



# Biocultural Protocol of the Kukula Traditional Health Practitioners Association



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## Who we are and what this protocol stands for

We are a group of over 350 traditional health practitioners (referred to here as “healers”) living in the Bushbuckridge area within the provinces of Mpumalanga and Limpopo South Africa. Bushbuckridge lies on the Westerly perimeter of the Kruger National Park and falls within the Kruger to Canyons Biosphere Region (K2C) [UNESCO]. The K2C covers an area of 2.5 million hectares, and encompasses a very large array of animal and plant biodiversity. It is also home to over 1 million people, the vast majority of whom earn among the lowest wages in South Africa. We are all from either Sepedi or Tsonga communities.

As a group, we are committed to keeping our communities healthy which includes tending to their physical, cultural and spiritual wellbeing. Because our *muti*, or traditional medicines, come from the areas in which we live, we are also committed to protecting our biodiversity and ensuring that any use of our biodiversity or knowledge directly benefits us and our communities and future generations.



This community protocol provides details of:

- Our contribution to the health of our communities;
- Our traditional knowledge;
- How we connect to our communities via our culture to our biodiversity;
- The threats to our livelihood posed by biodiversity loss and the taking of our traditional knowledge without the sharing of benefits;
- How we want to improve conservation and sustainable use of medicinal plants; and
- Information for people wanting to access our traditional knowledge and medicinal plants.

### We contribute to the health of our communities

As traditional health practitioners we work to keep our communities healthy and heal those that suffer from illnesses or injuries. Whilst we share common knowledge of the main types of illnesses, each one of us has a specific way of treating those illnesses. We also specialize in the types of ailments we treat, and cross refer patients to each other depending on their symptoms. Notably, the people we treat are poor and we often provide healthcare regardless of whether they can pay or not. Our ancestors prohibit us from pressuring people for money, so we rely on goodwill and reciprocity.

As well as treating conventional illnesses,

we perform a number of other culturally significant roles in the community. We connect community members to their ancestors in a number of different ways, including in assisting families when their new-born babies cry for their names, carrying out coming of age ceremonies, providing counselling for a range of issues, chasing away evil spirits through cleansing ceremonies, and determining when the ancestors are calling someone to undertake initiation and training, thus passing on our knowledge and culture to future generations.

All of the above contributes to healthy communities, builds leadership and morale, and promotes our culture.

## We have a wealth of **traditional knowledge**

Each one of us has received a calling to become a healer which encompasses an induction and study with other healers. We gain our knowledge in four main ways: we are taught by our mentors, during our dreams we receive our ancestors' knowledge that is passed down through the generations, we innovate on our own knowledge creating new knowledge, and we exchange knowledge with other traditional health practitioners. Whilst we share much of our common knowledge, each one of us has specialized areas of expertise and corresponding knowledge. Thus, our knowledge is held ancestrally, commonly

and individually at the same time. If we give our knowledge to others without taking into consideration our ancestors and fellow healers, we will anger our ancestors and jeopardize the sanctity of our common knowledge. We can share our knowledge, but only after appropriate consultations and on the basis of reciprocity, including benefit sharing and respect. We lament the loss of knowledge that has already taken place, in most cases without any acknowledgement of the source of the knowledge and in the absence of benefit sharing.

## We **connect with our communities** via our culture to our biodiversity

A large amount of our medicines are collected directly from the areas in which we live, mostly from communal areas around our villages. This makes us very aware of the links between biodiversity, our livelihoods and the health of our communities.

Our harvesting of medicinal plants is guided by our spiritual values and is regulated by our customary laws that promote the sustainability of our natural resources. For example, we ask our ancestors as we harvest to ensure that the medicines will have their full effect, and believe that only harvested leaves or bark that are taken in ways that ensure the survival of the plant or tree will heal the patient. This means that we take only strips of bark, selected leaves or stems of plants, and always cover the

roots of trees or plants after we have collected what we require. Also, we have rules linked to the seasons in which we can collect various plants, with severe consequences such as jeopardizing rains if they are transgressed. Because we harvest for immediate use, we never collect large quantities of any particular resource, tending to collect a variety of small samples. This inhibits over-harvesting.

