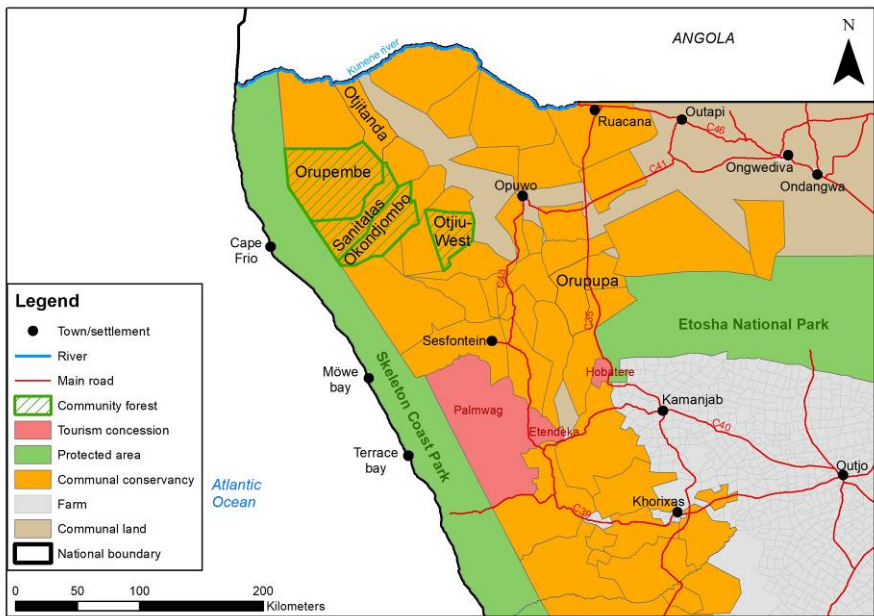


Access and Benefit Sharing (ABS) in Namibia

November 2017



VOICES FOR
BIOJUSTICE

How do conservancies and community forests work with the ABS Act?

- Biological resources are either animals or plants. Conservancies make decisions about wildlife, while Community Forests make decisions about plants. If a User wants access to animal resources then they must work with the Conservancy as the Local Community. If the User wants access to plants, then they must work with the Community Forest as the Local Community
- Conservancies and Community Forests are already following existing laws
- The ABS Act is a new law which gives **ADDITIONAL** protection to traditional communities

What is ABS?

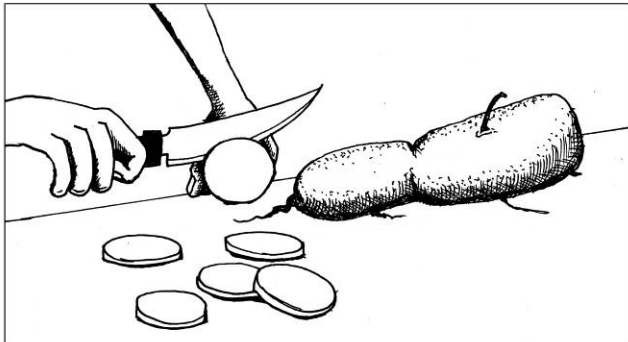
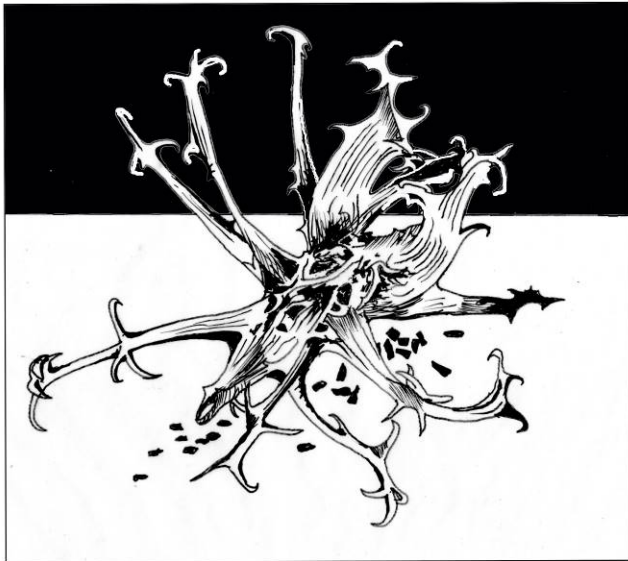
- ABS stands for “Access and Benefit Sharing” and refers to an international agreement of 2010 to make sure that if the biological and genetic resources of a Local Community are studied or used, that the benefits are fairly shared between the Users and Local Community
- Since 2010 each country which signed the agreement have been passing their own laws to implement the agreement. Namibia has passed its own law known as the Access to Biological and Genetic Resources and Associated Traditional Knowledge Act, of 2017 or “ABS Act”

What does access mean?



