

## The Access and Benefit-Sharing Clearing-House (ABSCH)

### Interim National Report on the Implementation of the Nagoya Protocol (NR)

PUBLISHED: 09 JUL 2018

#### General information

##### Country

South Africa

##### 1. Title of this national report

**Interim national report on the implementation of the Nagoya Protocol**

##### 2. Contact person

###### PERSON

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#### Institutional structures for the implementation of the Protocol

##### 3. Has your country made the information available to the ABS Clearing-House as provided in Article 14.2?

Yes

##### 4. Has your country taken legislative, administrative and policy measures on ABS?

Yes

Please provide a summary of the main difficulties and challenges encountered in setting up these measures

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA) is the framework legislation which includes in Chapter 6 regulatory provisions on Bioprospecting, Access and Benefit Sharing.

Please provide further information

Chapter 6 of NEMBA was given effect by the Regulations on Bioprospecting, Access and Benefit Sharing (BABS Regulations) which entered into force on 1 April 2008. These Regulations have since been amended and came into force on 19 May 2015. The amended Regulations prescribe the notification process for the discovery phase of bioprospecting involving any indigenous genetic and biological resources contemplated in section 81A (2) of the Act and further prescribe the permit system set out in Chapter 7 of the Act insofar as that system applies to bioprospecting involving any indigenous genetic and biological resources or export from the Republic of any indigenous genetic and biological resources for the purpose of bioprospecting or any other kind of research. In addition, the amended Regulations set out the form and content of, and requirements and criteria for benefit-sharing and material transfer agreements and the administration process of the Bioprospecting Trust Fund.

##### 5. Has your country designated a national focal point as provided in Article 13?

Yes

Use the text entry to provide further information

The National Department of Environmental Affairs is a National Focal Point

The ABS Clearing-House unique ID containing relevant information

ABSCH-NFP-ZA-6492

##### 6. Has your country designated one or more competent national authorities as provided in Article 13?

Yes

Use the text entry to provide further information

The National Department of Environmental Affairs is the Competent National Authority

The ABS Clearing-House unique ID containing relevant information

7. Has your country made available to the ABS Clearing-House permits or their equivalent issued at the time of access as evidence of the decision to grant prior informed consent (PIC) and of the establishment of mutually agreed terms (MAT)?

Yes

Please provide a summary of the main difficulties and challenges encountered for making this information available

Insufficient human resource capacity.

Use the text entry to provide further information.

- South Africa has issued 56 permits since 2008 when the ABS law came into force.
- Copies of these permits are not available in the ABS Clearing House, because they are treated as Confidential Information in terms of the South African ABS law.

8. Has your country made available to the ABS Clearing-House permits or their equivalent for the constitution of an internationally recognized certificate of compliance in accordance with Article 17.2?

Yes

Use the text entry to provide further information

South Africa has published 9 IRCC

9. Has your country designated one or more checkpoints as provided in Article 17?

Yes

Use the text entry to provide further information

South Africa has the following check points which are operational but not yet formalised through the ABS Clearing House.

- Patent office,
- Ports of Entry & Exit,
- Provincial Permit Issuing Authorities, and
- National Department of Environmental Affairs

10. Additional information:

Please provide a summary of the main difficulties and challenges

Insufficient human resource capacity.

#### Legislative, administrative or policy measures on access and benefit-sharing (ABS measures)

##### Access to genetic resources (Article 6)

11. Is access to genetic resources subject to PIC as provided in Article 6.1?

Yes

12. Does your country have fair and non-arbitrary rules and procedures on accessing genetic resources as provided in Article 6.3 (b)?

