



**WIMSA**

Working Group of Indigenous  
Minorities in Southern Africa



**UNIVERSITY OF CAPE TOWN**  
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD



Side-event at CBD, COP9

# Compliance with ABS requirements: Wishful thinking or reality? Experiences from the Hoodia Case

Thursday, 22 May 2008, 18:15 – 19:45

Summaries of the presentations

**Benefit-sharing agreements have been signed between the San, indigenous peoples of southern Africa and holders of traditional knowledge of the plant Hoodia, and different commercial users. A national law on ABS is also now in place in South Africa. Nonetheless many products are on the market that do not benefit the San. Free-riders remain unchallenged. During the side-event representatives of the San and stakeholders from southern Africa and Europe have discussed the need for further measures by provider and user countries to make ABS a reality.**

Speakers:

**Fundisile Mtekeni**, Deputy Director-General in the Department of Environmental Affairs and Tourism, South Africa

**Andries Steenkamp**, San Council, South Africa

**Hartmut Meyer**, consultant working for the Church Development Service (EED), Germany

Chair: **François Meienberg**, Berne Declaration, Switzerland

## **COMPLIANCE WITH ABS REQUIREMENTS – The view of the South African Government**

***Fundisile Mtekeni, Deputy Director-General in the Department of Environmental Affairs and Tourism***

***(Summary written by Rachel Wynberg, University of Cape Town)***

1.) South Africa has made several achievements since adoption of the Bonn Guidelines, including promulgation of the National Environmental Management: Biodiversity Act 10 of 2004. This Act includes a framework chapter on Bioprospecting, Access and Benefit Sharing. A Patent Amendment Act has also been promulgated requiring disclosure of origin of the genetic resources and associated traditional knowledge with patent applications. An Indigenous Knowledge policy aims to recognise, affirm, develop, promote and protect IK in South Africa.

2.) An important recent achievement to address biopiracy has been the publication of ABS Regulations. These came into force on 1 April 2008 and require benefit-sharing agreements to be in place between providers and users of genetic resources and traditional knowledge.

3.) Although there are now two benefit-sharing agreements in place between the San and users of Hoodia, we are faced with the problem of many Hoodia products being sold in Europe and elsewhere without complying with these benefit-sharing requirements. Part of the reason for this is because there is no International ABS Regime in place.

4.) We have a good opportunity to work with countries such as Germany and Switzerland to

ensure user compliance with benefit-sharing requirements for Hoodia and to demonstrate to the world that practical solutions are possible.

5.) This is an urgent matter. All countries need to do more on both access procedures and compliance measures.

6.) South Africa is a developing country that is both a user and provider of genetic resources. We are ready to do more but we also need the economically advanced countries to come up with regulatory and other compliance measures for ABS. Time is of the essence as the window of opportunity is closing on us.

7.) Because the matter relates to trade there needs to be consultation with the Department of Trade and Industry, as well as Foreign Affairs.

8.) Like-minded countries may wish to use this as a case study to test emerging ideas.

9.) Placing a moratorium on Hoodia trade would be used as a last resort.

## **COMPLIANCE WITH ABS REQUIREMENTS – The view of the San**

***Andries Steenkamp, San Council***

***Summary by Roger Chennells, San Lawyer***

The San have signed two benefit sharing agreements relating to the TK (Traditional Knowledge) component of the Hoodia appetite suppressant industry. Since about 2002, trade in Hoodia has exploded on the world market, most of it illegal and uncontrolled.

The San's first agreement with the CSIR who licensed their commercial rights to Unilever is still awaiting release of products by Unilever, and is not discussed. It was signed in March 2003., before RSA promulgated the Biodiversity Act 10 of 2004 giving effect to its obligations under the CBD.

The San's second agreement, with Southern African Hoodia Growers Association was signed in March 2007, with negotiations informed by the CBD, Bonn guidelines and the Biodiversity Act. By signing with primary producers, who agreed to pay R 24 (about 2 Euro) per dry kilogram exported, the intention was to control the production, and thereby to assist management of the trade internationally.

