

SOUTH AFRICA'S IMPLEMENTATION STATUS OF THE NAGOYA PROTOCOL ON ABS

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Venue: The Farm Inn, Pretoria



Biodiversity and Conservation



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OUTLINE

- Nagoya Protocol on ABS – Implementation Status Summary
- South Africa's Legal Framework for ABS Implementation
- Regulatory Approach
- Capacity Building & Awareness Raising Initiatives
- Lesson Learnt

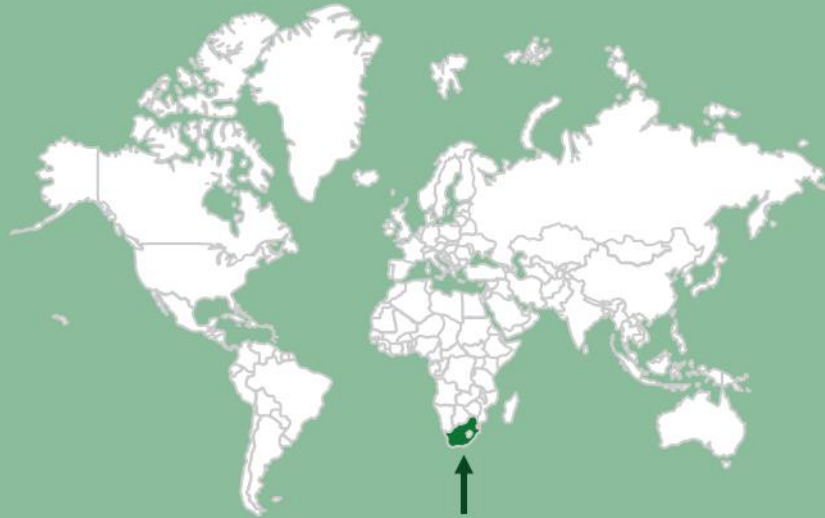


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SOUTH AFRICAN BIODIVERSITY

3rd 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 IBRs and cultural diversity.
- Rich with TK on the properties of plants, animals, seeds, algae & other IBRs.

SA's IBRs & associated TK is desired by both non-commercial & commercial sectors to develop new scientific information & commercial products.



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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***



NAGOYA PROTOCOL ON ABS IMPLEMENTATION

Nagoya Protocol Requirements

South African Situation

BECOMING A PARTY

1. Ratification of the CBD & Nagoya Protocol on ABS

- CBD - 02 November 2005
- NP - 10 January 2013

INSTITUTIONAL ARRANGEMENTS

2. National Focal Point

National Department of Environmental Affairs

3. Competent National Authority

National Department of Environmental Affairs supported by 9 x Provincial Departments of Environmental Affairs

4. Publishing Authority

National Department of Environmental Affairs

5. Checkpoints (N.B Operational but not yet formalised through the ABS Clearing House)

Patent Office, Ports of Entry & Exit, Provincial Permit Issuing Authorities, National Department of Environmental Affairs

NAGOYA PROTOCOL ON ABS IMPLEMENTATION

Nagoya Protocol Requirements

South African Situation

ABS CLEARING HOUSE

6. Publishing IRCC

24 IRCC Published

CHECKPOINT COMMUNIQUE FROM USER COUNTRIES

7. User Countries

1 communiqué received from Germany National Focal Point

CONTRIBUTION TO AICHI TARGETS

8. Target 16

By 2015, the Nagoya Protocol on ABS in force and operational, consistent with national legislation.

- Formed part of the 50 Countries required for its entry into force in 2014
- Developed national legislation in 2004 and started implementation in 2008
- Amended ABS Regulations in 2015

9. Target 18

By 2020, the TK, innovations & practices of ILCs relevant for the conservation & sustainable use of biodiversity, & their customary use of BRs, are respected, subject to national legislation & relevant international obligations, & fully integrated & reflected in the implementation of the Convention with the full & effective participation of ILCs at all relevant levels

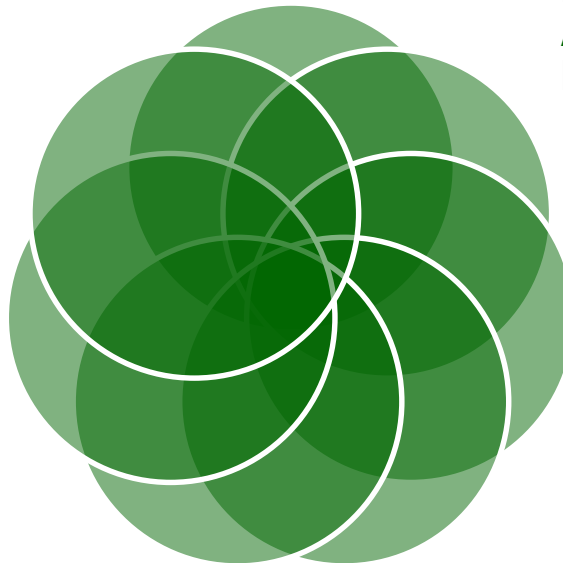
- National Recordal System of Indigenous Knowledge
- Indigenous Knowledge System Policy
- Protection, Promotion, Development & Management of Indigenous Knowledge Bill