Yes

Use the text entry to provide further information

The BABS Regulations provides for fair and non-arbitrary rules for people that want to access indigenous biological resources for bioprospecting in South Africa. The procedure and rules are the same to all persons. However, the Regulations provides that a permit application may only be submitted by;

- (a) a natural person registered in terms of South African law;
- (b) a natural person, who is a South African citizen or permanent resident of South Africa; or
- (c) a juristic person that is not registered in terms of South African law or a natural person who is not a South African citizen or permanent resident of South Africa, if that juristic person or foreign national applies jointly with juristic or natural person referred to in paragraph (a) or (b) above

13. Does your country provide information on how to apply for PIC as provided in Article 6.3(c)?

Yes

Use the text entry to provide further information

The BABS Regulations provides for clear information on how to apply for PIC as provided in Article 6.3(c). Section 82 of the Act states that the applicant must disclosed all material information relating to the bioprospecting to the relevant stakeholders and on the basis of that disclosure, has obtained prior consent of the stakeholder to use any of the stakeholder's knowledge of or discoveries about the indigenous biological resources for the proposed bioprospecting. Further, the applicant and stakeholder involved must negotiate and conclude material transfer agreement and benefit sharing agreement.

14. Does your country provide for a clear and transparent written decision by a competent national authority as provided in Article 6.3 (d)?

Yes

15. Does your country provide for the issuance at the time of access of a permit or its equivalent as provided in Article 6.3 (e)?

Yes

Use the text entry to provide further information

South Africa's legislative framework provides for the issuance of permit for access and utilisation of the indigenous biological resources for bioprospecting. Section 81 of the Act, provides for permit requirements when one is engaged in commercialisation phase of bioprospecting involving any indigenous biological resources for the purpose of bioprospecting or any other kind of research.

16. Please provide the number of permits or their equivalents made available through the ABS-Clearing-House since the entry into force of the Protocol for your country.

0

Use the text entry to provide further information

Copies of these permits are not available in the ABS Clearing House, because they are treated as Confidential Information in terms of the South African ABS law

17. Does your country have rules and procedures for requiring and establishing MAT as provided in Article 6.3 (g)?

Yes

Use the text entry to provide further information

The Act and Regulations require the establishment of MAT in the form of material transfer agreement and benefit sharing agreement. Section 82, 83, 84 of the Act and regulations 38 & 39 of the Regulations states that benefit sharing agreement which provides for the sharing of the benefits derived from bioprospecting involving the indigenous biological resources or associated traditional knowledge must be concluded by the applicant and the stakeholder.

18. Benefits received since entry into force of the Protocol for your country from the utilization of:

Genetic resources

Yes

Monetary benefits

Yes

Monetary benefits: More than two million rands has been paid to the stakeholders providing access to Genetic Resources.

Non-monetary benefits

Yes

Non-monetary benefits: various community development projects implemented.

Traditional knowledge associated with genetic resources

Yes

Monetary benefits

Yes

Monetary benefits: More than four million rands has been paid to the stakeholders providing access to traditional knowledge associated with genetic resources.

Non-monetary benefits

Yes

Non-monetary benefits: various community development projects implemented

19. Additional information:

No additional information provided

Fair and equitable benefit-sharing (Article 5)

20. Has your country taken legislative, administrative or policy measures to implement Article 5.1 that provides that benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization are shared with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention as provided in Article 5.3?

Yes

Use the text entry to provide further information

The Act as well as the associated BABS Regulations provides for everyone in the value chain involved in the bioprospecting activities to obtain bioprospecting permit. As part of the permit application process, the application must be submitted together with material transfer agreement and benefit sharing agreement concluded with Traditional Knowledge holders as well as stakeholders providing access to the genetic resources. This is to ensure that benefits arising from the commercialisation and the subsequent user/application are shared with the provider country through stakeholders involved.

21. Has your country taken legislative, administrative or policy measures with the aim of ensuring that the benefits from the utilization of genetic resources held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared with the indigenous and local communities concerned as provided in Article 5.2?

Yes

Use the text entry to provide further information

Section 82 of the Act requires the issuing authority considering the application for permit to protect any interests of the following stakeholders may have in the proposed bioprospecting project. Stakeholders in this regards refers to:

a) A person, including organ of state or community providing or giving access to the indigenous biological resource

Further, the applicant and the stakeholders have to enter into benefit sharing agreement and material transfer agreement that provides for sharing by stakeholders in any future benefits that may be derived from the relevant bioprospecting in accordance with section 82(2).

22. Has your country taken legislative, administrative or policy measures in order that benefits arising from the utilization of traditional knowledge associated with genetic resources are shared with indigenous and local communities holding such knowledge as provided in Article 5.5?

