Participation in Access and Benefit-Sharing Policy
Case Study no 1

South Africa's Experience in Developing a Policy on Biodiversity and Access to Genetic Resources

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SOUTH AFRICA'S EXPERIENCE IN DEVELOPING A POLICY ON BIODIVERSITY AND ACCESS TO GENETIC RESOURCES

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1. INTRODUCTION

1.1 Background

The past twenty years have seen increased calls for greater local control over biodiversity, for the sharing of benefits derived from its use, and for a say in the way in which decisions are made about its conservation. This stems from a long history of disregard for the social issues and impacts that accompany conservation projects, as well as the inequitable way in which benefits derived from the commercialisation of biodiversity have been shared in the past. Most of the world's biodiversity is located in the biologically rich countries of the South, yet the bulk of benefits are realised by companies and institutions in the industrialised North. If biodiversity is to be conserved, these inequities must be redressed. It is this principle that underpins the 1992 Convention on Biological Diversity (CBD), agreed at the United Nations Conference on Environment and Development.

Implementing this approach requires that local custodians of biological resources and knowledge, as well as other national stakeholders, become involved in developing appropriate policies and laws to control access to genetic resources and to determine conditions for benefit-sharing. Through such participation it is believed that potential or real conflicts will be transformed into mutually beneficial relationships, trust will be built between role-players, awareness will be raised, and through co-ownership of the process of policy and law-making, implementation will be smooth and effective. Ultimately, it is assumed, the involvement of local stakeholders in the design of policies, laws and procedures, will increase their share of benefits derived from bioprospecting[3] and other commercial activities. This involvement should provide an opportunity for local stakeholders to better define and negotiate the terms of a wide range of relationships, from which more equitable benefit sharing will flow.

1.2 Purpose of this Project

It was on this basis that the International Institute for Environment and Development, an independent non-profit research organisation based in the United Kingdom, designed a project to investigate participation[4] in the development of biodiversity policies and laws. Stated objectives were to record, analyse and share

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[3] Bioprospecting is the search for economically valuable genetic and biochemical resources.

[4] 'Participation' means involvement in decision-making, as opposed to 'consultation', where there is no guarantee that the views gathered will actually influence decision-making. However, participation can also mean involvement in a consultation process.

the experiences of developing countries in securing stakeholder participation in the design of measures to control access to genetic resources and benefit-sharing ('ABS'), so allowing for bioprospecting to contribute more effectively to the needs of poor people at local level. Through a process of learning from past experiences in consultation, it was hoped that policy and law making would improve, and that methods of best practice would emerge.

The project identified four countries as case studies – Peru, the Philippines, India and South Africa – each of which have engaged stakeholders in the development of policy or law on biodiversity, ABS or traditional knowledge. In Peru, the focus was on the consultative process to develop a *sui generis* regime on Traditional Knowledge; in the Philippines the project centred around the development of Executive Order No. 247, which regulates access to genetic resources; in India, the focus was on the formulation of the Biodiversity Bill and community biodiversity registers.

1.3   Why South Africa?

In South Africa, the focus was on the planning and consultation process conducted to develop a comprehensive national policy on biodiversity, including policy on ABS. This process was considered to provide a good example of participation in policy making, as it took place soon after the new democratic government had been established, at a time when major efforts were underway to engage civil society in defining policy. South Africa was also considered an important 'pioneer' from which other countries could learn because of its engagement in a policy planning process prior to the development of ABS legislation. This is in contrast to other countries which have tended to rush into the development of ABS legislation with little reflection, planning and research about key principles and priorities. Furthermore, few countries have considered access issues in the context of overall biodiversity policies and strategies, or developed biodiversity policies as part of a broader process of reform towards a more equitable and sustainable development path. With South Africa due to develop bioprospecting legislation in the near future, it was also intended that the project assist in consolidating local experience about ongoing bioprospecting initiatives, and so facilitate the development of appropriate legislation.

1.4   How will the Research be Used?

This report examines a fairly comprehensive consultation process undertaken to design a policy on biodiversity and access to genetic resources in order to enable other countries developing similar policy to draw lessons and insights from the

process. It also aims to assist South Africa in learning from its experience and shaping the future direction of its biodiversity policy. Together with the three other case studies, the report has been used to develop general recommendations for securing effective participation in the design of policy on biodiversity, access to genetic resources and traditional knowledge. A synthesis report has been prepared containing the recommendations and key findings from the case studies[5].

1.5   Structure of Report

Following this introduction, Section 2 describes the methodology and approach used for the study. Section 3 gives an overview of South Africa's biodiversity policy process, including the historical context to the policy. An assessment of the process follows in Section 4, which is the main body of the report. This section describes key components that enabled the design and implementation of the policy process, as well as the benefits, drawbacks and impacts of the policy process and its final outcome. Steps towards the establishment of legal mechanisms to control access to genetic resources in South Africa are outlined in Section 5, followed by a concluding section that distils key lessons and conclusions derived from the study.

2.   METHODOLOGY

From the start of the project it was clear that a broad analysis of the entire biodiversity policy process in South Africa would be required, in order for any meaningful conclusions to be reached about the efficacy of participation. This is because ABS issues comprised only a small part of South Africa's biodiversity policy, which in its entirety addressed the whole gamut of issues raised by the Biodiversity Convention. Participants in the process thus engaged on a wide range of different topics, and specific interventions about the ABS proposals that were contained in the policy were limited. Where interventions were made, they often formed part of a broader input on the overall policy. For these reasons it was decided to focus on the entire consultative process to develop a biodiversity policy, rather than piecemeal components of this process. This approach was also taken to provide an example of developing a policy on access and benefit-sharing as part of a wider biodiversity policy process.

One-to-one interviews and document review comprised the basis of the methodology adopted. The study also drew on the experience of the lead author

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[5] Krystyna Swiderska, 2001. Stakeholder participation in policy on access to genetic resources, traditional knowledge and benefit-sharing: Case studies and recommendations.

South African case study

who was the editorial consultant for drafting the biodiversity policy. Interviews were conducted with a wide range of stakeholders during November 1999, representing national and provincial government, parastatals, NGOs, traditional healers, academics, industry and private consultants (see Appendix I). This included people who were integrally involved with the day-to-day management of the policy development process, those who were active participants in the process , those who were only peripherally involved, or who have only recently come to new portfolios that deal with biodiversity but nonetheless have valuable insights, and others whose activities are affected by the policy (eg. scientists, companies and traditional healers).

Early on it emerged that the biodiversity policy process could not be seen in isolation from other environmental policies under development in South Africa, and indeed that because of people's simultaneous involvement in such policies, the details of the biodiversity policy were often blurred. Because of these factors a fairly wide net was cast to glean viewpoints and perspectives about participation in environmental policy development in general.

A common set of questions guided the interviews. These focused on the following topics:

- The representation of different stakeholders in the process, and whether any sectors were especially dominant or weak;
- Key points of conflict and consensus, and how the process brought together different interests, or mediated between conflict;
- Factors that constrained or enabled the participation of different groups;
- Strengths and weaknesses of the process;
- The adequacy of resources and time allocated to the process;
- The benefits and drawbacks to stakeholders of participating in the process;
- Whether or not the policy process led to greater policy ownership and more effective implementation;
- Impacts of the policy since its adoption;
- How the policy has been used and how it has helped institutions in their programmes and projects;
- The role of policy as a precursor in the drafting of legislation; and
- Implementation of the policy and priorities for the future.

Analysis of responses to these questions comprises the basis of this report.

3. SOUTH AFRICA'S BIODIVERSITY POLICY PROCESS

3.1 Historical Context to the Policy

In 1995 South Africa initiated a consultation process to develop a national biodiversity policy and strategy. This was enormously significant in the history of conservation in the country. Prior to this time, conservation – and indeed the entire environmental field - had been the domain of natural scientists, wildlife enthusiasts, and a handful of NGOs that were perceived to be negligent of social needs and the political realities of the country. Historically, the sector was also associated with the establishment of protected areas to serve a privileged elite, and the imposition of restrictions on access to natural resources, often involving the forced relocation of black communities in the interests of conservation. Far from being seen as a national asset and heritage, conservation had very negative connotations for the majority of South Africans. This was exacerbated by perceptions that the apartheid government expressed far more concern about the preservation of wildlife than about the poverty and oppression faced by millions of South Africans[6]

The election of a new democratic government in 1994 saw fundamental changes – not only in the adoption of new policies and laws, but also in the way in which people were consulted about such policies. Throughout the 1980s and leading up to the new democracy, an extremely effective civil society movement was built in South Africa, founded on strong principles of social justice, and on the belief that policy processes should be participatory and inclusive. These standings were largely embraced by the African National Congress (the majority political party), which prior to taking power had undertaken a massive process countrywide to elicit the viewpoints of civil society in formulating the *Reconstruction and Development Programme* - a socio-economic policy framework to guide the new government in its work. In assuming power, the new government set about to rewrite virtually every policy on record as well as a good proportion of laws on the statute books. In an unprecedented exercise, people were called upon to negotiate their future, and ensure their interests and concerns were adequately accounted for.

In the environmental field alone, some seven policy processes were initiated, including those relating to forestry, water, fisheries, coastal zone management, and

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[6] International Development Research Centre, 1995. *Building a New South Africa. Volume 4. Environment, Reconstruction and Development.* A report from the International Mission on Environmental Policy. Ottawa, Canada.

integrated pollution control as well as a range of related policy processes including those on land, energy, planning, trade and industry, tourism, education, science and technology. Although these processes were distinct entities that were managed and executed by different government departments and consultants, they all formed subsets of a broader context to develop a national environmental policy. Dubbed 'CONNEPP', or the Consultative National Environmental Policy Process, this was widely viewed as the 'mother of all policy processes', and represented an exhaustive effort to bring on board voices that had hitherto been ignored. In so doing it was intended to shift environmental perspectives and paradigms in South Africa, and develop an environmental policy that was relevant and appropriate to people's needs and priorities.

