



**WIMSA**  
Working Group of Indigenous  
Minorities in Southern Africa



Berne Declaration  
Déclaration de Berne  
Erklärung von Bern



**bio watch**  
SOUTH AFRICA biodiversity|food security|biosafety|social justice

To the ministers responsible in South Africa, Germany, Switzerland

**South Africa - Minister Marthinus van Schalkwyk**, Ministry of Environmental Affairs and Tourism (cc: Ms Maria Mbengashe, Chief Director: International marine and biodiversity cooperation, Department of Environmental Affairs and Tourism)

**Germany -Minister Michael Glos- Ministry for Economics and Technology**  
(cc Minister Heidemarie Wieczorek-Zeul, Ministry for Economic Cooperation and Minister Sigmar Gabriel, Ministry for the Environment, Nature Conservation and Nuclear Safety)

**Switzerland- President of the Confederation Moritz Leuenberger**, Head of the Federal Department of the Environment, Transport, Energy and Communications Switzerland  
(cc: Bruno Oberle, Head of the Federal Office for the environment FOEN; Thomas Kolly Head Division International Affairs FOEN)

Dear Minister

Representatives of the San in Southern Africa and supporting organizations in South Africa, Germany, and Switzerland urge you to take long overdue steps against the continued trade of hoodia plants and products without the return of benefits to the San – the holders of traditional knowledge about the plant.

During a recent initial inquiry we found no less than 10 hoodia products for sale in stores (mostly pharmacies) in Germany and Switzerland. A preliminary list of products is included in the appendix. Almost all sellers/distributors market their product with reference to the traditional knowledge of the San. In other countries too, notably the UK and the US, there is a brisk trade in hoodia products. However, the San have yet to receive a single penny from this trade.

A benefit sharing agreement between the patent owner (CSIR, South Africa) and the holder of the traditional knowledge (the San) was concluded in 2003. A second benefit sharing agreement was signed between the San and the South African Hoodia Growers (Pty) Ltd in early February 2006. Through the CSIR agreement only the license holders Phytopharm (UK) and Unilever have legitimate access to the knowledge and the genetic resource, and for the moment the license holders are not selling any hoodia products. The Hoodia Growers Association will market their products with a clear logo showing that the San have received a

benefit from the growing of hoodia. No products have yet been placed on the market bearing this logo.

Therefore all hoodia products currently on the market are not part of the abovementioned two San benefit sharing agreements. The San have not negotiated ABS-agreements with anyone except the CSIR and the South African Hoodia Growers. It seems safe to conclude therefore, that all commercially traded hoodia products today contain illegally acquired resources and traditional knowledge according to the CBD. But so far no user country has made any move to stop the sale of these products.

The sale of these hoodia products violates article 8j CBD and article 48 of the Bonn Guidelines (benefit sharing with local communities). Since no other ABS-agreement exists for the use of the genetic resources involved, the products on the market today also violate art. 15 CBD (access to genetic resources).

Germany and Switzerland played a very active role in drafting the Bonn Guidelines. It is particularly objectionable therefore that these countries do not actively implement the guidelines. In chapter II, part C (Responsibilities), paragraph d states the following:

*Contracting Parties with users of genetic resources under their jurisdiction should take appropriate legal, administrative, or policy measures, as appropriate, to support compliance with prior informed consent of the Contracting Party providing such resources and mutually agreed terms on which access was granted. These countries could consider, inter alia, the following measures:*

...

*iii. Measures aimed at preventing the use of genetic resources obtained without the prior informed consent of the Contracting Party providing such resources;*

*iv. Cooperation between Contracting Parties to address alleged infringements of access and benefit-sharing agreements;*

We urge Germany and Switzerland to take seriously their obligations as user countries under the CBD and to initiate appropriate legal, administrative, or policy measures to stop the sale of hoodia products in their countries in violation of 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 from Southern Africa – the home territory of the San and the primary hoodia export region. In our view, both users and providers have not done enough to promote the spirit of the CBD and make sure that it will prevail. The undersigned organizations are ready to participate actively in efforts to address these failings.

Ideally, the intended solution would not only suppress the illegal sale of hoodia-products but would establish a structure that prevents the biopiracy of many other genetic resources as well. Participating governments should apply the insights gained from this case to the task of developing a new regime on access and benefit sharing.

We sincerely hope that you will make an effort to restore the rights of the San and provide the CBD with the authority it requires and deserves. Please let us know how you plan to proceed.  
Yours truly,

Roger Chennells

WIMSA -Working Group of Indigenous Minorities in Southern Africa

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Biowatch (South Africa)

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### **Annex:**

- List of hoodia products sold in Germany and Switzerland