We protect biodiversity in other ways, such as guarding against veld fires and discouraging poaching of plants by *muti* hunters. These ecologically-based customary laws and methods of sustainable harvesting are passed on to our students, perpetuating our biocultural values.



## Our livelihoods are threatened through biodiversity loss and the taking of our traditional knowledge without the sharing of benefits

As traditional health practitioners we perform an important role in society, but it is a difficult one. We face three main challenges, namely: management of and access to medicinal plants, benefit from sharing from our knowledge, and discrimination.

### Natural resource **management and access**

For our medicines, we require access to medicinal plants, yet there are a number of inter-related factors that are hindering our ability to manage and harvest the medicinal plants we require. There are three main types of land in the K2C Biosphere Reserve – communal, protected and private - each one with its particular challenges.

Access to communal lands is regulated by traditional leaders who either require unrealistic sums of money for access or we endure conflict. Furthermore, the conservation and management of medicinal plants within communal areas is not prioritized by traditional leaders and the Kukula are not formally recognized. Within our communal areas over-harvesting by herbalists or muti

hunters who collect large quantities using unsustainable methods are reducing the populations of medicinal plants.

Protected areas are important to us as they contain a great diversity of medicinal plants, and some species of restricted occurrence which are not found in abundance outside of their boundaries. Important protected areas to us include, Kruger National Park, Mariepskop Forest Reserve, and the Bushbuck Ridge Nature Reserve. We face challenges accessing these areas, as the regulations vary and we are not always sure of the procedures. Similarly, travelling to the areas and paying fees is costly.

Private land is off-bounds to us and it is hard for us to even conceive gaining access to these areas.

### No benefit sharing

We have been visited by scores of researchers who generally provide us with few details of who they are working for and how our knowledge will be used. We want our consent to be sought before our knowledge or plants are taken and to be acknowledged as the holders of the knowledge and benefit from any commercialization. We also want to ensure that our intellectual property is protected when we share our knowledge.

We also face payment issues within the community. We always treat patients and only ask for money afterwards. Because of the levels of poverty in the area, this means we are often not paid or underpaid for the services we provide to our community.

### Discrimination

We face discrimination from the police who arrest us if a patient dies whilst in our care and are often targeted if people die in inexplicable circumstances. Our relationship with Christian institutions is also strained as they claim our practices as inconsistent not consistent with the Christian faith. This is not true, as we are all churchgoing Christians. Finally, often medical clinics warn patients against engaging with us, when in fact we consider our medicines to be complementary to 'western' drugs.



## Improving conservation and sustainable use of medicinal plants

To ensure that we can continue to provide for our communities, we require secured access to medicinal plants, which means that within communal areas land use allocation and management decisions must be improved so that the conservation and sustainable use of medicinal plants is addressed, and over-harvesting is tackled. We want to work with traditional authorities to better regulate the access to communal lands by muti hunters, and to explore how we can contribute to minimizing the environmental degradation being carried out by the herbalists, either through community education or establishing closer local controls. We want to evaluate how to replicate successful community run medicinal plants nurseries in the area, and we are in discussions with local Tribal Authority Council to negotiate that land be set aside for this purpose, we seek the K2C Biosphere Reserve Committee's assistance in future projects of this kind.

We wish to engage with protected areas managers, to explore opportunities to access medicinal plants. Present throughout South Africa's legislation concerning conservation is the balance between conservation on the one hand and sustainable use for the benefit of communities on the other. Given that we encourage both conservation and sustainable use in our communities, we, as traditional health practitioners, need to access certain medicinal plants to advance the health of our communities, our members should be granted access to protected areas as partners in conservation.

### We call on:

Conservation agencies to enter into meaningful dialogue with us. We are engaging with South African National Parks (SANParks) Kruger National Park, and are assisting the Skukuza Indigenous Plants Nursery to meet one of its aims, which is to identify medicinal plant species in high demand around the buffer zone of the park. Together we are developing a list of priority medicinal plant species, which can be supplied through the sustainable harvest of seeds, cuttings or plants grown within the nursery. We are also engaging SANParks to include our healers in village-level roll-out of the 'Warburgia Conservation Programme' [Warburgia salutaris (Pepperbark/XiBhaha), which will promote and facilitate the conservation of this endangered tree that is important for medicinal purposes. Our members will promote harvesting of leaves rather than bark and so encourage more sustainable harvesting practices. We call on SANParks to continue and deepen these positive initiatives.