This context is clearly important if one is to draw conclusions about the biodiversity policy process. Virtually all of the policy processes described ran in parallel to one another, and stakeholder representatives often found themselves engaging in many different processes at the same time. Unsurprisingly, 'stakeholder fatigue' set in quickly, and this had implications for the biodiversity policy process. If the same process were to take place today, it is likely that a much-reduced emphasis would be placed on consultation and participation. This is due in large part to the fact that the government has since moved strongly towards the implementation and delivery of policy, including a 'fast-track' approach to consultation. Moreover, it has learnt that extensive consultation is very resource intensive, and that there is probably a limit to consultation beyond which there is not necessarily a net gain.

3.2   The Impetus for a Biodiversity Policy

The need for a coherent and integrated policy on biodiversity in South Africa had long been recognised, but new urgency was given to this need through political changes in the country. Prior to democracy, civil society had enjoyed little influence in the manner in which decisions about biodiversity were made, and had no status on any of the formal structures set up to consider its conservation and use. In the 'new' democratic South Africa, however, the 'old guard' still held many positions of power and resisted new views and shifts in approaches towards conservation, resulting in considerable conflict between different 'camps' and mistrust between groups. Broadly, a chasm existed between those from the 'old school', who were typically 'expert-driven' natural scientists and disinterested in or antagonistic towards the broader social and political context of biodiversity; and those from civil society organisations, who were 'process-driven', and committed to principles of social and environmental justice, as the priority with respect to biodiversity

conservation, but who tended to lack formal scientific training and knowledge about biodiversity.

Such conflicts and the pending ratification of the CBD were key catalysts for the initiation of the consultation process in 1995. South Africa had signed the CBD in 1992 and ratification of the agreement was pending. Organisations that had traditionally dominated the conservation sector in South Africa were lobbying government to ratify the CBD, and so enable funds to be sought from the Global Environment Facility for their work. For organisations affiliated to the civil society movement this was cause for concern, signifying a 'business as usual' approach in the allocation of funds and thus priorities for conservation. Funding, it was argued, should be channelled into projects designed to benefit the majority of South Africans, and should reflect the needs and aspirations of such people. To enable this to happen, a process of consultation was necessary *prior* to ratification of the CBD, as this would legitimise the 'new', more progressive organisations and give them a voice equal to that of the traditional conservation organisations.

These concerns were submitted to Parliament, with a recommendation that ratification of the Convention be conditional on a national policy process being in place. Such a process was negotiated in April 1995 following a meeting of stakeholders convened by the Chair of the then Senate Portfolio Committee for Environment, and the Department of Environmental Affairs and Tourism (DEAT) and was to culminate in August 1997, with the adoption of a White Paper by Parliament. Meanwhile, South Africa's ratification of the CBD followed in November 1995 amidst much concern from civil society organisations that this had not been accompanied by the agreed public participation process.

3.3   Description of the Process

South Africa's biodiversity policy and strategy was designed to incorporate both the political process necessary to facilitate ownership and acceptance of the policy, as well as the technical component required to articulate substantive issues. Both aspects were built into the structures established to manage the process. Such structures were set up in April 1995, following an initial meeting of key stakeholders, including NGOs, politicians and the Department of Environmental Affairs and Tourism. The management structures included:

- A four-person **Steering Committee**, representing the national DEAT; the Land and Agriculture Policy Centre (LAPC), a NGO working on policies concerning natural resource management; the Senate Portfolio Committee on Environmental Affairs, and Danish Cooperation for Environment and Development (DANCED),
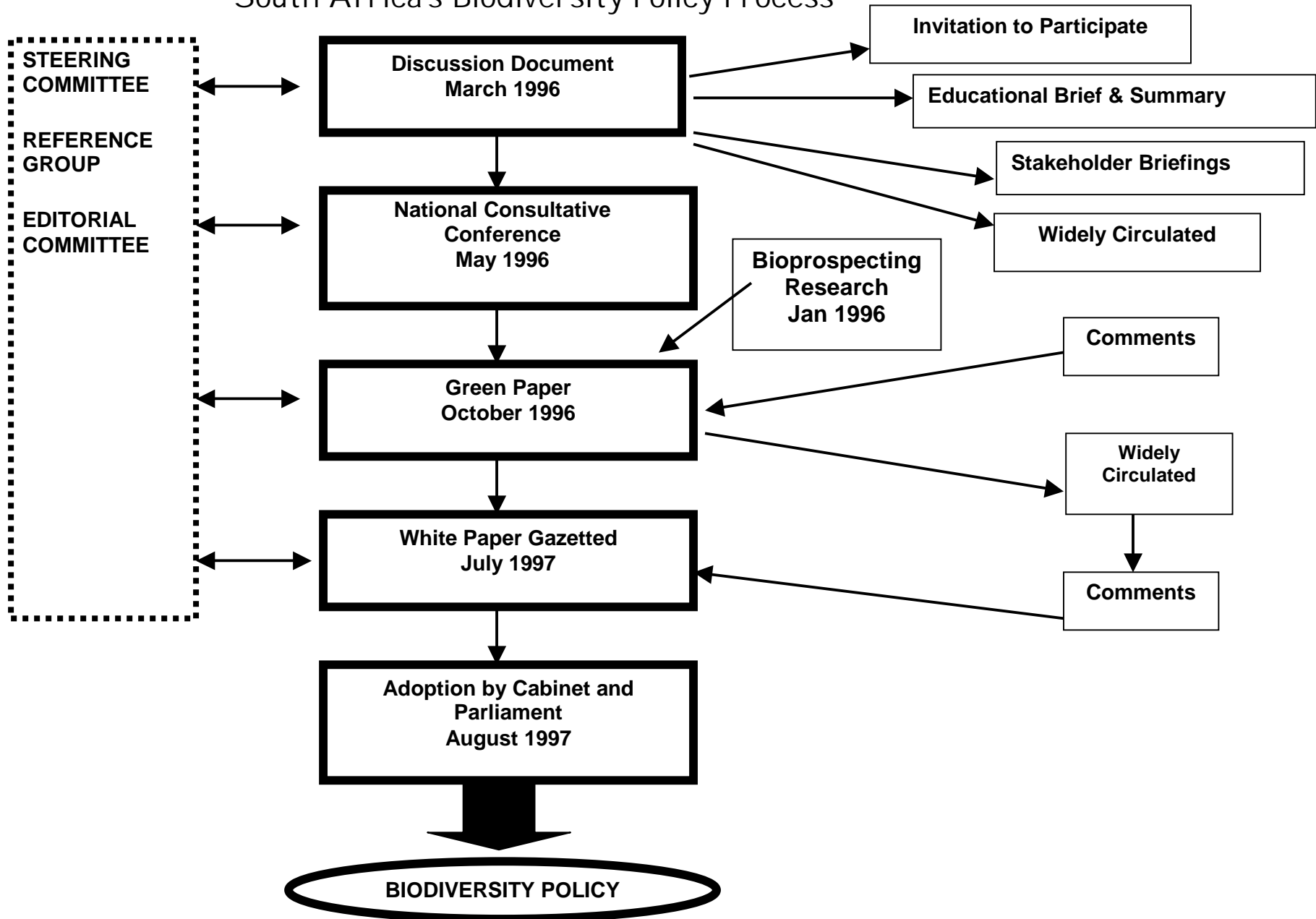
the primary funders of the process. This Committee was responsible for managing the policy process. In turn, most of the day-to-day management was tasked to the LAPC, which was also responsible for managing donor funding. In total, this group met seven times over the two-year period of the project.

- A 28 person multi-stakeholder **Reference Group**, representing parliament (2 representatives), national (4) and provincial (12) government departments, parastatal organisations (representing users of biodiversity to some extent) (2), NGOs (both traditional and 'social') (7), and traditional healers (1). Its tasks were to (a) guide the Steering Committee in the management and implementation of the policy process; (b) accept responsibility for the consultation process; and (c) ensure that the content of the policy adequately reflected the concerns and interests of different constituencies. This group was the primary decision-making body for the policy drafting and consultation process, and provided a forum in which stakeholder representatives participated equally. The initial composition of the group was determined by the Steering Committee, although once the forum was established members were asked to provide advice and recommendations as to changes in its composition, mainly to improve representation. It was chaired by a prominent South African politician and met six times in total.

- An **Editorial Committee**, comprised of members of the Steering Committee as well as an independent editorial consultant, who was responsible for drafting policy documents, incorporating diverse views and interests into such drafts, and undertaking general research on biodiversity issues to develop policy positions.

Additional logistical support was provided through an independent **Secretariat**, housed with a private consultancy, which was responsible for facilitating communication between different role-players, for organising meetings of the Reference Group and a national consultative conference on biodiversity, and for providing technical advice on consultation.

Three phases comprised the process: (i) an initial preparatory phase; (ii) an intensive consultation phase; and (iii) an integrative phase, wherein final drafts of the policy were prepared, based on comments received. Figure 1 illustrates these phases.

Figure 1:
South Africa's Biodiversity Policy Process

STEERING COMMITTEE

REFERENCE GROUP

EDITORIAL COMMITTEE

Discussion Document March 1996

Invitation to Participate

Educational Brief & Summary

Stakeholder Briefings

Widely Circulated

National Consultative Conference May 1996

Bioprospecting Research Jan 1996

Comments

Green Paper October 1996

Widely Circulated

White Paper Gazetted July 1997

Comments

Adoption by Cabinet and Parliament August 1997

BIODIVERSITY POLICY

INITIAL PREPARATORY PHASE (NOVEMBER 1995 – MARCH 1996)

An initial phase was focused on gathering information and drafting a Discussion Document[7] based on information obtained. The document, which was drafted by the editorial consultant in consultation with the Reference Group, and completed in March 1996, served as the basis for further consultation. Using the Biodiversity Convention as a template, it provided background information on major themes, identified key issues with respect to the conservation and use of biodiversity in South Africa, and identified different policy options that could be adopted to address divergent issues.