RELEVANT FRAMEWORK LEGISLATION IN SOUTH AFRICA

Constitutional mandate-
Section 24

Constitutional Concurrent
Mandate - 9 x Provincial
Ordinance

Indigenous Knowledge Systems
Policy (2004) & Protection,
Promotion, Development &
Management of Indigenous
Knowledge Bill -administered by
DST



White Paper on Environmental
Management Policy of South
Africa of 1998- administered by
DEA

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

Patent Amendment Act (2005)-
administered by DTI



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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

N.B Visit South African National Biodiversity Institute website to confirm the names of species that are indigenous to South Africa ~ www.sanbi.org



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Biodiversity richness for all South Africans

HOME

ABOUT SANBI

CONTACT

EVENTS



*"Man's heart away from
nature becomes hard."*



site search...

GO

GARDENS

INFORMATION RESOURCES

EDUCATION

RESEARCH

BIODIVERSITY TOPICS

BIODIVERSITY PROGRAMMES

Advanced Site Search

Home | Information Resources | Infobases

-AAA+

INFOBASES

Overview

Infobases

SANBI in collaboration with partners, have developed a range of websites, databases and other electronic resources to provide biodiversity information. Some are more technical and others are designed with the general public in mind. These online resources include:



Biodiversity Advisor: The Biodiversity Advisor helps you use SANBI's online biodiversity information resources for making, planning and research.



SIBIS (SANBI's Integrated Biodiversity Information System) which provides threatened species information, distribution area checklists and general species details.



POSA (Plants of Southern Africa) A site which provides information about all SA plants, their distribution and current status.

NEMBA CHAPTER 6 (KEY PROVISIONS)

- Permit requirements (Section 81)
- Notification requirements (Section 81A)
- Protection of interests of Providers of Access to IBRs &/or Associated TK (Section 82)
- Benefit Sharing Agreement requirements (Section 83)
- Material Transfer Agreement requirements (Section 84)
- Establishment of Bioprospecting Trust Fund (Section 85)
- Exemptions (Section 86)
- Offences & Penalties (Section 98(2), 101 & 102)



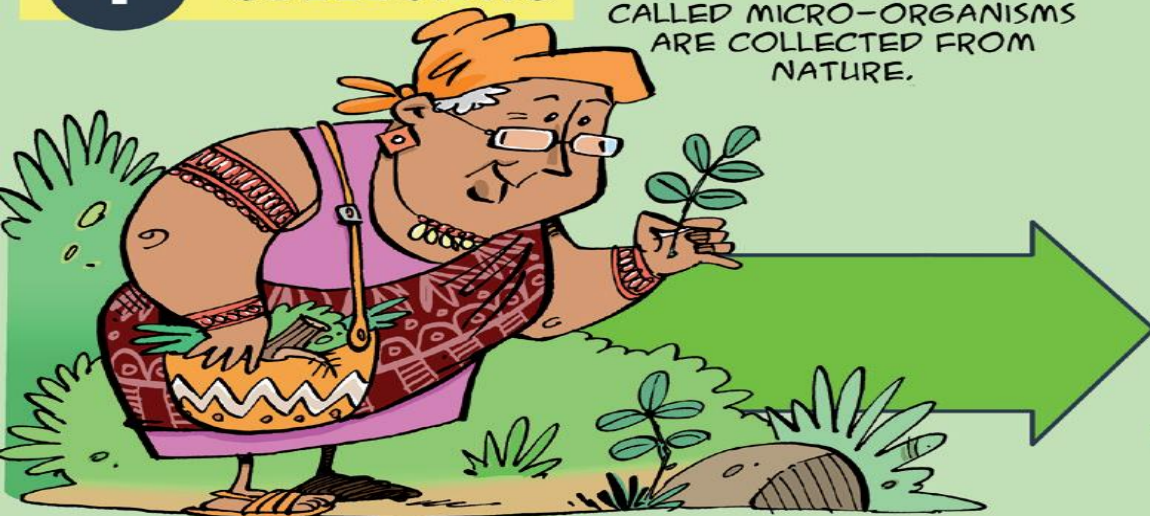
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DISCOVERY PHASE

