



ABS Brochure, Kenya.....



Access and Benefit Sharing From Utilization of Biological Resources & Associated Traditional Knowledge in Kenya

GENERAL INFORMATION BROCHURE



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First Published in 2014 By:

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Cover Page Source: NMK





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1.0 INTRODUCTION

1.1 Background Information

Kenya is renowned destination for tourists and researchers due to its abundant natural and cultural heritage. It is home to over 34,000 species of flora and fauna distributed in various national parks, nature reserves and private nature conservancies. In addition, Kenya is a multi-cultural country with diverse indigenous and traditional knowledge (TK), medicinal plants among other heritage resources as reflected in her 42 communities. Thus, Kenya attracts a variety of individuals and corporations interested in collecting genetic resources (GRs) and associated TK for various purposes.

This brochure attempts to avail simplified concepts and procedures of access to genetic resources and sharing of the benefits that accrue from its utilization in Kenya. It is meant to create awareness to local communities as well as providing guidance in management and monitoring of utilization of genetic resources by policy makers, regulators and checkpoints in Kenya.



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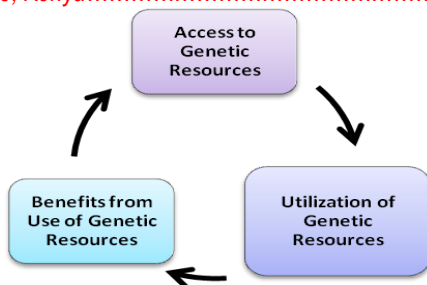


1.2 Access and Benefit Sharing Concept

Access and benefit-sharing (ABS) is an established international system that spells out the way in which genetic resources and associated traditional knowledge (TK) are accessed, and how the benefits that result from their use are shared between the users and the providers. The concept was coined during negotiations and signing of Convention on Biological Diversity (CBD) in 1992. It is entrenched in the third objective of CBD, which requires all contracting parties to ensure fair and equitable access to genetic resources and sharing of benefits accruing from utilization of genetic resources and associated TK.



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Benefit Sharing refers to the distribution of benefits that accrue from the utilization of genetic resources and associated traditional knowledge, practices and innovations. The benefits include both monetary and non-monetary returns.

1.3 Traditional Knowledge and Community Protocols

Traditional knowledge encompasses indigenous and tradition-based literary, artistic or scientific works; inventions; scientific discoveries; names and symbols; undisclosed information; and all other traditional and tradition-based innovations and creations resulting from intellectual activity in the cultural, industrial, scientific, folklore, literary or artistic fields.



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Today, a number of indigenous local communities (ILCs) are developing community protocols to implement the concept of access and benefit sharing policy framework, which encompass a broad range of practices and procedures developed by indigenous peoples and their communities.



1.4 National ABS Institutional Framework

1.4.1 National Environment Management Authority

NEMA is the national authority for the implementation of the Convention on Biological Diversity (CBD), and Nagoya Protocol. It implements the ABS under Environmental Management and Coordination Act, 1999 (Conservation of Biological Diversity and Resources; Access to Genetic Resources and Benefit Sharing) Regulations 2006 (often called “Legal notice No. 160 of 2006”) and other relevant national laws and policies. It works closely with lead agencies in coordination and implementation of



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environment and biodiversity conservation policy and regulations in the country.

1.4.2 National Competent Authorities and Lead Agencies

NEMA liaises with National Competent Authorities (NCAs) (also referred to as "lead agencies") in regulating ABS in Kenya. Technically, lead agencies are designated to perform various responsibilities such as granting PIC, research licence, pass, letter of affiliation or export permit to users of their genetic resources. NCAs are also responsible for negotiating MAT, MTA and benefit sharing agreements with users of GR, representing providers at local or national level, and serving as checkpoints in monitoring compliance with ABS requirements during post-access permit procedures.