Seven hundred copies of the discussion document were distributed to a wide range of groups. A summary of the document was also compiled, of which 600 copies were made available. Additionally, an educational leaflet was prepared about the document to assist those unfamiliar with the concepts of biodiversity. This was translated into 5 of South Africa's 11 official languages, and over 2000 copies distributed throughout the country. Some 3000 pamphlets were also prepared, inviting organisations and individuals to participate in the process.

INTENSIVE CONSULTATION PHASE (APRIL – JULY 1996)

Consultation with stakeholders was initiated at the outset of the process with the establishment of a Reference Group, which participated in drafting the Discussion Document. The policy materials developed served as a reference point from which a more inclusive and informed debate could unfold. Following the publication of the Discussion Document in March 1996, a series of consultative meetings and events took place, including:

- regular meetings of the Reference Group;
- stakeholder briefings convened by members of the Steering Committee in 7 of South Africa's 9 provinces, involving a range of stakeholders (eg. local community representatives, NGOs – attendance varied from province to province)
- independent workshops of different constituencies (*eg* scientists, healers); and
- a national conference, in which 160 representatives from a range of organisations participated[8].

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[7] Department of Environmental Affairs and Tourism, March 1996. Towards a Policy for the Conservation and Sustainable Use of South Africa's Biological Diversity. A Discussion Document.
[8] Department of Environmental Affairs and Tourism, Proceedings of the National Conference on Biological Diversity, 13 and 14 May 1996, CSIR Conference Centre, Pretoria.

Together with 46 sets of written comment, this feedback provided the basis from which a more directed policy could be drafted.

Prior to the national conference, a one-day briefing workshop was held specifically for community-based organisations. This served to improve understanding about the issues, to articulate the hopes and fears of communities participating in the conference, and to provide a forum for discussion around issues of key concern. Conclusions reached at this workshop were presented at the national conference. The workshop thus helped to place participants from local communities on an equal footing and level of understanding.

POLICY DRAFTING PHASE (AUGUST 1996 – AUGUST 1997)

A final policy-drafting phase occurred from August 1996 – August 1997. During this time information was consolidated and prepared initially as a Green Paper[9] (or draft policy) for public comment; and then as a White Paper[10] (or final policy) for submission to Parliament.

In October 1996 the Green Paper was finalised, launched and publicised through the media. Written comments were invited on the document which was circulated to over 3000 stakeholders and also placed on the Internet. At the May conference a specific request was made by community participants for the Green Paper to be further workshopped and reviewed by them, but this process did not materialise due to funding constraints. Instead, some funds were set aside for workshops to be held in individual communities/areas, on request. Such requests were, however, not forthcoming[11], although it is uncertain to what extent this facility was advertised. It seems that the Reference Group was expecting communities to take the process forward, while communities were expecting the Reference Group to do this, and in the end, neither side took the initiative.

Altogether, written comments were received from 57 groupings (sometimes simply a group of people, eg scientists or healers, that had got together to prepare comments, but were not formally organised), organisations and individuals, totalling more than 180

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[9] Department of Environmental Affairs and Tourism, October 1996. Green Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity. http://www.polity.org.za/govdocs/green_papers/biodiversity.html

[10] Department of Environmental Affairs and Tourism, July 1997. White Paper on the Conservation and Sustainable Use of South Africa's Biological Diversity. *Government Gazette Notice 1095 of 1997. Vol 385, No. 18163.* http://www.polity.org.za/govdocs/white_papers/diversity.html

[11] Land and Agriculture Policy Centre, April 1997, "Project Completion Report to DANCED and Steering Committee for the Biodiversity Policy Process".

pages of text. Each submission was considered by the Editorial Committee, who then made recommendations to the Reference Group concerning language changes and the inclusion or exclusion of text. The Reference Group served as the consultative forum within which decisions were made.

In February 1997 a final draft of the White Paper was presented to the Reference Group, who recommended the document be submitted to the appropriate political structures, and concluded that its work had been achieved. The Steering Committee and Editorial Committee were mandated to see the policy process through to its completion. This culminated in July 1997 with the gazetting of the White Paper and, following minor modifications by Cabinet, its adoption by Parliament as formal policy. Shortly thereafter the management and support structures for the process concluded their work and the DEAT assumed responsibility for further implementation.

BOX 1.
GOALS OF THE BIODIVERSITY WHITE PAPER

1. Conserve the Diversity of Landscapes, Ecosystems, Habitats, Communities, Populations, Species and Genes in South Africa
2. Use Biological Resources Sustainably and Minimise Adverse Impacts on Biological Diversity
3. Ensure that Benefits Derived from the Use and Development of South Africa's Genetic Resources Serve National Interests
4. Expand the Human Capacity to Conserve Biodiversity, to Manage its Use, and to Address Factors Threatening it
5. Create Conditions and Incentives that Support the Conservation and Sustainable Use of Biodiversity
6. Promote the Conservation and Sustainable Use of Biodiversity at the International Level

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3.4   Budget

The costs of this process were kept relatively low, totalling some R544 000 (US$90 000). Approximately R400 000 was secured from a foreign funder (DANCED), with DEAT contributing the balance (largely towards the cost of the conference). Figure 2 below provides a breakdown of expenditure.

Figure 2.
Breakdown of Expenses for the Biodiversity Policy Process.
Total Budget = $90 000

3.5   Supporting Research

In addition to the process described above, several research projects were initiated by the LAPC, unrelated to the formal process, but relevant in terms of informing the policy content and gaining the input of stakeholders on specific issues. In January 1996 a major study was commissioned to investigate the status of biodiversity prospecting in South Africa, which included interviews with over 50 people, representing national and provincial government, nature conservation agencies, parastatals, universities, industry, NGOs and traditional healers. For the first time an overview was obtained on the scale of bioprospecting operations, the nature of the partnerships being developed, and the key policy issues requiring resolution. Those interviewed were invited to comment on the report prepared, and a national workshop was held in March 1996 to which key stakeholders were invited. The findings of the research project were presented and discussed at this workshop, and comments were incorporated into the policy proposals for access to genetic resources and benefit-sharing in the Discussion Document. These proposals formed the basis for later policy formulations on access and benefit-sharing in the Green Paper and White Paper (see Appendix 2).

BOX 2.
Biodiversity and Bioprospecting in South Africa

Bioprospecting is vigorously pursued in South Africa because the country's biodiversity is one of the richest in the world - both in terms of the number and uniqueness of species. Additionally, the country has a well-developed infrastructure, considerable scientific/technical capacity, and a well-managed system of protected areas and ex-situ collections. These factors are extremely appealing to the bioprospecting industry. Almost weekly, pharmaceutical or other companies and their intermediaries, are arriving in the country to collect biological material or to strike up deals with private individuals or research institutes. A diverse array of sectors are actively and sometimes unknowingly involved in this activity, including industry; universities; parastatals; traditional healers and farmers; government and protected area agencies; NGOs; local communities and private landowners. Within industry, the strategy is almost always to work through local universities, research institutions or parastatals.

Some of the key agreements to recently emerge include:
- a venture between South Africa's Council for Scientific and Industrial Research (CSIR), Phytopharm, and Pfizer to develop an indigenous plant into an anti-obesity drug;

- an agreement between CSIR and Diversa Corporation, giving Diversa rights to identify genes and commercialise products from samples provided by the CSIR ;
- an agreement between Ball Horticulture and the National Botanical Institute to develop South Africa's plant resources;
- an agreement between Rhodes University and the National Cancer Institute to explore South Africa's marine biodiversity for anti-cancer compounds; and
- a consortium between the CSIR, the Agriculture and Marine Research Councils, the NBI, and the University of Cape Town.

These and many other agreements are being developed in a legal vaccuum. The Biodiversity White Paper provides broad policy to guide bioprospecting, but in the absence of legislation this is open to wide and often ambiguous interpretation. As a result, few of the agreements have clear articulations of the manner in which South African society is to benefit, and there is frustration on the part of potential investors and collaborators. However, efforts to develop appropriate legislation have recently begun.

# 4.	ASSESSMENT OF THE PROCESS

## 4.1	Introduction

Was the biodiversity policy process a success and what lessons can be gleaned from its shortcomings and strengths? Asking this question of role-players nearly three years after adoption of the policy elicited some diverse and enlightening responses. Overall, the majority of those we spoke with considered the process to have been extremely successful, and to have created the space for people to articulate viewpoints and influence policy positions. People spoke of the "excitement" and "magic" of entering into a discourse with sectors they had previously not engaged with; of the enthusiasm of having an opportunity to change the face of conservation in South Africa; of participating in a policy process that had hitherto been confined to experts; and of developing a joint vision as to how biodiversity should be nurtured and used. Some commented that compared to the plethora of other policy processes occurring at the time, biodiversity was the "best by far".

While these were the majority views, others, notably civil society organisations, were more cynical, describing the process as "terrible", "elitist" and "untransparent". A major factor fuelling these concerns arose from the fact that South Africa's ratification of the CBD had short-circuited a proper consultation process, which had destroyed

confidence in the process for civil society organisations who had requested consultation before ratification proceeded. This effectively thwarted the bargaining powers such organisations may have had in the process, and made them less prepared to participate. Furthermore, the biodiversity policy process was perceived by civil society organisations to give only lip service to participation and to reaching local communities, to be dominated by the 'old guard' conservationists, and to be poorly integrated with CONNEPP, which involved much more extensive consultation with civil society. Thus from the beginning the biodiversity policy process was tarnished, regardless of the final policy outcome.