We also call on the Department of Health to speed up its registration process to enable us to carry identification cards that certify us as traditional health practitioners. We feel that being recognized at the national level will assist us in our local challenges.



## Protecting and sharing our traditional knowledge: Respecting our informed consent

To ensure that our traditional knowledge is protected, we require people who want to access our knowledge to abide by customary and domestic law regulating the transfer of traditional knowledge. We use both customary and domestic laws to determine the conditions upon which we may share our knowledge.



### Customary laws:

The principle of reciprocity lies at the core of our customary laws on the transfer of knowledge. We must honour our ancestors and take due consideration of other members of our community of healers when considering whether and on what terms we can share our knowledge.

Our customary law necessitates that conservation must be based on the principles of sustainable use of natural resources, and our customary law tasks us with the role of encouraging sustainable use in our communities. We call on traditional leaders and traditional councils to recognise this role and to include us in traditional governance structures around conservation.

### Domestic law:

We know our constitutional right to have the environment protected, and to secure ecologically sustainable development and use of natural resources. We know our rights under the National Environmental Management Act (NEMA), National Environmental Management: Protected Areas Act (NEMPAA) and the Mpumalanga Tourism and Parks Agency Act (MTPA Act) to participate in environmental governance and to access protected areas to promote sustainable utilisation of protected areas for the benefit of our communities.

The basis for these assertions are set out in more detail in the Annexure.

### Prior informed consent:

We will base any consent to use our knowledge and access our indigenous biological resources on our customary laws and domestic regulations and the process of providing prior informed consent and deciding on the conditions for transfer will depend largely on the type of user. For example:

**Students** wanting to become healers: we want to assist anyone wanting to become a student of traditional health practices. Prospective students should make arrangements with any of us to set up a mentorship and can expect to pay a fee.

**Healers** from other areas who contact any of us for particular information will be directed to the Executive Committee who will conduct a process of community deliberation and ancestral consultation to decide whether the knowledge should be shared and on what basis.



**Academic researchers** must apply to the Executive Committee for any access to our traditional knowledge or indigenous biological resources. We will require, according to the Bioprospecting, Access and Benefit Sharing (BABS) Regulations and the BABS Amendment Regulations, to see the letter from the Department Environmental Affairs (DEA) stating that they can conduct the research.

Researchers will also be required to enter into a Prior Informed Consent agreement, this must fully explain the project and its risks and benefits associated with the research. Other documents that maybe required are an information/material transfer agreement, and if researchers plan to disclose information publicly, a non-disclosure agreement. Researchers would also need to adhere to the Indigenous Knowledge Systems Research Ethics Policy, which is endorsed by the Department of Science and Technology.

When the Executive Committee has ascertained the exact parameters of the intended research, they will then, based on our customary laws, conduct a process of community deliberation and ancestral consultation to decide whether the knowledge should be shared and on what basis.

Where access is granted, it will be on condition that further consent is required if the intended use of the research is changed and for a range of non-monetary benefits including acknowledgement that we are the holders of the original knowledge. Any

form of relationship with us must be conducted in total transparency.

**Commercial bio-prospectors** are welcome to engage with us. They must first apply to the Executive Committee for any access to our traditional knowledge or indigenous biological resources. We will require, according to the Bio-prospecting, Access and Benefit Sharing Regulations, any commercial bio-prospecting company to provide us with all information relating to the intended use of the knowledge and/or indigenous biological resource. With that information the Committee will, according to our customary laws, conduct a process of community deliberation and ancestral consultation to decide whether the knowledge should be shared and on what basis. That will form the start of a process of negotiation with the company towards a benefit sharing agreement and material transfer agreement, if required. Benefits could include monetary and/or non-monetary benefits.