1 COLLECTING

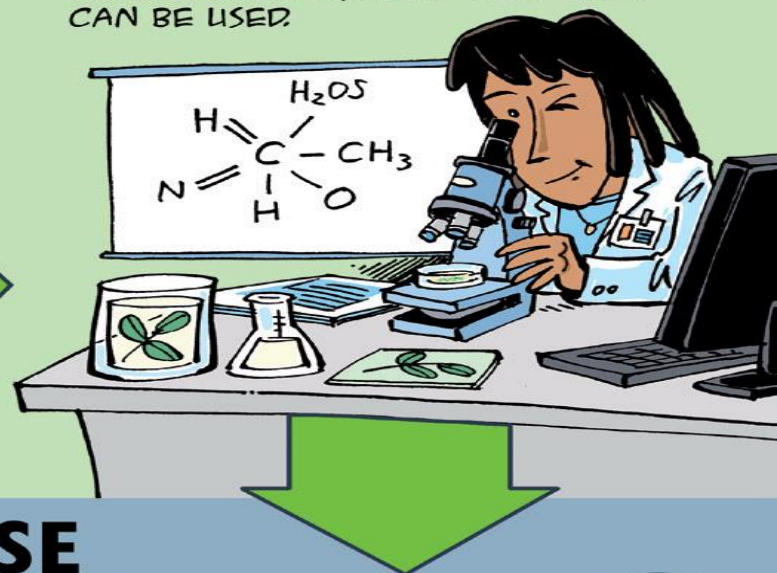
PLANTS, ANIMALS OR EVEN TINY CREATURES CALLED MICRO-ORGANISMS ARE COLLECTED FROM NATURE.



2

SCREENING

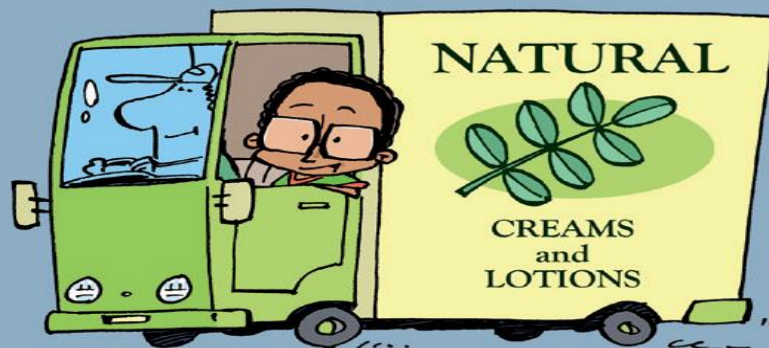
THESE ARE TAKEN TO A LABORATORY TO FIND OUT MORE ABOUT THEM, HOW THEY WORK AND HOW THEY CAN BE USED.



COMMERCIALISATION PHASE

4 PRODUCTION

FINALLY, A PRODUCT IS MADE TO BE SOLD. A PATENT CAN BE REGISTERED - WHICH MEANS THAT NO ONE ELSE IS ALLOWED TO SELL THE SAME PRODUCT FOR A PERIOD OF TIME.



DEVELOPMENT

3

IF USEFUL DISCOVERIES ARE MADE, SCIENTISTS WORK OUT HOW TO USE THEM IN A NEW WAY.



