ABS COMPLIANCE IN THE BROBAD SEC A TUDY BY THE AFRICAN BAOBAD ALLIANCE REPORT ABA CONGRESS SENEGAL 2025

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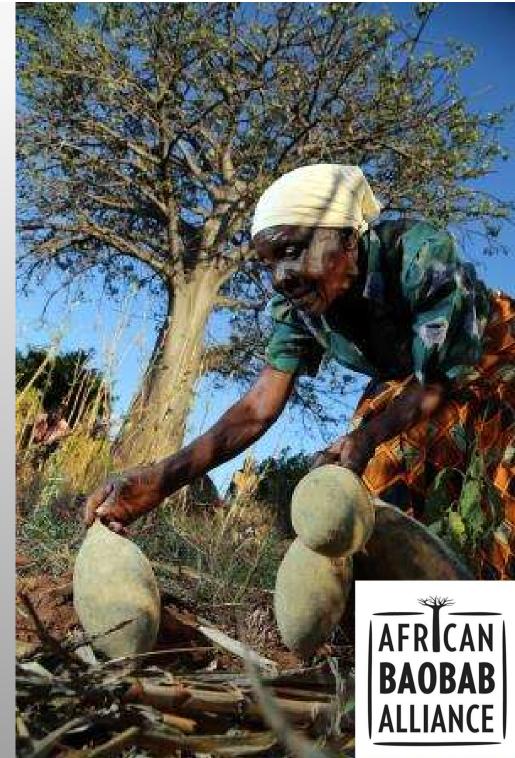
Scope of research

- Introduction to ABS principles
- Key provisions of the Nagoya Protocol
- Overview of ABS regulations in SADC
- Market awareness
- Cross cutting issues
- Recommendations



Nagoya protocol

- As of June 2024, the protocol has 141 parties, representing over two-thirds of the CBD parties (196 parties) (CBD, 2024).
- The protocol contains 36 articles elaborating various rules and regulations, providing a legally binding framework
- It promotes transparent and effective implementation of ABS concepts at regional, national and local levels.



National ABS Frameworks in SADC

- Overview of ABS regulations in Mozambique, South Africa, Tanzania, and Zimbabwe
- Comparison of national legislations





National ABS Frameworks in SADC

Mozambique

- Mozambique has been party to the Nagoya Protocol since 12 Oct 2014.
- The country's ABS framework is primarily governed by Regulation 19/2007 of 9 August, published in the National Gazette, No. 32, Series I

Administrative Processes and Modalities

The main administrative body responsible for ABS is the Ministry of Land, Environment and Rural Development

Inter-Ministry Working Group:

This group advises the National Authority on ABS issues and coordinates between different government departments. However the Roles and responsibilities of each of the participating ministries have not yet clarified.



Mozambique Continued



Benefit-Sharing Mechanisms

Mozambique's **Regulation 19/2007** mandates that access to genetic resources must be based on Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).

ABS Process

- Currently **no clear ABS case** that has been negotiated in Mozambique.
- Roles and responsibilities of all the governmental players have not been clearly defined which leads to bureaucracy and delayed processes.

Monitoring and Reporting: Mozambique has not yet developed models for internationally recognised certificates of compliance. This hinders the ability to monitor the utilisation of genetic resources effectively and ensure compliance with PIC and MAT requirements.

Enforcement Mechanisms

The country lacks specific checkpoints for ABS compliance, which are necessary to monitor the use resources and ensure that all activities are conducted legally.



Mozambique Continued



Challenges

- There are no contracts, models, manuals, or guidelines developed for ABS regulations, which complicates the implementation of benefit-sharing mechanisms.
- The enforcement of PIC and MAT provisions is inconsistent, and communities often do not receive their fair share of benefits due to bureaucratic inefficiencies and corruption.

Compliance Pathways

• To ensure compliance with ABS regulations, Mozambique needs to establish clear compliance pathways that include monitoring, reporting and enforcement mecha



South Africa



- Became a Party to the Nagoya Protocol in 12 October 2014.
- The country's Access and Benefit-Sharing (ABS) framework was established under the National Environmental Management: Biodiversity Act (NEMBA) of 2004.
- This is further reinforced by the Bioprospecting, Access and Benefit-Sharing (BABS) Regulations, which were first introduced in 2008 and subsequently amended in 2015.
- Other legislation and policy measures supporting ABS include-
 - South Africa's Patents Act No. 57 of 1978,
 - Amendments of the Act in 2005 that make the disclosure of origin of South African genetic resources and associated traditional knowledge compulsory.

South Africa



Administrative Processes

The Department of Environmental Affairs (DEA) serves as the National Focal Point and the Competent National Authority (CNA) for ABS. The DEA is responsible for the overall coordination and implementation of ABS policies and regulations.