What follows is an analysis of the process, drawing on factors that influenced its design, implementation and impacts.

4.2   Designing the Process

BUILDING TRUST

South Africa's climate of mistrust between government and other role-players, joined with the ill-fated history of the ratification process, provided an especially challenging environment for the biodiversity policy process. Building trust and confidence in the process and in the ability of the much-maligned Department of Environmental Affairs and Tourism, chastised because of its ineffectualness and history of neglecting social concerns, was critical to its success. Equally important was to ensure that this happened in the early planning stages of the policy process. Right from the outset, role-players had an opportunity to influence the design and implementation of the process. This was effected through representation on the Reference Group, which considered proposals submitted by the Steering Committee and modified or adopted these as appropriate. Such consultation was an essential element of the process.

SEPARATING POLITICAL AND TECHNICAL COMPONENTS

Importantly, the process was structured to comprise two principle elements – one focused on gaining political support for the initiative; and the other on developing the technical aspects of the policy content. Although there were obviously interlinkages between the two, with the Reference Group serving as the decision-making forum for both components, an attempt was made to separate out the substantive issues from the political process. The rationale for this separation was to create the space for both political and technical debates to unfold in a constructive manner without the one hindering the other. It was felt that, together, the two debates would serve to develop

an understanding of the different agendas and interests at stake, and that a template could be formed as to which policy options were appropriate. Political conflicts and 'turf battles' had previously been disguised as differences over technical issues, precluding progress in developing appropriate solutions to the issue. Similarly, attempts to bring about technical change had often met with political suspicion as to the intended beneficiaries of such action.

EXPERT-DRIVEN VERSUS PROCESS-DRIVEN APPROACHES

The applicability and usefulness of this expert-driven approach for other policy processes warrants some discussion and needs to be placed within the overall context in which the biodiversity policy process evolved. Comparison with CONNEPP, which ran in direct but unintentional synchrony to the biodiversity policy process is especially instructive, given the vastly different approaches employed by each process. Whereas CONNEPP was about process and consulting as many people as possible to gain political support and set broad objectives, biodiversity was more about active participation in decision making about technical issues. CONNEPP, as the overarching environmental policy, was enormously politicised and was focused on getting stakeholder input and agreement on key principles and objectives rather than specific details. In sharp contrast to biodiversity, stakeholder representatives rather than independent editors drafted policy papers and technical inputs for CONNEPP, and energies were expended on getting the process right, rather than on developing a substantive policy.

Given this situation, it is fair to say that the separation of the political and technical components of the biodiversity policy process was made far easier through the existence of CONNEPP. Commented one official close to both processes:

> "CONNEPP took the political heat off biodiversity and made it [the biodiversity policy process] far easier to get to detail and consensus. While CONNEPP represented an exhaustive effort to reach people at all levels, biodiversity was widely perceived as being expert based and not very consultative [in comparison]."

Whether or not this 'expert-driven' approach changed or enhanced the substance of the biodiversity policy is a moot point. Certainly, there was continuous tension in attempting to balance questions about representation with those about the substantive policy issues. Yet the space created for technical participation facilitated the involvement of those who may well have been sidelined in a more politicised process.

THE IMPORTANCE OF A STRONG POLITICAL MANDATE

Overall, and in spite of the strong technical nature of the subject, there was wide consensus among those with whom we spoke that the biodiversity policy process enabled the development of a new and comprehensive policy perspective. The political component of the process was pivotal to the attainment of this shift and it is clear that a policy based only on technical interventions would have failed dismally, both in accommodating new perspectives, and in generating broad acceptance. Indeed, one of the success factors of the biodiversity policy process mentioned by people interviewed was that the process was given a political mandate and legitimisation through the designation of a political 'champion' (a prominent South African politician) to chair meetings of the Reference Group and guide the process.

Having said this, comments were made that the mandate did not emanate from a high enough political level. Within the Reference Group, organisations were asked to nominate representatives, often resulting in the designation of junior officials to attend meetings rather than the key decision-makers of organisations. Retrospectively, this was seen as a shortcoming of the process, and perhaps partly responsible for the ultimate lack of follow-through of the policy by government departments and organisations.

4.3   Implementing the Process

HOW WERE STAKEHOLDERS BROUGHT ON BOARD?

> *"Both the government and the people were completely unused to consultation. The government didn't have a clue about process"* [senior government official].

Mention has been made of South Africa's climate of mistrust and the importance of setting aside time and resources to build trust and confidence among role-players. At the start of the process tensions existed at many levels: between DEAT and civil society organisations; between DEAT and other national government departments; between DEAT and provincial environment departments; between different groups of NGOs; and often between individuals within the same organisation, bearing different visions as to how transformation of the conservation sector should be achieved. Engaging these different constituencies in the process proved to be one of the most challenging tasks, requiring careful strategizing on the part of the Steering Committee.

> *"We had to be deliberate and tactful to get stakeholders on board and to engage them. We needed to gauge which groups were more powerful and controlling. We had to take into account people's psychology and behaviour, think about what it is they were protecting most, and try to make them see the other side of the story".* [member of the Steering Committee]

Over the two year process, through the regular exchange of viewpoints and perspectives within the Reference Group and at the conference, and through the networks and relationships that developed, a gradual shift became apparent. Stated one senior government official:

> *"There was antagonism between NGOs and the government sector but in the course of the process these misgivings were alleviated and mutual understanding developed between the groups"*

It is unlikely that all participants would agree with this assessment, but among those interviewed there was general consensus that within the financial and time constraints the process did as much as it could to bring different representatives on board. Ultimately it was acknowledged that the process succeeded in obtaining perspectives from "a slice of society" but was far off from obtaining real community participation, as CONNEPP had done through broad outreach and the direct involvement of grassroots communities in policy formulation.

WERE ANY SECTORS DOMINANT OR WEAKLY REPRESENTED?

> *"We made the right effort to identify key stakeholders but we were learning at the time"* [member of the Secretariat]

A variety of perceptions were presented by those interviewed as to whether any of the sectors had dominated or been weakly represented in the process. Some felt that nature conservation officials were extremely well represented; others that they were under-represented. Some considered NGOs to have been marginalised from the process; others that NGOs had dominated the process. One official noted that:

> *"People with a vested agenda or who were ill informed tended to dominate and those who could make an impact did not have time. NGOs by nature of the beast had time – green grope groups argued about trivia while the planet died around them".*

Despite these impressions, an overall assessment of comments received on policy drafts

and of participation by different groups reveals that NGOs participated rather weakly. In contrast, there was a high level of participation from the scientific community, on a scale unprecedented for a policy process of this nature in South Africa. Taxonomists in particular, concerned about declining resources and inadequate state interest in their field, set about organising a series of workshops to mobilise and inform themselves; marine biologists established a think-tank specifically devoted to the policy process; biologists at the universities likewise organised various meetings to consolidate their positions on issues. Other scientists adopted the view that:

"We do not try to participate too actively in policy as we are a scientific organisation".

At the other end of the spectrum, participation from holders of traditional knowledge was confined to the relatively well-organised traditional healer community, which took it upon themselves to organise workshops among their members. At these meetings concerns were raised about the expropriation of their knowledge by commercial users, about the need to legally protect their knowledge, and about the dwindling supplies of medicinal plants. However, some holders of traditional knowledge, and especially those who do not practice traditional healing commercially, did not have access to the necessary resources and structures to participate.

Three sectors or groups were singled out as being especially weakly represented. The first, representing industry and business, was through an intentional decision on their part to not "waste time" on policy discussions. Commented two separate representatives from industries dealing with bioprospecting: "we had other things on our mind"; and "policy is not important – the horse has already bolted" (by which they meant that all valuable biological resources had already left the country). The second under-represented group was the national Department of Agriculture, which was considered to have not seen the relevance and significance of the policy in its day-to-day activities, although junior officials did participate in the process. A third voice that was largely absent from the debate was that of local communities, more particularly rural communities who rely upon biodiversity for subsistence purposes and daily needs. One critic stated:

"One needs to look at both interested and affected parties and the biodiversity process largely involved only the interested parties – not really the affected ones, apart from one or two healers. The focus was on decision-makers in terms of who was involved".

HOW WERE LOCAL COMMUNITIES BROUGHT INTO THE PROCESS?

There is widespread acknowledgement that the process did not involve adequate consultation at a local level. Although local consultation was considered a priority, the difficulties involved in effecting this prevented a proper engagement with communities. The main constraint was financial, coupled with logistical complexities. South Africa is a vast country, encompassing over one million square kilometres and forty million people in its nine provinces. There are eleven official languages, and many more dialects and cultures. Levels of illiteracy are high, while awareness and technical capacities are low, requiring innovative approaches to enable participation among communities in any public policy process. A further challenge is to motivate local people to participate in discussions relating to natural resources when many communities have been displaced from their lands and do not have secure rights over natural resources. Under these circumstances, policy can appear particularly abstract and far removed from day-to-day concerns.

Although attempts were made to overcome these hurdles, through for example the simplification and translation of documents, a common sentiment expressed was that these efforts did not go far enough. Rather than a comprehensive process of community consultation, stakeholder briefings were held in major urban centres to consult anyone interested and Reference Group members were asked to disseminate information through their networks and to "consult to the best of their ability given the constraints placed upon them" [12]. With no budget allocated to the request, and ever-present tensions between central and provincial government and NGOs, over-stretched provincial government departments and NGOs were clearly not in a position to fully realise this task.

