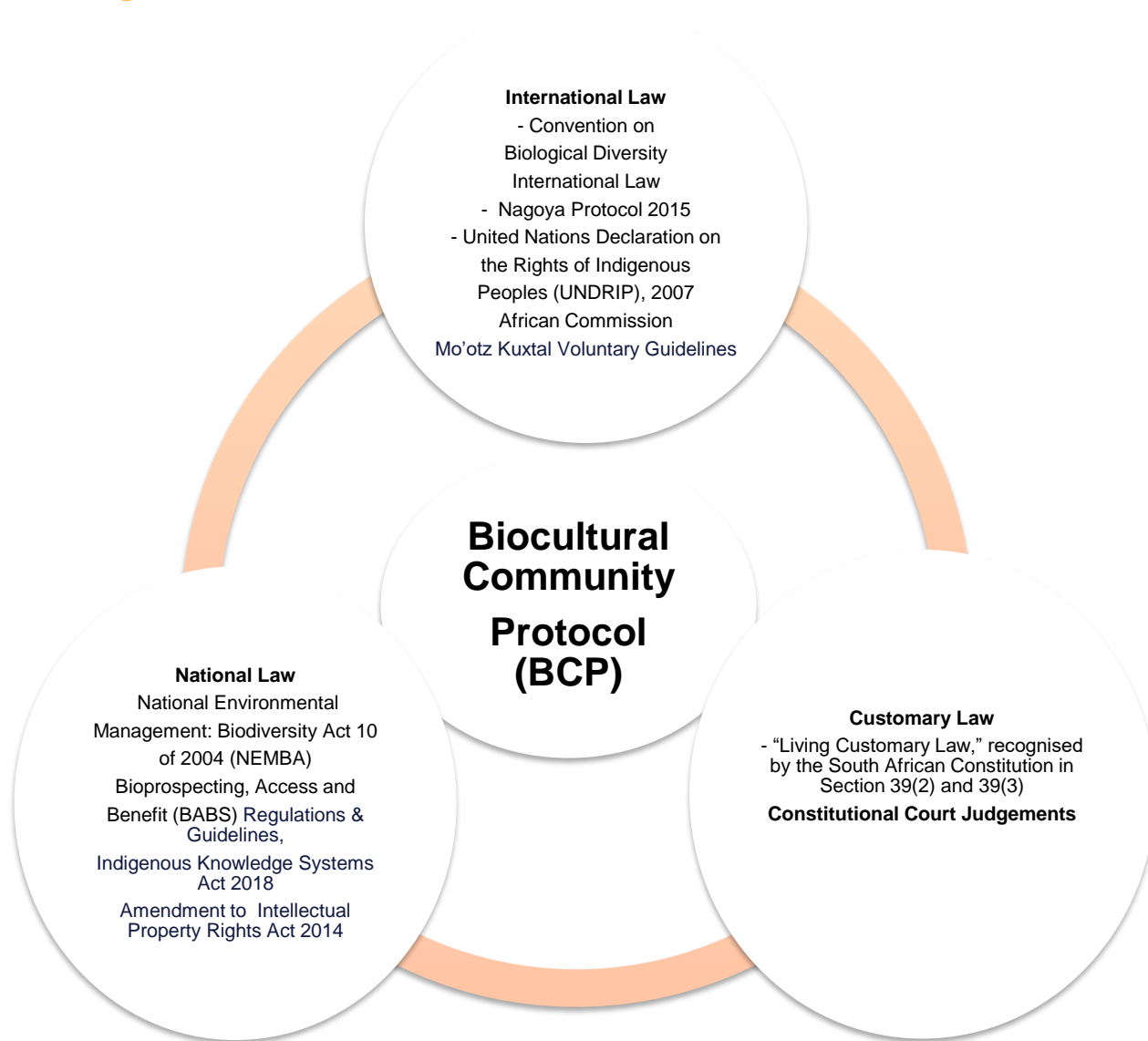


THE KHOIKHOI PEOPLES' ROOIBOS BIOCULTURAL COMMUNITY PROTOCOL AND ROOIBOS SHARING AGREEMENT WITH THE ROOIBOS INDUSTRY



SA BCP Legal Framework: International and National



The KhoiKhoi Peoples' Rooibos BCP

Natural Justice supported the National Khoisan Council (NKC), including the Cederberg Belt Region's Rooibos Indigenous Farming Communities, to conclude a Biocultural Community Protocol (BCP) in 2013. The community, through conclusion of the BCP, was able to access the internationally legal binding framework in terms of the Nagoya Protocol that established a set of rights for them as indigenous peoples and local communities over their genetic resources and traditional knowledge.

