

# Guideline and Toolkit for Access and Benefit Sharing of Traditional Knowledge Associated with Genetic Resources in Rwanda:

*Information for Providers, Users, and Regulatory Institutions*



*Empowered lives.  
Resilient nations.*





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## List of Acronyms and Abbreviations

ABS	Access and Benefit-Sharing
AGA Rwanda	Asosiyasiyo y'Abavuzi Gakondo mu Rwanda
ARIPO	African Regional Intellectual Property Organization
CBD	Convention on Biological Diversity
CNA	Competent National Authority
GR	Genetic Resources
IP	Intellectual Property
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
MAT	Mutually Agreed Terms
MTA	Material Transfer Agreement
NBSAP	National Biodiversity Strategy and Action Plan
NCST	National Commission of Science and Technology
NGOs	Non-Government Organizations
PIC	Prior Informed Consent
RDB	Rwanda Development Board
REMA	Rwanda Environment Management Authority
UNDP	United Nations Development Programme

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## Chapter 1. Introduction

The search for and collection of biochemical and genetic resources in the environment for the purposes of developing commercially-valuable products for pharmaceutical, agricultural, cosmetic and other applications is governed by procedures that ensure fair and equitable access and benefit sharing. This document presents the toolkit and guideline for access and benefit sharing related to traditional knowledge associated with genetic resources in Rwanda. The guideline has been informed by national laws, policies and regulations, stakeholder input and the Nagoya Protocol. The guideline does not change or supersede any existing legal rights or obligations of stakeholders as presented in national laws, orders and regulations.

This guideline and toolkit are specifically intended to support access to traditional knowledge (hereafter referred to as aTK) associated with genetic resources (hereafter referred to as GR) and the equitable sharing of benefits arising from the use of aTK in Rwanda. This document is intended to raise awareness about the Nagoya Protocol and Access and Benefit Sharing (ABS) procedures in Rwanda, and will help the intended audiences (stakeholders: providers of GR and aTK, users of GR and aTK, and regulators) to understand the legal requirements and procedures related to ABS, the legal rights, and guidance for negotiating Prior Informed Consent (PIC), the process for requesting access, areas of negotiation, and Mutually Agreed Terms (MAT) for benefit sharing. The guideline is embedded within the toolkit for Rwanda which includes in depth background, purpose and review of legal frameworks in Rwanda and internationally, in order to increase awareness of the basic principles and concepts of the Nagoya Protocol and ABS and their context in Rwanda.

An access permit for accessing traditional knowledge associated with genetic resources (aTK) will only be issued if there has been material disclosure to the stakeholders, if the prior informed consent and mutually agreed terms for benefit sharing for the bioprospecting activities have been obtained by the appropriate stakeholders through a negotiation process, and if the competent authority is satisfied that the conditions as set out in the legislation have been met. This guideline and toolkit document provides a step by step guide and explanation of the tools used to manage the access permit process and the follow up steps post-access when commercialization is involved.

The intended audiences for the guideline are:

**Providers or holders of traditional knowledge associated with genetic resources** (e.g. local communities, traditional healers, *ex-situ* collection holders, organs of State and private, public and communal landowners).

**Prospective users of traditional knowledge associated with genetic resources** (e.g. companies, bioprospectors, or researchers who intend to use biological or genetic resources and/or traditional knowledge related to those resources).

**Regulators from national government agencies and authorities** responsible for implementing the laws and regulations, and for regulating access to and benefit sharing from genetic or biological resources and the associated traditional knowledge.

The guideline and toolkit include:

1. Research permit process and affiliation with partner institution for users interested in accessing traditional knowledge associated with biological or genetic resources
2. Prior informed consent (PIC) process to obtain access permit
3. Access Procedures
4. Access and Benefit Sharing Agreement between providers and users – the Mutually Agreed Terms (MAT)
5. Process for Negotiation of PIC, MAT and Material Transfer Agreement (MTA)
6. Compliance Monitoring
7. Follow up procedures when users have identified genetic resource(s) to be developed for commercialization based on associated traditional knowledge

Those who want to conduct research on traditional knowledge associated with genetic resources must follow the procedures and uphold standards in collaboration with the appropriate institutions and communities. Access and Benefit Sharing (ABS) is usually initiated when a user becomes interested in exploring the potential applications of traditional knowledge associated with a genetic resource that has traditionally been cultivated, harvested, or otherwise used for cultural or traditional purposes. Access requests may be for either non-commercial purposes (research or education) or for commercial purposes.

Anyone carrying out bioprospecting involving indigenous biological or genetic resources or associated traditional use or knowledge, requires an access permit. Anyone exporting indigenous biological or genetic resources for the purposes of bioprospecting or other research requires a permit. This document focuses specifically on traditional knowledge associated with genetic resources. It does not deal with traditional knowledge not associated to genetic resources. The following sections include a background about the Nagoya Protocol, the Rwandan context for Access and Benefit Sharing, and details of the procedure for accessing aTK in Rwanda.

**Textbox 1. The experience of Bugesera Women's Cooperative "COVANYA", Rwanda**

A member of a women's cooperative said a woman came to ask information about Rwandan traditional basket weaving procedures and took some samples of raw materials from *Agave sp.* that cooperative members were using. 'We gave our knowledge and genetic resources to the woman for free because we were not aware of the Nagoya protocol'. After learning about ABS and Nagoya protocol these cooperative members said they wish to know more about their rights, about the ABS process and learn the English language that they need to better communicate with foreigners who come seeking access.



## Chapter 2. Bioprospecting, the Nagoya Protocol and Access and Benefit Sharing (ABS)

Bioprospecting, which is a shortening of 'biodiversity prospecting' with the same meaning, refers to the systematic search for and collection of biochemical and genetic information in nature with the aim to develop commercially-valuable products for pharmaceutical, agricultural, cosmetic and other applications.<sup>1</sup> Bioprospecting activities should contribute to biodiversity conservation, economic development, and enhancement of scientific knowledge and development.

All bioprospecting activities must observe and comply with the framework established for the utilization of genetic resources within the Nagoya Protocol and as stated in the national laws or policies of Rwanda. The Nagoya Protocol applies to the utilization of genetic resources and their derivatives.

Those involved in bioprospecting include:

- Researchers who collect biological or genetic material and may be guided by local or traditional knowledge holders about the location and/or use of these resources. These researchers are often involved in the 'discovery' phase of bioprospecting; they may be investigating the potentials of biological or genetic resources. Researchers may be locally based at a Rwandan research institution or university, or they may be based outside of Rwanda and Rwanda is one of their research sites.
- Land owners, or individuals or entities who manage the land upon which the resources are located. This may be a farmer, a community, a cooperative, a government agency, or a non-governmental or civil society organization.
- Traditional knowledge holders with specific knowledge about the resource or material being investigated. Although this knowledge may already be publicly available in publications such as reports, books or journal articles, this does not preclude the participation of the original knowledge holders.
- Producers of particular species (those cultivating, developing or harvesting for example) may also be involved.
- Companies, including foreign or local companies, from pharmaceutical or biotechnology industries, cosmetics, food, or herbal medicine industries seeking to identify resources to develop products in their companies.
- Government agencies charged with administering laws that relate to bioprospecting, biodiversity and environmental management, exporting materials, research and collecting, etc. Non-governmental organizations (NGOs) working with communities or conservation may represent community interests or environmental management interests.
- Museums, herbaria and other institutions that maintain collections of biological and genetic resources.

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<sup>1</sup> (Source: <http://www.undp.org/content/sdfinance/en/home/solutions/bioprospecting.html>)

In order for prospective users (those seeking to conduct bioprospecting activities) interested in traditional knowledge associated with genetic resources to gain access to aTK in Rwanda, they must get the prior informed consent of the provider and enter into an agreement to show how they will provide fair and equitable benefits to the provider country, which may be direct or indirect benefits. In order to receive those benefits, a provider country must facilitate access to genetic resources. This process is called 'access and benefit sharing', or 'ABS' and is guided by the Nagoya Protocol.

The Nagoya Protocol was developed to implement legal measures in user countries to ensure compliance with the third objective of the Convention on Biological Diversity (CBD). The CBD came into force on 29 December 1993 and affirms that states hold sovereign rights over their biological resources and countries have the right to regulate or grant access to genetic resources (GR) inside their territorial boundaries. The three objectives of the CBD are 1) Conservation of biological diversity, 2) Sustainable use of its components, and 3) Fair and equitable sharing of benefits arising out of the utilization of genetic resources. Rwanda is a signatory to the CBD and has the right to determine who can collect biological material that contains genetic resources and what users are allowed to do with those genetic resources. Protection of the rights of traditional knowledge holders is also an intention in this process.

Women have a critical role to play in the conservation of biological diversity given their daily activities around managing natural resource including procurement and processing of food (including animal or plant parts and seeds), water, and fuel wood, which has an influence on the use and conservation of genetic diversity. The process of documenting aTK and developing aTK databases should not be gender blind but rather gender sensitive. Gender sensitivity in aTK documentation involves identification and acknowledgement of the existing differences and inequalities between women and men. Data related to aTK holders should thus be sex and age disaggregated to understand the different roles played by women and men, youth and the elderly.