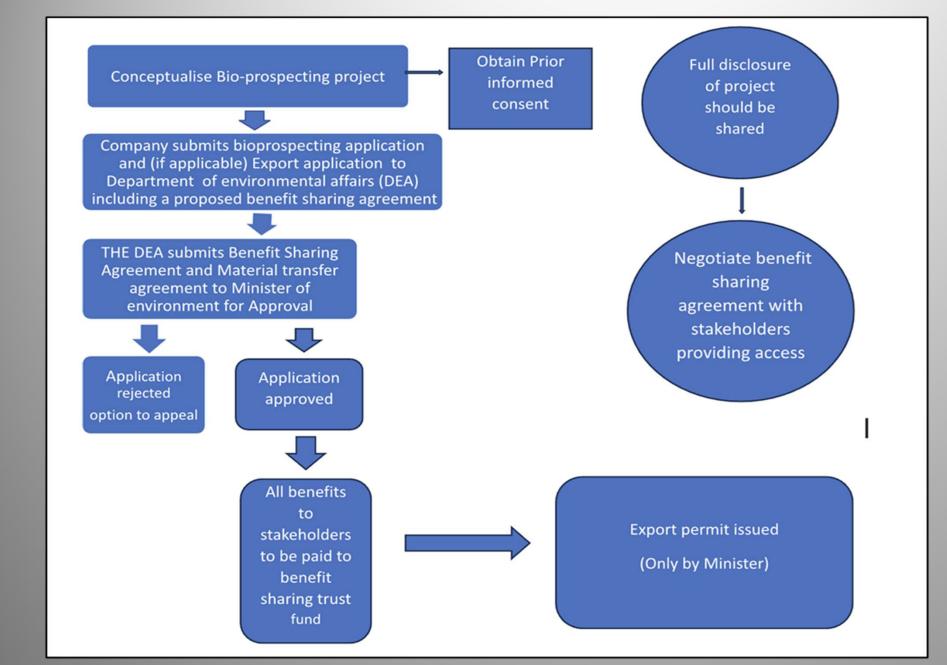
Challenges: The DEA faces challenges such as insufficient human resource capacity and the need for improved coordination among different governmental departments and stakeholders involved in the ABS process

Institutional Structures:

South Africa has established multiple checkpoints including the Patent Office, Ports of Entry and Exit, Provincial Permit Issuing Authorities, and the DEA itself to monitor and enforce ABS compliance.

- Enforcement Mechanisms: South Africa has designated various checkpoints to enforce ABS compliance.
- The Patents Amendment Act of 2015 includes provisions that require patent applicants to disclose whether their inventions are based on or derived from indigenous biological resources, ensuring that the use of genetic resources

South Africa ABS Procedure





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South African Process



ABS permit Process

- The Biodiversity and Conservation branch of the Department of Forests Fisheries and Environment (DFFE) reviews applications made by the customer during the internal assessment – where gaps can be identified and the application can be resubmitted - and prepares documents for the Bioprospecting Advisory Committee (BAC).
- 2. The BAC reviews the application received from the DFFE (this process can take up to a year with the back-and-forth processes)
- 3. Upon completion, the DFFE then submits documentation which progresses to the Minister via many interim teams including Legal and Transactional Advisory to review the agreements for fairness.
- 4. Ministers must also then assess based on their advice whether the agreements are fair and equitable before signing the permit and agreements (only the Minister has the right to sign an agreement issue a permit) this entire process ends up taking close to a year and often more than one year **AFRIC**



Industry wide ABS Negotiations



- South Africa is often lauded as leading the pack on ABS issues in Africa because of case studies such as the Buchu and Rooibos industry wide as well as the precedence set by the SAN-Hoodia case.
- Where ownership of Genetic resource or Indigenous knowledge can be attributed an industry wide negotiation for Benefit sharing is carried out However, Every company still has to go through the process of Negotiating PIC and MAT.
- Sector wise, having a ring that binds allows the benefit sharing agreement to be contained at a specific level and eliminates a lot of bureaucracy and administration.

Pros and Cons of South African ABS regulations

Pros



- The application system can be done online making it more accessible and may improve efficiency.
- NEMBA is currently being reviewed to align with the Nagoya protocol
- For the more homogenous species where Tk Holders are known the negotiation is industry wide making it easier and there is no need for replication where benefit sharing is concerned however a company is still required to apply for a permit as an individual.
- Centralised system helps quickly identify TK holders or other stakeholders who may have an interest in the specie

Cons

- Due to limited personnel the application process takes time
- It does not include conservation as part of benefit sharing.
- The legislation has solely focused on monetary benefits & addressing socio economic disproportionality for TK holders
- Centralised system -only the Minister can sign permit or grant a permit and this can take time

Tanzania

- Tanzania, still not a signatory and has so far accessed the Nagoya protocol
- Accessed in January 2018 and officially became a Party on 19th April 2018.
- Tanzania's Access and Benefit-Sharing (ABS) framework is primarily governed by the Environmental Management Act of 2004 and the subsequent Environmental Management (Control and Management of Genetic Resources) Regulations, 2010.