2.0 ABS STAKEHOLDERS

2.1 Providers of Genetic Resources

A provider of genetic resources is any persons or entity in custody of GR that provides genetic resources and/or associated knowledge within the Kenyan territory. These include; public or private



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land owners, and resource managers, county government, local community and individual traditional knowledge holders. It is the obligations of the genetic resource providers to negotiate MAT and grant PIC to the user prior to access to genetic resource and/or associated traditional knowledge.

2.2 Users of Genetic Resources

A user of genetic resources is anyone pursuing collection activities in Kenya, whether of tangible materials or intangible information. The user is required to acquire PIC from the provider and apply for an access permit from NEMA before access to genetic resources. Users of GR include; scientists, academic researchers, collectors or curators, inventors, herbal doctors, bio-prospectors, and investors or industry researchers.





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2.3 Regulators

These are government bodies responsible for ensuring that ABS Regulations are adhered to. These include NEMA and NACOSTI.

3.0 ACCESS AND BENEFIT SHARING TOOLS

There are various tools in the implementation of the concept of ABS. The most commonly used tools are; PIC, MAT, MTA, Benefit Sharing Agreements and Reports on utilization. These tools are very crucial in implementation of ABS Regulations in Kenya.

3.1 Prior Informed Consent

Prior Informed Consent (PIC) is the permission given by the provider or competent national authority of a provider country to a user before accessing genetic resources. Usually, PIC is negotiated between the provider and the user of GR through an agreement involving mutually agreed terms (MAT). In Kenya, PIC is a written document and is granted upon completing a Form modeled along Appendix I of the ABS Toolkit and may require minutes of meetings with community or letter of support from lead agency.



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3.2 Mutually Agreed Terms

Mutually Agreed Terms (MAT) is a set of terms and clauses in an agreement reached between the providers of genetic resources and users on the conditions of access and use of the resources, and the benefits to be shared between both parties. It is negotiated in the presence of relevant lead agencies to ensure a fair access and equitable sharing of the benefits. In Kenya, MAT is a negotiated document modeled along Appendix II of the ABS Toolkit by parties and may require minutes of meetings with community and permit, licence or letter of support from relevant lead agency.

3.3 Material Transfer Agreement

Material Transfer Agreement (MTA) is document negotiated between the holder of access permit or provider and a relevant lead agency or community on terms of transfer and use material abroad if the project is designed to export GR out of Kenya.

4.0. ABS REGULATIONS IN KENYA

In Kenya, ABS is regulated under the Environment Management and Co-ordination Act, 1999, (Conservation of Biological Diversity and Resources;



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Access to Genetic Resources and Benefit Sharing) Regulations 2006 (often called “the Legal Notice No. 160 of 2006”) and other relevant national laws and policies. The Regulations provides for issuance of access permit to anybody wishing to use genetic resources and associated traditional knowledge by NEMA subject to provision of the following documents:

- i. Research Clearance Licence from the National Commission for Science, Technology and Innovation (NACOSTI),
- ii. Prior Informed Consent (PIC) granted to users by resource providers, and
- iii. An agreement based on Mutually Agreed Terms (MAT)



In addition to the access permit, the permit holder wishing to export GR outside Kenya is required to execute Material Transfer Agreement (MTA) and to



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apply for either phyto-sanitary or animal health certificate from KEPHIS or Department of Veterinary Services respectively. Once the appropriate health certificate is acquired, the permit holder is required to acquire an export permit or licence from appropriate lead agency prior to moving the material out of the country.

4.1 Benefit Sharing Plan

Benefit sharing refers to an arrangement between provider and user of GR on how they will distribute benefits accruing from utilization of GR. In Kenya, the holder of an access permit is responsible for ensuring the provider's enjoyment of both monetary and non-monetary benefits arising from the proprietary rights of access and the use of GR.



