

Benefit Sharing Agreement

Slimming with Hoodia – to whose advantage?

Uwe Hoering, November 2004

The UN-Convention on Biological Diversity (CBD) entrusts national governments with sovereignty over the genetic resources in their respective countries. In return, they are made responsible for regulating access to these resources and making sure that the benefit is shared justly and equitably between countries, companies and local people, who over the centuries have contributed to the conservation and development of biological diversity (Access and Benefit Sharing, ABS). One of the few examples so far of such a benefit sharing arrangement with indigenous peoples is the agreement between the Council for Scientific and Industrial Research, CSIR, based in Pretoria, South Africa, and the San of Southern Africa over the commercial use of Hoodia, a natural hunger suppressant.

Rachel Wynberg, *BioWatch South Africa*, called the agreement a “historic breakthrough”ⁱ. Compared to earlier cases of biopiracy in Africa and elsewhere, it definitely marks some progress. So far, it provides the most far-reaching acknowledgement of the rights of indigenous peoples over their traditional knowledge, as demanded in the CBD, after some hide-and-seek.

Initially, it had looked like one of the classical examples of biopiracy and knowledge theft. With the aid from the San hunters, using Hoodia, a succulent plant from the Kalahari used to suppress hunger for centuries, the CSIR succeeded in isolating the active ingredients in the nineties, and patented them as P57 in several countries from 1997 on. One year later, CSIR entered into a licensing agreement with the British company Phytopharm for the exploitation of the patents. Soon after that, Phytopharm signed a commercialisation agreement with US Pharma giant Pfizer, with prospects of big business in the market for appetite suppressant drugs. Another four years later, NGO discovered that CSIR had made no provisions to share the benefits with the San as the original owners of knowledge about Hoodia. Furthermore, their Prior Informed Consent (PIC) to research and commercialisation, as demanded by the Convention, had not been obtained, which was especially embarrassing for South Africa as one of the Convention’s early signatories.

In order to contain the damage done by the attempted biopiracy, CSIR came to an agreement with the South African San Council in March 2003, recognising the San as the “custodians of an ancient body of traditional knowledge and cultural values” and agreeing upon a “comprehensive benefit sharing agreement”ⁱⁱ. On the other hand, CSIR insists that the isolation of the active ingredients was its own scientific discovery and that, therefore, patenting was justified.

Crumbs

In addition to her acclaim of the agreement, Rachel Wynberg criticises that the San “receive only a minuscule sliver of a large, well-iced cake”. Their share is just six percent of the royalties Phytopharm pays to CSIR, so they do not directly benefit from turnover or profit of the products themselves. Furthermore, their bargaining position had been weakened due to the violation of the principle of Prior Informed Consent, leaving them in a position to take it or leave it. Among other things, they had to accept the patenting of a life form, which is strongly rejected by many environmental and developmental groups. So there has been strong criticism of the agreement for several reasons. Roger Chennells, on the other hand, who negotiated the agreement as lawyer for the San, justifies it: “To criticise the San for signing the agreement is like criticising a drowning person for accepting a hand to save them from drowning.”

Still, it is not clear how big the financial benefits will be. In July 2003, Pfizer withdrew from producing natural medicines and returned the production licence to Phytopharm, who since then have been looking for another pharmaceutical company or a food company to market products based on the patent for P57. It could take several years before any product hits the markets and profits begin to flow.

Meanwhile, for CSIR the agreement opened up access to all the indigenous knowledge of the San. The Council got the exclusive right for a systematic screening (bio-prospecting) of their knowledge of the Kalahari’s diverse and often endogenous plants. For the San, there is no immediate financial benefit from this. But in October 2004, CSIR acknowledged that the San would become “joint owners” of any further patent or other forms of intellectual property rights resulting from the research.

Cultivation

Even without products based on the CSIR patent for P57, marketing of Hoodia products as a supposed Wonder Drug against obesity is flourishing. Semi-legal and illegal harvesting and exports from Southern Africa are already threatening the wild population of Hoodia. Therefore, at the recent Conference of the UN Convention on international Trade in endangered Species, CITES, in Bangkok in October 2004, on request of South Africa, Namibia and Botswana, Hoodia was included in the Annex II of the CITES Agreement. This means that trading Hoodia is only allowed if the material originates from controlled harvesting and processing in co-operation with institutions acknowledged by CITES.

Cultivation could be the answer to overcoming shortage of supply and fulfilling the demand for sustainable production. Seed production, propagation, large-scale commercial cultivation and value-adding processing would bring a lot of money to the countries of origin in Southern Africa. Here too, CSIR and Phytopharm have already staked their claims. The Council secured the rights for cultivation and

production for the South African market, and Phytopharm for plantations outside South Africa. CSIR also got protection for technologies for propagation and methods for cultivation.

Recently, Phytopharm and CSIR started with the commercial cultivation of Hoodia in Namibia and South Africa. In South Africa, the San will receive part of the income, while in neighbouring Namibia, a Working Group of NGOs and government aims at establishing small-scale, family based Hoodia cultivation to create self-employment for rural communities.

But things may turn out to develop completely differently. Phytopharm is trying to involve countries like Chile, with a similar agro-climatic character to that of Southern Africa, in Hoodia cultivation – although this contravenes at least the spirit if not the letter of the CBD. If this were to succeed, the whole region of origin could ultimately lose out because Namibia and South Africa would literally be dispossessed of their genetic resources.

Note: For further information on the benefit sharing agreement see the publication: *Biopirates in the Kalahari? How indigenous people are standing up for their rights – the experience of the San in Southern Africa*, which can be ordered free of charge from EED (Church Development Service): eed@eed.de.

(1.100 words)

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ⁱ Rachel Wynberg, Sharing the Crumbs with the San. www.biowatch.org.za

ⁱⁱ Benefit Sharing Agreement between the CSIR and South African San Council, March 24, 2003