WHO MAY APPLY FOR A PERMIT

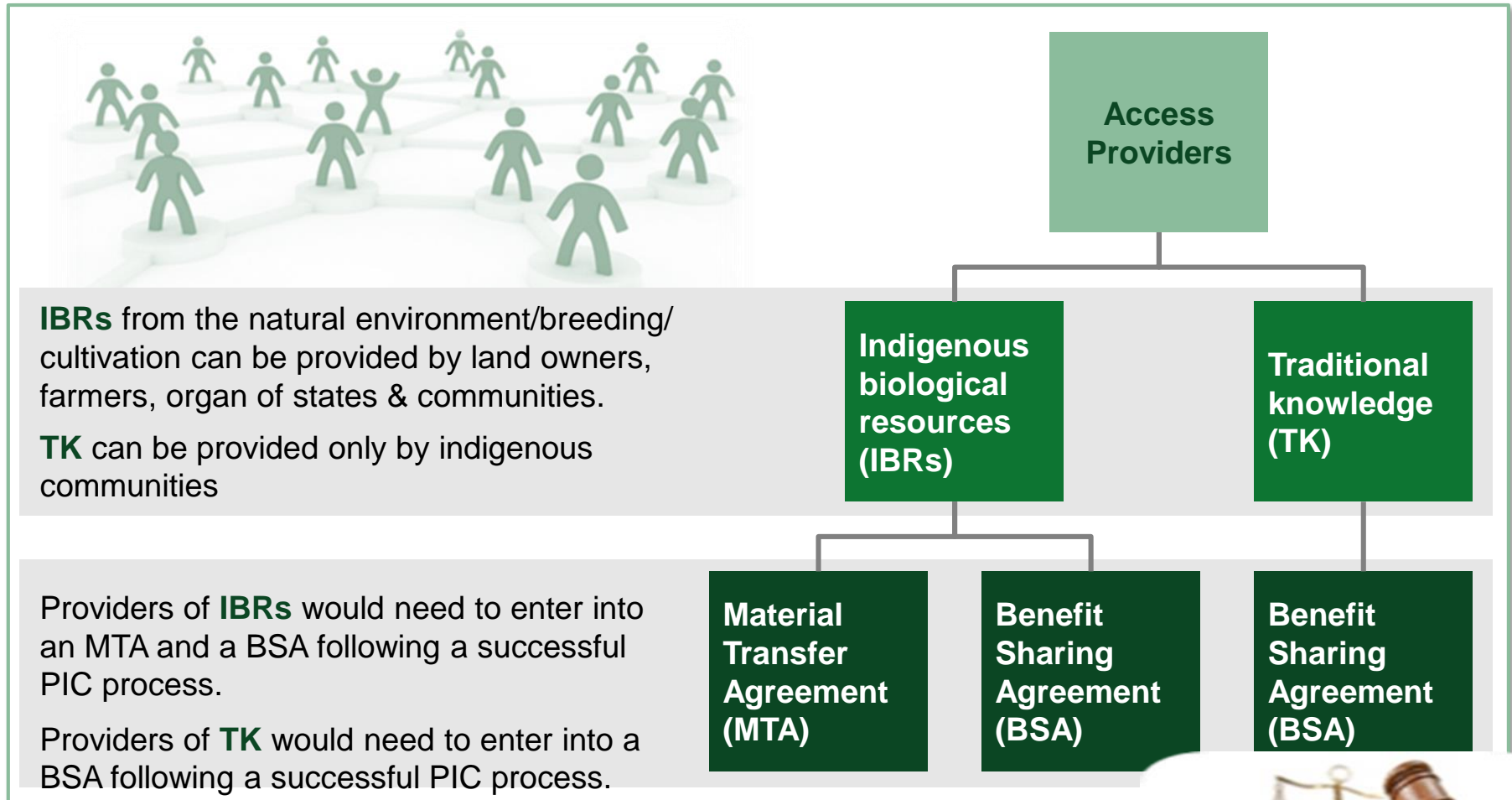
- A juristic person registered in terms of SA law.
- A natural person, who is a SA citizen or a permanent resident of SA.
- A non-juristic or natural person jointly with a juristic or natural person in terms of SA law.



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PRIOR INFORMED CONSENT REQUIREMENTS FOR ACCESS TO IBRs & ASSOCIATED TK



DECISION MAKING PROCESS ON PERMIT APPLICATIONS

- The Minister has established a National Bioprospecting Advisory Committee (BAC), to conduct technical evaluation of permit applications and also make recommendations to the Minister for a final decision.
- The BAC meet four times a year.
- Ad hoc BAC meetings are also convened, when necessary.

AUTHORISATION

A permit may only be issued if

- Rights of stakeholders (ILCs) are protected and PIC obtained
- MTA approved
- BSA approved
- Bioprospecting contribute to
 - Conservation of biodiversity
 - Economic development; or
 - Enhancing scientific knowledge and technical capacity



PERMIT ISSUING AUTHORITIES

Provincial
Departments
of
Environmental
Affairs (MECs)

National
Department of Environment Affairs
(Minister)

Non-
Commercial
Research

Discovery phase
bioprospecting

Commercialisation phase
bioprospecting

Export Permit
(outside RSA)

Notification
(in RSA)

Discovery
phase Export
permit
(outside RSA)

Bioprospecting
Permit
(in & outside RSA)

Biotrade
permit
(in & outside
RSA)

Integrated
Biotrade &
Bioprospecting
permit
(in & outside
RSA)

The permit application process begins long before the application is submitted to the Department of Environmental Affairs

IBR
TK

Indigenous Biological Resources
Traditional Knowledge

MTA
BSA

Material transfer agreement
Benefit-sharing agreement

Applicant must identify & disclose all information about the project to the identified access provider in order to obtain PIC

Negotiate and conclude BSA and MTA.
Complete permit application form

Applicant submits permit application documentation to DEA

DEA responds to applicant with acknowledgment of receipt

Bioprospecting Advisory Committee convenes and reviews application (**Convene quarterly or monthly**)

Application recommended for a final decision

Minister takes a Final decision and permit issued. If not issued, give written reason for her decision