However numerous compliance problems have emerged, so that 18 months after signing of the agreement, and whilst world trade continues, the San have not received one cent from this agreement. They have now written to the Minister of the Department of Environment Affairs and Tourism (DEAT) expressing their frustration and pleading for assistance. At a meeting with DEAT held during April 2008, the San pointed out that

a) Internally, the regulations which aspire to force Hoodia Growers to have a benefit sharing agreement, are not yet enforceable or enforced. Internal compliance is complex,

relying on regulations as well as CITES regulations. DEAT undertook to devote attention to this.

b) Externally, the issue is more challenging. Both Namibia and RSA are exporting Hoodia to the world. However the two countries have completely different policies on benefit sharing. Namibia has not formally acknowledged the rights of the San. This could confuse the market, and prevents a common "southern African Hoodia" geographic origin marketing strategy. DEAT undertook at the meeting to engage with Namibia in order to "align" the policies of the two countries.

c) Internationally, Hoodia products are arriving on the shelves without any "user measures" in place to ensure basic benefit sharing compliance. Whilst no international regime is in place, it is suggested that a best practice benefit sharing regime could and should be instituted by bilateral arrangements between like minded countries, (Germany, Switzerland) which would work at resolving the problem and also provide a practical working model for the CBD negotiators to consider. The San pleaded with the governments of RSA, Germany and Switzerland, to engage with one another in order to consider institution of such a bilateral and principle based user-country-regime.

d) The assistance of NGOs is always useful in taking initiatives and facilitating communication between key stakeholders. The continued assistance of the Berne Declaration, EED and GTZ in this regard is regarded as essential and is appreciated by the San.

## DO USER COUNTRIES BOYCOTT THE HOODIA BS-SYSTEM?

*Hartmut Meyer, consultant working for the Church Development Service (EED)*

In 2005, the Berne Declaration (EvB, Switzerland) and the Church Development Service (EED, Germany) were able to purchase 12 Hoodia-containing products in an ad-hoc action in Swiss and German pharmacies, health shops, and internet shops. Although all of the products were promoted with reference to the traditional knowledge of the San or Southern African tribes in general none of the companies seemed to comply with the existing South African benefit-sharing agreement with the San, according to the information given by WIMSA (Working Group of Indigenous Minorities in Southern Africa) and Biowatch South Africa.

In February 2006, all four organisations wrote letters to the German and Swiss Government which both played a very active role in setting up the Bonn Guidelines to alert them on this situation. The Governments were asked for activities to ensure compliance of companies trading in their countries with the existing benefit-sharing agreement in South Africa - and of course future other benefit-sharing agreements.

"We urge Germany and Switzerland to atke seriously their obligations as user countries under the CBD and to initiatie appropriate legal, administrative , of politcy measures to stop the sale of hoodia products in their countries violating CBD rules. According to paragraph II.C(d)iv of the Bonn Guidelines, it is most desirable in matters like these to act in concert with the contracting parties of the CBD in Southern Africa - the home territory of the San and the primary hoodia export region. ... The undersigned organizations are ready to participate actively in efforts to address these failiungs."

The Swiss Government answered in March 2006 and essentially asked for more information on the case:

"Switzerland will continue to be involved in finding practical solutions to ensure the

sharing of benefits arising from the use of biodiversity.

In this regard we notice with a strong interest your reference to a recent agreement passed between the South African Hoodia growers Ltd and the holders of traditional knowledge to ensure sustainable production of Hoodia. This practical approach which might promote access to Hoodia material in line with the CBD obligations is worth further exploration.

In this regard we would be very interested to receive additional information on this agreement."

No further steps relating to the Hoodia-Case have been taken by the Swiss Government, after they have received the additional information as requested.

The German Government could only send a reply 11 months later in January 2007 informing that "the protection of traditional knowledge ... poses specific problems" because the term is not defined and traditional knowledge is not protected by any international agreement. The Hoodia case itself was not mentioned, but the letter stated: "It is the aim of the German Government to ensure fair access and equitable benefit sharing. We follow this aim in international negotiations and organizations. ... It is task of the government to build awareness on ABS measures amongst different stakeholder groups and to discuss possible implementation steps."

According to our knowledge no such awareness building measures with the private sector focussing in compliance with benefit-sharing rules and agreements in provider countries were undertaken in Germany since then.

The four organizations have started to work together with the concerned South African authorities to work on next steps to start a dialogue with the German and Swiss Governments on BS-measures.