Yes

Use the text entry to provide further information

Section 82 of the Act requires the issuing authority considering the application for permit in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project. Stakeholders in this regards refers to: indigenous community-

i) whose traditional uses of the indigenous biological resources to which the application relates have initiated/or will contribute to or form part of the proposed bioprospecting.  
ii) whose knowledge of or discoveries about indigenous biological resource to which application relates are to be used for proposed bioprospecting.

Further, the applicant and the stakeholders have to enter into benefit sharing agreement and material transfer agreement that provides for sharing by stakeholders in any future benefits that may be derived from the relevant bioprospecting in accordance with section 82(3).

The benefit sharing agreement requirements provide for two categories of benefits sharing with the indigenous and local communities namely;

1. For access to the indigenous biological resources utilised for bioprospecting; and
2. For access to traditional knowledge whose uses on the indigenous biological resources have initiated or contributed to or form part of the proposed bioprospecting.

Compliance with domestic legislation or regulatory requirements on ABS (Article 15 and Article 16) and monitoring the utilization of genetic resources (Article 17)

24. Has your country taken appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within your jurisdiction have been accessed in accordance with PIC and that MAT have been established as required by the domestic ABS legislation or regulatory requirements of the other Party as provided in Article 15.1?

No

Use the text entry to provide further information

The Act is currently undergoing amendment process to include legislative measures to ensure that genetic resources utilised with jurisdiction have been accessed in accordance with PIC and that MAT have been established in accordance with Article 15.1 of the Nagoya Protocol.

However, if the issuing authority comes across a situation where a South African based Institution want to utilise genetic resources accessed from other Countries within South African jurisdiction- they always request for documentation to confirm compliance with the provider country's regulatory requirements. Further, the National Focal Point on ABS of the provider country is notified by the South African National Focal Point on ABS.

25. Has your country taken appropriate, effective and proportionate legislative, administrative or policy measures to provide that traditional knowledge associated with genetic resources utilized within your jurisdiction has been accessed in accordance with PIC or approval and involvement of indigenous and local communities and that MAT have been established as required by the domestic ABS legislation or regulatory requirements of the other Party where such indigenous and local communities are located as provided in Article 16.1?

No

Use the text entry to provide further information

The Act is currently undergoing amendment process to include legislative measures to ensure that traditional knowledge associated with genetic resources utilised with jurisdiction have been accessed in accordance with PIC and that MAT have been established in accordance with Article 16.1 of the Nagoya Protocol.

However, if the issuing authority comes across a situation where a South African based Institution want to utilise traditional knowledge associated with genetic resources accessed from other Countries within South African jurisdiction- they always request for documentation to confirm compliance with the provider country's regulatory requirements. Further, the National Focal Point on ABS of the provider country is notified by the South African National Focal Point on ABS.

26. Does your country require users of genetic resources to provide information related to PIC, to the source of the genetic resource, to the establishment of MAT and/or utilization of genetic resources at a designated checkpoint, as appropriate, as provided in Article 17.1 (a)(i) and (ii)?

Yes

Please provide further information

When indigenous biological resources is exported to other countries, the user should provide permit as proof of compliance to the provider country. i.e at Port of entry and Port of exit.

Has your country taken measures to address situations of non-compliance?

Yes

Please provide further information

If the user does not provide proof of compliance with the regulatory requirements of the provider country, the National Focal point alerts the National Focal Point of the provider country about the resources that are being imported into South Africa for them to take the necessary action.

Use the text entry to provide further information

Further, the Patents Amendment Act of 2015, has been amended to include section "(3A) Every applicant who lodges an application for a patent accompanied by a complete specification shall, before acceptance of the application, lodge with the registrar a statement in the prescribed manner stating whether or not the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use. (3B) The registrar shall call upon the applicant to furnish proof in the prescribed manner as to his or her title or authority to make use of the indigenous biological resource, genetic resource, or of the traditional knowledge or use if an applicant lodges a statement that acknowledges that the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use."

27. Has your country provided the information referred to in Article 17.1 (a)(i) to relevant national authorities, to the Party providing PIC and to the ABS Clearing-House as provided in Article 17.1 (a)(iii)?