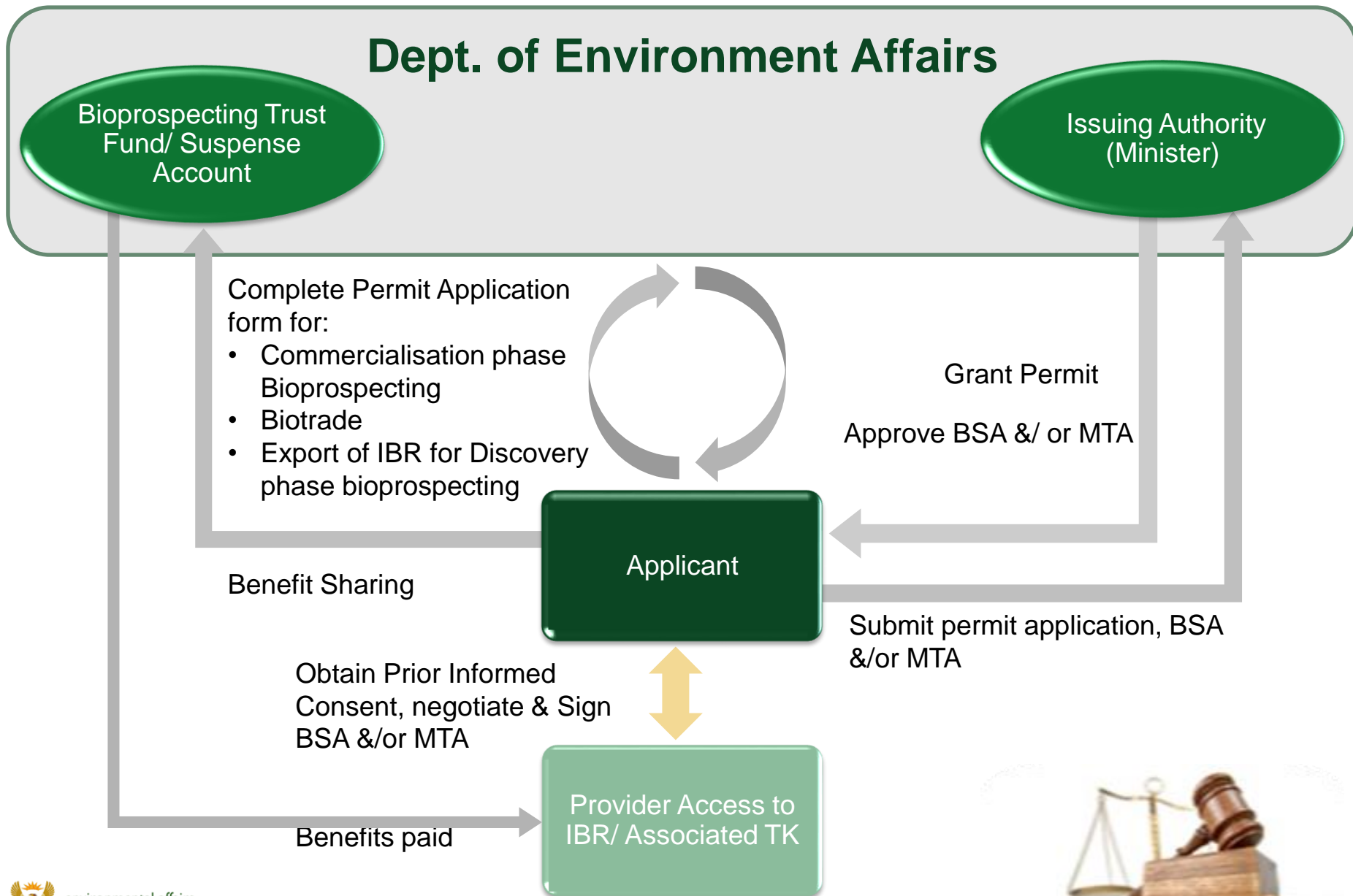
Application not recommended for a final decision

Application returned with comments

Option to adjust applications and re-submit



FLOW CHART OF ABS PROCEDURE

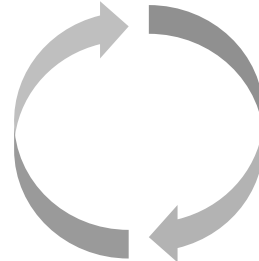


FLOW CHART OF ABS PROCEDURE (NON-COMMERCIAL)

Provincial Dept. of Environment Affairs

Issuing Authority (MECs)

Complete Permit
Application form for:
• Non-commercial
research



Grant Permit

Applicant

Submit permit application,
written Prior Informed
Consent

Obtain written Prior
Informed Consent from
land owner

Provider Access
to IBR



CURRENT STATUS OF PERMITS ISSUED

- To date, 94 permits issued
 - 88 are for commercialisation phase of bioprospecting
 - 6 are for discovery phase of bioprospecting conducted outside South Africa
 - Sectors involved are Cosmetic, Medicinal, Agricultural & Nutraceutical
- To date, 117 Notifications registered for discovery phase of bioprospecting conducted within South Africa
 - Sectors involved are Cosmetic, Medicinal and Nutraceutical