Institutional Arrangements

The regulatory framework involves multiple institutions. The Ministry responsible for the Environment regulates all biodiversity matters in Tanzania is the Ministry of Natural Resources and Tourism (MNRT). The Division of the Environment (DoE) within this Ministry is headed by a Director who acts as the focal point for all Multilateral Environmental Agreements (MEAs).

Approval of Permits:

Permits for access to genetic resources or information concerning natural resources in Tanzania Mainland are approved by the Ministry of Natural Resources and Tourism (MNRT). Despite having a process they still have not issued out an ABS case study

Tanzania Continued

Competent National Authorities:

- Tanzania National Parks Authority (TANAPA)
- Tanzania Wildlife Management Authority (TAWA)
- Tanzania Wildlife Research Institute (TAWIRI)
- Tanzania Forest Research Institute (TAFORI)
- Tanzania Forest Services Agency (TFS)
- Ngorongoro Conservation Authority
 - Tanzania Fishery Research Institute (TAFIRI)





Tanzania



National Focal Point and Competent National Authority

- The Vice President's Office (Division of Environment) serves as the National Focal Point for ABS.
- Competent National Authority (CNA): The Tanzania Commission for Science and Technology (COSTECH) acts as the CNA

Institutional Structures

The regulatory framework involves multiple institutions such as the Ministry of Natural Resources and Tourism, the National Environment Management Council (NEMC), and local government authorities. These bodies collaborate to ensure effective management and compliance with ABS regulations.

Challenges

Despite a robust framework, challenges include limited capacity and resources to fully implement ABS regulations and monitor compliance effectively (Mariki, 2021).



Tanzania

Monitoring and Reporting

Tanzania has established mechanisms to monitor the utilisation of genetic resources and ensure compliance with PIC and MAT requirements. However, there are ongoing efforts to develop more comprehensive models for internationally recognised certificates of compliance (ABSCH, 2024).

Legislative and Policy Measures

The Environmental Management Act and the 2010 ABS regulations provide the legislative framework for ABS compliance. These regulations are periodically reviewed to enhance their effectiveness and alignment with international standards.

Checkpoints: The country has set up checkpoints at various stages of resource utilisation to ensure that all activities comply with ABS regulations. These include customs checkpoints, research institutions, and patent offices (ABSCH, 2024).

Enforcement Mechanisms: Enforcement of ABS regulations involves multiple agencies working together to ensure compliance. This includes the use of legal instruments and penalties for non-compliance. However, there is a need for more resources and capacity to enhance enforcement efforts (Goldstein, 2004).

Zimbabwe



- Has established a robust legal and institutional framework to manage its natural resources and ensure sustainable environmental practices
- Party to the Protocol since 30 November 2017 by Accession

The key legislative instruments include:

- Statutory Instrument 61/2009 on Access to Genetic Resources., indigenous knowledge and benefit sharing
- Environmental Management Act (EMA),
- Forest Act
- Communal Lands Forest Produce Act
- Traditional Leaders Act.

Zimbabwe



Benefit-Sharing Mechanisms

1. Statutory Instrument 61 of 2009 (SI 61/2009)

Operates under the EMA Act and focuses on access to genetic resources and indigenous knowledge (Statutory Instrument 61:2009).

Key Provisions:

- Licensing: Required for individuals or entities seeking to prospect or utilise genetic resources.
- Prior Informed Consent (PIC): Ensures fair and equitable benefit-sharing with local communities.
- Community Rights: Emphasises the rights of communities over their genetic resources and associated knowledge.

Zimbabwe is required to monitor the utilisation of genetic resources and report on compli the Nagoya Protocol however this has not been carried out