Yes

Has your country made use of the checkpoint communique?

No

28. Has your country taken measures to encourage users and providers to include provisions in MAT to share information on the implementation of such terms as provided in Article 17.1(b)?

No

Use the text entry to provide further information

The National Environmental Management:Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations were promulgated before the coming into force of the Nagoya Protocol; however; the legislation is currently going through amendment, which would also result in the amendment of the Regulations and the provision to encourage users and providers to include provisions in MAT to share information on the implementation of such terms as provided under Article 17.1 (b) would be included.

29. Is your country encouraging the use of cost-effective communication tools and systems as provided in Article 17.1 (c)?

No

Use the text entry to provide further information

The National Environmental Management:Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations were promulgated before the coming into force of the Nagoya Protocol; however; the legislation is currently going through amendment, which would also result in the amendment of the Regulations and the provision to encourage the use of cost-effective communication tools and systems as provided under Article 17.1 (c) would be included.

30. Additional information:

No additional information provided

#### Compliance with mutually agreed terms (MAT) (Article 18)

31. Is your country encouraging the inclusion of provisions in MAT to cover dispute resolution as provided in Article 18.1 (a) (b) and (c)?

No

Use the text entry to provide further information

The National Environmental Management:Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations were promulgated before the coming into force of the Nagoya Protocol; however; the legislation is currently going through amendment, which would also result in the amendment of the Regulations and the provision to cover dispute resolution as provided under Article 18.1 would be included.

32. Does your country ensure that opportunity to seek recourse is available under your legal systems in cases of disputes arising from MAT as provided in Article 18.2?

Yes

Use the text entry to provide further information

The scope of offences provided in the BABS Regulations includes disputes arising from MAT as provided in Article 18.2. However, a more effective legal systems is under development through the current amendment of the National Environmental Management: Biodiversity Act, 2004 ( Act No.10 of 2004) and its BABS Regulations.

33. Has your country taken measures regarding the following points as provided in Article 18.3?  
Access to justice?

Yes

Please provide further information

The scope of offences provided in the BABS Regulations includes disputes arising from MAT as provided in Article 18.2 which is also supported by access to justice at national level. However, a more effective legal systems is under development through the current

amendment of the National Environmental Management: Biodiversity Act, 2004 ( Act No.10 of 2004) and its BABS Regulations to deal with issues of access to justice in a foreign country.

Utilization of mechanisms regarding mutual recognition and enforcement of foreign judgements and arbitral awards?

No

Please provide further information

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations were promulgated before the coming into force of the Nagoya Protocol; however; the legislation is currently going through amendment, which would also result in the amendment of the Regulations and the provision to provide for the utilization of mechanism regarding mutual recognition and enforcement of foreign judgements and arbitral awards.

34. Additional information:

No additional information provided

#### Special considerations (Article 8)

35. In the development and implementation of ABS legislation or regulatory requirements has your country:

Created conditions to promote and encourage research which contributes to the conservation and sustainable use of biodiversity including through simplified measures on access for non-commercial research purposes, taking into account the need to address a change of intent for such research as provided in Article 8(a)?

Yes

Please provide further information

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations includes provisions for simplified measures on access for non-commercial research purposes.

Paid due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health as provided in Article 8(b)?

No

Please provide further information

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations were promulgated before the coming into force of the Nagoya Protocol; however; the legislation is currently going through amendment, which would also result in the amendment of the Regulations and includes provision to cover cases of present or imminent emergencies would be included.

Taken into consideration the need for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits arising out of the use of such genetic resources, including access to affordable treatments by those in need, especially, in developing countries as provided in Article 8(b)?

No

Please provide further information

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and related BABS Regulations were promulgated before the coming into force of the Nagoya Protocol; however; the legislation is currently going through amendment, which would also result in the amendment of the Regulations and includes provisions for expeditious access to genetic resources and expeditious fair and equitable sharing of benefits.

Considered the importance of genetic resources for food and agriculture and their special role for food security as provided in Article 8 (c)?

Yes

Please provide further information

The national strategic documents have already considered the importance of genetic resources for food and agriculture and their special role for food security.