- Access means to study, collect or use your biological and genetic resources

What are biological and genetic resources?



- Biological resources are those plants and animals naturally found in your area, and genetic resources are the very small parts like seeds from which more of the resource can be made

What is meant by associated traditional knowledge?



- Local Communities may be the first or only ones with the knowledge that a particular plant can be used to treat a sickness or make a perfume, or which part of the plant to use or how it must be prepared to be effective. (This is also known as Community Intellectual Property Rights)

Do we have to say yes to access?



- You can say NO
- You should not say YES until you understand what they want to do, and you and the user come to a written agreement about how you both will share benefits

Why do we have an act?

To give additional protections to existing Conservancy & Community Forest laws.

- to make rules about how to get access to biological and genetic resources and traditional knowledge
- to protect the rights of Local Communities over their natural resources and traditional knowledge
- to make sure that agreements can be made between Local Communities and Users on Access and Benefit Sharing in a fair way
- to create an MET office and procedures to support the goals of the ABS Act

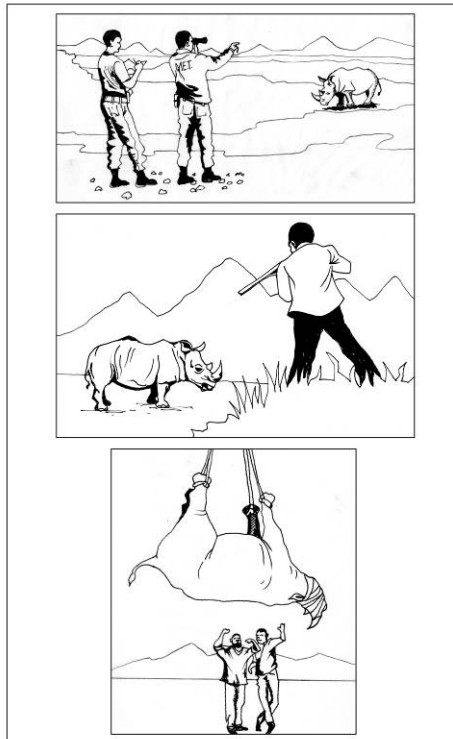
Regulations are currently being made and not all questions may be able to be answered at this time.

What are our community's rights over our biological & genetic resources and traditional knowledge?

- to say NO – however, if the resource has international value, such as a cure for cancer, or the resource is being overharvested, MET can say NO even if the community says yes.

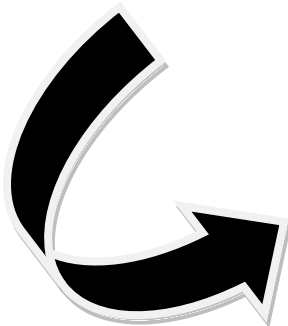
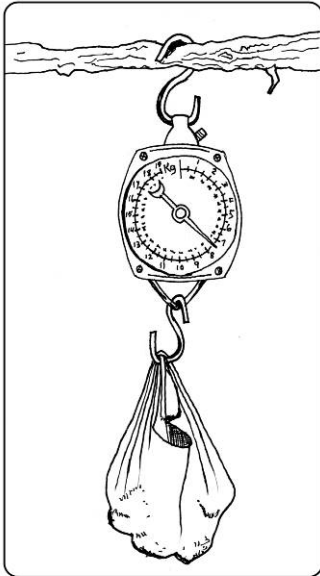
What are our community's rights over our biological & genetic resources and traditional knowledge?

- to collectively share the benefits from these resources and related traditional knowledge
- to protect these resources and related traditional knowledge according to customary law and practices whether written or not
- to sustainably use and conserve these resources to sustain our livelihoods



What benefits are possible?