## Call for local dialogue

### We call on:

The Department of Environmental Affairs, and the Department of Science and Technology to visit us to discuss how we can assist them with their respective programmes on access and benefit sharing. We also call on the Mpumalanga Tourism and Parks Agency as well as the Mpumalanga Rural Development Programme to engage with us to better understand our needs and what we can offer as joint implementers of conservation and livelihood projects. We feel that a multi-stakeholder approach to these issues is central to improving the current situation.

To address the misconceptions about our practices, we call on the following local groups to engage with us to discuss our role in the lives of our communities: traditional leaders, local health facilities, political organizations, schools and church leaders.



## Annexure

### Legislation that provides a basis for the Kukula's BCP

- Chapter 12 of the Constitution recognises the role of traditional leaders and enshrines the authority of customary law as subject only to the Constitution and statutes that specifically address customary law.
- The Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA) governs the powers and roles of traditional leaders and traditional councils. The Act encourages the promotion of democratic governance and the centrality of the applicable customary law and practices.

Section 19 of the TLGFA provides that “[a] traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned.” Section 20 empowers national and provincial government to allocate additional powers in a wide range of areas through statute.

- The Mpumalanga Traditional Leadership and Governance Framework Act 3 of 2005 governs customary leadership in Mpumalanga. It largely reflects the TLGFA but importantly requires traditional councils to create conditions for the community to participate in the affairs of the council. It also enables partnerships between traditional councils and municipalities.

**Conservation and sustainable use are fundamental to our customary laws and practices. As traditional leaders must govern in accordance with this customary law, our traditional governance institutions are tasked with protecting and promoting conservation and sustainable use. As we are the leaders in conservation in our communities, and our leaders are obliged to create conditions for community participation, traditional leaders should call upon our expertise as they fulfil their obligations to promote conservation in our communities.**

We also call upon our traditional councils to creatively partner with national, provincial and municipal governments to advance conservation and sustainable use.

## Access to protected areas

- Section 24 of the South African Constitution sets out that:  
Everyone has the right -
  - (a) to an environment that is not harmful to their health or well-being, and
  - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
    - prevent pollution and ecological degradation;
    - promote conservation; and
    - secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
- The National Environmental Management Act 107 of 1998 (NEMA) is the primary legislative instrument for advancing the aims of section 24 of the Constitution and serves as the keystone for a series of statutes that govern different aspects of environmental management. Each subsequent piece of legislation must be interpreted in accordance with the NEMA.  
Section 2(4) of the NEMA sets out the following relevant principles:
  - (f) The participation of all interested and affected parties in environmental governance must be promoted.
  - (g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.
  - (o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest.

**In emphasising protecting the environment from pollution and degradation, this section clearly provides for protected areas where economic and other activities are curtailed. In discussing sustainable use of natural resources, however, it is clear that such protections should not rigidly exclude all but should rather encourage cooperative conservation.**

Section 35 of the NEMA provides for the conclusion of environmental management cooperation agreements with any person or community for the purpose of promoting compliance with the principles laid down in the Act.

- The National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA) governs the conservation of protected areas and is aligned with the pro-community conservation impetus seen in section 24 of the Constitution and the NEMA.

The objectives of the Act, set out in section 2, include the following:

- (e) To promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas.
- (f) To promote participation of local communities in the management of protected areas, where appropriate.

To give effect to this, section 50 of the Act empowers the management of any protected area to enter into agreements with local communities regarding the sustainable use of resources within the protected area. The requirements for the exercise of these powers are set out in more detail in the NEMPAA regulations relating to national parks as well as nature reserves.

- Finally, section 14(4) of the Mpumalanga Tourism and Parks Agency (MTPA) Act 5 of 2005 specifically encourages the participation of previously disadvantaged communities in the MTPA's exercise of its powers.

Running throughout our legislation around conservation is the balance between conservation on the one hand and sustainable use for the benefit of communities on the other. Given that the Kukula encourage both conservation and sustainable use in our communities, as well as that we need to access certain medicinal plants to advance the health of our communities, our members should clearly be granted access to protected areas as partners in conservation.



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