The Khoikhoi BCP gave rise to a more specific KhoiKhoi Rooibos BCP, *The Khoikhoi People's Rooibos Biocultural Protocol* that documents the KhoiKhoi as traditional knowledge holders in relation to Rooibos. The KhoiKhoi Rooibos BCP set out a basis for negotiations with the South African Rooibos Council, which was overseen by the Department of Environmental Affairs, and a Benefit sharing agreement was reached in 2019.



Context & Background

Khoikhoi constitute about 40 historical communities, excluding the Cederberg indigenous farming communities. Furthermore, the Khoikhoi and San communities are in a struggle for recognition in South Africa. There is not a formal record of our existence such as, on a par with other cultural communities. It was unclear to external actors, who the Khoikhoi are, who their communities are, how they are organised in post-Apartheid South Africa, how the Khoikhoi give consent, and what their aims and priorities are.

Objectives of the BCP:

- To provide a platform for the Khoikhoi people to safeguard their resources and associated Traditional Knowledge from being misappropriated.
- To articulate how the Khoikhoi are organized for purposes of Free, Prior and Informed Consent (FPIC) and Access and Benefit-sharing (ABS) in relation to Rooibos.
- To set out how they want to be engaged, guiding external actors on their internal governance and confirming their collective rights.

BCP Development Timeline

Diagram 2

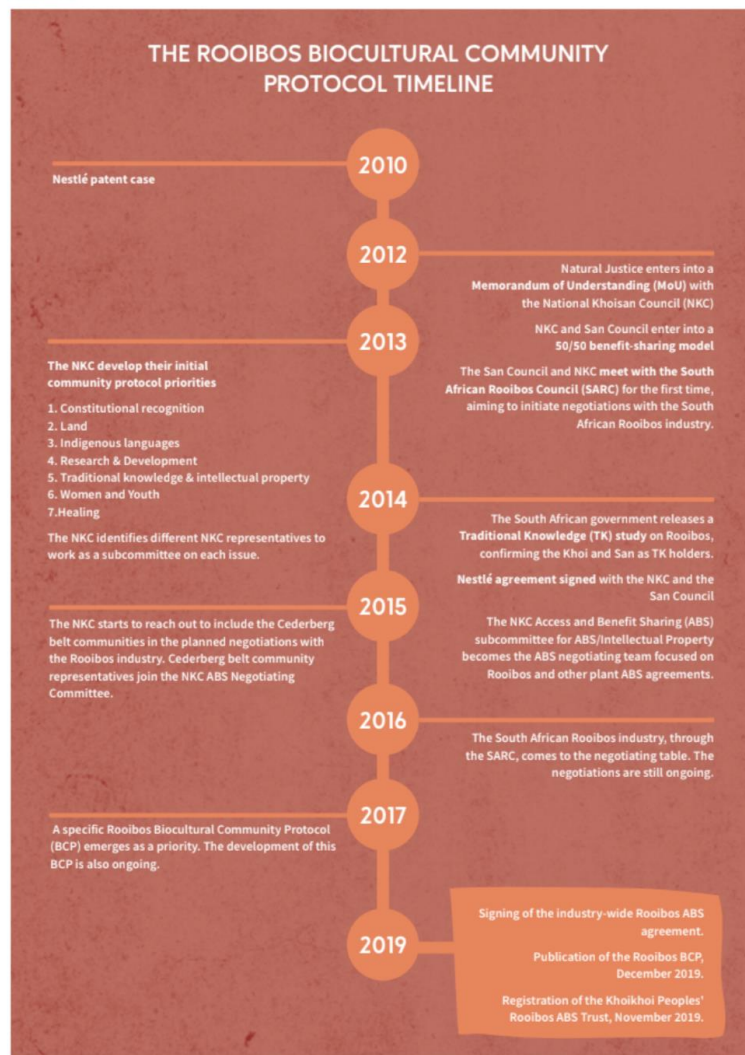


Diagram 2



Contents of the Rooibos BCP

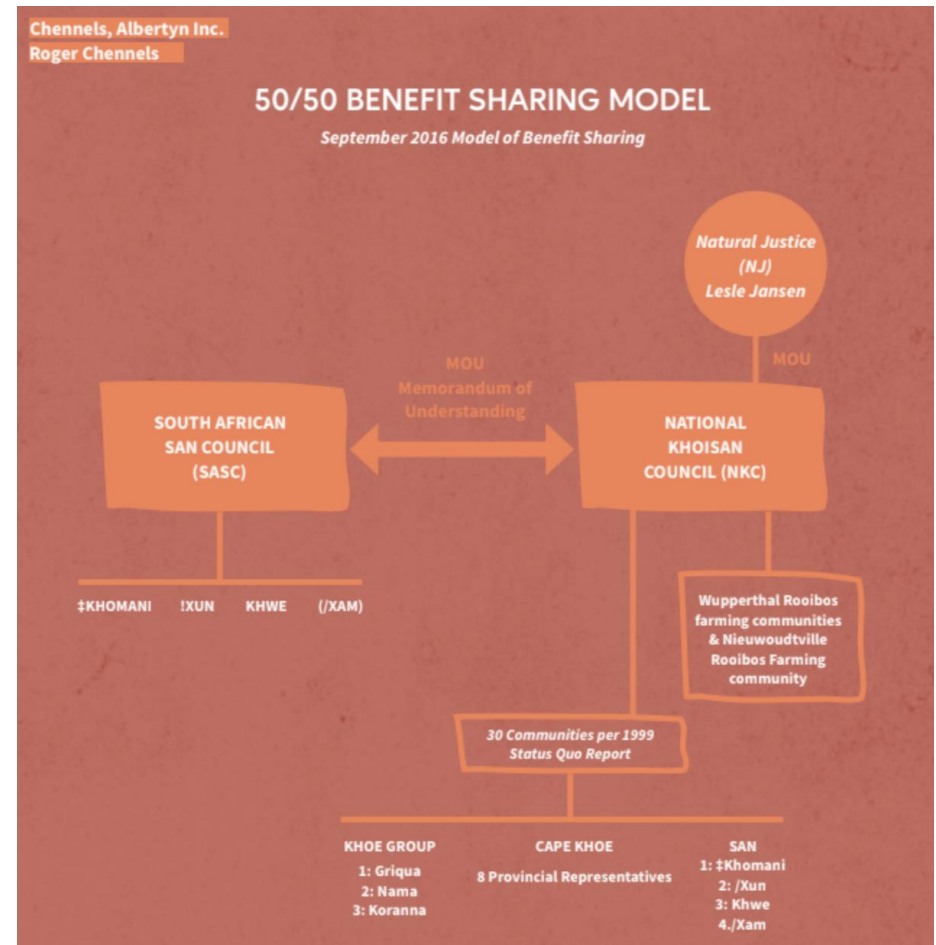


- The Rooibos Journey
- The need of a Biocultural Community Protocol and legal framework supporting it
- Parties to the Biocultural Community Protocol
- Who are the Khoi-Khoi?
- Indigenous values of the Khoi-Khoi
- Traditional Knowledge to the uses of Rooibos
- Community Principles for Free Prior Informed consent
- Benefit sharing model and how to access benefits

The Khoikhoi Peoples Rooibos & Biodiversity Trust

The Trust

A KhoiKhoi People's Rooibos ABS (Access and Benefit-sharing) Trust was created in November 2019 by the KhoiKhoi with the purpose of utilising the capital and income paid into the Trust Fund, derived from the Benefit Sharing agreement with the South African Rooibos Council, to support and benefit the Beneficiaries, i.e. the KhoiKhoi peoples.



Benefit Sharing and Access to Benefits

Benefit Sharing Model

In terms of the Bioprospecting, Access and Benefit-Sharing (BABS) Regulations, all funds from the Traditional Knowledge (TK) levy on Rooibos is paid into a government management fund of which 50% are paid to the San Community and 50% to the KhoiKhoi community as per a memorandum of understanding between the KhoiKhoi and San.