36. Additional information:

No additional information provided

#### Provisions related to indigenous and local communities (Articles 6, 7 and 12)

37. Does your country have indigenous and local communities?

Yes

38. Do indigenous and local communities have the established right to grant access to genetic resources according to your domestic law? (Article 6.2)

Yes

Please provide further information and reference to the domestic law establishing rights of indigenous and local communities to grant access to genetic resources

The National Environmental Management: Biodiversity Act of 2004 provides for the following:  
Section 82. (1) states that "Before a permit referred to in section 81(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:  
(a) A person, including any organ of state or community, providing or giving access to the indigenous biological resources to which

the application relates; and

(b) an indigenous community—

(i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or  
(ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.

Bioprospecting, Access and Benefit Sharing Amendment Regulations of 2015 provides for the following:

Section 38. (1) states that “Parties to a material transfer agreement are the applicant and the stakeholder or stakeholders contemplated in section 82(1) (a) of the Act for the provision of access to the indigenous genetic and biological resources to which the application for any of the permits relates.”

Does your country have measures in place with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained as provided in Article 6.2?

Yes

Please provide further information

Section 82 (2) of NEMBA states that “If a stakeholder has an interest as set out in subsection (1)(a), an issuing authority may issue a permit only if—

(a) the applicant has disclosed all material information relating to the relevant bioprospecting to the stakeholder and on the basis of that disclosure has obtained the prior consent of the stakeholder for the provision of or access to such resources;

Section 38 (4) of the BABS Amendment Regulations states that “If the stakeholder, that is party to the material transfer agreement, is a community, a community resolution authorizing a representative to enter into material transfer agreement, must be in the prescribed format set out in Annexure 13 to the Regulations.

Has your country set out criteria and/or process for obtaining prior informed consent or approval and involvement of indigenous and local communities for access to genetic resources in Article 6.3(f)?

Yes

Please provide further information

The process is provided for in NEMBA and the BABS Regulations. The Regulations further set criteria for involving the indigenous communities. A Material Transfer Agreement is concluded for access to the material and if the party giving access to the material is a community, a Community Resolution as prescribed in the Regulations is required.

39. In accordance with domestic law has your country taken measures with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities within your country is accessed with the PIC or approval and involvement of these indigenous and local communities and that MAT have been established as provided in Article 7?

Yes

Use the text entry to provide further information

Section 82. (1) of NEMBA states that “Before a permit referred to in section 81(1)(a) or (b) is issued, the issuing authority considering the application for the permit must in accordance with this section protect any interests any of the following stakeholders may have in the proposed bioprospecting project:

(b) an indigenous community—

(i) whose traditional uses of the indigenous biological resources to which the application relates have initiated or will contribute to or form part of the proposed bioprospecting; or

(ii) whose knowledge of or discoveries about the indigenous biological resources to which the application relates are to be used for the proposed bioprospecting.

40. In implementing the Protocol and in accordance with your domestic law, is your country taking into consideration indigenous and local communities’ customary laws, community protocols and procedures with respect to traditional knowledge associated with genetic resources as provided in Article 12.1?

Yes

Use the text entry to provide further information

As already indicated above, the representatives of local and indigenous communities cannot act on behalf of them without getting approval from the entire communities.

In addition, when engaging with indigenous and local communities, the point of entry will be through the Traditional Councils which comprises of the elders and Chief of the the community. South Africa through the Department of Environmental Affairs (DEA) also encourages the communities that do not have formal structures as yet to organise themselves. Other Departments like Science and Technology (DST) and Cooperative Governance and Traditional Affairs (COGTA) are also very involved in terms of ensuring that community protocols and customary laws are taken into consideration.

41. Has your country established mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations as provided in Article 12.2?

Yes

Use the text entry to provide further information

The NEMBA and the associated BABS Regulations are very clear in terms of the utilisation of traditional knowledge associated with the use of indigenous genetic and biological resources. The permitting system that has been put into place to further implement ABS in South Africa, sets out the criteria to be followed by potential users of traditional knowledge associated with the the genetic resources. As a result, no ABS permit can be issued without a Benefit Sharing Agreement concluded with the traditional knowledge holders. If the traditional knowledge holders are not yet identified, the DEA usually include a condition on the permit that should the relevant traditional knowledge holders be identified, the permit holder will have to conclude a Benefit Sharing Agreement with that community.