ABS Process Zimbabwe

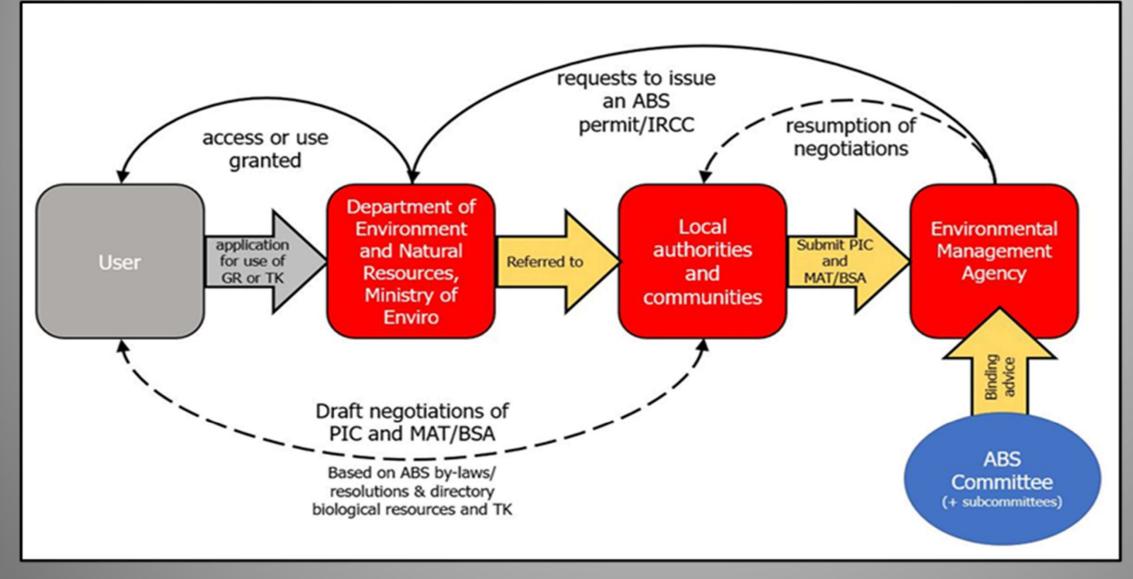


illustration courtesy of Ministry of Environment Zimbabwe

Challenges



- Due to a multi government stakeholder approach, roles are not clearly defined and often duplicated.
- Without having a centralised system a potential customer is faced with a lot of bureaucracy and a lot of administration issues.
- As only the Minister of Environment can approve the Benefit sharing agreement after it has been vetted by the Attorney general's office and undergone scrutiny by the ABS committee there is potential that this process often takes long and to date no company has gone through the full process.
- One of the prerequisites of a benefit sharing agreement in Zimbabwe is that the Rural district Council negotiating ABS should have an inventory in place of both the indigenous resources as well as indigenous knowledge. Currently no districts have these inventories. This puts a pin in the Negotiation process.

Comparisons Between SADC

Country	Party to NP Since:	NFP	CNA	MSR	PRO	NMCC	IRCC	NDB	СР	СРС	NR
Mozambique	12 Oct 2014	1	0	0	0	0	0	0	0	0	1
South Africa	12 Oct 2014	1	1	3	2	1	58	1	1	0	1
Tanzania	19 Apr 2018	1	0	0	0	0	0	0	0	0	0
Zimbabwe	30 Nov 2017	1	3	1	1	0	0	0	0	0	0

- NFP: ABS National Focal Point
- CNA: Competent National Authority
- MSR: Legislative, Administrative or Policy Measure
- PRO: ABS Procedure
- NMCC: National Model Contractual Clause

- IRCC: Internationally Recognized Certificates of Compliance
- NDB: National Websites or Databases
- **CP**: Checkpoint
- **CPC**: Checkpoint Communiqué
- NR: Interim National Reports on the Implementation of the Nagoya Protocol

Cross cutting issues

- All the frameworks were developed prior to the Nagoya protocol because of this, the frameworks are not aligned to the precepts of the Nagoya protocol. Currently all countries are at varying stages of aligning their frameworks to the Nagoya protocol.
- Issues of conservation as a benefit is not properly prescribed or provided for in all the existing frameworks. The thrust was mainly social, economic and less on conservation issues.
- Patenting definition of Traditional knowledge holders are not reflected sufficiently in most of the ABS frameworks.
- The types of benefits that can be negotiated have not been clearly articulated in all the existing frameworks.
- Transboundary species have not been addressed in the frameworks and Baobab is one such product that faces the risk of transboundary conflicts on resources as well as indigenous knowledge.

Impact Implications of ABS regulations in SADC on Baobab Producer members

- Clear definitions aid in compliance and understanding of requirements for accessing genetic resources.
- Producers must navigate state regulations and community rights, impacting access procedures.
- Promotes sustainable practices and ensures fair benefit distribution to local communities involved in baobab production.
- Broad scope ensures comprehensive regulation, affecting all aspects of baobab production and commercialisation.
- National and subnational regulations may add complexity to compliance for producers.
- Ensures that producers obtain necessary permissions, fostering trust and collaboration with local communities.



Continued

- Clear agreements provide legal certainty and fair benefit-sharing terms for baobab producers.
- Encourages active participation of communities in the ABS process, supporting equitable and inclusive practices.
- Protects communities' interests and ensures compliance when the purpose of utilisation changes.
- Ensures that baobab producers involved in food and agriculture are adequately regulated and supported.
- Ensures that all uses of baobab resources contribute to benefit-sharing, promoting fairness and equity.
- Promotes comprehensive benefit-sharing across all utilisations of baobab resources.
- Flexibility in defining benefit-sharing allows for tailored agreements that reflect the value of baobab resources and community contributions.
- Clear accountability ensures that baobab producers who benefit from genetic resources also share those benefits with local communities.
- Ensures that benefits are distributed equitably across all stages of the baobab produ supply chain.



Continued

- Promotes comprehensive inclusion of all stakeholders in the benefitsharing process, enhancing overall fairness and sustainability.
- Encourages diverse forms of benefit-sharing, providing flexibility and broadening the scope of benefits for baobab producers and communities.
- Protects and values traditional knowledge, ensuring that benefits reach those who hold and utilise it.
- Ensures that communities are recognised and compensated even when traditional knowledge is accessed indirectly, promoting fairness.
- The absence of checkpoints complicates tracking and enforcing compliance, potentially impacting the efficiency of benefit-sharing mechanisms.
- Lack of clear reporting guidelines may hinder transparency and accountability in the utilisation of baobab resources.