"The grassroots process was not as effective as it should have been. We tried to use the Reference Group to cascade down but this was not done effectively. Is it ever possible to get grassroots participation on such technical issues?" [provincial government official]

Some money was however set aside to enable community representatives to attend the national conference. Representatives were selected through consulting with intermediaries working with communities on biodiversity related issues; through invitations issued to people attending stakeholder briefings; and through using existing databases of communities that had been involved in related policy processes, such as

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[12] Department of Environmental Affairs and Tourism, Convention on Biological Diversity Policy Development Process, "Minutes of the Second Meeting of the Reference Group for the Development of a Biodiversity Policy for South Africa", 30 January 1996.

land, forestry, and energy. Additionally, attention was given to ensuring a good geographic balance; the involvement of different sectors within communities (eg healers, wood-carvers); identifying those communities with a direct stake in biodiversity; and attaining a gender balance[13]. Only people with a proven mandate to speak on behalf of their constituencies were invited to attend the meeting. All in all, 25 community representatives attended the conference, participating actively in issues concerning access to biodiversity and protected areas; bioprospecting; traditional knowledge and intellectual property rights.

> *"You can never get communities fully represented. You need people who can articulate the common feeling of the people. One way is to target key informants in each sector and to seek perspectives and views that represent those of an interest group. It is important not to bring in figureheads who do not say anything".* [NGO participant]

The conference provided an important opportunity for community participation, but was not sufficient to capture the views of affected communities. Closer coordination with the CONNEPP process would have enabled more extensive consultation with local communities.

HOW WERE CONFLICTS RESOLVED?

Many differences were resolved through the consultation process, and this was facilitated by careful design of the policy documents as well as through the structures set up to manage and monitor the process. The Discussion Document, for example, described a number of policy options that could be pursued to address certain issues. Respondents were asked – both at the national conference and in the form of a questionnaire - to identify which choices they preferred. Of significance is that respondents were nearly all unanimous in the options that were identified. Similarly, the Green Paper received overwhelming support for most of the proposals articulated. Some of the critical areas of tension related to:

- the lack of integration between the biodiversity policy process and CONNEPP;
- the need for clarification as to the regulation of privately owned biological resources;
- a general concern from industry that the policy favoured a regulatory rather than self-regulatory approach;
- the extent to which the policy should endorse modern biotechnology;
- the need to both ensure continued access to foreign germplasm for agriculture and

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[13] Greying Liaison cc, March 1996, "Proposal for Grassroots Involvement for the Biodiversity Policy Consultation Process".

control access to indigenous genetic resources;
- clarification on the use of taxes and levies; and
- issues concerning the funding of implementation.

Conflicting viewpoints were discussed in the Reference Group, where decisions as to which positions to adopt were taken by consensus. More serious differences in opinion were addressed through individual meetings between the Steering Committee and the concerned parties to gain a better understanding of the positions of the different parties and what interests they were trying to protect.

HOW WAS INFORMATION SHARED AND FEEDBACK ENSURED?

Feedback and communication were lynchpins of the process. Stakeholder representatives on the Reference Group, and at consultation meetings, were expected to feedback to their constituencies and so broaden the consultative process and ensure that these perspectives were incorporated into the policy positions developed. To facilitate this, a crucial role was played by the Secretariat in developing a communication strategy and in ensuring that role-players received the necessary documentation and information.

Were these feedback processes adequate and what could have been improved? Although some local community representatives felt that there was insufficient report-back following the Conference and Green Paper, most stakeholders seemed content with communications and information obtained from the Secretariat. However, feedback amongst organisations of a sector tended to be limited, and virtually all those we spoke with identified internal consultation within their various organisations as a major problem area that did not receive adequate attention. There were many reasons for this poor feedback.

Within civil society organisations, ongoing capacity constraints were aggravated by the overlapping demands being placed on such organisations by policy processes and post-apartheid government transformation. In the environmental sector there were few people who were conversant in policy issues and who could participate in policy fora. The withdrawal from the biodiversity policy process of the Environmental Justice Networking Forum (EJNF), comprising a network of some 200 organisations, further reduced opportunities for broader feedback to be effected among civil society organisations. Early on in the process the EJNF had withdrawn because of unhappiness with the way consultation was being undertaken (as it was taking place *after* CBD ratification), and because of capacity constraints.

Feedback within government institutions was hindered by capacity constraints and

bureaucratic procedures which often got in the way of disseminating information about policy matters. One official, for example, spoke of the problems of introducing any policy documents into the organisation without the documents first carrying the support of the Chief Executive. Another identified the need to set aside time and money to ensure proper feedback. One large institution that managed to achieve very effective internal feedback and participation had done so through allocating a budget for bringing people together to discuss drafts of the biodiversity policy.

Another issue that prevented effective feedback from occurring was the difficulty of knowing the extent to which stakeholders were representative of their broader constituencies. For example, nearly 300 traditional healer organisations, (representing between 200 – 300 000 healers) exist in South Africa, many with opposing interests and making competing claims of representation. Representivity for this group was near impossible, although a broad network was used to disseminate information to different organisations.

4.4   Management and Policy Drafting

MANAGEMENT OF THE PROCESS

An important aspect of the policy process was the way in which it was managed. The Land and Agriculture Policy Centre – a recently established NGO providing policy advice to the new government – was tasked with taking responsibility for managing both donor funding and, in partnership with DEAT, the day-to-day tasks associated with the process. By circumventing the complex procedures associated with government bureaucracies, this allowed for enhanced flexibility and speed, especially with respect to financing arrangements. Critical support needed for the process – a secretariat, policy drafter, facilitators and expert inputs – could be contracted into the process almost immediately.

While this had clear advantages, it also sowed tension among other NGOs, some of whom accused the LAPC of being too close to government, untransparent and not consultative enough. For the LAPC, its involvement was seen as strategic, creating stronger linkages with government and so influencing policy directions within DEAT. Suspicions about the LAPC combined with a lack of faith in DEAT and its commitment to participation undoubtedly affected the process and precluded the full participation of the NGO sector. In another way however the LAPC's partnership with government and independence accorded much needed capacity and credibility to the process.

GETTING THE CONTENT RIGHT

The management and integration of information obtained from different phases of the process comprised a major task. This was undertaken primarily by the editorial consultant who drafted the policy documents almost exclusively for the two-year duration of the project. Written and verbal inputs were received from a variety of sources, including the Reference Group, the national conference, separate sectoral meetings, as well as formal submissions on the various policy drafts. This was accompanied by an ongoing literature review and analysis as well as specific research projects where necessary (see Section 3.5). Attendance by the policy drafter of meetings of the Conference of Parties to the CBD greatly facilitated this process, allowing for the most recent and pertinent information on biodiversity to be incorporated and reflected in the documents prepared.

Getting the content right was a major focus of the process and was widely considered to have been a strength. Many cited the importance of an independent person with knowledge of the sector in assuming this role.

> *"The quality of the drafting was extremely good and was largely responsible for the clarity of the process – it was clear what people were being asked to have an opinion on".* [Nature conservation official]

4.5   Benefits and Drawbacks of Participating in the Policy

What were the benefits and drawbacks of participating in the consultation process? Numerous factors were mentioned in our discussions with people who, regardless of their disparate policy positions or perspectives were at one as to the benefits they gleaned from involvement in the process, and the positive impacts of such involvement for the conservation and sustainable use of biodiversity in South Africa.

- First, the biodiversity policy process undoubtedly resulted in **improved relationships, trust and understanding** between stakeholders, brought about through a transparent and accountable process of consensus building, and resulting in a shared vision about biodiversity conservation and use in South Africa. Through the policy process it was felt that the discourse on biodiversity achieved a certain level of maturity because it provoked a dialogue and understanding of different viewpoints and, in some instances, a change in people's interpretation of the issues (*eg* scientists becoming more socially aware).

- The process also created a momentum of its own in terms of facilitating the **development of networks** between different people and sectors working on biodiversity issues, and promoting dialogue between these groups about pertinent issues. It also catalysed various groups to **coordinate** among themselves and establish structures to enable this to happen. This process is still ongoing and has resulted for example in a communication forum on biodiversity among museums; a Marine Biodiversity Working Group within DEAT; and a protected areas forum on biodiversity.

- Involvement in the process **built capacity** among participants at a variety of levels and in a variety of ways. Benefits that were singled out included improved knowledge, understanding and awareness of biodiversity issues and of the South African and international context; enhanced capacity to undertake participatory processes; and the broadening of perspectives to include new insights and knowledge.

- The process enabled **new constituencies** that had previously not had a voice (eg. development NGOs, local communities and traditional healers), to participate in the biodiversity sector, resulting in their increased awareness of the broader policy context, and ways in which agreements such as the CBD could be used to protect their interests.

- For some people, the policy process created direct **opportunities** through for example, the opening up of funding channels such as the Global Environment Facility for project support, or greater involvement in biodiversity projects.

- Within government, the policy process facilitated **more effective participation in the Conference of Party meetings** to the CBD as well as other international fora. Through involvement in the policy process it was thought that the South African delegation became more organised, representative and informed. Additionally, an ethos developed within the delegation precluding positions from being tabled without prior consultation.

- Through ongoing consultation, the **content of the policy** was continually improved and refined, resulting in an accurate reflection of the needs, interests and priorities of different sectors.

- For some institutions, **implementation** of the policy was made easier through the experience and knowledge gained in the policy process, and in-house deficiencies in certain skills (*eg* engaging with communities) were highlighted. Participation in the

policy process also served to generate a momentum and motivation for implementation, resulting in organisations being "poised for action".

● Finally and more broadly, participation in the policy process enabled a **new policy perspective** and paradigm shift to be adopted, resulting for the first time in an integrated and holistic approach to the conservation and sustainable use of biodiversity in South Africa. Some direct manifestations of this are an increased focus on the sustainable use of resources, as opposed to a preservationist approach towards resource use. These shifts in turn have led to biodiversity conservation assuming greater political credibility and a higher profile in the country.

Certainly these gains outweighed the possible drawbacks or costs of participation, which were mentioned as the "locking up of people's time"; and the use of resources and donor money that could perhaps have been channelled elsewhere.

