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# Putting ABS into practice



**Dr Alan Hesketh**

**INDIGENA BIODIVERSITY**



# What Indigena does

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- ❖ Identify promising plant species
  - Traditional knowledge and literature search
  - Consider potential for IP
- ❖ Seek partners
  - for R&D and commercialization.
- ❖ Arrange access
  - Obtain Prior Informed Consent
  - Access and Benefit Sharing agreement
- ❖ Manage benefit sharing



# Some of the hurdles

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1. Unrealistic expectations
2. Demanding access requirements
3. Timing of Mutually Agreed Terms
4. Which national law governs MAT
5. Deciding on the royalty
6. Who owns the patent



# 1. A partnership of cultures

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- ❖ The CBD is based on genetic resources moving from a provider country to a user country - two cultures
- ❖ Needs to be mutual understanding and trust
- ❖ A foreign partner
  - respect local culture, attitudes and traditional practices
- ❖ Provider country and indigenous communities
  - recognize commercial issues and the value of patent protection
- ❖ Manage expectations
  - Good communication



## 2. Access requirements

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- ❖ Prior Informed Consent
  - Straightforward once partnerships established
- ❖ Local participation in research
  - Effect on ownership of patents?
- ❖ Details of foreign research project
  - Names of individual UK researchers
- ❖ Minimum royalty figures



# 3. Timing of ABS agreement

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- ❖ Provider wants early certainty
- ❖ User resists early commitment of royalty
  - Easier to finalize close to commercialization
- ❖ Part of the negotiation
- ❖ Or an agreement to agree?
  - With a minimum royalty figure



## 4. Which law governs the MAT

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- ❖ English companies want English law
- ❖ Provider country want local law
- ❖ Indigena can do both!



# 5. What is the right royalty

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Proposals for percentage of sales

- ❖ Australia biodiversity act 30%
- ❖ Hoodia – the San people 0.03%
- ❖ Indigena Suggestion 2%
  - Shared between all stakeholders





# Reactions to my 2% proposal

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## ❖ Provider country

- “What! only 2% - who gets the other 98%?”

## ❖ User company

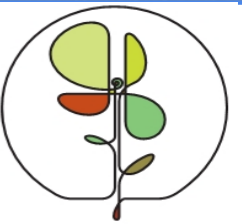
- “What! 2% - just because it grows there?”



# 6. Does it matter who owns patent?

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- ❖ Genetic resources have intrinsic value
  - The basis of the provider country benefit
- ❖ Patent protection increases that value
  - By increasing commercial potential
- ❖ The country of origin owns the genetic resources
  - Gains income from their increased value, even if someone else owns the patent.
- ❖ Local patent ownership can work
  - Structure the deal accordingly



# *Simaba cedron*

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*Project to improve antimalarial effectiveness of the natural product*

- *Simaba cedron* is native to Central America
- Used as a remedy for malaria
- Limited use due to its bitter taste/toxicity



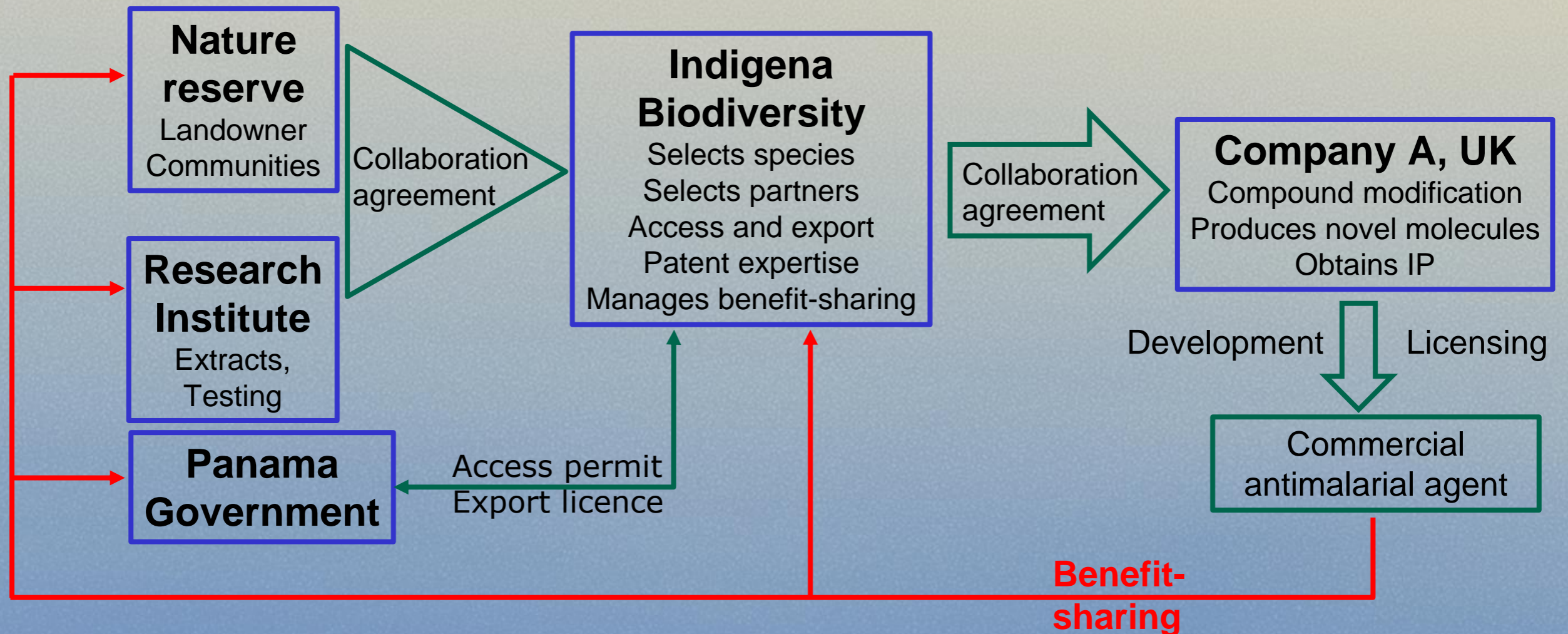
Prepare derivatives of the compounds present in *Simaba cedron*, which retain, or improve, the antimalarial activity, but have a better toxicity/therapeutic ratio



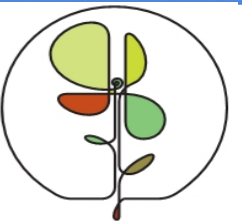
# *Simaba cedron*

**Panama**

**UK**



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# Summary

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- ❖ Build relationships
- ❖ Tackle cultural misunderstandings
- ❖ Deal with legal hurdles
- ❖ Look for patentable opportunities
- ❖ Choose the right species



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