Disaggregated data helps shed light on underlying gender dynamics to understand how gender norms and practices influence the transmission of traditional knowledge over generations, and it ensures that defensive, positive, sui generis and other aTK protection or valorisation systems are well informed to address inequalities based on gender related norms. This is a key step in ensuring that any activity involving the documentation of aTK supports women, men, youth and the elderly's participation in granting access over their aTK and the fair and equitable sharing of benefits arising from the use of such knowledge.

The Nagoya Protocol establishes a legal framework for access and benefit sharing (ABS) that requires countries to develop and apply systematically a set of procedures for access and sharing of benefits from use of GR, and to ensure that users comply with provider country ABS laws. The Nagoya Protocol was adopted on 29 October 2010 in Nagoya, Japan and entered into force on 12 October 2014. The Nagoya Protocol recognizes the values of indigenous and local communities and the knowledge associated to the use of genetic resources in research and development activities.

The Nagoya Protocol has six principles:

**Principle 1: Sovereignty on Genetic Resources**

Each country has the right to regulate resources on its territory, while respecting the right to property according to international agreements, national law, and customary law.

**Principle 2: Access on Genetic Resources**

Biological resources (plants, animals, cultures, microorganisms) are different from their Genetic Resources Component or Biochemical Composition. ABS process is concerned with research and development activities on Genetic Resources or Biochemical Composition.

**Principle 3: Traditional Knowledge Values**

Recognize the contribution of indigenous and local communities to the conservation and sustainable use of biodiversity as Natural resources managers; Recognize their skills and techniques because they are the most concerned as they are on field; and Recognize traditional values for industry and modern agriculture, products such as medicines, agricultural, sanitary and cosmetic herbs that are derived from traditional knowledge.

**Principle 4: PIC (Prior Informed Consent) and MAT (Mutually Agreed Terms)**

Consultation and agreement between the provider of the genetic resource and the user who is subject to research and development.

**Principle 5: Fair and equitable sharing of benefits arising from the use of genetic resource**

What is fair and equitable depends on the particular circumstances and is generally defined by the parties to the agreement but must contribute to the conservation and sustainable use of biological and genetic resources.

**Principle 6: Monitoring and Compliance with ABS Requirements**

Measures to ensure compliance with ABS requirements must be settled such as monitoring the rules of access and use of GR and aTK, the rules of benefit sharing, a compliance committee or authority and check points.

**Textbox 2. An innovative woman manufacturing lubricants and cosmetics using GR and aTK in Rwanda before the implementation of Nagoya Protocol**

A woman from Western Province produces a lubricant and cosmetics from a plant that contains natural oils. She said that she never gives out her knowledge unless the person requesting access is a work associate or she is provided something in turn. She said she has had experiences of people wanting to take her traditional knowledge and GR without sharing benefits. She believes that people requesting and using GR and aTK should share the benefits with those who deserve it.



## Chapter 3. The Rwandan ABS Context

### 3.1. Biodiversity in Rwanda

Rwanda lies within the Albertine Rift ecoregion. This region is defined by the mountains rising along the western rift, and stretches from Uganda, Rwanda and Burundi, and is flanked to the west and east by western Tanzania and eastern DR Congo, respectively. It is known for its rich diversity of species, including both plants and animals, found in this region and nowhere else on earth (Plumptre et al. 2007). Identified as a biodiversity hotspot, the Albertine Rift is high in species diversity and endemism, and is also one of the most densely populated regions on earth with high rates of poverty and land use change. It is also a region vulnerable to climate change due to its mountainous geography and the high proportion of the population living subsistence lifestyles.

### 3.2. Traditional knowledge in Rwanda

In Rwanda, there is a rich history of traditional knowledge related to medicinal plants, agriculture, animal husbandry, food storage, natural resource management, ecological systems and wildlife. Most of this knowledge is oral and passed from generation to generation usually within families. An elder will select a younger member of the family to begin teaching the knowledge to as a way to pass on the knowledge and not have it lost. There has been limited research related to traditional knowledge associated to the use of genetic resources in Rwanda.

Results from the studies that have been carried out reveal the role of Rwandan traditional knowledge in agroforestry systems (den Biggelaar and Gold, 1995), and the need to incorporate ABS in traditional medicine, exemplified by the case of *Prunus africana*, an overexploited and traded medicinal tree indigenous to central Africa including Rwanda (Bodeker et al., 2014). Research demonstrates the necessity to enforce intellectual property rights protection of Sub-Saharan Africans including Rwandan traditional knowledge used in western pharmacology companies (Ezeanya, 2013) and also the need to recognize the role of Rwandan traditional knowledge in the preparation and use of traditional medicines (Nkurunziza, 1997).

Research on traditional medicine in Rwanda began in 1972 and explored the tradition of using plants for medicines and the potential to develop commercial products (Nkurunziza, 1997). A recent and fairly extensive review of 50 medicinal plants and the traditional knowledge associated with those plants showed a range of diseases and ailments that are treated with plants in Rwanda based on aTK, and the contribution of aTK to biodiversity conservation (Munyaneza & Muganga 2017). According to the Health Sector Policy (2015), traditional medicine in Rwanda is generally practiced by recognized and registered traditional healers which have been confirmed by the community where they are practicing. However, the Policy noted a lack of coordination among stakeholders involved in traditional medicine research. A recent inventory of aTK in Rwanda notes well over 600 plant species used in traditional knowledge practices, with aTK applications in cosmetics, agriculture, food and beverage production, traditional medicine, cosmetics and construction (REMA, unpublished report).

### 3.3. Rwandan Policies, Laws and Strategies

Rwanda has a number of policies, laws and strategies that guide biodiversity conservation and management, resource use, land management, bioprospecting, and intellectual property rights. Below is a review of relevant laws and policies to enhance the understanding of the context of the ABS guideline in Rwanda.

#### 1. Intellectual Property Policy, 2009

One of the objectives of the Intellectual Property Policy of Rwanda is to enhance the protection of traditional knowledge and facilitate equitable access to genetic resources and benefit-sharing by promoting and supporting the development of relevant legal systems and institutions for the protection of traditional knowledge and ensuring prior-informed consent and benefit-sharing for access to genetic resources in Rwanda. The aim is: (i) recognising the value of traditional knowledge and responding to the needs of the knowledge holders; (ii) promoting respect for traditional knowledge and its conservation and preservation including repression of unfair and inequitable uses of the knowledge; (iii) promoting innovation and creativity and overall community development including facilitating legitimate trade in traditional knowledge-based goods and services; and (iv) preventing bio piracy through the creation of laws for traditional knowledge and genetic resources.

Rwanda is a signatory to the African Regional Intellectual Property Organization (ARIPO). ARIPO recently launched a Regional Intellectual Property (IP) Database at the ARIPO Headquarters in Harare, Zimbabwe. The centralized database with published IP titles from ARIPO and its Member States is free and easy to access. The IP Database is designed to efficiently serve multiple purposes, including on-line provision of published IP data, encouragement of regional trade, IP scientific research, IP rights protection and enforcement in the ARIPO region, as well as sustainable development of IP. The database aims to improve the use and uptake of IP in the ARIPO region thereby increasing the number of local and regional applications which is still very low (<http://regionalip.aripo.org>).

#### 2. Protection of Intellectual Property Law No. 31/2009 of 26/10/2009

Chapter one of this law on intellectual property rights in relation to discovery, genetic resources, traditional knowledge and folklore includes Article 289 which specifies that the protection of discovery of plants, genetic resources, traditional knowledge and folklore is granted by a related special law. Provisions are detailed in the Intellectual Property Policy.

#### 3. Rwanda Biodiversity Policy, 2011

This policy provides a comprehensive and cohesive policy framework to support the Government's ability to conserve and protect Rwanda's natural and cultural resources, to promote generation, management of conservation knowledge, including traditional knowledge, and its application in the conservation of biodiversity and to provide a framework for access to genetic resources and the sharing of benefits derived from those resources.

This policy ensures the control of access to Rwanda's indigenous genetic resources through the introduction of appropriate regulatory and institutional frameworks and equitable sharing of benefits arising from the use of the resources

#### **4. Rwanda Wildlife Policy, 2013**

Two objectives within this policy highlight promotion of access to genetic resources and their sustainable use for socio-economic benefits: (i) To develop new strategies that link protecting wildlife resources with human needs and harness the investment opportunities offered by biodiversity to generate and equitably share economic benefits through promoting bio-prospecting and access to genetic resources in protected areas, which can contribute to wildlife conservation through royalties and value addition to wildlife by products; and (ii) Wildlife in protected areas conserved, managed and wisely used and their socio-economic benefits optimised through development of tools for sustainable use of wildlife resources.

