustainable utilization of IBRs ~ ***Permitting System.***

3) To provide obligatory requirements to the regulated sectors to recognize existing TK on the useful properties of IBRs ~ ***Benefit Sharing Agreements.***

4) To provide obligatory requirements to the regulated sectors to seek permission from the land owners to access/collect IBRs ~ ***Material Transfer Agreements & Benefit Sharing Agreements.***

5) To implement international regulatory obligations adopted by South Africa ~ ***CBD & Nagoya Protocol on ABS***

# NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (OBJECTIVES)

**Provides for, amongst other:**

- The management & conservation of biodiversity within South Africa;
- The use of IBRs in a sustainable manner; and
- The fair & equitable sharing of benefits arising from the use of IBRs & associated TK.



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# NEMBA CHAPTER 6 (PURPOSE)

Provides a framework for:

- The regulation of bioprospecting involving IBRs;
- The regulation of export from the Republic of IBRs for purposes of bioprospecting & non-commercial research;
- The fair & equitable sharing of benefits arising from bioprospecting involving utilization of IBRs & associated TK; and
- South Africa's IBRs to be developed & utilized in an ecologically sustainable manner while promoting social & economic development, in particular in the areas where the IBRs & associated TK are accessed.



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# NEMBA CHAPTER 6 (SCOPE OF IBRs)

- Plants
- Animals
- Microorganisms
- Derivatives
- Genetic Resources
- Genetic Information
- Genetic materials



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# WHO MAY APPLY FOR A PERMIT OR NOTIFY

- A juristic person registered in terms of SA law.
- A natural person, who is a SA citizen or a permanent resident of SA.
- A non-juristic or natural person jointly with a juristic or natural person in terms of SA law.



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# PERMITTING PROCESS

## 1. Discovery phase

- Notification of the Minister (nationally)
- Discovery Phase Export permit (internationally)

## 2. Commercialisation phase

- Biotrade permit (nationally & internationally)
- Bioprospecting permit (nationally & internationally)
- Integrated biotrade & bioprospecting permit (nationally & internationally)

## 3. Any other kind of Research

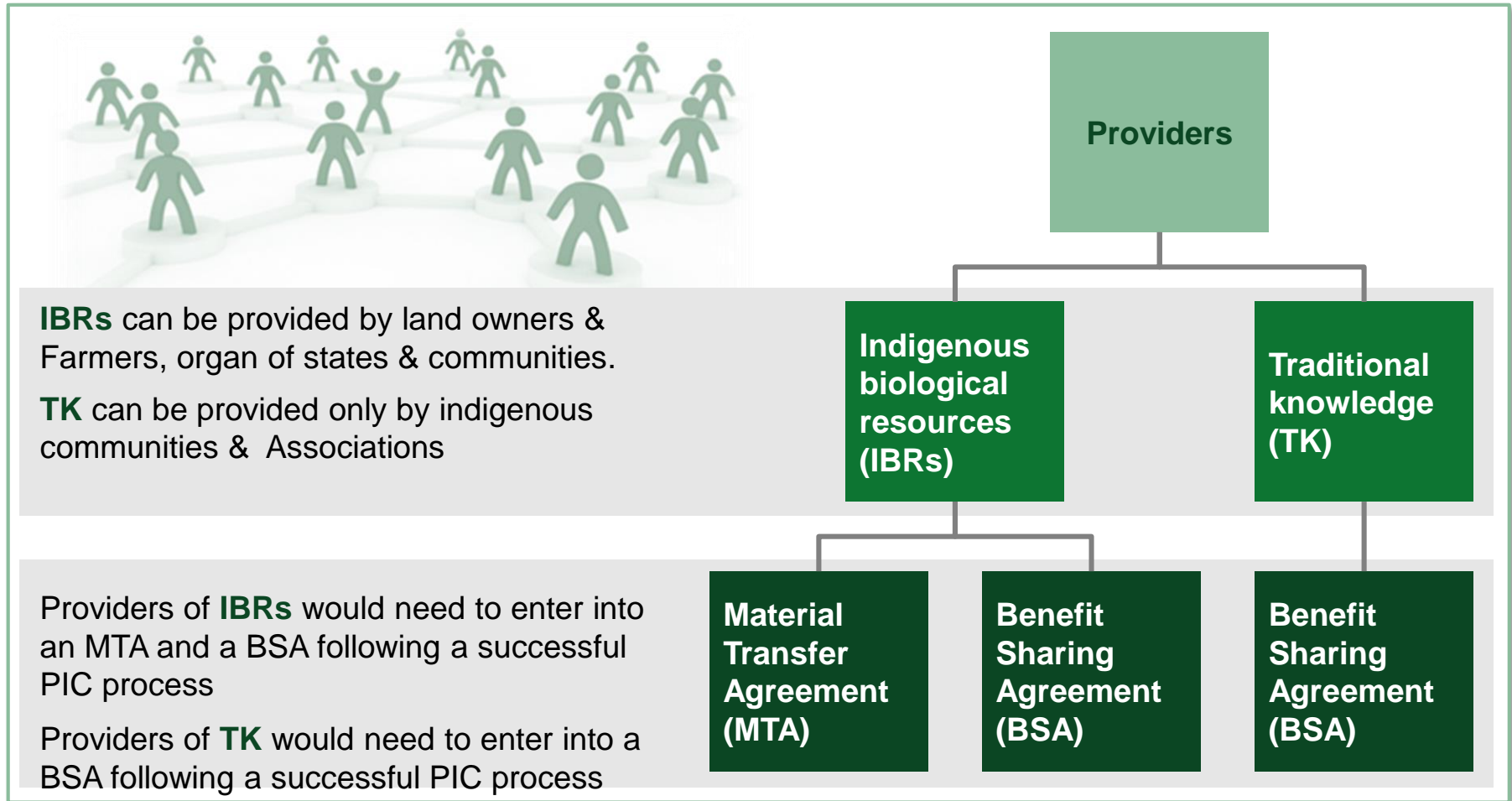
- Export permit for research other than bioprospecting (internationally)



