

Berne Declaration (Switzerland), Natural Justice (South Africa)  
Press Release

## **Rooibos Robbery: Nestlé accused of Biopirating South African Genetic Resources**

**Research by the Berne Declaration and Natural Justice reveals that five recent patent applications by Nestlé on the use of Rooibos and Honeybush are in conflict with South African Law and the Convention on Biological Diversity (CBD). This second biopiracy case in South Africa in less than a year again demonstrates how big corporations neglect their obligations to seek prior informed consent and to share benefits when using genetic resources from the developing countries as obliged by the CBD.**

Four out of the five patents in question relate to the use of Rooibos and Honeybush for the treatment of certain hair and skin conditions. Another patent claims the use of Rooibos for the preparation of a product to prevent inflammatory disorders. The claims are very broad and subsequently applicable to a product range that stretches from cappuccino to salad dressing and from toothpaste to lipstick. Applicant of the patents is Nestec S.A., a subsidiary of Nestlé. Rooibos and Honeybush are both endemic to the South African Western and Eastern Cape Provinces and both plants have a long tradition of use in the region, also for related medicinal purposes.

According to the South African Biodiversity Act (which implements the CBD in South Africa) a company needs a permit of the Government to do research with commercial intent on, or patent the use of, genetic resources occurring in South Africa. Such a permit can only be obtained if a benefit-sharing agreement has been negotiated. The Department of Environmental Affairs of the South African Government confirmed to Natural Justice and the Berne Declaration that Nestlé has never received the permits to use these South African genetic resources.

Based on the information provided, it is clear the patents of Nestlé and the research on which they are based are in contradiction with South African Law and the CBD. The Department of Science and Technology's National *Indigenous Knowledge Systems* Office has also been approached given their mandate to safeguard the interests of indigenous communities and they are currently considering the nature of their involvement.

Nestlé's holds a 30.5% participation in L'Oréal (the biggest cosmetic producer worldwide) and 50% in Innéov, a joint venture with L'Oréal, which could explain the company's interest in skin and hair care products. "Nestlé builds its new business on illegally accessed material, precluding South Africa of their rightful share of benefits. Such illegal behaviour must no longer be supported by the patent system and tolerated by our governments," says François Meienberg of the Berne Declaration.

Over the last few years CBD member states have been negotiating a new protocol to ensure compliance with the rules of Access and Benefit Sharing under the CBD and the corresponding national laws. "The Nestlé case highlights the urgent need of a new protocol that prevents the misappropriation of genetic resources and associated traditional knowledge. Only a strong protocol will protect developing countries from an unlawful exploitation by companies," says Kabir Bavikatte from Natural Justice.

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The briefing paper, “Dirty Business for Clean Skin: Nestlé’s Rooibos Robbery in South Africa” can be found at [www.naturaljustice.org](http://www.naturaljustice.org) or [www.evb.ch](http://www.evb.ch)

NATURAL JUSTICE: Lawyers for Communities and the Environment is a not-for-profit organization based in Cape Town, South Africa, working with communities to develop their legal capacity to affirm social and environmental justice. [www.naturaljustice.org](http://www.naturaljustice.org)

The BERNE DECLARATION is a Swiss non-governmental organization with more than 21,000 members, promoting more equitable, sustainable and democratic North-South relations since 1968. [www.evb.ch](http://www.evb.ch)