42. Is your country supporting the development by indigenous and local communities of the following tools as provided in Article 12.3?

Community protocols

Yes

Please provide further information on how your country is supporting the development of community protocols

The DEA provides support for the development of community protocols through awareness raising workshops, one on one engagements with communities when required.

Minimum requirements for mutually agreed terms

Yes

Please provide further information on how your country is supporting the development of minimum requirements mutually agreed terms

Minimum requirements for mutually agreed terms

The minimum requirements for mutually agreed terms is set out in the BABS Regulations. The Benefit Sharing Agreement format outlines the minimum terms that should be agreed upon by parties entering into an agreement. This requirements includes the following key areas amongst others:

- Sharing of benefits and the types of benefits to be shared
- Payments of benefits (When, where, how and if monetary how much will be paid)
- Review of the Benefit Sharing Agreement
- Third party transfer
- Breach and termination
- All parties outlined in the agreement, should agree to the terms of the agreement by signing.

Model contractual clauses

Yes

Please provide further information on how your country is supporting the development of model contractual clauses

The development of Model contractual clauses was taken into consideration during the development of the formats for permit application forms, benefit sharing agreement and material transfer agreements and it is still being taken into consideration as the Country continue to learn through its previous experiences, best practices and challenges faced.

The clauses in agreements mentioned above, are mostly generic but flexible and can be adapted to different kinds of users and providers. For example, the Benefit Sharing Agreement can either be concluded for access to the genetic material and this is mostly in instances where a company to company transaction is involved or where there is no traditional knowledge associated with the genetic resources. In instances where there is traditional knowledge, then the section of the agreement that deals with traditional knowledge will be completed.

In addition, with regards to the Material Transfer Agreement, the format provides for different access providers like the ones cultivating their own material, farming, breeding and also the format in which the genetic resources will be received whether extracts, leaves, stems, seeds, oil, crystals etc. Although the model contractual clauses used in all the forms can be adapted to suit different types of users and providers, they cannot be changed or any other model cannot be used except for the prescribed ones.

43. Has your country endeavoured not to restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among indigenous and local communities as provided in Article 12.4?

Yes

Use the text entry to provide further information

The DEA regulate the utilisation of indigenous genetic and biological resources for the purpose of research and commercial purposes and the utilisation of traditional knowledge associated with the use of the indigenous genetic and biological resources. The customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities is not restricted.

44. Additional information:

Please provide a summary of the main difficulties and challenges for putting measures in place in relation to traditional knowledge associated with genetic resources

South Africa's trajectory in protecting, developing and promoting indigenous knowledge commenced with the adoption of the historic White Paper on Conservation and Sustainable Use of South Africa's Biological Diversity and the Indigenous Knowledge Systems Policy, followed by the enactment of key pieces of legislation affirming the importance of indigenous knowledge. These include the Traditional Health Practitioners Act, Traditional Leadership Governance Framework, Access and Benefit Sharing Regulations, and amendments to Intellectual Property Laws to accommodate indigenous knowledge, amongst others.

The above measures that have been put into place to date with regards to the utilisation of traditional knowledge associated with the genetic resources have played a big role in the implementation of ABS in South Africa. Although, as a country, we are still not at the level where we want to in terms of issues relating to traditional knowledge, but so far there is good progress.

A sui generis legislation on the protection, promotion, development and management of indigenous knowledge system is under development. In addition, there is an ongoing initiative on documenting indigenous knowledge system through the National Recordal System.

Challenges:

- The different industries are interested in complying with the law but there are those users in the industries that still have resistance in terms of concluding benefit sharing agreements with traditional knowledge holders.
- There is also a human resource capacity issue because there is still so much to be done but the officials are not enough.

Contribution to conservation and sustainable use (Article 9)



45. Is your country encouraging users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and sustainable use of its components as provided in Article 9?