#### **5. Biodiversity Law No. 70/2013 of 02/09/2013**

Chapter IV of the Law governing Biodiversity in Rwanda is devoted to Bioprospecting, Access and Benefit sharing, specifically Article 27 "Bioprospecting in and export of indigenous biological resources", Article 28 "preconditions for issuance of a permit, and Article 29 "Right to biological resources and sharing of benefits". The law stipulates that activities in terms of bioprospecting in and export of indigenous biological resources shall be subject to a permit and that consideration shall be given to the interests of a person, of the community and the State giving access to: (i) the indigenous biological resources to which the application relates; (ii) traditional uses of the indigenous biological resources; and (iii) knowledge of or discoveries about the indigenous biological resources.

Indigenous biological resources are any living or dead animal, plant or other organism of an indigenous species, including any derivative or genetic material of any indigenous species. This includes any indigenous biological resources gathered from the wild or accessed from any other source, including any animals, plants or other organisms of an indigenous species that are cultivated, bred or kept in captivity or cultivated or altered in any way by means of biotechnology; any cultivar, variety, strain, derivative, hybrid or fertile version of any indigenous species or of any animals, plants or other organisms.

Indigenous biological resources do not include genetic material of human origin; exotic animals, plants or other organisms; and indigenous biological resources listed as Annex to the International Treaty on Plant Genetic Resources for Food and Agriculture.

Under Chapter 3 in a discussion of "ecosystems and endangered and invasive species", Article 16 "Species in need of protection", the law stipulates that "every five (5) years and whenever necessary, an Order of the Minister shall set out a list of the following species in need of protection: (i) critically endangered species; (ii) endangered species; (iii) vulnerable species; (iv) other species of such high conservation value or national importance that require protection, although they are not included on the list of species under items (i), (ii) and (iii).

## **6. Environment Law No. 48/2018 of 13/08/2018**

Article 14 of this law stipulates that the acts of keeping of wild animals and products from wild animals, hawking, sales, exchange of and trade in wild animals are subject to prior permission by the organ in charge of tourism. Article 44 prohibit to kill, injure, and capture animal of endangered species, to transport or sell the remains of a whole or part of an animal and plants of endangered species; and to cut trees in forests or protected areas or in national parks. Projects that requires an EIA before their implementation are listed in a ministerial order that also issues instructions and procedures to follow for conducting an EIA (Article 30).

## **7. Management and Utilisation of Forests in Rwanda Law No. 47bis/2013 of 28/06/2013**

This law includes articles covering management of forests in Rwanda (for research, agroforestry, conservation, etc.) as well as the role of local authorities. Article 23 specifically deals with forest harvesting and collection of forest products. Article 26 deals with activities allowed in protected state forests, and article 27 covers protection and conservation of protected trees. Chapter IV of this law deals with management of types of research in the forests.

## **8. National Biodiversity Strategy and Action Plan (NBSAP), 2016**

The NBSAP's objectives are to improve environmental stability for natural ecosystems and their biodiversity; restore degraded ecosystems and maintain equilibrium among biological communities; establish an appropriate framework for access to genetic resources and equitable sharing of benefits arising from biodiversity use and ecosystems services; improve policy, legal and institutional frameworks for better management and conserve of national biodiversity. To achieve these objectives, NBSAP has 19 specific, time-bound targets (RoR, 2015; RoR, 2016).

Target 15 states that "By 2017, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is integrated into national legislation and administrative practices and enforced". Target 16 states "By 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation".

## **9. National Land Policy, 2004**

Objectives of the National Land Policy relevant to the ABS guideline are to facilitate the productive value of land in order to promote the country's socio-economic development; to focus land management towards sustainable production through reliable and time-tested methods of land development; and to develop actions that protect land resources from degradation. Customary land tenure as it exists in Rwanda has become obsolete and is not considered to offer any economic advantage to the tenants or the state.

The Policy indicates that to guarantee environmental conservation, state-owned lands should be governed by special measures and regulations, and public lands include lakes and waterways, natural reserves and national parks, marshlands classified as natural reserves, communal lands, and vacant land. The Policy mentions green spaces including existing wooded

areas in urban zones that should be protected as should reserves which are to accommodate community facilities. There is a policy mandate for cooperatives related to land management, and family farming of a cooperative type is included in the policy to avoid continued land subdivision. Land use and management in protected areas should encourage involvement of neighboring communities in the conservation and creation and strengthening of structures for community management of protected areas should also be encouraged.

#### **10. Rwanda Land Law No. 43/2013 of 16/06/2013**

Article 3, Land is Common Heritage of this Law states that only the State has the supreme power of management of all land on the national territory, which it 'exercises in the general interest of all with a view to ensuring rational economic and social development as defined by law'. Article 13 describes land in the public domain as land reserved for public activities and infrastructures of local authorities, among others.

State land in the private domain land consists of all land not included in State land reserved for public activities or infrastructures and land that does not belong to public institutions or local authorities or individuals. Regarding land consolidation, it is prohibited to subdivide plots of land reserved for agriculture and animal resources if the result of the subdivision leads to parcels of land of less than a hectare in size. Owners of lands prohibited to be subdivided may co-own and use the land in accordance with the laws.

#### **11. Rwanda Contract Law No. 45/2011 of 25/11/2011**

Article 3 of this law classifies contracts into different categories, and the ABS contracts can be referred to as bilateral contracts or synallagmatic contracts in which the parties have reciprocal obligations. Article 4 of this law stipulates that the formation of a contract requires the mutual assent, the capacity to contract, the object matter of the contract and the licit cause.

The mutual assent of parties consists of an offer by one party followed by an acceptance by the other party (article 8) and each party must manifest assent with reference to the assent of the other for the contract formation (article 9). Article 46 mentions that if mistakes occur at the time of the contract formation, with an effect on the performance of the contract as regards to what has been agreed on, the adversely affected party may request that the contract be void, unless he/she agrees to bear the risk of the mistake as stipulated in article 48.

### **Textbook 3. Definitions of Providers, Users and Regulators**

**Providers** of genetic resources and/or holders of traditional knowledge associated with genetic resources may include local communities, traditional healers, farmers, *ex-situ* collection holders, government institutions, and private, public and communal landowners.

**Users** of traditional knowledge associated with genetic resources may be companies, bioprospectors, or researchers who intend to use traditional knowledge associated with genetic resources to develop products or other outputs.

**Regulators** may include national government units or authorities that are responsible for implementing aspects of the ABS policy and law in Rwanda as well as any other associated policies and laws.

### **3.4. International Protocols and Organizations that Guide ABS in Rwanda**

A number of organizations, protocols and agreements guide countries in implementation of the Nagoya Protocol. Rwanda has taken a number of steps to build a framework for developing the ABS guideline and toolkit. For example, Rwanda is a member of the Africa Regional Intellectual Property Organisation (ARIPO)<sup>2</sup>, an inter-governmental organization which aims to facilitate cooperation among its member states in intellectual property matters by pooling financial and human resources, and seeking technological advancement for economic, social, technological, scientific and industrial development. The mission of ARIPO is to foster creativity and innovation for economic growth and development in Africa. Rwanda is also party to the Harare protocol (<http://www.aripo.org/rwanda>) which is a legal instrument that seeks to protect traditional knowledge use and associated patenting rights (Hinz, 2011).

Rwanda is guided by the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore<sup>3</sup> which it signed onto in 2012. This protocol was adopted in August 2010, within the framework of ARIPO. The protocol's preamble states that "legal protection must be tailored to the specific characteristics of traditional knowledge and expressions of folklore, including their collective or community context, the intergenerational nature of their development, preservation and transmission, their link to a community's cultural and social identity, integrity, beliefs, spirituality and values, and their constantly evolving character within the community concerned." Under this Protocol, countries are encouraged to use and refine the protocol to develop laws, guidelines and instruments to protect traditional knowledge at national level.

The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)<sup>4</sup> also informs Rwanda's ABS guideline and toolkit. Rwanda is a signatory to this Treaty, which has an article that supports the promotion of 'in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities' (Article 5).

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<sup>2</sup> <https://www.aripo.org/>

<sup>3</sup> [https://www.wipo.int/edocs/lexdocs/treaties/en/ap010/trt\\_ap010.pdf](https://www.wipo.int/edocs/lexdocs/treaties/en/ap010/trt_ap010.pdf)

<sup>4</sup> <http://www.fao.org/3/a-i0510e.pdf>

### 3.5 The Context of ABS in Rwanda and Domestication of the Guideline

Rwanda is aware of the need to develop and enforce the national legislation, regulations, laws and policies on ABS along with international treaties and protocols related to the use of genetic resources for food and agriculture (Gapusi et al. 2013). The process of domestication of the guideline for ABS in Rwanda follows these laws, policies and strategies, and is sensitive to the particular context of Rwanda's culture and history.

For example, biocultural community protocols can be useful elements in ABS, as they articulate specific community-determined values, procedures and priorities and are relevant to ABS policy and regulation. Article 12 of the Nagoya Protocol provides that "Parties shall, in accordance with domestic law, take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.