Continued

- Developing monitoring systems would enhance compliance and benefitsharing, supporting sustainable and ethical baobab production practices.
- Ensures regulatory oversight, but fragmentation may lead to inefficiencies and increased compliance costs for baobab producers.
- Stronger compliance measures would enhance the effectiveness of ABS regulations, benefiting baobab producers by ensuring fair and transparent processes.
- Unclear IPR guidelines may affect the ability of baobab producers to protect and benefit from innovations derived from genetic resources.
- Including mandatory disclosure of origin would promote transparency and ensure that benefits are fairly shared, impacting the protection of b related innovations.



Market Assessment: Insights & Comments from

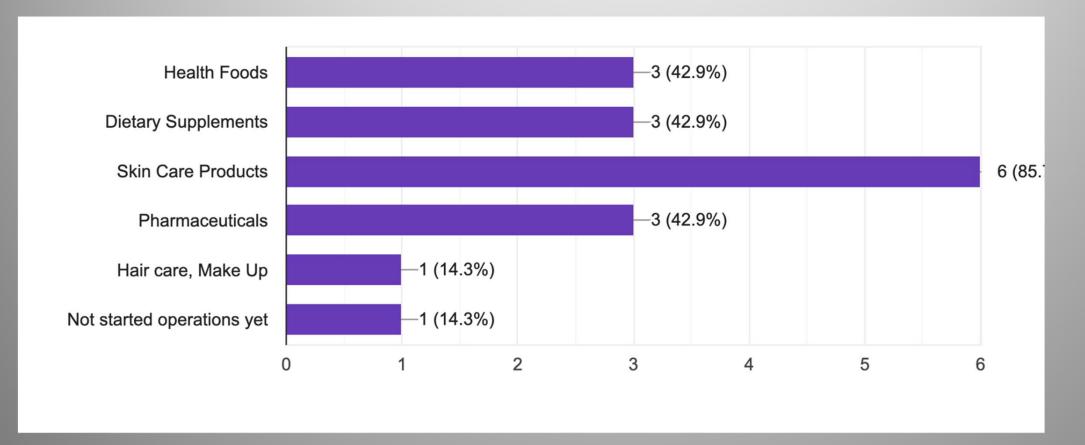


Content:

- Summary of the international market for baobab products.
- Key findings from the ABA Market Assessment.
- Importance of baobab in global markets, with statistics on market segments