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5.0 ACCESS PERMIT PROCEDURE

5.1 Pre-access Procedure

Pre-access procedure concerns mainly the acquisition of requisite documents for filing an application for the access permit. First and foremost, the applicant is required to identify and contact local counterparts in Kenya and sign a Memorandum of Understanding (MOU) or equivalent collaborative framework and seek a letter of affiliation from the lead agency. In



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liaison with the local counterpart in Kenya, applicant identifies potential GR provider and/or associated TK and develops a joint proposal. A letter of intent is written to NACOSTI, copy to NEMA. Upon receipt of positive response on the letter of intent, the applicant applies for research permit from NACOSTI by attaching the following documents: Affiliation letter from local counterpart, Letter of Intent and Partnership MOU and Project proposal abstract. The applicant proceeds to apply for researcher's pass or visa stamp issued by the Department of Immigration Services. The Pass is required by NEMA together with letter of affiliation for processing of access permit.

5.2 Acquisition of PIC and MAT

After receipt of research licence, the applicant is required to establish contact with appropriate genetic resource provider through the public administration to commence the process of acquiring prior informed consent and mutually agreed terms through the following general steps:

- a) The applicant is advised to collect or download application form (first schedule) under Regulation 9 of ABS to familiarize himself with necessary requirement and



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annexes. Armed with research permit, the applicant (in liaison with local partner) will approach relevant lead agency and local administration within which the genetic resources are located to organize a meeting to negotiate and sign PIC based on MAT.

- b) The community meeting should have a minimum of fourteen (14) participants including; chief, headman or other community leaders and representative/s of the relevant lead agency(ies) and county government.
- c) The Output of the meeting which forms part of the documentation to be submitted to NEMA should include the following: confirmed minutes of the meeting which must be duly signed, attendance list duly be signed by the participants complete with their contact information, details or their residence etc, evidence of the information provided by the GR user to the community and any additional evidence e. g. photos, videos etc.
- d) During the meeting, the communities identify and authorize person(s) who will sign the PIC and MAT on their behalf. The potential GR user will incorporate the agreed concerns



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from the public meeting in the project proposal document and together with the provider completes and signs the PIC and MAT.

- e) The potential GR user submits copies of the duly completed access permit application to NEMA by attaching; PIC, a project proposal, MAT and minutes of the public meeting among other requirements as indicated above.

5.3 Process for Acquiring Access Permit

Upon receipt of positive response on the letter of intent, research licence, researchers pass, PIC and MAT, the applicant is expected to apply to NEMA for an access permit in accordance with section 9(1) of the ABS Regulations¹. The procedure involves the following steps:-

The first step is to fill an application form as set out in the First Schedule of the ABS Regulations 2006 and found on-line at www.nema.go.ke. Once the application form is duly filled and signed, the applicant is required to attach the following:

- i. Bank slip of payment to NEMA



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- ii. Copy of ID for Kenyans ,Passport for foreigners and PIN for corporate/organization
- iii. A copy of the information provided by the applicant to the community.
- iv. Confirmed and duly signed minutes of meeting with the community on PIC,
- v. Attendance list in (iv) above duly signed by the participants complete with their contact information, details.
- vi. A duly executed PIC and MAT set out as a legally binding Memorandum of Understanding (MOU) between the GR provider and the applicant 1 Refer to Regulations 9-14 of the ABS Regulations
- vii. Copy of Research license from NACOSTI,
- viii. Copy of MOU or equivalent, providing the frame-work for collaboration with a counterpart in Kenya
- ix. Project Proposal indicating; title, scope, objectives, methodologies, and expected outputs.
- x. Copies of curriculum vitae for all personnel to be involved in the project,
- xi. Environmental Impact Assessment Certificate depending on the project.