However, Rwanda does not use community-led instruments to direct ABS, and there are no community protocols that guide government policy and guidelines about the rights of GR or aTK in the country. Instead every citizen must adhere to the governmental laws and policies related to GR and aTK such as the Biodiversity Law, the National Land Law, and other laws. Furthermore, while Rwanda acknowledges the presence of traditional knowledge among its citizens, all individuals are considered as Rwandan and there are no indigenous peoples in the country.

## Chapter 4. The Process of Access and Benefit Sharing in Rwanda

The Lead Agency for ABS and the Competent National Authorities (CNA) in Rwanda are key institutions for the ABS process in Rwanda. Other relevant institutions to the process are listed in Annex 1. Rwanda's national focal point (NFP) for the Nagoya Protocol is located in REMA.

Access and benefit sharing involve key ABS principles, including the Prior Informed Consent (PIC) and the Mutually Agreed Terms (MAT), and where applicable the Material Transfer Agreement (MTA). These documents must be negotiated between the user, the provider (individuals or community groups with rights over the aTK), and a designated institution as the CNA. The process of negotiation for the PIC and MAT are described below. Before beginning any research activities in Rwanda, including approaching communities or individuals related to research objectives, appropriate research permits must be obtained (described below).

The process of obtaining access begins with identifying partners in Rwanda and then completing the affiliation application with the partner institution, and applying for the appropriate research permits (Figure 2). Steps and templates are introduced in later chapters, and it is advisable to visit the relevant websites at REMA ([www.rema.gov.rw](http://www.rema.gov.rw)), RDB (<https://rdb.rw/>) and the national Clearing House Mechanism (<http://rw.chm-cbd.net/>).

Box 4 shows the situations when the ABS guideline process is not required.

**Textbox 4. The following resources and activities are excluded from ABS guidelines:**

- Human genetic resources
- Exotic animals, plants or other organisms (although in some cases where aTK is associated with a species which has been long present and naturalized ABS may apply)
- Research other than bioprospecting (research without intention of development)
- Export of *ex-situ* indigenous biological or genetic resources if the export is for research other than bioprospecting; the exporter must complete the export agreement and notify the issuing authority
- Trade of commercial products purchased from a retailer
- Artificial propagation and cultivation of plants for the cut flower and ornamental plant markets
- Aquaculture activities meant for consumption only

To ensure that local communities and traditional knowledge holders receive benefits from access and benefit sharing (ABS), Rwanda uses several approaches. Traditional healers in Rwanda are encouraged to join cooperatives where they receive support and training for their practice and professional work. District Environmental Officers present in each District throughout the country also play a role in ensuring ABS compliance, as they are close to communities and can assist in monitoring ABS.

The Institute of National Museums of Rwanda maintains information about traditional knowledge in Rwanda and aims to support research on traditional knowledge, as does the University of Rwanda and the Institute of Applied Science (INES). The Ministry of Sports and Culture promotes research and development of cultural activities and has as a core function to strengthen, rationalize and coordinate actions within Government institutions, private sector, civil society, and other partners with an aim of uplifting and promoting culture (as well as sports). There are non-governmental associations such as the AGA Rwanda network (Abavuzi Gakondo Rwanda Network), a forum of Rwandan traditional health practitioners with over 3,000 members.

## **4.1. Research Permit Process**

### **4.1.1. Affiliation Process**

Prior to beginning the research process, the prospective user must identify a local partner which will serve as the affiliating institution for the user<sup>5</sup>. The affiliating institution will be a Rwandan institution (Government institution or NGO). The affiliation application, approved by the affiliating institution, must be completed prior to seeking the Research permits and next steps in the ABS process.

### **4.1.2. Identification of holders of aTK (the Provider)**

In liaison with the partner in Rwanda, the applicant (user) should identify potential aTK, providers they wish to work with. The provider may be an individual or group of individuals, or a community in Rwanda. If the applicant plans to carry out a collaborative research with

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<sup>5</sup>[http://www.mineduc.gov.rw/fileadmin/user\\_upload/Application\\_for\\_Authority\\_to\\_conduct\\_Research\\_in\\_Rwanda.pdf](http://www.mineduc.gov.rw/fileadmin/user_upload/Application_for_Authority_to_conduct_Research_in_Rwanda.pdf)

his/her local partner, it is recommended that a joint proposal is developed for the research project.

#### **4.1.3. Research Permit Application**

Following approval of the affiliation application (section 4.1.1), the applicant or user must apply for the permit to carry out research in Rwanda with the National Commission for Science and Technology (NCST).

If access is being requested for a national park in Rwanda, the Rwanda Development Board (RDB) permit for research in a national park must also be obtained.

With these permits, the prospective user may begin the process of visiting sites and meeting providers (men and women) of aTK. When a provider is identified, whether an individual or community, the next step in the process is to enter into negotiation for the PIC and MAT with the providers. The CNA and District Environmental Officer should be informed of the progress of identification of a provider.

#### **Textbox 5. A traditional healer in Rwanda before the implementation process of Nagoya protocol.**

A Rwandan traditional healer used to give traditional knowledge about medicinal plants to people from various countries without gaining benefits. When people came to access aTK, most of the time they were accompanied by Rwandans who approached the healer with flattering words, promising that they will buy cars or other goods for the healer, but never came back in most cases. This healer used to give information freely because in Rwandan culture, who asks or seeks, receives. However, since he is informed about Nagoya Protocol, he no longer discloses such information for free. He thanked REMA for taking action on the implementation of Nagoya Protocol in Rwanda.



## **4.2. Documents Required for Access**

### **4.2.1. Prior Informed Consent (PIC)**

Before access to traditional knowledge associated with genetic resources may commence, the prior informed consent (PIC) from providers of that traditional knowledge associated with genetic resources is required. The party requesting access to the information (the user) is expected to disclose fully the intended use of the information (the aTK), and the method of

collection, in order that the provider of the knowledge and the CNA can make an informed decision about whether to provide access. The PIC is developed through a negotiation between the user and the provider and is a mandatory step in the access and benefit sharing process. A separate PIC must be negotiated for each new person (provider) with whom the user wishes to work, and for each new aTK sought.

The Competent National Authority (CNA) handles the PIC paperwork and oversight of the negotiation. The District Environmental Officer located in the District where the Access is being requested will assist with the negotiation process to ensure fair and equitable agreements. Each concerned community or traditional knowledge holder whether man or woman, cooperative or community, must be given the opportunity to provide consent prior to accessing of aTK. The user must negotiate for the PIC in the provider(s) preferred location to avoid making providers travel for negotiations.

#### **4.2.2. Mutually Agreed Terms (MAT)**

The Convention on Biological Diversity (CBD) as well as the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their use stipulates that any benefits arising from the use of genetic resources and community or traditional knowledge associated with these resources shall be shared between the people or country using the genetic resources and/or aTK (the user) and the people or country providing them (the provider). Following the successful conclusion of the PIC, MAT negotiations may begin.

The access and benefit sharing agreement is a critical requirement in the process for achieving access to genetic resources associated with traditional knowledge in Rwanda. Any issues in relation to access and benefit sharing of genetic resources or aTK shall be established and agreed through mutual discussion and negotiation and these terms will become part of the final access and benefit sharing agreement.

The MAT are essentially the conditions and provisions of access and benefit-sharing that are negotiated between the user and the provider as well as other relevant stakeholders. The MAT must be negotiated in a way that builds confidence and a relationship of trust between owners, managers or custodians of traditional knowledge associated with genetic resources in Rwanda who are considered the providers, and this should establish the basis for a long-term, transparent and respectful relationship and foundation for communication between the parties to the MAT.

The MAT must be negotiated in good faith by both users and providers, respecting the terms and understanding of the PIC, enabling the flow of benefits to the owners, managers or custodians of the genetic resource, and facilitating access. The MAT must take into account the differences in capacities and needs of the providers, including governments, and traditional or local communities, holders of *ex situ* collections, and the intended user organizations, to allow fair procedures of negotiation and equitable outcomes in the benefits to be shared.

The MAT must at the very minimum provide for the following benefits:

- further the conservation of Rwanda's indigenous genetic resources;
- support further research on indigenous genetic resources and related traditional knowledge;
- enhance the scientific knowledge and technical capacity to conserve, use and develop indigenous genetic resources in Rwanda while also supporting the protection of the intellectual property rights associated with this aTK appropriately;
- support any other activity that promotes the conservation, sustainable use and development of indigenous biological resources for the benefit of Rwanda; or
- improve the livelihoods of the communities involved in the ABS and enhance the technical capacity of the communities or individuals involved.