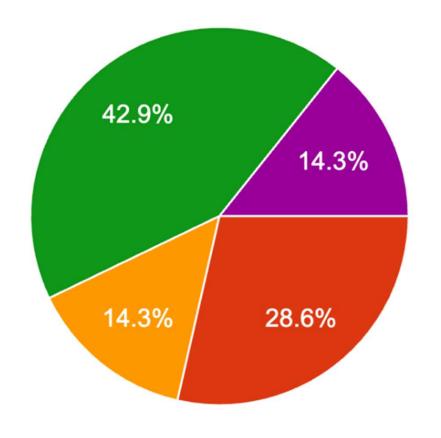
Market Assessment

Key Market Segments





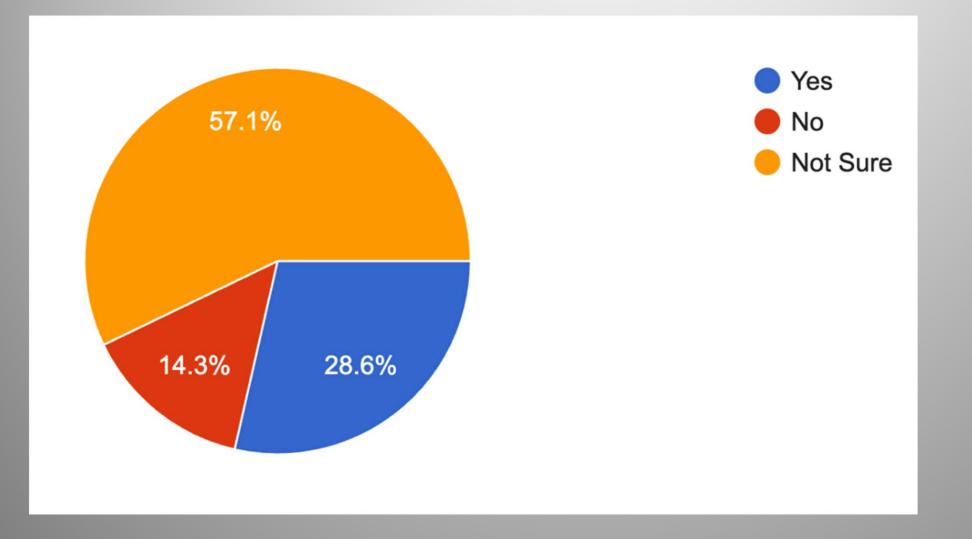
ABS Familiarity among ABA members



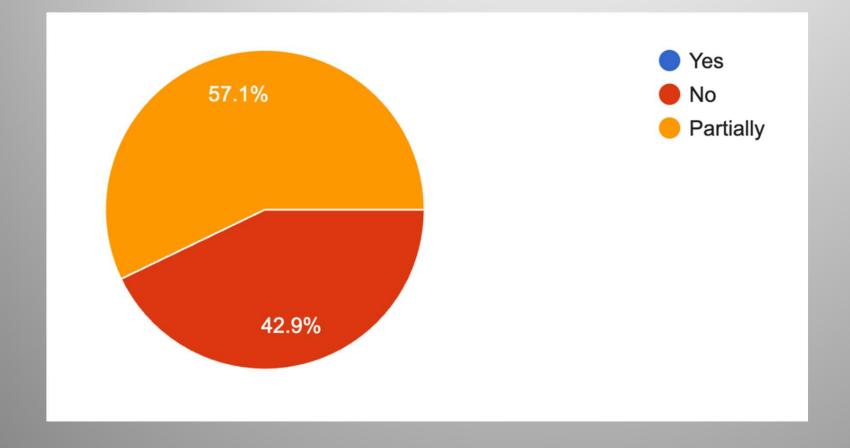




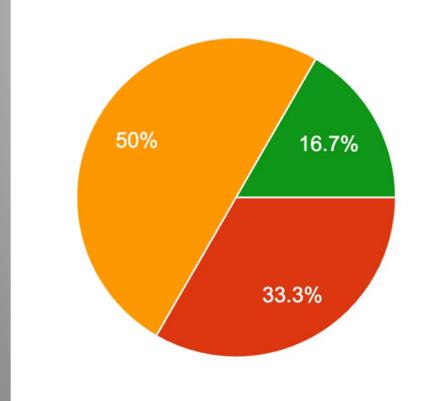
ABS compliance by ABA members

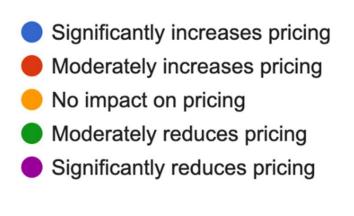


Awareness of the ABS compliance process among ABA members

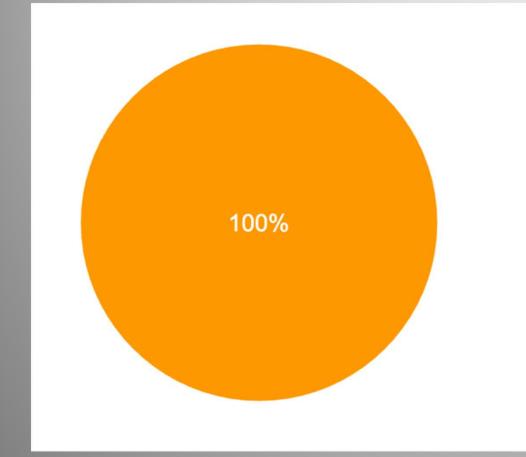


ABA compliance and its impact on Baobab prices



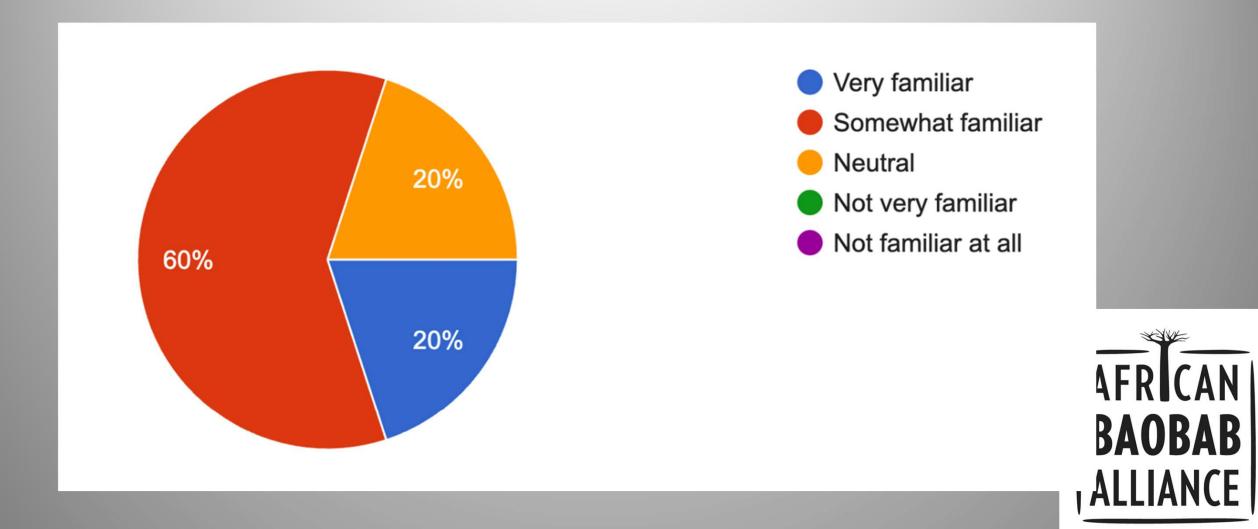


ABS Non Compliance and its impact on Price

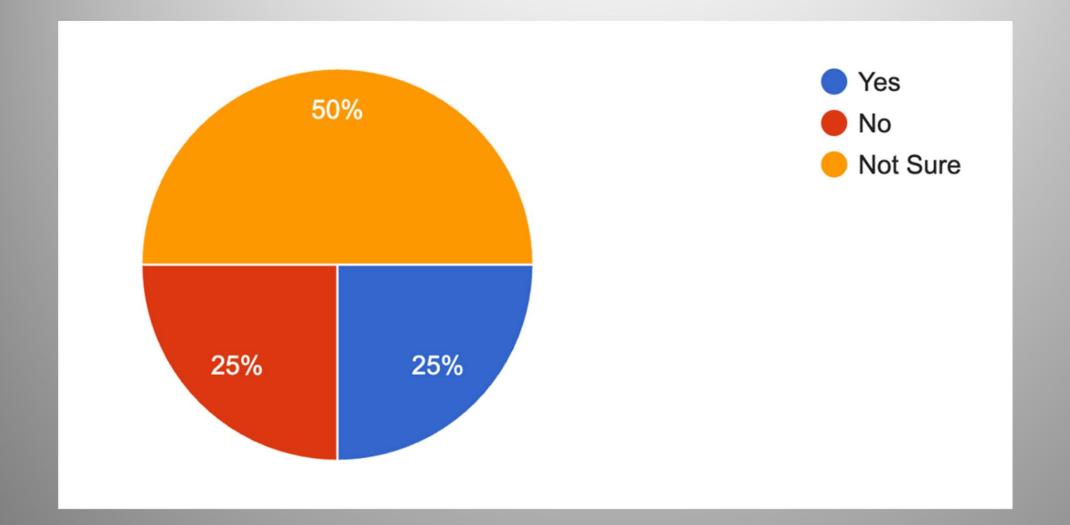


Significantly increases pricing
Moderately increases pricing