4.6   Use and Impacts of the Policy

Is the biodiversity policy used today and how is it being taken forward? For several of the government departments interviewed, the policy is a living document, being used on a regular basis to guide the planning and development of relevant programmes and projects as well as related policies. For DEAT, the White Paper is seen to be robust enough to withstand the current political term (*ie* until 2004) and is very much being used to direct the biodiversity work of the department. Likewise the White Paper is considered instrumental in the "total turnaround" experienced by the Agriculture Research Council (a large parastatal) in adopting a more socially oriented approach to biodiversity issues.

"At first there was a lot of resistance to CBD issues. Now everyone is talking about resource poor farmers and benefit-sharing has really come home." [official at the ARC]

The White Paper has also been used in formal structures, such as the Committee on Plant Genetic Resources established under the auspices of the Department of Agriculture, and has been an important tool to facilitate an understanding of other's perspectives in this structure. For the KwaZulu-Natal Nature Conservation Service, an internal biodiversity strategy had already been developed prior to the national policy, but the White Paper served to stimulate and emphasise the importance of the existing strategy. Additionally, the policy was seen as a key influence in provisions articulated in provincial legislation in KwaZulu-Natal for local participation in conservation management.

The use and usefulness of the policy have however not been universally embraced.

Officials at the National Botanical Institute, for example, do not consider the White Paper to have been much help, believing that it constituted a philosophy and guide rather than a set of directives, and that it "created an unnecessary level of confusion about the economic value of medicinal plants", raising unrealistic expectations. At the CSIR (a Science Council deeply involved in bioprospecting) South Africa's ratification of the CBD is seen to be far more powerful than the White Paper because "multinationals are not interested in the detail contained in the White Paper". However, the existence of the policy is used as a lever to negotiate for stronger social and economic benefits in bioprospecting agreements.

4.7   Implementation of the Policy

Despite the broad support received for the biodiversity policy and process, every person we spoke with raised concerns that all had come to nought in implementation of the White Paper. The White Paper identifies eight priority actions requiring urgent attention (see Box 3) but virtually none of these have been realised. Three of the priority actions and their associated problems are examined below in more detail.

- **No action plan:** Two years on from the publication of the White Paper, there is still no concrete action plan to implement the policy. Problems of capacity and funding have been key obstacles, as well as an absence of vision and leadership as to how the policy should be taken forward. Although DEAT is identified as the "biodiversity champion" in the White Paper, this responsibility has not been matched by accompanying commitments or actions. This has resulted in despondency on the part of those at the provincial level, charged with effecting the policy, and an increased scar on the image and effectiveness of DEAT. Lack of transformation (restructuring in the post-apartheid regime) within DEAT has been a major contributing factor retarding progress, and recent restructuring to ensure transformation has further delayed implementation. Another reason cited for tardy implementation has been the absence of legal expertise within government to translate the policy to law.

- **No legal control over bioprospecting:** Legal and administrative mechanisms to control bioprospecting are still not in place. This is extremely problematic and has resulted in a good deal of frustration and anxiety on the part of potential investors and collaborators, a free-for-all among bioprospecting opportunists, and weak benefit-sharing arrangements for South Africa. Complicating matters is the fact that there are several departments affected by the issue, including Environmental Affairs and Tourism, Agriculture, Water Affairs and Forestry, Arts, Culture, Science and Technology, and Health, each of which is taking up the issue in a

different manner and with little coordination. Finding a single government department to take responsibility for making decisions about access and benefit-sharing has been extremely difficult.

BOX 3
PRIORITY ACTIONS OF THE BIODIVERSITY WHITE PAPER

1. The development of a biodiversity action plan through which detailed implementation strategies can be developed.
2. Obtaining a political commitment from all relevant ministers and provincial MECS towards achieving the objectives of the policy (eg through approved sectoral plans and budgets for relevant central and provincial departments and institutions).
3. Addressing concerns relating to the present degree of fragmentation amongst nature conservation agencies and establishing necessary institutional arrangements to accommodate such concerns.
4. Securing necessary funding for implementation.
5. Strengthening and rationalising South Africa's protected area system.
6. Establishing legal and administrative mechanisms to control access to South Africa's genetic resources;
7. Instituting a national biodiversity education and awareness plan; and
8. Participating in the development of an international Biosafety Protocol and instituting appropriate measures for biosafety.

- **Reduced capacity among nature conservation agencies:** Despite recognition in the White Paper of the importance of strengthening and rationalising South Africa's protected area system, and of reducing fragmentation amongst nature conservation agencies, resources allocated to such activities have progressively dwindled. Frustration and disillusionment has resulted in a mass exodus of highly trained managers and scientists from conservation agencies, to the detriment of protected area management in the country.

"There has been negativity to the new environmental and biodiversity policies and laws in the provinces. Functions have been devolved to the provinces – not without consultation – but without the means to do it. In fact provinces have been given even more responsibilities but without additional expertise and funding". [provincial official]

Could measures have been taken in the policy process to prevent some of these problems? Several people we spoke with identified the importance of building

implementation into the project proposal for developing the policy. At the conclusion of the policy process stakeholders were poised to implement the policies and strategies that had been so carefully developed and debated, and within the Reference Group there was a considerable momentum and enthusiasm to see through stated commitments. Continued meetings of the Reference Group, and its evolution into a more formal structure or 'Biodiversity Council' could have enabled this transition to implementation to happen in a more concerted manner. Instead, funding constraints combined with a lack of political will and commitment precluded further meetings from taking place, consultation processes around biodiversity reverted back to being issue based and rather limited, and momentum for implementation generated by the process dwindled.

> *"DEAT went into a different mode with different priorities immediately after the policy was produced"* [provincial official]

5. LOOKING AHEAD: TOWARDS THE ESTABLISHMENT OF LEGAL MECHANISMS TO CONTROL ACCESS TO SOUTH AFRICA'S GENETIC RESOURCES

Steps towards implementation of the Biodiversity White Paper are now crucial, especially with respect to the development of appropriate laws and strategies. New impetus has been given to this task through the employment of senior personnel at DEAT who are responsible for biodiversity management, and the accompanying transformation of the department. Additionally, funds have been raised and earmarked specifically for the development of biodiversity legislation. The need to regulate access to genetic resources is considered by government to be especially pressing, and there is concern that bioprospecting agreements are proceeding without cognisance of national priorities and needs. Presently, legislation governing access and benefit-sharing is being developed as part of a Biodiversity Chapter within an amendment to the National Environmental Management Act. Consultations about the legislation have commenced with key national and provincial government departments and institutes and an informal reference group has been constituted to provide advice on the content of the Chapter, but it is unlikely that a detailed process of public consultation will accompany the drafting of the law.

The research undertaken for this study yielded some general principles that may be useful for the development of such legislation. This includes matters concerning the level of consultation required, the value of a policy process prior to developing legislation, and specific ideas for future structures to administer access to genetic resources.

- **Consultation fatigue:** What is abundantly clear is that people have developed 'consultation fatigue'. Any future consultation must therefore be focused and directed and orientated towards outputs. While some see ABS as a new issue requiring consultation to develop concepts for law-making, others we spoke with thought there had "been enough talking" and that the development of a draft law for comment would be the best approach to take. The idea of a national workshop was mooted by several people, allowing for both talking and delivery and the identification of "knuckles of dissent". One suggestion was to develop a draft that could be used in the workplace to test its practicality; another was to introduce interim guidelines to precede legislation and to sensitise those involved in bioprospecting. It was believed that enough research material already exists to inform the development of legislation, although it would be important to back this up with the practical experiences of those engaged in bioprospecting in South Africa.

- **Key elements for ABS legislation**: Specific components that were considered to require attention in legislation and/or a strategy on ABS included the need to distinguish between research and commercial collections; the importance of broadening perceptions about benefit-sharing beyond financial aspects; the difficulties in enforcing ABS legislation and the need for political support to enable this to happen effectively; the introduction of a mechanism/s to equitably distribute financial benefits and prevent the "Mercedes Benz syndrome" of individuals lining their own pockets; the importance of regional cooperation to administer and control access; and the need to view bioprospecting as an opportunity for inventory work to be undertaken.

- **Institutional capacity for regulating access:** Many people we spoke with emphasised the importance of establishing a mechanism to administer access that was representative of all stakeholders and that viewed ABS within the broader context of conserving and using biodiversity sustainably. The existing Committee on Plant Genetic Resources was not considered to be suitable for this purpose because of its technical orientation and narrow approach (for example it excludes marine organisms, insects, and other animals). The composition and terms of reference for this Committee are also considered to be outdated. Because several government departments are involved in issues relating to ABS, it will be crucial to ensure their representation on a consultative structure and to link issues across departments through common principles and standards.

- **ABS Policy as a precursor to legislation:** Information gathered suggests that the development of a specific policy for ABS may not in itself be an especially useful

precursor to legislation. What matters is that legislation is informed by a comprehensive analysis of the *status quo* and by national priorities and principles that are developed in a consultative manner. Those we spoke with who were actively involved in bioprospecting had not directly used the ABS policy in the White Paper to guide agreements or actions, and indeed many commented that they were operating in a "policy vacuum" and were in need of legislation to assist and guide them in their transactions. Others, such as the CSIR, do not see the absence of legislation as a problem and are using the Law of Contracts as an interim measure; this apparently allows for retrospective changes if legislation is introduced. Having said this, a policy is useful if no other guidance exists for bioprospecting activities, although in itself the policy will not be enough to control ABS and should be only the first step of a regulatory process. Irrespective of future legislation, it was considered important that organisations develop their own policies and approaches towards bioprospecting.