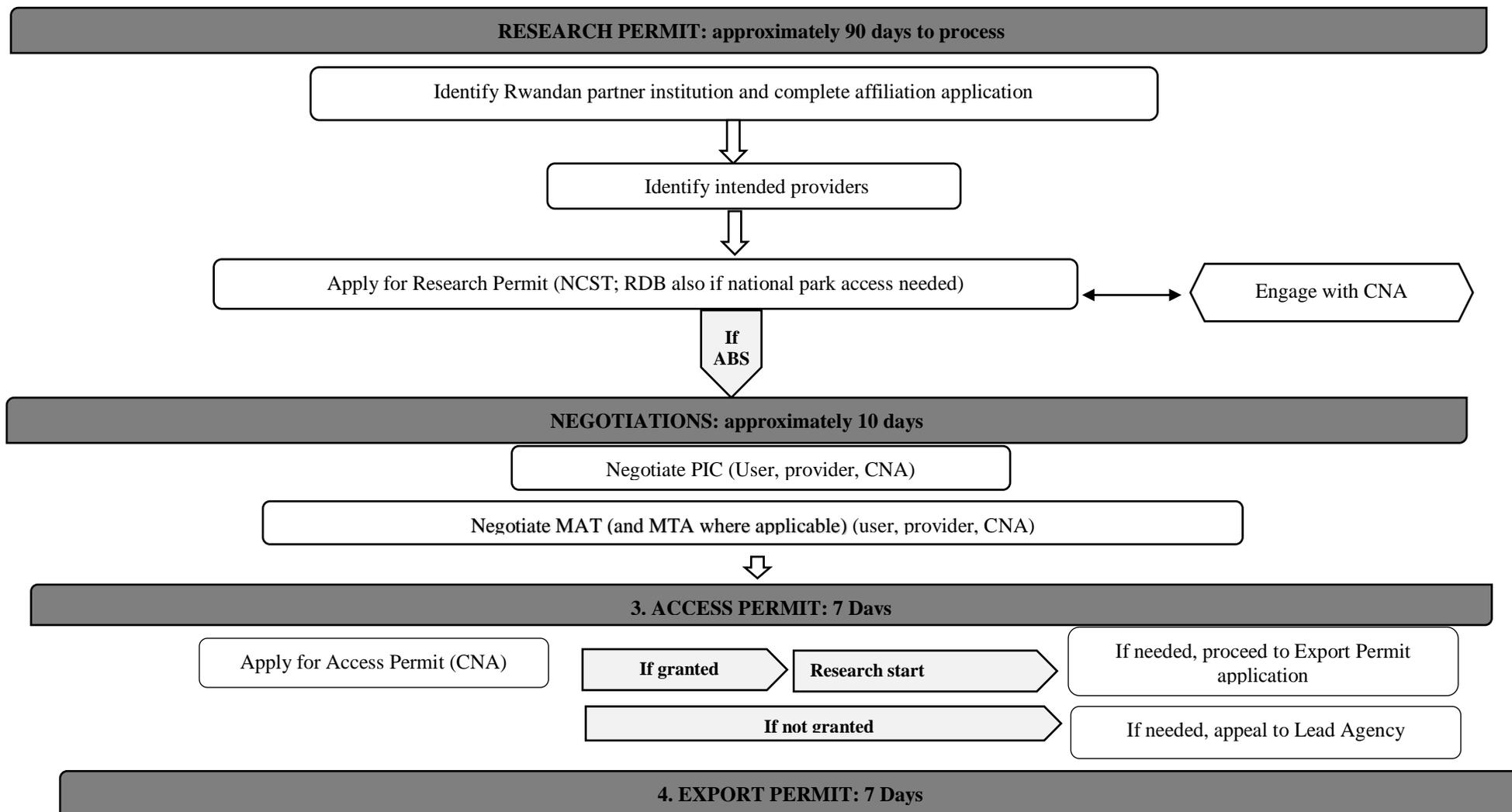


Figure 1. The Steps in the Process for ABS related to Traditional Knowledge associated with Genetic Resources in Rwanda.

The benefits to be shared from an access to traditional knowledge associated with genetic resources agreement may be monetary such as license fee, upfront or lump sum payment, royalty, research funding, or non-monetary such as joint ownership of intellectual property, employment opportunity, or support of infrastructure and technologies. Benefits will be defined and agreed upon on a case by case basis. See Box 6 for an indicative list of potential benefits that may be included in the MAT.

Considerations for the MAT should include statements about the expectations for the user of aTK. For example, the user shall:

- use accessed traditional knowledge associated with genetic resources in a manner consistent with the terms and conditions specified in the agreements negotiated, signed, and deposited with the CNA.
- not use the traditional knowledge associated with genetic resources for purposes other than those specified in the negotiated and signed Prior Informed Consent unless first obtaining a separate Prior Informed Consent in writing for the other use of the aTK.
- maintain records concerning the handling and storage of the collected aTK and be prepared to share such records upon the request of the Regulator or Provider within stipulated limitations.
- ensure that the terms and conditions specified in each agreement entered into with the Government of Rwanda or Provider is applied to any party that obtains aTK, unless those parties have independently obtained from the Government of Rwanda or Providers the right to obtain such information.
- not transfer collected aTK to third parties unless such transfer is consistent with the terms and conditions of the applicable Agreement.
- not accept aTK information from a third party that is not able to provide evidence that the information was obtained in compliance with ABS obligations of PIC, MAT and conditions governing use that are applicable to the collection.

#### ***4.2.3. Material Transfer Agreement (MTA)***

This guideline and toolkit covers only traditional knowledge associated with genetic resources and not the genetic resources themselves. However, it is relevant to mention that if genetic material is going to be transferred from one entity to another following the access of aTK, a material transfer agreement may be required. If it is required, it will be negotiated between the provider, the user and the CNA has the authority to determine if it is needed. The MTA may be required when a bioprospector, a company, or a researcher that has been provided access to traditional knowledge and genetic resources associated with that traditional knowledge, and who has already received the Access Permit, requests the transfer of the material. In some cases the MAT will have these details of material transfer included in it, covering the information listed below.

**Textbox 6. Examples of non-monetary and monetary benefits in ABS for Traditional Knowledge associated with genetic resources**

**Examples of Non-monetary Benefits**

(a) Sharing of research and development results; (b) Collaboration, cooperation and contribution in scientific research and development programmes, particularly biotechnological research activities, where possible in the Party providing aTK; (c) Participation in product development; (d) Collaboration, cooperation and contribution in education and training; (e) Admittance to ex situ facilities of genetic resources and to databases; (f) Transfer to the provider of the genetic resources of knowledge and technology under fair and most favorable terms, including on concessional and preferential terms where agreed, in particular, knowledge and technology that make use of genetic resources, including biotechnology, or that are relevant to the conservation and sustainable utilization of biological diversity; (g) Strengthening capacities for technology transfer; (h) Institutional capacity-building; (i) Human and material resources to strengthen the capacities for the administration and enforcement of access regulations; (j) Training related to genetic resources with the full participation of countries providing genetic resources, and where possible, in such countries; (k) Access to scientific information relevant to conservation and sustainable use of biological diversity, including biological inventories and taxonomic studies; (l) Contributions to the local economy; (m) Research directed towards priority needs, such as health and food security, taking into account domestic uses of genetic resources in the Party providing genetic resources; (n) Institutional and professional relationships that can arise from an access and benefit-sharing agreement and subsequent collaborative activities; (o) Food and livelihood security benefits; (p) Social recognition; (q) Joint ownership of relevant intellectual property rights, joint applications providers and users together.

**Examples of Monetary Benefits**

(a) Access fees/fee per sample collected or otherwise acquired; (b) Up-front payments; (c) Milestone payments; (d) Payment of royalties; (e) License fees in case of commercialization; (f) Special fees to be paid to trust funds supporting conservation and sustainable use of biodiversity; (g) Salaries and preferential terms where mutually agreed; (h) Research funding; (i) Joint ventures involving a negotiated partnership for mutual benefits between two or more entities; (j) Joint ownership of relevant intellectual property rights

Source: <https://www.cbd.int/abs/text/articles/default.shtml?sec=abs-37>

**4.2.4. Negotiation Process for PIC and MAT**

Typically, negotiation will be around but not necessarily limited to the following issues:

- a. Type of aTK being sought
- b. Geographical/ecological area of activity for the access to aTK
- c. Any limitations on the possible use of the information proposed to be accessed
- d. A clause addressing whether the terms of the agreement, in certain circumstances, could be renegotiated after access or more discovery/new information is found

- e. Whether the aTK can be transferred to third parties and conditions to be imposed in such cases
- f. Provisions regulating the use of the information in order to take into account ethical concerns held by any party or stakeholders
- g. Cultural issues related to traditional knowledge and practices held by the local communities that may constrain access
- h. Treatment of confidential information
- i. Provisions regarding the sharing of benefits arising from any eventual commercialization or development based on the aTK accessed
- j. Capacity building in various areas to be identified in the agreement
- k. Dispute resolution mechanisms
- l. Ownership of intellectual property rights
- m. Mechanisms to maintain communication during the length of the access permit and follow up with regards to commercialization or other updates in the agreements

#### ***4.2.5. Considerations for traditional knowledge holders (providers) before signing the agreements***

The rights of traditional knowledge holders in Rwanda is guided by Rwanda's Intellectual Property Law and Policy. Traditional knowledge holders in Rwanda have the rights and may be willing to provide their knowledge associated with the use of genetic resources under conditions that protect their rights and their knowledge, and at the same time provide for fair and equitable benefits from the provisioning of this knowledge to the potential users.

