

1. Introduction to PhytoTrade Africa

PhytoTrade Africa is the trade name of the Southern African Natural Products Trade Association. Our vision is to engage the private sector in developing a natural products industry¹ from which low-income rural producers will be able to generate meaningful long-term incomes. Today, PhytoTrade Africa is a thriving association with nearly 60 members from eight different SADC countries². It is a registered Fair Trade Organisation, a Type II partnership under the World Summit on Sustainable Development, a founding member of the UNCTAD-supported Union for Ethical Biobusiness and has been nominated as a SADC Centre of Excellence in the field of ABS.

PhytoTrade Africa has always taken a robust approach towards ABS. In early 2003 it published a set of Bio-Prospecting Guidelines for its members, the aim of which was to advise African producers how to respond to bio-prospecting approaches from other companies. PhytoTrade Africa undertook this initiative in the absence of any ABS regulations in southern Africa. Even with the onset of new ABS regulations coming into force within the region, these guidelines will remain relevant to all our members because PhytoTrade Africa is a *regional* trade association with members from eight different SADC countries. Little, if any, of its impacts can be attributed to a single country, and it is inappropriate to discuss PhytoTrade Africa's approach to ABS within the context of any one country's national policies and frameworks. However these guidelines will be expanded and amended as legislation becomes effective.

PhytoTrade's approach is based on a pragmatic and realistic understanding of what is and is not attainable. Benefit-sharing as a concept is irrelevant if there are no benefits to share. Greater emphasis in ABS debates needs to be channelled from regulating and managing the flow of benefits towards giving more attention to the creation of these benefits. PhytoTrade Africa's primary concern is therefore to ensure that there are first benefits to share, and then to ensure that the sharing is equitable. PhytoTrade Africa does not work with genetic resources, and all its experiences and contributions to ABS knowledge and best practice therefore relate only to *biological* resources.

2. PhytoTrade Africa, traditional knowledge and patents

Traditional ethno-botanical knowledge amongst African communities relating to the uses of plants is a potentially valuable asset in the commercialisation of those plants. However in practice, there is little traditional knowledge that is patentable, since much of it has emerged in the public domain through the work of ethno-botanists and other researchers over the last century or so. Many discussions on the rights or wrongs of patenting traditional knowledge are therefore largely irrelevant, since the knowledge is no longer patentable.

Traditional knowledge can and does, however, suggest areas in which particular plants may have commercially valuable applications. These applications, or the processing technologies used to realise them, may be patentable. In such cases it is of course important to try and maximise the benefit-sharing opportunities that could arise from such patents.

¹ PhytoTrade Africa defines natural products broadly as "products derived from indigenous plants"

² Botswana, Malawi, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe

PhytoTrade Africa recognises that patenting is an important commercial strategy, and strongly advocates intelligent use of patents as a means towards creating commercial opportunities from which low-income producers in Southern Africa can benefit. So far, PhytoTrade Africa has only itself been engaged in the development of one patent around Maruline – a derivative of Marula Oil. This is a “process patent”, around a processing technology that enhances biological activity.

3. PhytoTrade Africa and Material Transfer Agreements (MTAs)

During the course of its routine product Research and Development, PhytoTrade Africa regularly transfers biological material to its commercial partners for analysis and research. Whenever such transfers occur, they are always covered by a Material Transfer Agreement (MTAs) that specifically obliges the recipient to:

- Use the material only for purposes mutually agreed by PhytoTrade Africa and the recipient
- Share the results of any research with PhytoTrade Africa; and
- Destroy the material after the research has been completed.

Furthermore, and most importantly, the MTA specifically states that the recipient may not proceed to any form of commercialisation of the material without the consent and active participation of PhytoTrade Africa. Critically, the MTA ensures that the material remains the property of PhytoTrade Africa, and is being transferred to the recipient for research purposes only.

Note that any material transferred across an international boundary must also have appropriate authority from the national government before it is transferred.

4. PhytoTrade Africa and Prior Informed Consent (PIC)

If traditional knowledge emanating from a clearly defined community is being transferred as part of a bio-prospecting agreement, it requires the attainment of Prior Informed Consent (PIC) from the source community. Since PhytoTrade Africa is not itself involved in transferring proprietary traditional knowledge, it has never had need to seek PIC. However, its bio-prospecting guidelines provide clear guidance to members as to how and when it should be attained.

5. Conclusion

PhytoTrade Africa’s approach to ABS is pragmatic but cautious. The ultimate objective is to ensure that real benefits are created for rural producers. In this process, it is obviously imperative to adhere to national legislation. However, it is equally important, from PhytoTrade Africa’s point of view, to ensure that such legislation is workable and user-friendly. All the biological resources with which PhytoTrade Africa is currently working (marula, kigelia, mongongo, Kalahari melons, trichilia, parinari, baobab, Devil’s Claw and ximenia) are found in several countries across Africa. Each individual country therefore has a strong interest in ensuring that they are able to derive a meaningful share of the benefits arising from commercialisation through the implementation of practicable ABS regulations and legislation.

For further information, please see www.phytotradeafrica.com, or contact info@phytotradeafrica.com.