Yes

Use the text entry to provide further information

The BABS Regulations provides that the monetary benefits derived from such benefit sharing agreement may be utilised to support the following:

- a) Conservation of the indigenous genetic and biological resources;
- b) Support for further research on indigenous genetic and biological resources and traditional knowledge;
- c) Enhancement of the scientific knowledge and technical capacity to conserve, use and develop the indigenous genetic and biological resources;
- d) Any other activity to promote conservation, sustainable use and development of indigenous biological resources for the benefit of South Africa; or
- e) Improve livelihoods of the communities and enhancement of technical capacity of the communities or individuals involved.

46. Please indicate how the implementation of the Nagoya Protocol has contributed to conservation and sustainable use of biodiversity in your country:

- A national species management plan for Pelargonium species was developed
- A resource assessment for Aloe ferox species was undertaken
- A number of species utilised for ABS are being cultivated in order to reduce pressure on the wild population

47. Additional information:

Please provide a summary of the main difficulties and challenges

The current amendment of the National Environmental Management: Biodiversity Act, 2004 ( Act No. 10 of 2004) and its BABS Regulations will provide mandatory provisions to direct a portion of the benefits arising from the utilization of genetic resources towards the conservation of biological diversity and sustainable use of its components

#### Transboundary cooperation (Article 11)

48. Is your country endeavouring to cooperate, with the involvement of indigenous and local communities concerned, with a view to implementing the Protocol in instances where the same genetic resources are found in situ within the territory of more than one Party as provided in Article 11.1?

Yes

If your country has indigenous and local communities, please provide further detail of their involvement

The current amendment of the National Environmental Management: Biodiversity Act, 2004 ( Act No. 10 of 2004) and its BABS Regulations will provide mechanism to ensure transboundary cooperation, in accordance with existing regional and subregional structures.

49. Is your country endeavouring to cooperate with a view to implementing the Protocol in instances where the same traditional knowledge associated with genetic resources is shared by one or more indigenous and local communities in several Parties as provided in Article 11.2?

Yes

Use the text entry to provide further information

The current amendment of the National Environmental Management: Biodiversity Act, 2004 ( Act No. 10 of 2004) and its BABS Regulations will provide mechanism to ensure transboundary cooperation, in accordance with existing regional and subregional structures.

50. Additional information:

No additional information provided

#### Model contractual clauses, codes of conduct, guidelines and best practices and/or standards (Article 19 and 20)

51. Is your country encouraging the development, update and use of model contractual clauses for MAT as provided in Article 19?

Yes

Use the text entry to provide further information

The current amendment of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and its BABS Regulations also focuses on updating the model contractual clauses for MAT.

52. Is your country encouraging the development, update and use of codes of conduct, guidelines and best practices or standards as provided in Article 20?

Yes

Use the text entry to provide further information

The current amendment of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) and its BABS Regulations also focuses on encouraging the development and use of sector specific best practices.

53. Additional information:

No additional information provided

#### Awareness-raising and capacity (Article 21 and 22)

54. Has your country taken measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources and related access and benefit-sharing issues as provided in Article 21?

Yes

Has your country taken measures to implement the awareness-raising strategy for the Nagoya Protocol on ABS?

Yes

Please provide a summary of the measures taken

Several workshops and stakeholder engagement on raising awareness about ABS and how South Africa is implementing ABS and the Nagoya Protocol nationally have been conducted.

Use the text entry to provide further information

Below is a summary of awareness raising initiatives:

- Biodiversity awareness workshops with Muthi traders and traditional healers
- Indigenous Knowledge System (IKS) Bioprospecting and Product Development Platform
- Compliance awareness campaign undertaken jointly between DEA and the Traditional Healers Organisation.
- BABS workshops with various Industry Associations
- BABS workshop with various academic and research institutions
- Biennial Indigenous Knowledge System Expo
- Biennial Biodiversity Economy Indaba
- Bioprospecting Forum

55. Has your country taken measures to build and develop capacity and strengthening of human resources and institutional capacities to effectively implement the Protocol as provided in Article 22?

Yes

Has your country taken measures to implement the strategic framework for capacity-building and development to support effective implementation of the Nagoya Protocol on ABS?