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# PROTECTION OF RIGHTS OF PROVIDERS OF ACCESS TO IBSs & TK THROUGH MTA & BSA REQUIREMENTS



# IDENTIFICATION OF TK HOLDERS

## Medium to Long term methods:

- National Recordal System by the Department of Science and Technology

## Interim methods:

- The following information points:
  - Medical Research Council website
  - SANBI website
- Desktop Research (Publications, Journals)
- Support from Government (DEA) for the identification of the TK holder.



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# FLOW CHART OF ABS PROCEDURE

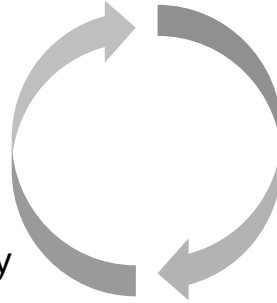
## Dept. of Environment Affairs

Bioprospecting Trust  
Fund/ Suspense  
Account

Issuing Authority  
(Minister)

Complete Permit Application  
form for:

- Commercialisation phase  
Bioprospecting
- Biotrade
- Export of IBR for Discovery  
phase bioprospecting



Grant Permit

Approve BSA &/ or MTA

Applicant

Benefit Sharing

Submit permit application, BSA  
&/or MTA

Obtain Prior Informed  
Consent, negotiate & Sign  
BSA &/or MTA



Provider Access to  
IBR/ Associated TK

Benefits paid



# CURRENT STATUS OF PERMIT ISSUED

- To date 56 permits issued
  - 23 are bioprospecting permits;
  - 20 are biotrade permits;
  - 13 are integrated biotrade & bioprospecting permits.
- Majority of these permits are for Cosmetic industry.



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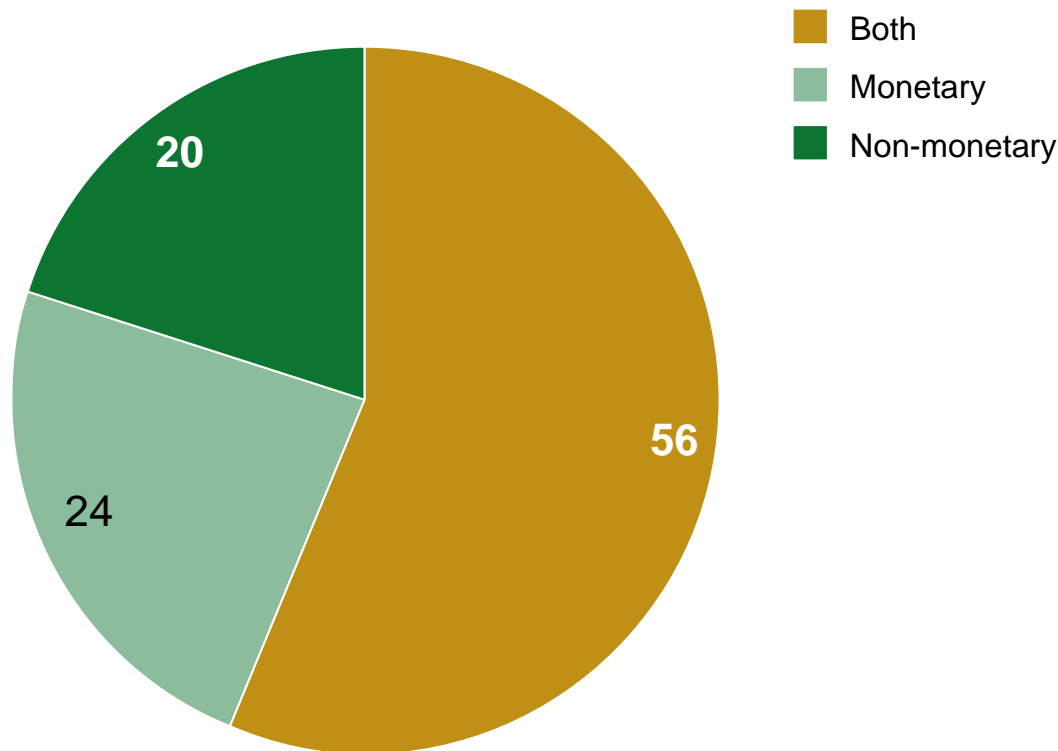
# Monetary & Non-Monetary Benefits

