



## The South African Civil Society Information Service

### A Story of David Versus Goliath

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*Civil society organisations continue to make a difference against the malpractices of big corporations.*

Dedicated non-profit and community organisations work against time and the public's lack of awareness to tackle corporations that spend an inordinate amount of money on public relations. It's a constant war of public imagery with big corporations spending a lot to look good and clean.

Given their vast capacity, those corporations who covet deliberate malevolence against public interests tend to overwhelm the media with their propaganda, which contrasts sharply with the paltry resources of non-profit actors fighting for a better and more just world.

But well-financed public relations machines, while creating an asymmetry in capacity between corporations and NGOs, also have their flip side: predisposing corporations to complacency. And, as BP has proven of late, even seemingly invincible CEOs get clumsy, making one stupid mistake after another.

Just when they think they have things covered, out pops a scandal that catches them off-guard.

The thing about scandals is that when they break, the fight widens. It is no longer the small civic organisation making the lone big fight, but everybody that has had an issue or two with the corporation that climbs in on the attack.

Even shareholders lose confidence and listed companies have to face their worse nightmare: drastic shedding of share value.

This is the nature of media guerrilla warfare. You should not be too sure until you are very sure. That gap of asymmetry quickly closes in. When this happens, time seems to be short and not on the side of corporations.

While the BP oil spill looms large in our minds, two recent cases of corporate malpractice challenged by a collaboration of local and international NGOs have gone relatively unnoticed. Yet, given their protection of the public's interests, they are important to highlight.

The cases brought to light the work of the African Centre for Biosafety (ACB) and Natural Justice who challenged the biopiracy of German based multinational pharmaceutical company Schwabe and food giant, Nestlé, respectively in two separate cases. Both organizations defended two key principles under the Convention on Biological Diversity -- that of "prior informed consent" and "benefit sharing" in their recent exposé of corporate biopiracy.

Patents are important in that they drive up company share-value and investor confidence. Hence the desperate scramble to register as many patents as possible.

The ACB, in alliance with the Swiss based non-profit organisation, the Berne Declaration, filed suit against the

European Patent Office's unlawful granting of four patents to Schwabe.

Schwabe applied for patent rights over two species of *pelargonium* plants. ACB challenged Schwabe's claim that its process for arriving at the extracts containing the *pelargonium* medicinal properties was novel. ACB argued that Schwabe would not have, in fact, known about the medicinal properties of the plants had it not been for the knowledge provided by traditional healers.

Communities in the Eastern Cape have long used the plant as a traditional remedy for coughs. It is marketed under the brand name, *Umckaloabo*, and also sold in Europe as a natural medicine.

Due to the opposition mounted by ACB and its allies, Schwabe withdrew the patent applications. If the patent went ahead, it would essentially have precluded the traditional medicine, *Umckaloabo*, from being used in Europe.

A carbon copy of the Schwabe case saw Nestec, a scientific subsidiary of Nestlé, file five patents for Rooibos and Honeybush extracts primarily for the treatment of inflammatory disorders like rheumatoid arthritis and for cosmetic purposes.

Nestlé is also a big player in the cosmetics sector. It owns 30.5% of L'Oreal, which has a market share of US\$18bn. The patents over Rooibos and Honeybush formed part of a strategy to create new product ranges for their growing natural remedies market.

Just like Schwabe, Nestlé claimed they had found a novel extract through the invention of a new process for deriving the extract, hence the patent application.

But Rooibos is endemic to South Africa to the extent that it only grows in the Cederberg Mountains in the Western Cape and its benefits have been public knowledge for a long time.

Natural Justice challenged Nestlé's novelty claims as being spurious. The medicinal and cosmetic properties of Rooibos, at least, have been known for eons; first by the Khoi San and later European settlers themselves used Rooibos as an alternative to black tea and for other purposes.

According to Natural Justice, unlike Schwabe, Nestlé completely ignored national law by claiming it was the responsibility of its supplier and not itself to ensure that national law was adhered to.

This flies against Nestlé's own codes of good governance and the assurance it gives to the public that it checks the bona fides of its suppliers. Any process prior to the securing of a patent should at least have the country of origin's permission and a benefit sharing deal with the local community.

Unlike BP's oil spill that is publicly visible (nobody can ignore dead birds and fish), biopiracy happens secretly in remote labs far from the public eye. Its detection requires passionate commitment and investigative skills.

Very focused and small civic organisations play this role. Often, they are manned by two or three people, but still form part of a network of national and global NGOs all working in concert; sometimes like a spider's web and at other time like a swarm of wasps ready to sting.

They may not have deep grassroots reach because of their modest incomes, but they represent the public's interests and rely on the media and Internet to magnify and disperse their views and investigations.

Many times they are accused of being non-representative. They will admit to this. They are not political parties, but rather defenders of public interests.

In the case of BP too, the investigative journalism of an NGO in the US, ProPublica, brought to the fore that the Gulf of Mexico incident was not an isolated event even though BP sought to paint it in that way.

Going back at least a decade, BP was actively paying little attention to risk and flouting safety standards, leading to the deaths of several workers in various accidents in the US. It was all about stripping the company of costs to boost the balance sheet.

One may ask what would happen if civic minded organisations did not exist, as some corporations would love?

Well, there will be a gaping hole in public knowledge and understanding. Their knowledge is a public good, the collective value of which is far greater than we are often able to appreciate. If these public goods were not provided, certain collective interests of fairness, justice and morality would be hard to come by and we would be much poorer for this.

This fact alone explains why corporations spend inordinate amounts on public relations, managing perception, blocking adverse publicity, defending against claims or seeking to weaken civic organisations by taking them to court.

And while we may not all have the wherewithal, time or expertise to defend public morals, be sure too that corporations have another disincentive working against them: people do ditch brands that behave badly.

The moral sensibility ingrained within us all still provides hope that we can create a better world.

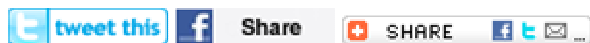
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