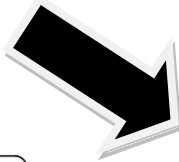
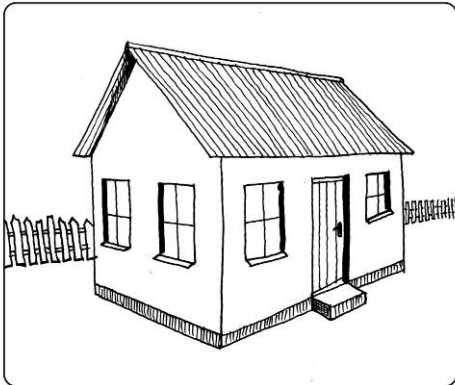
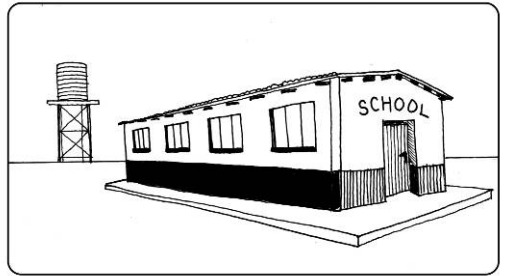
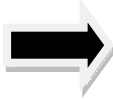
There are possible benefits for: Local Communities (both individually and collectively); the Users and the Resources



Local Community/Individual Benefits can include cash, food or access to healthcare.

What benefits are possible?

There are possible benefits for: Local Communities (both individually and collectively); the Users and the Resources



Local Community Collective Benefits can include: sharing profits, jobs, training, research funding, new markets and maintenance of community structures

What benefits are possible?

There are possible benefits for: Local Communities (both individually and collectively); the Users and the Resources



Users: new medicines, foods, cosmetics and products to sell

What benefits are possible?

There are possible benefits for: Local Communities (both individually and collectively); the Users and the Resources



Resources: added incentives to protect natural resources through sustainable use

What are Users' obligations?



- To work through the MET ABS office and follow the ABS Act and all other laws of Namibia
- To explain fully to the Local Community what they want to do and get their consent in the presence of the MET [= Prior Informed Consent]
- To reach an ABS agreement through the fair and equitable MET mechanism (if the community is willing)
- To obtain all necessary Access and Export Permits and Material Transfer Agreement

Who can help and how?

The MET will establish an “ABS” Office whose duties include:

- to educate users & local communities of their Rights & Obligations
- to establish a Help Desk and provide information, support and training
- to deal with complaints
- to create rules for Prior Informed Consent & mutually agreed terms for access
- to supervise the consultative process of Prior Informed Consent
- to prepare Model Agreements and to assist local communities in negotiations
- to ensure compliance with Agreements
- to process Permit applications

The MET will establish required STEPs [Regulations] to access and use biological and genetic resources and traditional knowledge, to include:

1. Prior Informed Consent (PIC):

- The MET must supervise and confirm that the user explained completely and accurately to the TA/LC how they will collect and use the resource and how they will fairly share benefits, and that the TA/LC agreed that they can proceed to the next STEP.
- Women must fully participate in the decision-making process.

Who can help and how?

2. ABS & MTA Written Agreements

- MET will establish conditions and minimum standards for both agreements, and will help local community and user to negotiate mutual agreements between both parties.
- The decision-making process must be fair and women must fully participate.