- To date approximately 93 Benefit Sharing Agreements have been Approved
- Permit applicants are open to a variety of benefit sharing options which range from **Short-Medium- Long Term Benefits**

Short Term	Medium Term	Long Term
Up-Front Payments	Access fees	License fees in case of commercialisation
Information	Milestone payments	Payment of Royalties
Species inventories	Environmental Education	Joint ventures
Access to collections	Training	Supply contracts
Acknowledgement of parties	Collaboration	Co-authorship of publications
	Strengthen capacity for technology transfer	Contribution to local economy
		Recognition and promotion of TK
		Livelihood benefits

# For permitted companies the bulk of entities use a combination of monetary and non-monetary benefits

Benefit type, percent



## Key take aways

1. Specific kinds of benefits are decided upon on a case by case basis by Parties
2. Monetary benefits ranges from 1-10%



# CURRENT STEPS

- Identification of TK holders through engagement with specific communities who have claims on TK associated with specific species. - Working with Dept of Science and Technology.
- Appointment of a panel of experts (Transactional advisors) to advise on appropriate benefit sharing model per species. (Case by case) - Currently working on the Aloe Ferox and Baobab Industries.
- Engagement with SADC countries on how benefits should be shared when accessing aTK shared between SA communities and within the SADC region. – a meeting this year



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# EXAMPLE: ROOIBOS and HONEYBUSH

- Conducted an ethnobotanical study on the origin of traditional knowledge associated with rooibos and honeybush species to make recommendations on the existence and legitimate ownership of traditional knowledge associated with rooibos and honeybush species in South Africa
- the outcome of the study revealed that there is **no evidence to dispute the communities' perceptions that TK rests with the communities where the species is endemic and/or with the Khoi and San people of South Africa.**
- Facilitated engagement with Communities as well as with the Rooibos Industry.



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# Challenges: ROOIBOS

- Convincing the industry of the outcome of the study
- Understanding the value chain of the resource
- Knowledge of the value of the resource in the value chain.
- Determining the type of benefit sharing to occur.
- Understanding who constitutes the community
- Determining the percentage of benefits that will go to the community where the resource occurs and likewise to the greater community
- Hosting meetings – costs, availability.



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# Positives: ROOIBOS

- Industry has a better understanding and respect for the community and their cultural heritage.
- Communities have a better understanding of the value chain and the value of the resource in the value chain.
- Development of an agreed code of conduct on dealing with media etc.
- Development of a unique model for sharing benefits through engagement – still in progress (agreed code of conduct)
- The process has paved the way for engagement with Honeybush communities and industry.



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# OTHER CASES

- Transboundary species and TK:
  - If accessed in SA: TK benefits are shared with SA TK communities.
  - If accessed elsewhere with intention to do bioprospecting in SA: Permit application with proof of IBR accessed legally from the country of origin – invoice, letters from the communities.
  - SA focal point to communicate with focal point from country of origin to determine whether the IBR was accessed legally.



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# CONCLUSION

- Communities need to be made aware of ABS legislation.
- Industry engagement with the communities (TK holders) is crucial to ensuring fair and equitable benefit sharing agreements.
- Governments role to facilitating engagements are crucial to ensuring communities are equipped to engage industry appropriately. (legal and financial advice).
- BSAs can only be fair and equitable if both parties have a clear understanding of the value chain and the value of the IBRs in their respective value chains and that industry acknowledges the value of TK and TK holders contribution to the value of the products.



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# CONCLUSION

- **IMPORTANT:**

Have to link implementation of the process to the overall policy objectives of the country, especially when it comes to TK.



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