When entering into negotiations for the PIC or MAT, traditional knowledge holders should take the following indicative points and questions into consideration:

- Know information about the company/institution/researcher requesting access and get their contacts; the CNA should be able to assist with gathering of additional information about prospective users of aTK requesting access.
- Understand the purposes or uses of the request and the intended uses and outcomes for the material or information to be gathered.
- What are the proposed steps in the research? Where will the steps take place – what steps will be in Rwanda and what will occur outside Rwanda and where specifically?
- How long is the project of access and collection expected to take and what are the methods for access and collection?
- What are possible risks or impacts of the methods of access and collection? What are plans for mitigation of risks or impacts?
- What other groups or institutions will be involved?
- What types of commercial returns are anticipated from the project? What are the projected revenues or benefits to the company or institution and over what time frame?
- How will the aTK holders and/or communities and the Rwandan government benefit?
- What are the preferred methods of communication so that contact is maintained during the entire process from pre-access to commercialization?

- How will confidentiality be ensured if that is a concern with regards to aTK or locations of biological or genetic resources?

Other questions and considerations may arise depending on the specific circumstances at play in a given process. The Provider is encouraged to contact the District Environmental Officer or ABS national focal point at REMA.

### 4.3. Access Permit

#### 4.3.1 The Process to Obtain the Access Permit

Prospective users of traditional knowledge associated with genetic resources will submit the access request application after successful negotiation and completion of the PIC and MAT. The process for making the request to access genetic resources associated with traditional knowledge must follow the process explained here. District Environmental Officers are available in every District in Rwanda to assist and monitor the negotiation proceedings. The permit for accessing aTK is issued by the CNA in Rwanda. The access permit is necessary for both Rwandan and international applicants. If genetic material associated with traditional knowledge is planned to be exported, the proper export permit is needed and an MTA may be required. Box 7 shows the documents that need to be filed with the CNA as part of the Access request application.

An environmental impact assessment may be a requirement in case the methods of specimen collection are suspected to harm the wanted genetic resources and/or associated traditional knowledge. The CNA will advise on this.

The application to access aTK for research and development (rather than educational) must be accompanied by a letter from the home institution of the applicant supporting the proposed project and ensuring that the regulations and laws will be followed for access to aTK in Rwanda. The access application requires information about the applicant's organization, official establishment documentation, details about the organization's mission and history, names of all individuals involved in the proposed project for commercial use and their expertise, and the timeline for the project.

The proposal will include the objectives of the proposed project, details of the steps and processes involved from start to finish (type and extent of proposed research, techniques and equipment to be used), financial details, institutions involved in the project, common and scientific names of species/genetic resources about which information is desired, method of collecting the aTK, specific geographic locations proposed for collecting including GPS coordinates and/or names of communities implicated, potential risks during collection and plan for mitigation of those risks, and anticipated outcomes of the project. Names and expertise of Rwandan nationals to be involved in the project should be included as well as their roles in the proposed project. The communities or cooperatives to be approached must be indicated and the method for accessing and recording information must be explained.

The application will be accompanied by the PIC and MAT. The submitted paperwork will be reviewed by the CNA and if approved, the Access Permit shall be issued to the user which will

signal that the user may begin the agreed upon activities. This access permit should not take longer than one month from the time it is deposited in the office if all documents are in order. The Access Permit should be carried with the user when accessing aTK in Rwanda and be easily available to show upon request.

Upon approval of the access application, the local community or communities to be visited for accessing aTK must be informed of the timing and purpose of the visit in advance. The partner institution, the CNA and the District Environmental Officer should be contacted to facilitate communication with communities or individuals that will be visited.

An Environmental Officer from the relevant District must be informed about any foreign individual or team that has received an access permit for the collection of traditional knowledge associated with genetic resources, and may accompany the user during access and collection. Both the CNA and the user have the responsibility to ensure that the District Environmental Officer is informed. During collection of aTK, the user must respect the customs, traditions and values of the local communities.

If the Access request is denied, the user will receive a detailed explanation for the reason why the access request was denied. An appeal process is in place and is described below.

**Textbox 7. Checklist for filing access permit request with REMA. The user must provide the following:**

- Affiliation application showing the framework for the collaboration with the Rwandan partner institution
- Letter from home institution confirming status and purpose
- Research permit from appropriate institution(s) in Rwanda (if not a Rwandan national)
- Signed PIC
- Signed MAT
- Signed MTA (if required)
- Environmental Impact Assessment (EIA) if applicable

#### ***4.3.2. Appeal Process***

If an Access Permit application is denied, the applicant may appeal the decision to the Lead Agency in Rwanda. Denial of an access permit will be accompanied by an explanation of the denial prepared by the CNA. A review will be conducted of the application by the Lead Agency and a decision released within one month. In some cases, the access application may be denied due to missing documents or incorrect completion of documents, and in such situations the CNA may provide an explanation of steps needed by the applicant to rectify the problems with the application and resubmit, so that an appeal may not be needed at this time.

## **Chapter 5. Additional obligations of the User**

The user who has accessed aTK is obligated to the following:

1. Share updates on status of research using the information gathered with the CNA, partner institution, and providers/community members. The user will promptly inform the stakeholders of all discoveries made during the activities agreed upon under the access permit.
2. If commercialization proceeds based on any discovery the user must communicate with the appropriate stakeholders (CNA, partner institution, and providers/community members) and create a new MAT relevant to the commercialization process of the accessed GR for equitable and fair benefit sharing arising from this commercialization.

According to the Rwandan law and ABS regulations, an access permit may be suspended or cancelled if the user violates the agreements or any of the conditions imposed on the access permit or those implied under the regulations.

## **Chapter 6. Compliance Monitoring**

### **6.1. Checkpoints and Compliance Monitoring**

National and international laws and regulations governing ABS must be followed to avoid non-compliance and violation of ABS agreements. The users as well as the lead agency, CNA, and providers of aTK are responsible for observance of laws associated with ABS. It is crucial to understand the relevant policies, principles and laws, and to have a solid understanding of the various tools included in this document and the procedural steps necessary for full compliance. Communication with the CNA is a key step in avoiding problems with the ABS process in Rwanda. A hotline is available for communication with REMA at 3989.

Signing the PIC, MAT and MTA (if required) indicates that both provider and user of aTK will adhere to their obligations and comply with conditions and requirements of all the agreements and permits. The provider and user of aTK are required to implement the PIC, MAT, and MTA as negotiated and signed. This is monitored by designated checkpoints from the user's country. The user country will have access to PIC, MAT and MTA (if applicable), and refer to the Internationally Recognized Certificate of Compliance (IRCC) to monitor the compliance by the user. For the countries not signatory of the Nagoya Protocol, the monitoring should be guided by existing relevant regulations.

**Textbox 8. An example of accessing traditional knowledge about medicinal plants in Rwanda**

A researcher from USA may have an interest in studying the use of a certain plant species indigenous to montane tropical forest in Rwanda to treat high blood pressure, for example. To plan her research, she could first make contact with collaborators in the Pharmacy Department at the University of Rwanda. She completes the affiliation application for University of Rwanda so she can become an affiliated researcher there, and she then applies for her research permit at National Commission for Science and Technology. After receipt of the research permit, she works with her collaborator in Pharmacy to identify elders in villages around Nyungwe National Park with whom to carry out interviews. After identification of villages that fit the research needs, they apply for a permit from RDB because the research involves the national park, and they embark on the process of negotiating the PIC and MAT. To ensure compliance they contact the CNA in Rwanda and the District Environment Officer at their field location who assist them in the negotiation processes. After successfully completing the negotiations for PIC and MAT which involve non-monetary benefits that the participants requested in return for sharing aTK, the researcher submits her access permit application along with all required documentation (signed PIC, MAT and the research permits). The researcher receives her access permit and accompanied by her collaborator and the District Environmental Officer, she embarks on her research to access traditional knowledge associated with genetic resources. She will make sure to keep records of all contact information to follow up with her informants after her research is completed to ensure that the benefits agreed upon will be delivered, and she maintains contact with her collaborator and the CNA in Rwanda.

## 6.2. Penalties for not following the procedures

Offences could include the following: access to aTK without an access permit; failure to comply with a condition imposed by a permit or any aspect of the PIC or MAT; failure to provide, or willfully withholding, or providing false information during any aspects of negotiation; obtaining an ABS agreement by any dishonest means; export of aTK without appropriate permits; failure to follow up with the MAT. These offences will bring about penalties managed by the CNA.