Yes

Please provide a summary of the measures taken

South Africa is very keen in developing capacity and strengthening of human resources to effectively implement the Protocol. Officials are often exposed to workshop and seminars that strengthen their ability to implement the Protocol.

Use the text entry to provide further information

Below are some of the workshops that South African official participated in:

- Regional Training Capacity-Building Workshop for the African Region on Community Protocols, Indicators on Traditional Knowledge and Customary Sustainable Use of Biodiversity
- ABS Dialogues at various International meetings
- Capacity-building workshop on the negotiation of Mutually Agreed Terms for access to genetic resources, to support effective implementation of CBD and the Nagoya Protocol on Access and Benefit Sharing
- IDLO Capacity Building Training on establishing measures to implement the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity

56. Has your country received external support for building and developing capacity for the implementation of the Nagoya Protocol?

Yes

Use the text entry to provide further information

The Country has received funding from the Global Environment Facility (GEF) for implementation of ABS projects

57. Has your country provided external support for building and developing capacity for the implementation of the Nagoya Protocol?

Yes

Use the text entry to provide further information

South Africa has delivered ABS Presentation at various platforms aimed at building and developing capacity for the implementation of the Nagoya Protocol both at regional, subregional and international levels.

58. Additional information:

Please provide a summary of the main difficulties and challenges

The main challenge to this is the issue of funding. Some of the activities are not implemented in time because of lack of funding.

#### Technology transfer, collaboration and cooperation (Article 23)

59. Is your country collaborating and cooperating in technical and scientific research and development programmes as a means to achieve the objective of the Protocol as provided in Article 23?

Yes

Please provide a summary of the measures taken

Issues of technical and scientific research and development are the national agenda not only for the Department but for the country. The South African policies and programs support technology transfer as well as collaboration and cooperation. The BABS Regulations support and encourage the applicants for bioprospecting activities to share and transfer scientific and technological knowledge developed in the bioprospecting purposes with the stakeholders involved i.e communities providing access to

indigenous genetic and biological resources as well as those providing traditional knowledge associated with indigenous genetic and biological resources.

Further, the BABS Regulations require that Benefit Sharing Agreement required in terms of section 82(1)(a) and (b) of the Act to support further research on indigenous genetic and biological resources and traditional knowledge associated with indigenous genetic and biological resources; ensure enhancement of the scientific knowledge and technical capacity to conserve, use and develop indigenous genetic and biological resources.

Use the text entry to provide further information

In addition, the Department of Science and Technology has programs such as;

- Bioprospecting Platform- focuses on African Traditional Medicines, Nutraceuticals and Cosmeceuticals through the development and manufacturing of high-end products.
- Technology Innovation Agency – is a national public entity that serves as the key institutional intervention to bridge the innovation chasm between research and development from higher education institutions, science councils, public entities, and private sector, and commercialisation.

These program also encourage collaboration and cooperation between the applicant and the indigenous knowledge holders; also coordinate and support research and high-end skills development in strategic and emerging areas.

#### Optional additional information

60. Please provide a summary of the main difficulties and challenges encountered for becoming a Party to the Nagoya Protocol.

No additional information provided

61. Has your country established a mechanism for budgetary allocations of funds for the implementation of the Nagoya Protocol?

Yes

Please provide further information

South Africa has a well established unit within the Department of Environmental Affairs with budget allocation by the State.

62. a) Has your country made financial resources available to other Parties or received financial resources from other Parties or financial institutions for the purposes of implementation of the Protocol as provided in Article 25?

No selection made

62. b) Please provide information on experiences related to the mobilization of resources in support of the implementation of the Protocol.

None

62. c) Please provide information on the status of funds mobilized in support of the implementation of the Protocol.

None

63. Does your country have specific staff to administer functions directly related to the implementation of the Nagoya Protocol?

Yes

Please indicate how many

Less than 5

64. Any other relevant information:

None

#### Comments in the reporting format

65. Please provide any comment that you may have regarding the format of this report:

None

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## Further Information

Questions about the Nagoya Protocol on Access and Benefit-sharing or the operation of the Access and Benefit-sharing Clearing-House may be directed to the Secretariat of the Convention on Biological Diversity.

### Secretariat of the Convention on Biological Diversity

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