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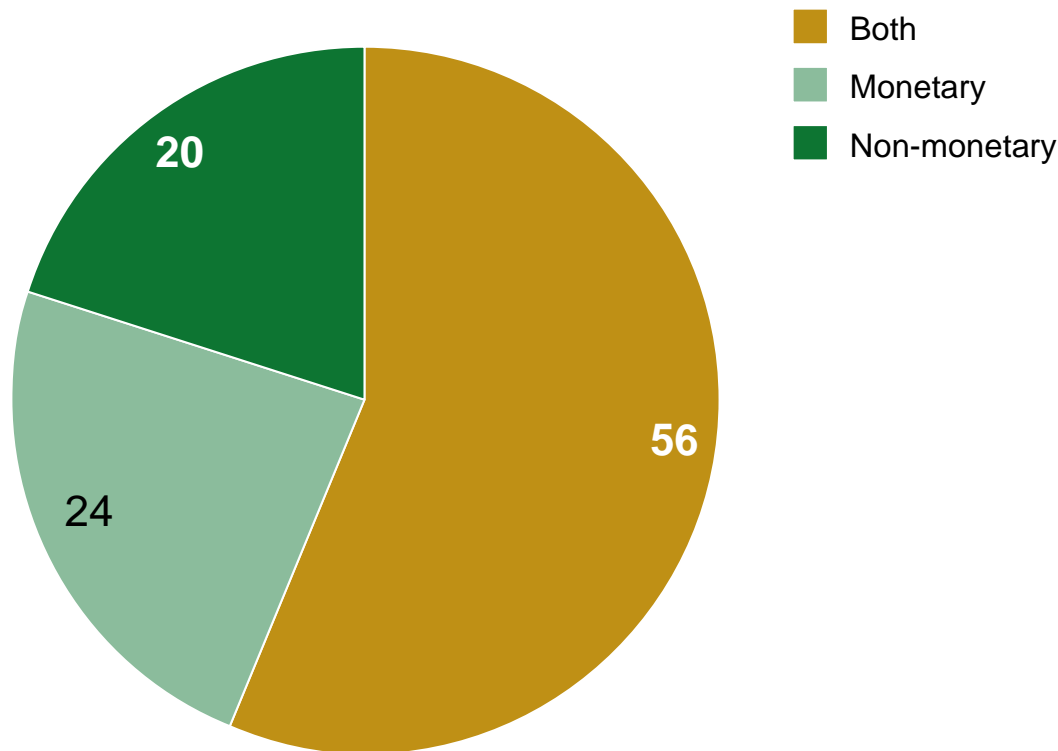
Monetary & Non-Monetary Benefits

- To date 140 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%



AWARENESS RAISING /CAPACITY BUILDING INITIATIVES

- Established an information portal housed within the DEA website serving as the National ABS Clearing House (*N.B provides access to information on: National Focal Point; Competent National Authority; Procedures for lodging permit applications for commercial and/or non-commercial research; Relevant forms and guideline on the completion of such forms; Guidelines and Fact Sheets; permit issued and legislation*).
- Several workshops, seminars, conference, media events and information sharing session are conducted annually/ bienially to raise awareness on Bioprospecting, Access and Benefit Sharing.