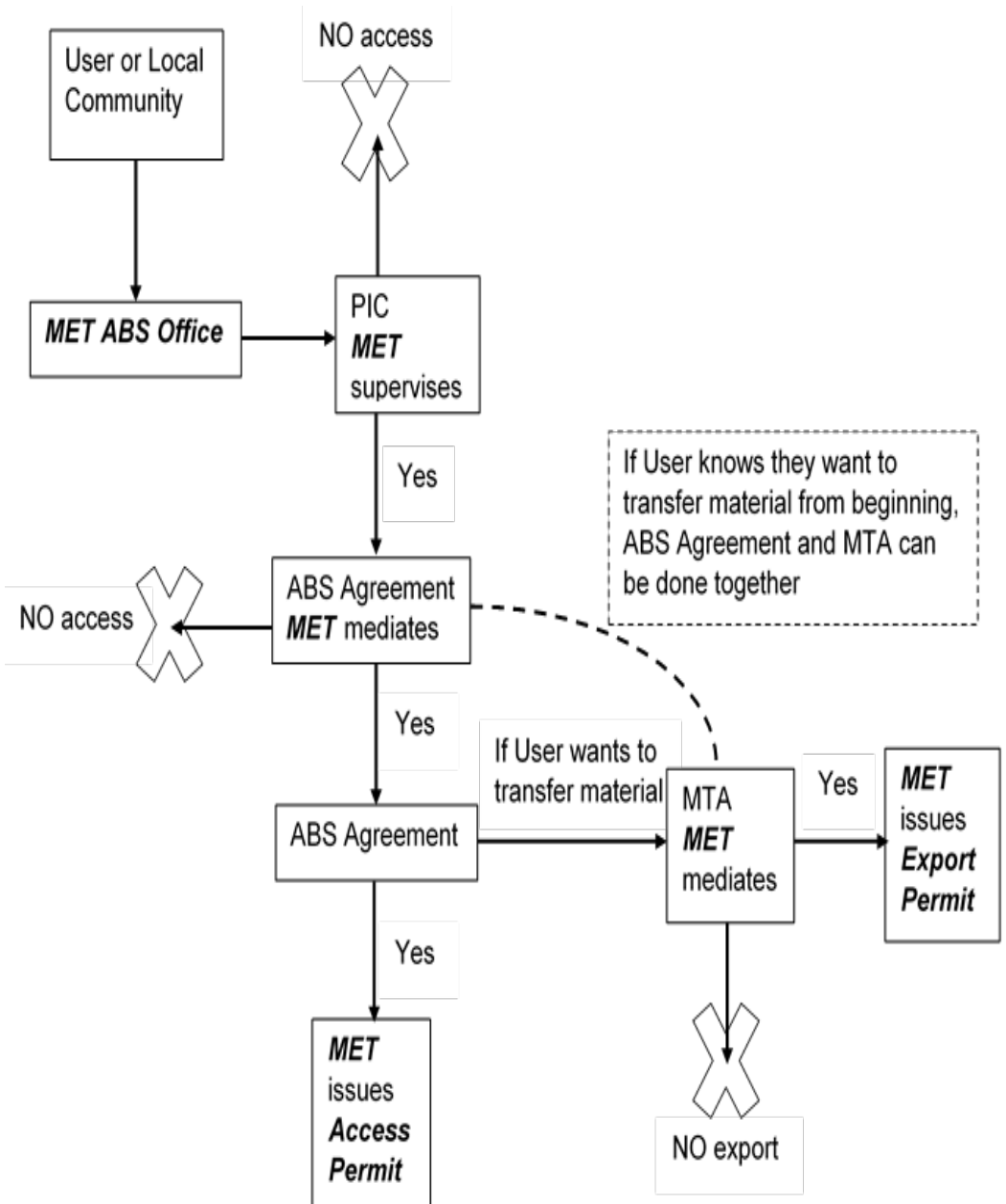
ABS Agreement – Access and Benefit Sharing Agreement

- If the local community has first given Prior Informed Consent (under supervision by MET), then this written ABS agreement establishes what the user and local community have agreed to on what the user has access to (including any conditions), as well as how benefits will be shared.
- If the user wants to transfer any of these resources outside of Namibia, then a written Material Transfer Agreement is necessary, which will establish such things as what is to be transferred, how much and to whom.

3. Access and Export Permits

- Even if a user and local community have completed an ABS agreement and/or a Material Transfer Agreement, the user cannot access the resources or export the resource materials without applying for and receiving an Access Permit or Export Permit from MET.
- MET must check that all the legal requirements have been met before issuing the permits.

Who can help and how?



Who can help and how?

Enforcement

- The ABS Act establishes criminal offences for not following the Act (such as not obtaining a Permit). The penalty for an offence may be as high as N\$150,000 and/or up to 10 years in jail.
- In addition, an offender can be forced to give up any equipment (such as a vehicle) used in committing the offence
- Any decision of the Minister may be appealed to the High Court

Special Funds

The ABS Act enables any donations for supporting the conservation of biological and genetic resources and related traditional knowledge to be paid into Environmental Investment Fund. Such monies may then be used for:

- to support projects developed by those local communities who provide biological and genetic resources and traditional knowledge.
- to conserve biological diversity
- to create awareness, or provide training about biological and genetic resources and traditional knowledge
- to pay for other expenses related to MET's ABS office