

# Permit problems for some exporters

By [Shannon Sherry](#)

1 Nov 2010

The makers and exporters of some of the best-known SA products derived from indigenous plants and organisms have laid themselves open to criminal prosecution by failing to acquire the necessary permits. Rooibos tea and SA's best-selling liqueur, Amarula Cream, are among many such products apparently being produced and exported without the required permits from the environmental affairs department.



The National Environmental Management Biodiversity Act has since April 2008 legislated the "protection and use of indigenous biological resources and associated traditional knowledge", says Roopa Singh, the department's acting communications director.

"Any company that was involved in the bioprospecting and biotrade industry on April 1 2008, is still involved in such business and has not applied for a bioprospecting permit is in breach of the legislation and may be criminally charged."

Projects that already existed at that date - such as rooibos tea producers and Amarula Cream - were allowed to continue, provided that a permit application was received within six months, or before 30 September 2008.

## 54 applications, 1 successful... so far

It is understood that the department has received 54 permit applications. Just one has so far been granted.

For commercial purposes, two kinds of permit are provided for in the regulations. Bioprospecting permits are required by those who engage in the commercialisation phase of a project in SA - for example, the cultivation and wild harvesting or collection of indigenous biological resources to produce products such as liquor, cosmetics and medicines. This costs R5000. Export permits are required if primary biological products are exported for further research, development and production abroad. The cost is R5200.

A third type of permit, involving export for "pure academic research", costs just R100. Penalties for first offences could involve imprisonment for a maximum of five years or a fine of R5 million, or both.

For second offences these penalties can be doubled.

The Act deals with issues such as bioprospecting (finding useful indigenous plants), access to the plants and organisms as well as, crucially, the sharing of the commercial benefits with local communities.

## **The Scorpions sting**

Singh says the department is conducting compliance inspections at companies known to trade in indigenous biological resources and derived products. Inspections are unannounced and can be done at "any reasonable time".

During inspections environmental management inspectors - "Green Scorpions" - will question company representatives and tour sites to look for areas warranting closer examination.

"The company will then be required to produce the permits required for that type of business," Singh says. "If it does not have the permits, appropriate action will be taken."

Wessel de Wet, in-house legal adviser to wine maker Distell, the producer of Amarula Cream, says the company has been "engaging" with the department and is in a "consulting process".

"We are aware of the legislation. But we buy our supply of marula pulp from a company in Phalaborwa, which also supplies other companies, and we are not sure who should apply for a permit, them or us." He says the regulations are "commendable legislation" which might also protect the company from "imitators" who sell marula drinks overseas.

## **The Act is 'confusing'**

Gerhard Pretorius, biodiversity project manager for the SA Rooibos Council, says the Act is "confusing" because there are many companies exporting rooibos which are not aware of what is expected of them.

"Why should we be paying lawyers to explain the regulations to us when it is the department's job to make it clear?"

He agrees that the legislation is necessary in the light of "biopiracy" and big food companies trying to register patents abroad for indigenous SA biological products.

Singh says SA is one of the first countries to engage in the "novel concept" of regulating the bioprospecting of its indigenous resources.

Source: *Financial Mail*

For more, visit: <https://www.bizcommunity.com>