



environment, forestry & fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

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NATIONAL ASSEMBLY

(For written reply)

QUESTION NO. 1641 {NW2028E}

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Mr M N Paulsen (EFF) to ask the Minister of Forestry, Fisheries and the Environment:

Whether her Department has conducted any assessment of all the losses the Republic incurs as a result of biopiracy, which robs us of the benefits of our biodiversity; if not, what is the position in this regard; if so, what measures has her Department put in place to combat biopiracy?

1641. THE MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT REPLIES:

Biopiracy is often understood and defined as the practice of commercially exploiting naturally occurring biochemical or genetic material, especially by obtaining patents that restrict its future use, while failing to pay fair compensation to the community from which it originates. This misappropriation and patenting of genetic resources and knowledge usually exploits indigenous people's biological and cultural heritage that has been passed from generation to generation, without their consent.

Biopiracy became a concern at a global level, following the adoption and entry into force of the Convention on Biological Diversity, in 1992, to which South Africa became a Party to this convention in 1995. At the global level, issues of biopiracy are being addressed through the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their

Utilisation, which was adopted and entered into force in 2014. Important to note is that South Africa became a Party to this Protocol already in 2014.

South Africa has been at the global forefront of Access and Benefit Sharing (ABS) regulation, having been amongst the first few countries in the world to domesticate the NAGOYA Protocol. In 2004, the Biodiversity Act was promulgated, with Chapter 6 specifically focused on ABS. The three objectives of the Act mirrored those of the CBD, providing for the management and conservation of biodiversity; the sustainable use of indigenous biological resources; and the fair and equitable sharing among stakeholders of benefits arising from bioprospecting involving indigenous biological resources. The Biodiversity Act provided a broad framework for ABS however, leaving the detail to be dealt with in subordinate national legislation. In 2008, the Bioprospecting, Access and Benefit Sharing (BABS) Regulations came into effect following a protracted period of public engagement.

The National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA) and the Bioprospecting, Access and Benefit Sharing (BABS) Amendment Regulations of 2015 administered by the Department of Environment, Forestry and Fisheries (DEFF), regulates bioprospecting activities involving indigenous genetic and biological resources and the associated traditional knowledge. This is implemented through a permitting process that requires two important agreements, i.e. a material transfer agreement and a benefit sharing agreement. These provisions are included to ensure that the communities from where indigenous biological resources and/or its associated traditional knowledge originate are recognised and accrue fair benefits.

As part of the Government of South Africa's efforts to improve its legislative environment, the Department of Environment, Forestry and Fisheries has initiated a process of amending the National Environmental Management Biodiversity Act to ensure that the Act remains relevant in terms of what it tries to address, and that recent developments are also considered. This intensive process involved different stakeholders, public and private sector, industries, indigenous peoples and local communities as well as various experts. The Bill has been drafted and is currently being consulted through Cabinet processes for approval to be gazetted for public comment. Some of the regulatory lessons from the implementation of the rooibos benefit sharing agreement will be considered in the forthcoming revision process of the Bioprospecting, Access and Benefit-Sharing Regulations.

The Patent Amendment Act, 2005 (Act No. 20 of 2005), which is administered by the Department of Trade, Industry and Competition (DTIC), provides for the mandatory disclosure of information relating to

any role played by an indigenous biological resource, genetic resources or traditional knowledge in an invention, by any applicant for a Patent. These provisions are included to ensure that the communities from where indigenous biological resources and/or its associated traditional knowledge originate accrue fair benefits. The two departments work together to ensure that this disclosure is done by including the relevant officials in the Bioprospecting advisory committee, a committee set-up to evaluate all Bioprospecting Permit applications. This allows for appropriate cross-checking.

Similarly, the **Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (Act No. 6 of 2019)**, administered by the Department of Science and Innovation (DSI), provides for the management of rights of indigenous knowledge of communities, amongst other things. These provisions are included to ensure that the communities wherein indigenous biological resources and/or its associated traditional knowledge originate accrue fair benefits.

Overall, the DEFF has made tremendous progress since 2008, in terms of implementing the BABS Regulations on the utilisation of indigenous genetic and biological resources and/or associated traditional knowledge for bioprospecting purposes through this permitting system. Communities that hold traditional knowledge associated with various indigenous biological resources as well as those that are providing access to the utilisation of indigenous biological resources are able to benefit through the above-mentioned permitting process.

In addition, the Compliance and Enforcement units within the DEFF are consistently taking measures to ensure that those involved in the utilisation of indigenous biological resources for bioprospecting purposes comply with the NEMBA and the BABS Regulations. These continuous measures have positive impact in terms of protecting the rights of communities who hold traditional knowledge on indigenous biological material as well as ensure the conservation and sustainable use of South Africa's flora and fauna, in line with NEMBA and the BABS Regulations.

Regards



MS BD CREECY, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE:.....6/8/2020.....