MEDIA EVENTS



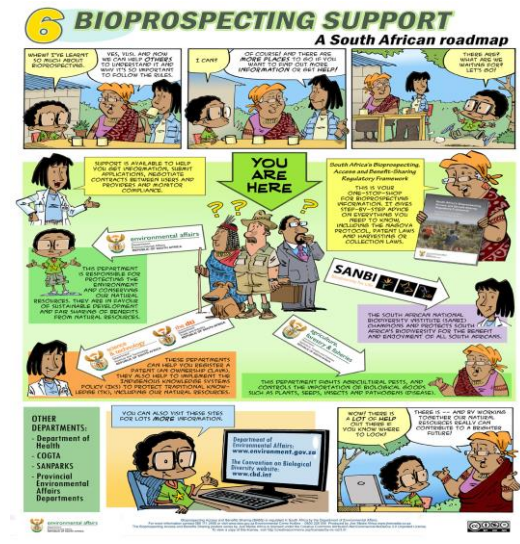
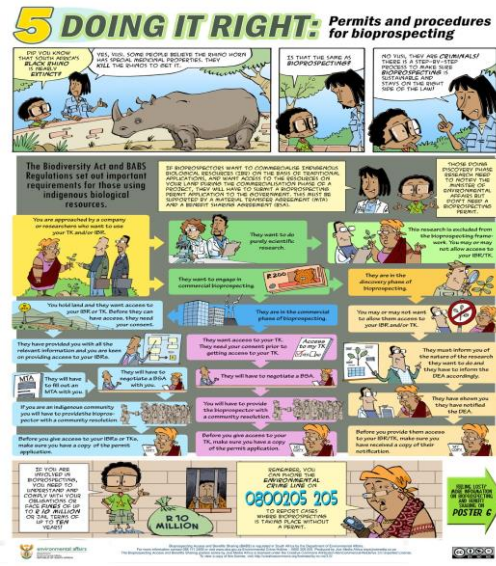
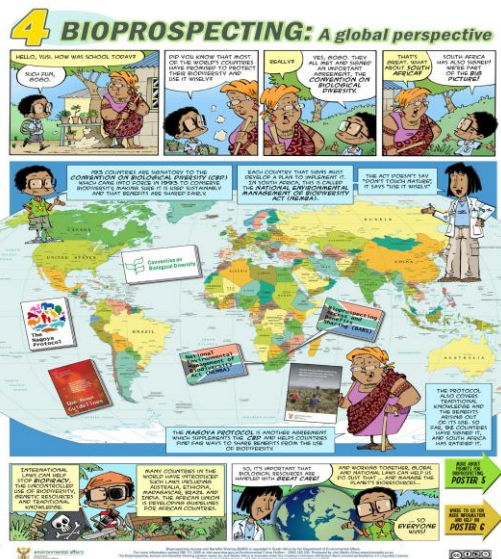
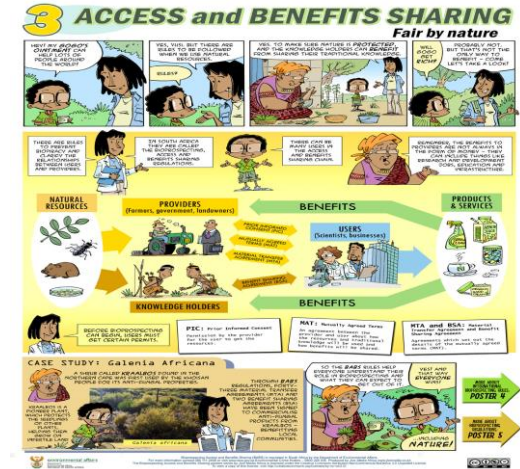
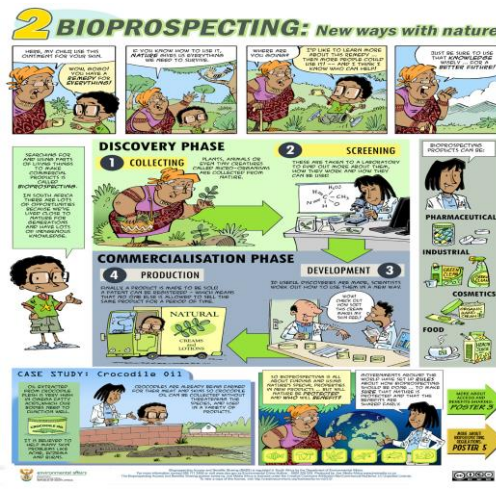
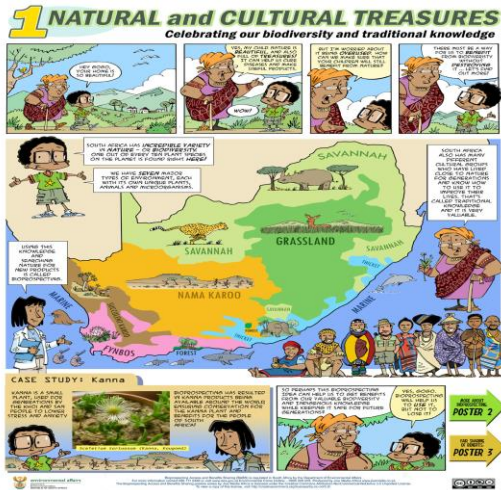
AWARENESS RAISING /CAPACITY BUILDING INITIATIVES

- Film on BABS (30 seconds animation)
- Published a comprehensive set of guidelines entitled “SA’s Bioprospecting, Access and Benefit Sharing Regulatory Framework: Guidelines for Providers, Users and Regulators”.
- Frequently Asked Questions on BABS
- BABS Regulations & Guidelines translated into all (eleven) SA official languages



AWARENESS RAISING /CAPACITY BUILDING INITIATIVES

Posters and articles on BABS:

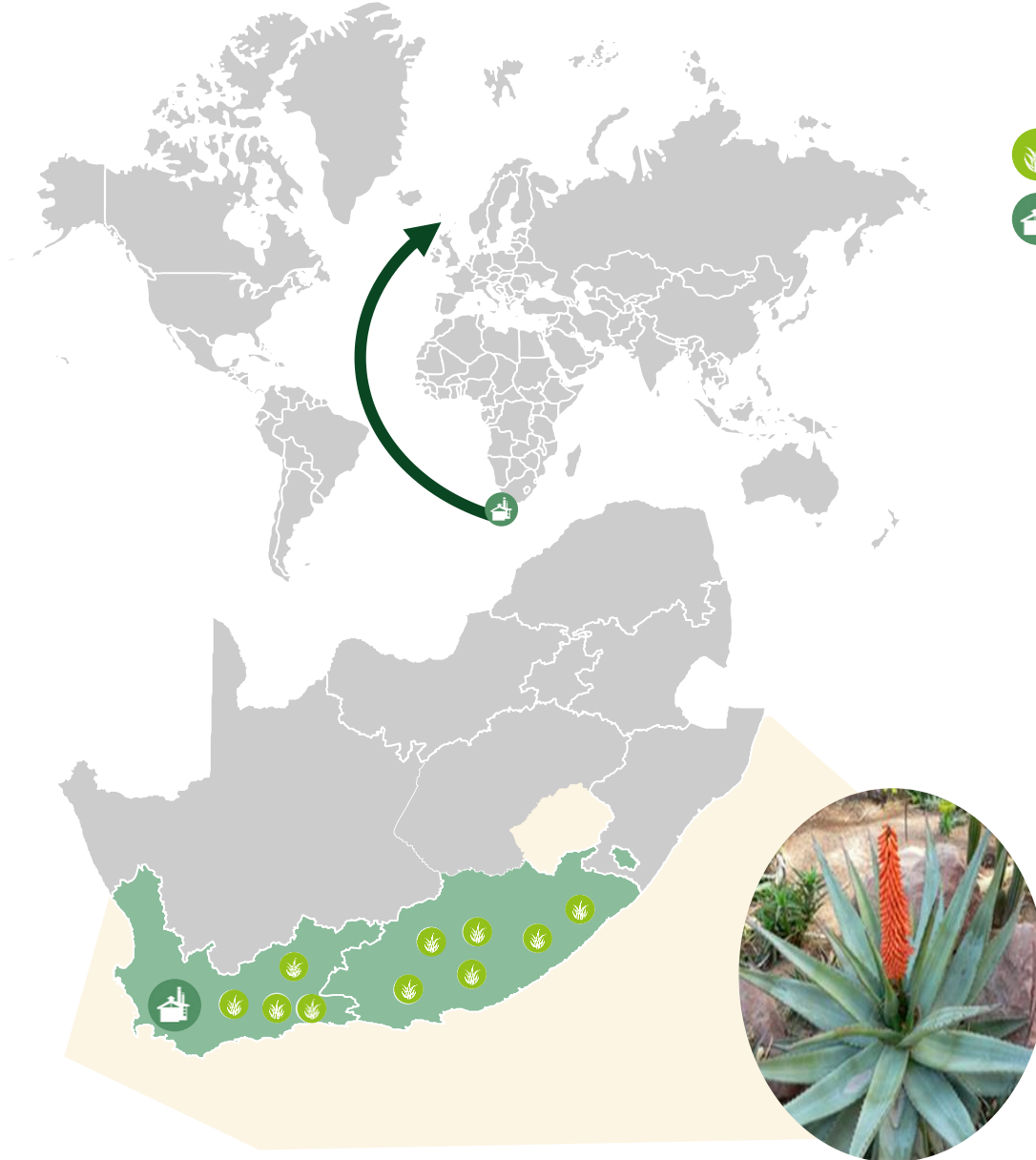


LESSONS LEARNT



- Biotrade plays a major role in facilitating access to IBRs by foreign companies which in turn contributes largely to unauthorized bioprospecting.
- A need for an international system to monitor & track the movement of IBRs to foreign R&D companies for commercial product development~
Hence, an urgent need for the user countries to designate effective checkpoints and also share information with the provider countries..



Case example: Biotrader in *Aloe ferox*



Clients in Europe

-  10 harvesting communities in 2 provinces
-  Primary processing plant (crystals powder or Lump) in SA

Key Challenge & Proposed Solution

- Limited or no benefit sharing from European based Industries with Communities
- EU member states to support SA by encouraging users of natural ingredients traded for bioprospecting to apply for permits & share benefits



NEXT STEPS

- Alignment of South African Legislation (NEMBA & BABS Regulations) with the Nagoya Protocol on ABS through amendments is underway.
- Improve efficiencies in the BABS Permitting Process through Electronic Permitting System.
- Improve provisions for benefit sharing obligations.
- Willing to continue to work with CNAs from the user countries in facilitating compliance with South African Legislations by their industries.



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