6. LESSONS AND CONCLUSIONS

South Africa's biodiversity policy was developed through a broad and fairly comprehensive consultation process. A large multi-stakeholder Reference Group enabled key sectors and organisations, including provincial government departments, to participate actively in drafting the policy, and in the design of a broader consultation process. It was even suggested that DEAT was not active enough in taking decisions and providing leadership for the process. Another significant feature of the process was its management structure, which included an editorial consultant, an NGO for day-to-day management tasks, and a secretariat to provide support for logistics and communications. Funds for the consultation process and its management were secured from the start. The process involved wide dissemination of a discussion document, its summary and an educational leaflet, pamphlets advertising the process, a national conference, provincial briefings, independent sectoral workshops, and publication of a Green Paper.

The political context was an important factor in enabling such a process. In the newly democratic South Africa, the government was handing over control of policy to the people, and civil society organisations were keen to see a shift from the traditional approach to biodiversity conservation, which often disregarded social concerns, to one which reflected the needs of the majority of South Africans.

The majority of people interviewed felt that the biodiversity policy process was extremely successful. It created the space for people to articulate viewpoints and influence policy positions, and provided an exciting opportunity for different sectors to interact and for 'new' actors to participate in shaping biodiversity policy. The process

was also praised for striking a good balance between broad public consultation and securing technical inputs, unlike many other policy processes at the time where consultation was very extensive, but technical participation and progress with the content more difficult.

At the start of the process tensions existed between DEAT and civil society organisations, DEAT and some central and provincial departments, different NGOs, and even within organisations. Over the two year process, a gradual shift in perspectives became apparent, mutual understanding developed between groups, and a more socially oriented conservation agenda emerged.

Criticism of the process mainly came from civil society organisations concerned with social issues who felt that consultation with the public and local communities should have been much more extensive. Indeed many people agreed that there was insufficient involvement of rural communities who rely on biodiversity for subsistence needs, despite efforts to simplify and translate policy proposals, and the briefing workshop for CBOs held prior to the conference. The provincial briefings, which were held in urban centres, were not well attended by rural communities, and, overall, community participation was not adequately budgeted for. The business sector was also weakly involved, due to a lack of interest in the policy, as was the Department of Agriculture, which may not have seen the relevance of the policy. Some NGOs withdrew from the process following early CBD ratification, while participation of holders of traditional knowledge was limited to the more organised traditional healer community.

The lessons and conclusions that emerge from this study have broad implications, not only for South Africa but also for countries that share South Africa's circumstances. While the process to develop a biodiversity policy clearly needs to be tailored to be country specific, South Africa's situation is shared by many other developing countries that have a non-homogeneous population and a history of discrimination and mistrust. Some of the key lessons and conclusions distilled from the South African experience are summarised below, many of which have relevance for sectors far broader than biodiversity.

THE IMPORTANCE OF CONSULTATION IN BIODIVERSITY POLICY DEVELOPMENT

1. **The overwhelming conclusion of the study is that for a biodiversity policy to be a living document and to result in a changed ethos and practice it must be accompanied by wide consultation and awareness-raising**. These factors are fundamental to build understanding, respect and legitimacy for implementation.

Because biodiversity affects millions of people and is crucial for their livelihoods, outreach must be wide and people must have an opportunity to set policy.

2. **The extent and depth of consultation depends to a large degree on the levels of trust and shared understanding that exist between stakeholders**. Where trust is poor, as in the South African experience, a high level of consultation is required to build political support and consensus. Where a good relationship and understanding exists between stakeholders, a more cursory consultation process is likely to be needed.

3. Even where good trust exists between stakeholders **a consultation process brings incalculable benefits** through raising awareness and understanding of biodiversity issues, building capacity among participants, and broadening perspectives to include new insights and knowledge. Through participation in a consultation process, networks are built between those working on biodiversity issues, and coordination between and within groups is catalysed. If designed carefully, consultative processes bring on board new constituencies that have not previously had a voice.

4. **Participation in policy making generates a readiness and motivation to** put policy into practice, particularly amongst those who have been actively involved in debating and drafting a policy.

5. **Participation and consultation improves policy content** by generating a more mature level of debate and understanding of complex issues, and ensuring a more accurate reflection of the needs, interests and priorities of different sectors.

DESIGNING AND IMPLEMENTING A CONSULTATION PROCESS

6. **The cost of a fairly comprehensive consultation/participation process need not be high** - South Africa's biodiversity policy process cost $90,000. This covered the costs of management and logistical support, as well as a large conference, but did not include sufficient funds for local community consultation. It is important to secure the necessary financial resources before beginning a consultation process.

7. Participation provides an important tool for building consensus and political support in a policy process. For this to be achieved however the process must be carefully designed and implemented. **Involving stakeholders from the start of a process, including in its design, helps to build trust and bring people on board.** If the demands of certain stakeholders are not taken on board at the start of a process, they may become disillusioned with the process and choose not to participate.

Engaging an independent organisation or NGO to manage a policy process can help to bring non-governmental actors on board.

8. **Ways to engaqe stakeholders in policy drafting include**: to set up a decision-making structure that is representative of key stakeholders; to ask for written and verbal comments on policy drafts; to popularise and where necessary translate policy documents to make them more usable and understandable; and to organise or facilitate inter-sectoral and sectoral meetings of stakeholders as platforms for further debate.

9. **A multi–stakeholder committee provides a useful tool to enable representatives from different sectors to participate actively in policy drafting**, and to promote consultation within key sectors and organisations. Such committees should include representatives from different government departments, regional governments, environment and development NGOs, custodians of traditional knowledge and local communities, and the scientific and commercial sectors. Care should be taken to ensure that policy processes involve not only interested parties, but also those that are most affected.

10. **A successful consultative policy process for biodiversity requires a fine balance to be struck between representation ("process issues") and technical input ("content issues").** This balance should be taken into account in the composition of any drafting body, as well as in the design of the process. The weight given to each of these factors will however be determined by the nature of the policy and by the external political climate.

11. **The external political environment can directly determine the success or failure of a policy**. The timing of a policy process is thus critical, requiring careful strategizing on the part of those embarking on its development.

12. **High level political commitment is important for effective consultation.** This will ensure that adequate resources are allocated to the process, and that key stakeholders are motivated to participate actively.

13. **Political commitment is a critical ingredient for the successful adoption and implementation of a biodiversity policy**. Commitment must be made not only to the consultation process, but also to ensuring that biodiversity is conserved and sustainably used. One of the ways this commitment needs to be expressed is through the active involvement of high-ranking officials in decision-making structures set up to develop biodiversity policy.

14. **People require clear reasons and incentives to become involved in biodiversity policy processes and to change their** *modus operandi*. A strong strategic focus and political mandate is needed to convince top management of the importance of biodiversity policy and of setting aside resources to ensure that the policy results in organisational change.

15. Public consultation for policy development is greatly enhanced through the existence of a strong civil society movement and clear feedback structures within civil society organisations. However, even with such structures in place representivity is extremely difficult to achieve. **Policy should aim to ensure that the broadest range of sectors is afforded the opportunity to participate, and that the voices heard represent a "slice of society".**

16. **Management and logistical support is critical for effective consultation and participation. This should include:** an independent drafter with good understanding of the issues to prepare draft policy papers and integrate the information obtained, a manager to drive the process, and logistical/technical support for communication, disseminating information and organising events.

17. **The provision of external support to government by a NGO or other organisation brings both strengths and weaknesses to a policy process**. Some of the advantages include the fact that the policy process may gain credibility through its independence, or capacity through the expansion of available skills and expertise, and that delays in financial disbursement can be avoided. Some of the disadvantages may be reduced ownership by government of the process, lack of follow-through and implementation of the policy by government, and tensions about the singling out of a particular organisation in a partnership with government.

18. **Clear policy enables a clear process.** Getting the content and language of a policy right allows for more focused and productive discussion. Explanations of technical concepts and the inclusion of comprehensive strategies in policy documents, as well as different policy options, facilitate consultation and ease implementation.

19. **Capacity-building is a pre-requisite for effective participation.** Those who are affected by a policy may not be equipped to participate in discussions or to comment on specific issues. Information on the issues should be disseminated and popularised, using, for example summaries of policy documents and educational leaflets in local languages.

20. **During a consultation process it may be necessary to mediate between**

stakeholders with conflicting positions. One way to do this is to hold separate meetings with the parties in conflict to try to understand their underlying concerns and the interests which they are trying to protect.

21. **Community participation is costly and difficult and must be budgeted for appropriately**. Budgets need to substantially provide for awareness raising, capacity building, popularising and disseminating information, and for the costs incurred by communities through their participation (transport, subsistence, etc).

22. **Constraints to community participation include logistical/geographical factors, diversity of language and culture, and low literacy and awareness levels**. Community participation can also be difficult when traditional tribal societies have been fragmented and community structures are weak (as a result of migration or displacement). Interest in participation may be low due to lack of stake over natural resources and the abstract/technical nature of policy.

23. **Community awareness and participation can be promoted through** NGO networks, regional consultation events, and briefing sessions for CBOs held prior to national events to promote understanding and debate and enable them to participate on a more equal footing. Consultations with communities should not only be held in regional urban centres, should ensure a good geographical balance, target communities with a stake in biodiversity and seek out representatives with a mandate to speak on behalf of their constituents, who can articulate the common feeling of the people.

24. **Identifying real representatives can be difficult**. Identification of local community representatives can be facilitated by consulting intermediaries that work with them on biodiversity issues and using existing databases developed for related policy processes. However, where communities have been fragmented, research may be required to identify the areas, communities and representatives which should be consulted. Many traditional healers in South Africa claim to represent the healer community, and do not always act in the interest of the broader community they represent.

25. Experience with the environment policy process, CONNEPP, suggests that **very extensive consultation can hinder a policy drafting process,** that stakeholders can become 'fatigued' if several consultation processes run concurrently and that there may be a limit to consultation beyond which there is not necessarily a net gain. Stakeholder fatigue might be avoided by building on the results of related processes and focusing on specific issues that have not been addressed. Experience with the biodiversity policy also indicates that a balance needs to be struck between allowing

stakeholders to participate actively in decision-making and providing sufficient leadership and direction for a process.