No impact on pricing
Moderately reduces pricing
Significantly reduces pricing

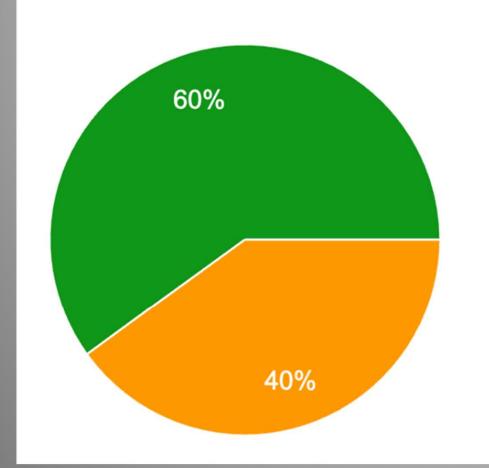
Awareness of the Nagoya protocol by international buyers



Compliance with Nagoya by international buyers

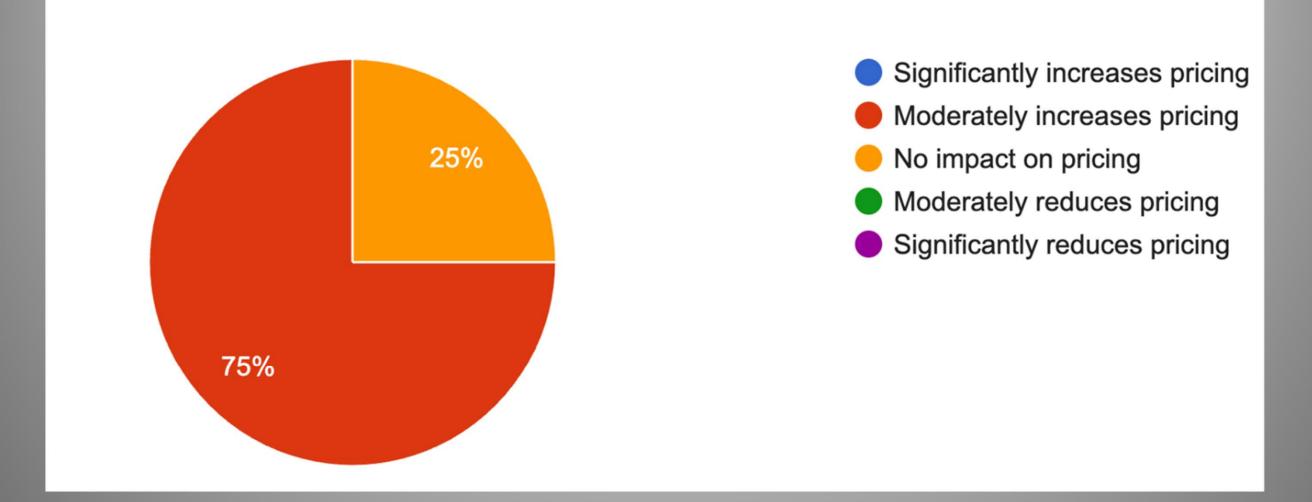


Anticipation of how non-compliance of providers will impact access to Baobab



Significantly improves access
Moderately improves access
No impact
Moderately hinders access
Significantly hinders access

ABS compliance and its impact on pricing of products



General comments

Honestly, I did not know about ABS compliance, I do not know much about the Nagoya Protocol. It is something new for me.