Diagram 6

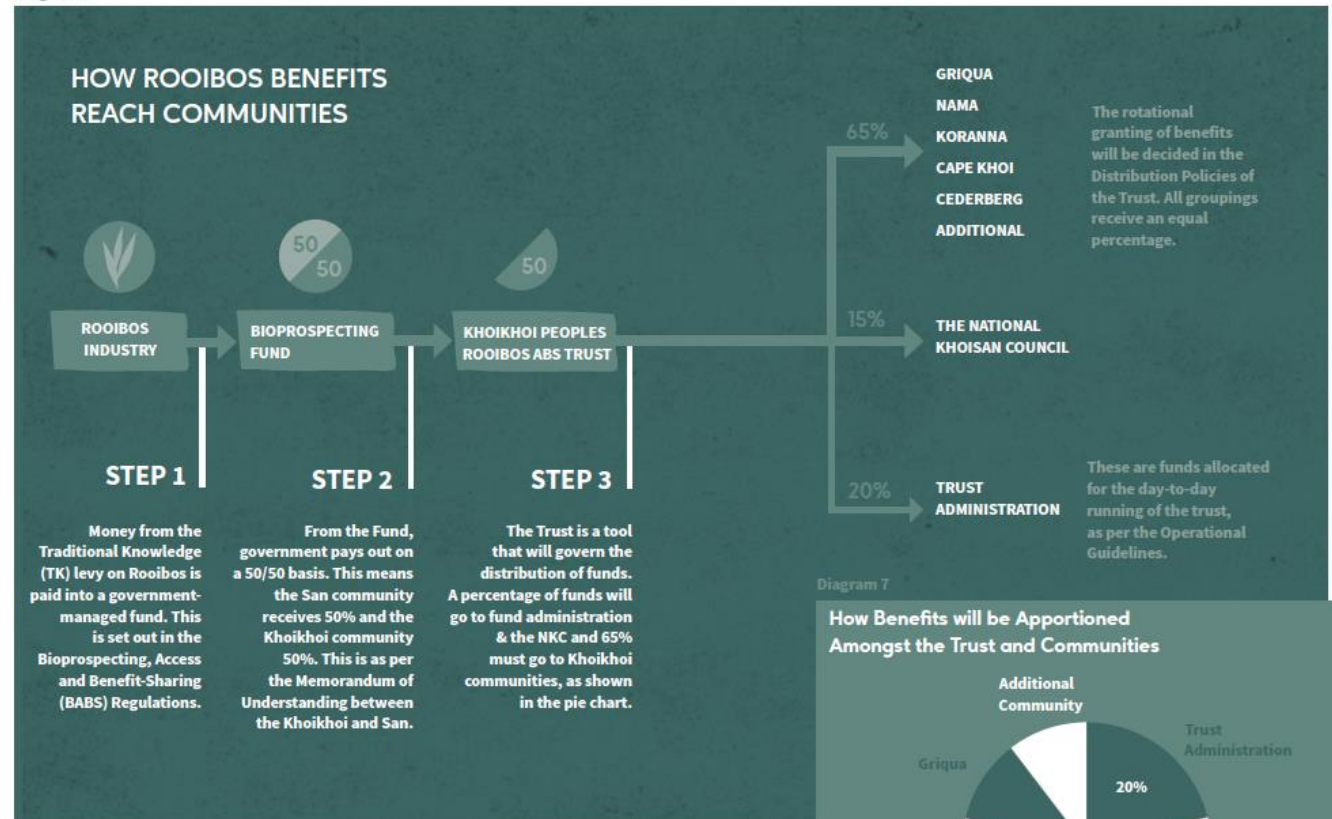
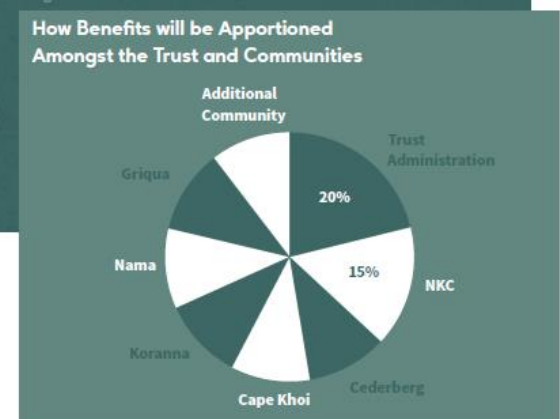


Diagram 7



Community reflections on the BCP process



- **Barend Salomo, Wupperthal indigenous Rooibos farmer**

"What I have learnt from this process, is that customary law is as strong as any other law in the court of law. And that anybody who wants to have access to your natural resources needs to have the consent of the community (not an individual) to protect the interest of the community's biocultural resources and avoid exploitation of their knowledge in this regard.

Regarding the way forward, we need the approval of the communities for this BCP and every traditional Khoikhoi community needs to develop its own BCP."

End

Ndo livhuwa !!