## 6.3. Internationally Recognized Certificate of Compliance

Under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, parties are to issue a permit or its equivalent at the time of access as evidence that access to genetic resources was based on prior informed consent and that mutually agreed terms were established. Parties are required by the Nagoya Protocol to make information on the permit or its equivalent, available to the ABS Clearing-House for the constitution of the internationally recognized certificate of compliance. Accordingly, the information on the access permit issued in accordance with ABS Regulations will be submitted to the ABS Clearing House for the constitution of an Internationally Recognized Certificate of

Compliance. This certificate serves as evidence that the genetic resource, which is described in the access permit, has been accessed in accordance with prior informed consent and that mutually agreed terms have been established as required by the Rwandan ABS laws and regulations.

According to article 17 of the Nagoya Protocol, the internationally recognized certificate of compliance will include the following information:

- a. Issuing authority
- b. Date of issuance
- c. The provider
- d. Unique identifier of the certificate
- e. Person or entity to whom prior informed consent was granted (user) and affiliation
- f. Subject-matter or genetic resources covered by the certificate
- g. Confirmation that mutually agreed terms were established
- h. Confirmation that prior informed consent was obtained
- i. Commercial and/or non-commercial use intentions

**Textbox 9. An example of Accessing Traditional Knowledge about Food Processing in Rwanda**

If a food scientist from Europe wanted to study the use of the leaves of an indigenous plant found in Rwanda in the brewing of traditional beer, he would first apply for his affiliation and research permits, and after receiving these he will work with his collaborating partner in Rwanda, the CNA and District Environment Officer to negotiate the PIC and MAT with knowledge holders. When approved, he will be able to begin his explorations. If he finds that he needs to analyze the compounds in the leaves, and this was included in the signed PIC and MAT documentation, he will work with RDB to obtain the export permit to bring the leaves to his laboratory at his home institution in Europe. He may plan to return 10 months later to present a research seminar at his collaborating partner's institution in Rwanda, and he may return to the providers of the aTK to show them his results and ensure that the benefits agreed upon in the MAT are released to them. He may have plans to publish his findings in a journal, and will do so in co-authorship with his Rwandan collaborators.

**Textbox 10. An example where ABS is not involved: Plant Ecophysiology Research in Rwandan Forest**

A plant ecologist could receive funding from the UK government to carry out research on plant adaptations to a warming climate in Rwanda. This researcher may apply for affiliation with the Center of Excellence in Biodiversity and Natural Resource Management at University of Rwanda, or a similar type of institution, and develop collaborations with Rwandan Research Associates and/or student interns, for example, for the research field work plans. After receiving the research permit from NCST and the permit from RDB for access to the national park where the field work is to take place, the team may conduct the field work which includes collecting leaf samples for analyses in the laboratory of the principal researcher in the UK. Because there is no ABS involved in this research project (it is a purely ecological research project focused on photosynthesis and respiration rates), the PIC and MAT are not thus required and the researcher only needs to apply for the export permit to carry out the leaf material to her laboratory in the UK.

## Chapter 7. The Tools for Access and Benefit Sharing in Rwanda

### 7.1. Prior Informed Consent Template

**The Prior Informed Consent refers to the access of aTK and shall include information about the user and the purpose of the request for access to aTK.**

I/we .....  
being the holder of traditional knowledge associated with genetic resources of the following nature (species names or uses or other aspects of the traditional knowledge):

.....  
.....  
located at (*village, cell, sector and District*)  
.....

hereby provide consent that (*Name of applicant for prior informed consent*)  
.....

From (Affiliation and Address of the applicant requesting the access to the aTK)  
.....

.....  
may apply to the Competent National Authority for consideration to access the above stated aTK that I/we hold.

This consent is valid from D/M/Y.....to D/M/Y.....

This consent is granted subject to the following conditions:

1. ....;
2. ....;
3. ....;
4. ....;
5. ....;

The applicant(s) has\*/have\* obtained the following accessory agreements

1. ....
2. ....

Signed .....Date .....

\*Delete whichever is not applicable

## 7.2. Mutually Agreed Terms Template

### 1. User information when user is an institution or company

- 1.1. Name of institution or body: \_\_\_\_\_  
 1.2. Registration number of institution or body: \_\_\_\_\_  
 1.3. Country of registration \_\_\_\_\_  
 1.4. Contact details of institution or body (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_  
 \_\_\_\_\_  
 1.4. Name of contact person in the institution or body: \_\_\_\_\_  
 1.5. Capacity of contact person: \_\_\_\_\_  
 1.6. Name of person completing this application: \_\_\_\_\_  
 1.7. Contact details for this person: \_\_\_\_\_

### 2. User information when user is an individual

- 2.1. Name of applicant: \_\_\_\_\_  
 2.2. Nationality: \_\_\_\_\_  
 2.3. Country of residence: \_\_\_\_\_  
 2.4. Passport or national identification number and country of issuance: \_\_\_\_\_  
 \_\_\_\_\_  
 2.5. Contact details of applicant (including postal/physical address, phone, fax and e-mail address): \_\_\_\_\_

### 3. Provider: Local community or individual holder of aTK

- 3.1. Name of local community or cooperative representative or individual holder of aTK who will sign this agreement on behalf of the local community: \_\_\_\_\_  
 3.2. Title and affiliation: \_\_\_\_\_  
 3.3. Contact details (includes physical/postal address, telephone, fax and e-mail address) of the local community representative or individual holder of aTK: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*If a cooperative or local community, a resolution must be attached to this agreement to confirm that the local community or cooperative representative indicated above has been authorised to enter into this agreement on behalf of the local community or cooperative; that the local community or cooperative has full knowledge of the bioprospecting project; and that it consents to entering into this benefit-sharing agreement.*

### 4. Traditional knowledge to be accessed

This agreement concerns the following traditional knowledge associated with genetic resources (specify type of information to be sought, specifics of the information being sought and area or source from which the information is requested to be collected or obtained)

Type of traditional knowledge being sought (TK about what?)	Family, genus, species (if possible) Scientific and Common names of genetic resources	Full locality data (GIS coordinates if possible) where access of aTK is being requested

	<b>associated with the traditional knowledge being sought</b>	

### 5. Intended use of the aTK

Explain precisely how and for what intentions the associated Traditional Knowledge will be used or exploited (set out details) \_\_\_\_\_

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### 6. Sharing of benefits

Benefits arising from the associated traditional knowledge must be fairly and equitably shared. The benefits may include monetary or non-monetary benefits.

<b>Monetary Benefits</b>	<b>Non-monetary benefits</b>	<b>Time frame for the benefit sharing (expected start date and duration)</b>

### 7. Payment of benefits

All money arising out of this agreement and due to any party to this agreement must be paid to .....

### 8. Review of agreement

This agreement will be reviewed every \_\_\_\_\_ (**fill in agreed timeframe**), with a view to amending the agreement if necessary. One month prior to every review, the permit holder must disclose any new material information with regard to the bioprospecting to all stakeholders to enable stakeholders to participate in the review from an informed basis.

### 9. Other matters

Any other matters or conditions which the parties to this agreement wish to record may be attached to this agreement as an annexure. A copy of this agreement must be lodged with the Competent National Authority in Rwanda within one month of the agreement being concluded. This agreement constitutes the entire agreement between the parties in regard to the subject matter of this agreement and no addition to, variation or cancellation of this agreement or waiver of any rights under this agreement will be of any force or effect unless reduced to writing and signed by the parties to this agreement.

**Signature of applicant for permit:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Title of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Endorsement of a juristic body, if applicable**

**Name of juristic body:**

\_\_\_\_\_  
**Signature of duly authorized officer from the juristic body:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Signature of access provider of indigenous biological resource:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Signature of local community representative or individual holder of aTK:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**Capacity of signatory:** \_\_\_\_\_

**On behalf of:** \_\_\_\_\_

**Approved by the..... Signature**

\_\_\_\_\_  
**Date**

**DEPARTMENTAL CONTACT DETAILS**

All completed documents must be mailed

to:.....

### 7.3. Access Permit Application Template

Date: Day/ month/, year

#### Instructions

Applicants applying as individuals should fill Part I.

Applicants applying as corporates (organizations) should fill Part II.

All applicants must submit two hard copies and one (1) soft copy of this application to the Authority.

#### PART I

##### FOR APPLICANTS WHO ARE INDIVIDUALS

Name of applicant .....

Nationality .....

Identification Card N<sup>o</sup>./Passport N<sup>o</sup>. .....

Postal Address .....

Telephone .....

E-mail: .....

Permanent Residential Address .....

.....

Qualifications (List qualifications below and attach to this application; these may be Curriculum Vitae and academic certificates)

.....

#### PART II

##### FOR APPLICANT WHO ARE CORPORATE (ORGANIZATIONS)

Name of Organization

.....

Permanent Address

.....

Registered Address

.....

Registration N<sup>o</sup> (Attach copy of certificate of registration)

.....

Qualification of individuals in the project (Curriculum Vitae and Academic certificates to be attached)

.....

Details (if any) of:

(i) Holding and subsidiary institutions; or

(ii) Individuals connected to the project

.....

(iii) Name of the contact person in regard to this application and the position held in the organization

.....

**Renewal Details**

Is this an application for renewal of an access permit?