26. Consultation can be difficult when there is limited experience with undertaking consultation processes. **Organisations undertaking consultation processes need to ensure that the lessons they learn from the process are recorded and institutionalised**. This will enable future consultation processes to be more effective and systematic. Government departments may wish to dedicate a permanent unit for consultation to ensure that institutional memory and learning is retained.

27. **It may be necessary to complement consultation and participation with research**, particularly for new and complex areas like access to genetic resources and traditional knowledge. An understanding of the current situation with regard to bio-prospecting, including the different actors, their activities, interests and concerns is necessary to formulate appropriate policy proposals.

IMPLEMENTING THE POLICY AND DEVELOPING LAWS

28. **Participation in policy making generates motivation for implementation, but momentum will be lost and stakeholders will become disillusioned if the process is not followed up soon after approval**. Continuity between policy approval and implementation is critical and needs to be built into the design of a policy process.

29. **A good consultation process to develop policy does not alone guarantee smooth or effective implementation**. Follow-up action requires firm and long-term political commitment and leadership, as well as clarity on the roles and mandates of different government departments. This could be facilitated through the establishment or adaptation of a formal multi-stakeholder structure to oversee implementation. Continued stakeholder participation during implementation is essential since new disputes or conflicts may arise that have not been previously considered.

30. **The development of a specific policy or strategy for access and benefit-sharing may not in itself be an essential precursor to legislation**. What matters is that legislation is informed by a comprehensive analysis of the *status quo* and by national priorities and principles that are developed in a consultative manner. Having said this, a policy is useful if no other guidance exists for bioprospecting activities, although in itself the policy will not be enough to control access and benefit-sharing and should be only the first step of a regulatory process.

31. If legislation is immediately preceded by a policy process involving comprehensive consultation and participation, a less extensive consultation process may be sufficient for its development.

APPENDICES

Appendix 1

List of those with whom interviews were held

1. Ms Judy Beaumont, National Department of Environmental Affairs and Tourism
2. Dr Martin Brooks, Kwa-Zulu-Natal Nature Conservation Service
3. Tr Dr Protas Cele, traditional healer
4. Ms Ingrid Coetzee, National Department of Environmental Affairs and Tourism
5. Dr Roger Ellis, Director: Plant Genetic Resources, Agricultural Research Council
6. Dr David Fig, Department of Sociology, University of the Witwatersrand
7. Mr Saliem Fakir, IUCN-South Africa (formerly LAPC)
8. Dr Nigel Gericke, consultant
9. Ms Tisha Greyling, Manyaka Greyling Meiring (Pty) Ltd
10. Mr Herman Grove, past Director of the Department of Environmental Affairs and Tourism
11. Dr Kas Hamman, Western Cape Department of Environment and Nature Conservation
12. Dr Marthinus Horak, Foodtek, CSIR
13. Professor Brian Huntley, CEO, National Botanical Institute
14. Ms Anne Hutchings, Botany Department, University of Zululand
15. Mr Myles Mander, Institute for Natural Resources, University of Natal
16. Mr Isaac Mayeng, Department of Health and Traditional Medical Practitioner
17. Mr Steve McKean, KwaZulu-Natal Nature Conservation Service
18. Ms Khungeka Njobe, National Department of Environmental Affairs and Tourism
19. Mr Trevor Sandwith, KwaZulu-Natal Nature Conservation Service
20. Mr Seth Seroka, Traditional Medical Practitioner
21. Ms Yolande Stowell, UK Department for International Development - Southern Africa
22. Ms Charmain Kruger, National Department of Environmental Affairs and Tourism
23. Dr Wynand van der Walt, South African National Seed Organisation
24. Dr Maureen Wolfson and Dr Gideon Smith, National Botanical Institute

Appendix 2

Access and Benefit-Sharing Provisions of the Biodiversity White Paper

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GOAL 3:
ENSURE THAT BENEFITS DERIVED FROM THE USE AND
DEVELOPMENT OF SOUTH AFRICA'S GENETIC RESOURCES
SERVE NATIONAL INTERESTS

3.1. ACCESS TO INDIGENOUS GENETIC RESOURCES

Policy objective 3.1.

Control access to South Africa's indigenous genetic resources through the introduction of appropriate legislation and establishment of institutional structures.

Policy and Strategy

The Convention on Biological Diversity recognises the sovereign rights of countries over their genetic resources, and their authority to determine access conditions, including the sharing of benefits gained. In terms of the Convention, South Africa is required to facilitate access to genetic resources by other Contracting Parties, and to ensure that any genetic resources acquired are on mutually agreed terms.

Government recognises that South Africa's genetic resources provide valuable opportunities for the nation to enhance the benefits from its vast biological wealth. The present situation, whereby foreign organisations and individuals have enjoyed almost free access to our genetic resources with little gain to either the country or the people from whom knowledge is gleaned, is a matter of considerable concern.

It is clearly in South Africa's interest to control access to its genetic resources, and to thereby ensure that benefits arising from the use and development of such resources serve the national good. It is, however, also in South Africa's interest to ensure that

access is not unnecessarily restrictive, and that conditions are provided which stimulate economic activity and allow for South Africa's continued access to foreign sources of genetic material. Thus Government will pursue an approach whereby access to South Africa's genetic resources is both controlled and facilitated, in line with certain principles.

To achieve this objective, Government, in collaboration with interested and affected parties, will:

1. (a) As a matter or urgency, and through appropriate structures:
   - develop detailed guidelines and conditions for biodiversity prospecting;
   - examine the applicability of such guidelines and conditions for domestic and foreign companies;
   - guide the development of appropriate agreements;
   - investigate the strengthening of existing controls and legislation, including the establishment of national sovereignty over South Africa's biological resources; and
   - investigate the establishment of a national clearing house to regulate and administer all exchanges of genetic resources, and to coordinate future activities.

(b) Develop and implement an efficient permitting system whereby authorisation is required for the collection of any biological or genetic resource to be used for research, trade or commercial purposes. This system will include the provision of comprehensive information from users and collectors, including the environmental impact of proposed activities and benefit-sharing arrangements. Where appropriate, the consent of local communities and private landowners will be required prior to the collection of material. Consent will also be required from holders of traditional knowledge prior to the collection of such information.

2. Require that benefit-sharing arrangements take into consideration:

(a) the need to strengthen the conservation of biodiversity in South Africa;

(b) the need to promote the reconstruction and development of South Africa, and to stimulate economic development in the most disadvantaged parts of the country and sections of the population;

(c) the rights of local communities, farmers, and others holding traditional knowledge to benefit from co-ownership of research data, patents, and products derived from their knowledge;

(d) the need to adopt a multi-faceted approach to benefit sharing, whereby a range of short- and long-term financial and non-monetary benefits are gleaned; and

(e) the need to strengthen South Africa's science and technology capacity.

3. Establish a system to allow for funds generated from biodiversity prospecting to be received and disbursed equitably, in line with the benefit-sharing arrangements articulated in (2) above.

4. Ensure that the collection of biological and genetic resources for research and development purposes does not adversely affect the conservation status of the genes, species, population, community, habitat, ecosystem, or landscape.

5. Promote coordination and cooperation between national research institutions engaged in biodiversity prospecting to enable the South African research community to strategically position the country in this field.

6. Encourage the development of institutional policies and professional codes of conduct to guide collection, research and commercial activities.

7. Investigate, through appropriate structures, the development of a system to provide legal protection for collective intellectual property rights.

3.2.   ACCESS TO GENETIC RESOURCES FOR FOOD, AGRICULTURE, AND FORESTRY

Policy objective 3.2.

Ensure continued access to sources of genetic material for food, agriculture, and forestry.

Policy and Strategy

Government is committed to adopting a uniform set of principles to guide the way in which access to genetic resources is controlled, and recognises the importance of

maintaining a consistent approach with regard to the implementation of policy for indigenous genetic resources that are used for different purposes. With regard to plant genetic resources, there are presently relatively few wild relatives of commercially produced crop plants that are indigenous to South Africa, but many indigenous species are considered to hold potential for new crops and forages. Indigenous animal and microbial genetic resources may also hold considerable potential for diverse uses.

While embracing a consistent approach to control access to indigenous genetic resources, Government recognises the mutual interdependence of nations on the global genepool of biodiversity, and the need for equitable benefit-sharing - both at the international and national levels. In particular, the development of specific strategies to ensure continued access to genetic resources for food, agriculture, and forestry is considered to be of paramount importance. To this end, Government is actively participating in negotiations to harmonise the International Undertaking on Plant Genetic Resources with the Convention on Biological Diversity, and has also established a Committee on Plant Genetic Resources to consider such matters.

Within this context, Government, in collaboration with interested and affected parties, will:

1. (a) Continue to participate in international negotiations to harmonise the International Undertaking on Plant Genetic Resources and other relevant international agreements with the Convention on Biological Diversity; and

(b) Through appropriate structures and mechanisms, ensure consultation with interested and affected parties in the formulation of national positions on the revision of the International Undertaking on Plant Genetic Resources.

2. (a) Initiate a process of national and local consultation, whereby the South African farming community, and small-scale farmers in particular, fully participate in the shaping, definition, and implementation of measures and legislation on Farmers' Rights;

(b) Investigate, through appropriate structures, the development of a system to provide legal protection for a collective rights regime that protects and controls farmers' knowledge, innovations, materials, and practices relevant to the conservation and sustainable use of genetic resources; and

(c) Review, assess and where appropriate modify relevant national policies and legislation to ensure that they support and do not run counter to Farmers' Rights and to relevant international agreements.

3. Adopt research, training, and institutional capacity-building activities to empower small-scale farmers and other farming communities in the acquisition, conservation, development and use of landraces, and of indigenous and traditional livestock breeds and plant varieties.