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Upon receipt of the access permit application, NEMA carries out a formal examination of the application to ascertain that it meets all the formal requirements including the attachments. If the application does not meet formal requirements, the applicant is notified to remedy the application within a specified period of time. If all the requirements have been met, NEMA publishes the application in the Kenya Gazette and in at least one newspaper with nationwide circulation or in such other manner as it may consider appropriate to invite public comments. Upon expiry of the stipulated publication period, NEMA invites ABS Technical Committee (TC) comprising various key stakeholders to determine the Application taking into consideration the comments from the public and other stakeholders. If TC is satisfied that the activity to be carried out will facilitate sustainable management and utilization of the GRs for the benefit of the people of Kenya², it recommends to NEMA to issue an access permit.

The decision to grant or reject the application for access permit is communicated in writing to the applicant within sixty (60) days from the date of receipt of the application. The permit is not transferable. It is valid for a period of one year but



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may be renewed for a similar. Any person who is dissatisfied with the decision of NEMA may appeal to the National Environment Tribunal (NET) as provided for in section 11 (3) of the Regulations.

5.4 Post Access Issues

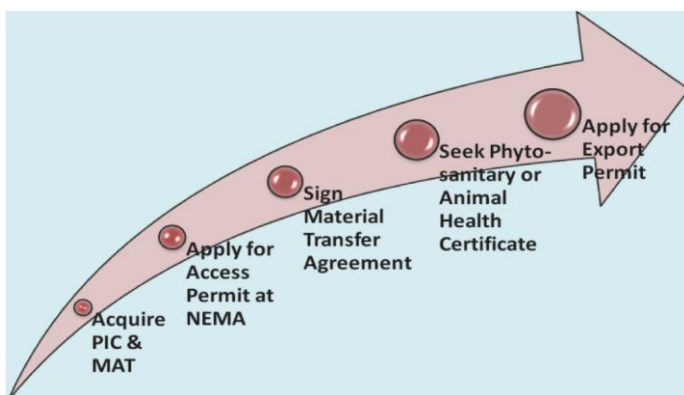
There are a number of documents and conditions to be fulfilled after acquiring access permit. For instance, a holder of access permit wishing to export GR outside of Kenya must negotiate and sign a Material Transfer Agreement (MTA) with a relevant lead agency in Kenya spelling out 2 See Article 69 (1) (h) of the Constitution.

important terms and conditions of transfer, use and benefit sharing. A copy of the executed MTA is then submitted to NEMA for further information. Permit holders wishing to export genetic resources from Kenya must apply for and obtain an export permit from the relevant lead agency by attaching either phyto-sanitary certificate from KEPHIS in case of plant genetic resources or animal health clearance certificate from the Department of Veterinary Services. Further, there is additional compliance responsibilities imposed on user of Access Permit. For instance, the permit holder in liaison with counterpart should share with stakeholders



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information on the state of duplicates and holotypes of all GR collected and deposited with the relevant lead agency in Kenya, deposit with NEMA records of all intangible components of GR collected and deposited with the lead agency and submit quarterly reports to the NEMA on the status of research, including all discoveries made involving genetic resources and/or intangible components.



6.0 MONITORING COMPLIANCE

In Kenya, there are a number of compliance measures to ensure that genetic resources utilized within its jurisdiction have been accessed in



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accordance with the law. In addition, there are various monitoring tools to ensure compliance with the terms and conditions of prior informed consent and mutually agreed terms as required by access and benefit-sharing regulations.



6.1 ABS Checkpoints in Kenya

Checkpoints are government institutions and organizations charged with monitoring compliance with the relevant agreements and application of ABS tools by both user and provider. The Organisations whose functions are relevant in implementation of the conditions set forth in the agreements such as; utilization of genetic resources, collection of relevant information at any stage of research, development, innovation or commercialization.



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6.2 Trans-boundary Measures

In cases where the same genetic resources or TK are found *in situ* within Kenya and other neighboring country such as Uganda or Tanzania, the Government will endeavour to cooperate with the neighboring country and involve indigenous and local communities concerned with a view to implementing PIC, MAT and other ABS Agreements and the objectives of the Nagoya Protocol.



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For further information

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