YES or NO

If YES, Previous Access Permit N<sup>o</sup>. .....

Granted on ..... (Date)

All applicants are forewarned that it is an offence to give false information to the Competent National Authority.

I undertake to provide progress and full reports as requested.

I declare that to the best of my knowledge the information given in respect of this application is true.

For individual applicants:

Name of Applicant

.....

Signature

.....

Date

.....

For Companies/Institutions:

*(Affix company seal)*

.....

Name of Head of company: .....

Signature

.....

Date

.....

#### 7.4. Access Permit Template

This permit is hereby granted to:

*(insert name, title, affiliation, and contact address)* in accordance with Rwanda's ABS Guideline for access to the following Traditional Knowledge Associated with Genetic Resources *(insert description of the traditional knowledge being accessed)*:

.....  
.....

to be accessed at *(insert geographical description of the location of the Traditional Knowledge)*:

.....  
.....  
.....

This access permit is issued subject to the Order and all agreements concluded pursuant to its grant, and may be suspended, cancelled or revoked should the holder breach any of those agreements and the conditions of issue and those contained in the Order.

M/s. .... (insert name of applicant) being the holder of this permit, including his agents and assignees, undertake to abide by the conditions of this permit and to promptly report to the (name of competent authority) any matter that may prejudice the interests of Rwanda and other parties concluded pursuant to the grant of this permit.

Signed: ..... Date: .....

*Director General,  
Competent Authority.*

Dated the .../.../....

### **Textbox 11. Definitions related to ABS following Rwanda laws and policies**

**Access:** obtaining the right to explore and use genetic resources including material that is conserved, from derived products, or genetic or biological material or knowledge associated with those resources or material for purposes of research, bioprospecting, conservation, industrial application or commercial use. Can we add the access to TK?

**Access permit:** a document issued by the Competent National Authority to allow an individual or entity access to genetic resources or associated traditional knowledge.

**Associated Traditional Knowledge:** knowledge related to biological or genetic resources that is held by people in Rwanda and passed down from generation to generation, usually within a family.

**Benefit sharing:** the sharing of results or outcomes that accrue from the utilization of genetic and/or associated Traditional Knowledge or biological resources and subsequent applications and commercialization arising from genetic resources and may include monetary and/or non-monetary benefits such as access fees, direct payments, royalties, technology or equipment, technology transfer, research results, capacity building, community knowledge, awareness and education.

**Biological diversity:** the variability among living organisms including plants, animals, fungi and bacteria, terrestrial and aquatic, and the ecological complexes of which they are part and the interactions among these organisms; the variability can be within species, between species, and among populations, communities, ecosystems, and landscapes.

**Biological resources:** genetic resources, organisms or parts of organisms, populations or any other biotic components of ecosystems with actual or potential use or value for humans.

**Bioprospecting:** the search for and development of genetic and biochemical resources (including chemical compounds, genes, micro-organisms, macro-organisms) from nature and may include associated traditional knowledge about those resources; its aim is to commercialize biodiversity.

**Competent National Authority(ies) (CNA):** the institution(s) designated by Rwanda to be responsible for granting access, and responsibility for advising on every aspect of the ABS process including negotiations for PIC and MAT, monitoring and evaluation of ABS agreements, processing of applications; oversight of conservation and sustainable use of genetic resources accessed and protection of the rights of traditional knowledge holders associated with those genetic resources, and mechanisms that ensure participation of the different stakeholders involved in the ABS process; there may be one or more CNA depending on how responsibilities for ABS processes are distributed.

**Genetic resource:** any genetic material from a biological resource containing genetic information of actual or potential value for humanity.

**Indigenous species:** any species that occurs, or has historically occurred in Rwanda living in a wild or free state. This does not include any species that has been introduced to Rwanda as a result of human activity.

**National Focal Point:** The designated individual for access and benefit sharing who shall make information available through the clearing-house mechanism, inform applicants for access to genetic resources on procedures for acquiring prior informed consent and mutually agreed terms, including benefit-sharing, and on competent national authorities, relevant traditional and local communities and relevant stakeholders, through the clearing-house mechanism.

## Chapter 8. Process used to develop the Toolkit and Guidelines

The aim of this guideline and toolkit document is to promote and support the development of an efficient system that protects traditional knowledge, biological resources and genetic material, promote best practices, and ensure prior-informed consent and benefit-sharing for access to traditional knowledge associated with genetic resources in Rwanda. The process of developing the guideline and toolkit used the following guiding principles:

- Recognition of the value of traditional knowledge and respect for the needs of the knowledge holders
- The need to promote respect for traditional knowledge and its conservation and preservation including elimination and avoidance of unfair and inequitable uses of the knowledge
- Promotion of innovation and creativity and overall community development and capacity in Rwanda including facilitating legitimate trade in traditional knowledge-based goods and services
- Prevention of biopiracy
- Adherence to Rwanda's policies and laws

Steps in the development of this document included the following:

- 1) Consultations with UNDP and REMA staff, including presentations by and discussions with international consultants working on ABS in Rwanda and the region, and review of consultant reports.
- 2) Review of international and national policies, reports, laws, and strategies related to ABS, biodiversity, and natural resources, including guidelines and toolkits already prepared for other countries.
- 3) A consultative workshop with ~ 90 traditional healers in Kigali, Rwanda in August 2018 to identify issues, concerns and knowledge base for ABS in Rwanda. Participants worked in groups to respond to questions about ABS issues which were presented in plenary sessions.
- 4) Participation in the Pan African workshop on Nagoya Protocol (ABS) held in Kigali, Rwanda in August 2018.
- 5) Consultative workshop in October 2018 in Kigali, Rwanda with stakeholders from governmental and non-governmental institutions to obtain feedback for the development of guidelines for Access and Benefit Sharing of Genetic Resources and Associated Traditional Knowledge in Rwanda. The workshop used active group facilitation techniques to gather information from the participants.
- 6) Individual interviews with stakeholders from institutions in Rwanda to gather past experiences about ABS.
- 7) A consultative workshop to review the drafted Guideline and Toolkit
- 8) A validation workshop to finalize the Guideline and Toolkit

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## Annex 1: List of governmental and public institutions relevant to the ABS process in Rwanda

No.	Name	Main field of Intervention
1	INMR (Institute of National Museums of Rwanda)	Collect, preserve, research, and present Rwandese past and present cultural and natural national heritage
2	Local government (District and Sector Authorities)	Coordination of good governance and administration of programs that promote population wellbeing
3	MINAGRI (Ministry of Agriculture and Animal Resources)	Initiate, develop and manage suitable programs of transformation and modernization of agriculture and livestock to ensure food security and to contribute to the national economy
4	MINICOM (Ministry of Trade and Industry)	Development of policies, laws and strategies for a business environment conducive to competitive private sector, growth and protection of consumers
5	MINIJUST (Ministry of Justice)	Elaboration of policies and legal instruments, and oversee the law enforcement and justice
6	MINILAF (Ministry of Lands and Forestry)	Developing and disseminating policies, laws, strategies and programs related to conservation and rational utilization of land and forestry
7	MINISPOC (Ministry of Sports and Culture)	Collect, preserve and disseminate National documented intellectual and cultural heritage
8	MoE (Ministry of Environment)	Providing guidelines on environment management and biodiversity conservation
9	MoH (Ministry of Health)	Provide health services to the population through the provision of preventive, curative and rehabilitative health care, including the control and monitoring of traditional medicine
10	National Gene Bank	Collect, document, conserve and manage living samples of the diversity of genetic resources, including plants, animal breeds, forest genetic resources and microbes and wild relatives of crops
11	NIRDA (National Industrial Research and Development Agency)	Implementation of policies, patent inventions and traditional knowledge in relation to industrial development, and promotion of the trade of research products, pharmaceutical research for producing drugs, delivering pharmaceutical research and traditional knowledge valorization permits
12	OR/RDB (Office of the Registrar General, Rwanda Development Board)	Registration and protection of intellectual property rights which include patent, trademarks and copyrights
13	RAB (Rwanda Agricultural Board)	Development, research and extension of crops and animal production
14	RALICS (Rwanda Agriculture and Livestock Inspection and Certification Services)	Inspection and certification of plants and animals' products entering or sent out of the country.

15	REMA (Rwanda Environment Management Authority)	Responsible for coordinating and implementing environmental policies in the country and for national environmental protection, conservation, promotion and overall management. REMA hosts the ABS and CBD National Focal Points
16	RNP (Rwanda National Police)	Safeguard the rule of law and provide safe and crime free environment for all
17	RSB (Rwanda Standards Board)	Provide standards based solutions for consumer protection and trade promotion
18	RWFA (Rwanda Water and Forestry Authority)	Implement policies, laws and strategies related to management of forests and natural water resources
19	UR/CoEB (University of Rwanda Center of Excellence in Biodiversity and Natural Resources Management)	Biodiversity data collection, monitoring, management, capacity building and bio information sharing
20	MINEDUC	Has hosted some conferences and workshops on traditional knowledge.