We need to be informed about ABS compliance, because personally, I was not aware of it

Training for awareness are needed

Can the process be made less complicated. If possible clear and concise steps to be taken in a single office/ department.

Capacity building. There is very little knowledge of ABS in general

Pause and reflect



Strategies for Effective ABS Compliance I Monitoring & Reporting in ABS

- Legal and regulatory strategies for compliance (Understanding requirements for the EU & UK Markets
- Steps companies should take on ABS (Best practices)
- Reporting requirements and best practices

Understanding requirements for the EU & UK Markets

- EU Regulation 511/2014 establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources
- The regulation implements the Nagoya Protocol within the European Union
- Compliance with the Nagoya Protocol: The regulation requires users of genetic resources in the EU to ensure these resources are accessed legally, with prior informed consent and agreed benefit-sharing terms.
- Due Diligence Obligation: Users must verify and document that genetic resources are obtained legally and ensure fair benefit-sharing, adhering to the access requirements of the country of origin.
- Monitoring and Compliance: The regulation mandates monitoring and users to declare compliance at specific checkpoints, with penalties for r compliance.



UK Markets

- Although a Party to the Nagoya Protocol, the <u>UK has chosen not to</u> <u>exercise sovereign rights</u> for accessing its genetic resources under the Nagoya Protocol.
- There is <u>no requirement to establish Prior Informed Consent (PIC)</u> or negotiate Mutually Agreed Terms (MAT) with the UK government for any utilisation of UK genetic resources.
- However, you may need to comply with other UK legislation, which should be considered prior to any collection of sovereign UK genetic resources.

Steps companies should take on ABS (Best practices)

- For producers in SADC countries, adhering to the Nagoya Protocol involves navigating a complex landscape of national regulations and international obligations.
- Many legislations are not aligned with the NAGOYA Protocol That in itself add complexities when it comes to actualising ABS.
- Common understanding is the need to promote and improve livelihoods, conservation and economic standing of indigenous sourcing communities.

Key steps for achieving compliance include:

- Understanding National Legislation: Producers must be familiar with their country's specific ABS regulations and potential customers must be familiar with requirements for obtaining prior informed consent (PIC) and establishing mutually agreed terms (MAT).
- Engaging with National Authorities: Establishing communication with national focal points (NFPs) and competent national authorities (CNAs) to ensure proper guidance and support throughout the ABS process.
- **Documentation and Record-Keeping:** Maintaining thorough documentation of the consent and benefit-sharing processes to ensure legal compliance and facilitate monitoring.
- **Benefit-Sharing Agreements:** Negotiating benefit-sharing agreements that outline both monetary and non-monetary benefits, ensuring fair distribution among all stakeholders.
- **Community Involvement:** Ensuring active participation and consent from local communities, recognising their traditional knowledge and contribution to the conservation of genetic resources.
- **Capacity Building:** Investing in capacity-building initiatives to enhance the understanding and implementation of ABS principles among all stakeholders.

Best Practices in Baobab ABS

Legal frameworks

 Partcipate in improving/developing legal frame works

Benefit sharing

- Where possible especially for Specie like Baobab advocate for Industry wise agreements.
- Broaden scopes and definitions of benefitsharing beyond Monetary benefits

Conservation

- Contribute to research and conservation issues.
- Vigilence in including issues of conservation in business strategies

Community engagement

 Through training and capacity building. Traditional Knowledge

 Establishing ownership of indigenous knowledge PPP

 Like minded government, companies and NGOs come togetherto develop best pratices.

Capacity Building and Support Needs I Developing Effective Benefit-Sharing Mechanisms

Capacity Needs

- Training and Education
 - ABS Regulations
 - Sustainable Harvesting Practices & conservation
- Market Access
- Technical Assistance
- Compliance Procedures
- Technology Transfer
 - Financial Support
 - Grants and Subsidies
 - Low-Interest Loans
- Infrastructure & Processing Facilities
- Collaboration



Capacity Needs of ABA Members

- Training and Education: ABS Regulations: Comprehensive training on ABS regulations, particularly the Nagoya Protocol, is needed. 55% of ABA members indicated a need for more detailed training.
- 55% of the surveyed ABA members cited financial constraints as a barrier to compliance.
- 60% of respondents indicated that better monitoring would enhance compliance rates.

The end

