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A Historic-Contemporary Analysis of the Benefit-Sharing Agreement for South African Khoisan Rooibos Farmers

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Abstract. *The Rooibos Benefit-Sharing Agreement (BSA) represents ethical and legal failure, perpetuating historical injustices against the Khoisan people, while maintaining the racial and economic monopoly of the Rooibos industry. The agreement functions as a superficial compliance mechanism with the Nagoya Protocol, failing to ensure meaningful economic redress for Rooibos's Traditional Knowledge Holders (TKH) rather than serving as a restorative justice and fair-trade instrument. This article critically examines the contradictions between the BSA and international legal frameworks, including the Convention on Biological Diversity (CBD), the Nagoya Protocol, and access and benefit-sharing (ABS) principles. It argues that the agreement's structure effectively excludes Khoisan Rooibos farmers from substantive participation in the Rooibos value chain, denying them control over their traditional knowledge and economic benefits. Despite being hailed as a landmark victory upon its implementation in 2019, the Rooibos BSA remains a mechanism of economic marginalization. Khoisan communities, whose traditional knowledge underpins the multi-billion-dollar Rooibos industry, receive a negligible share of industry profits, while historically privileged agribusinesses and multinational corporations retain dominance over production, processing, and international trade. This article critically analyses the agreement, the South African government's role in sustaining this inequitable framework, and its failure to enforce national and international legal obligations.*

Keywords: South Africa, Rooibos, Khoisan, farmers, tea

JEL Codes: Q13, Q15, Q57

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1. Introduction and Research Problem

Rooibos, or *Aspalathus linearis*, is primarily recognised globally as herbal tea. The tea was commercialised in the Cape Province of South Africa at least 150 years ago. (SARC, 2020). However, there is much more to Rooibos than being an herbal tea. Ongoing scientific research into Rooibos plant extracts has demonstrated significant additional benefits in the pharmaceutical, medical, confectionery, cosmetics, and alcoholic beverages industries. Rooibos has more than 140 patents pending for its biochemical and health properties.

Rooibos exclusively grows in a confined geographical area, approximately 200 km to 350 km north of Cape Town, classifying it as a niche product cultivated only within this designated region. On August 23,



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2021, the European Union added Rooibos (Red Bush) tea to its register of products with a protected designation of origin. This iconic tea was the first African product to receive such status in the EU and the 40th one from a non-EU country (European Commission, 2021).

According to the South African Rooibos Council (SARC, 2021), the Rooibos tea industry employed around 5,000 people in South Africa and produced approximately 20,000 tons of processed leaves annually, half of which were exported. This generated roughly R500 million per year (\$33 million). The global Rooibos industry generates billions in revenue, yet the Indigenous Khoisan farmers, the original cultivators of *Aspalathus linearis* (Rooibos tea), remain economically marginalized and structurally excluded from significant financial benefits. The Rooibos Benefit-Sharing Agreement (BSA) was introduced as a mechanism to compensate Khoisan communities for their traditional knowledge, yet it has proven inadequate, inequitable, and exploitative.

Despite legal frameworks like the Nagoya Protocol (2010) and South Africa's National Environmental Management: Biodiversity Act (NEMBA, 2004), multinational corporations and monopolistic industry players continue to reap disproportionate profits, while Khoisan farmers receive minimal compensation and remain economically disenfranchised.

This study examines the historical and contemporary economic exploitation of Khoisan Rooibos farmers, the structural failures of the Benefit-Sharing Agreement, and the mechanisms of economic apartheid and racial monopoly that continue to exclude Indigenous communities from rightful participation in the global Rooibos value chain.

2. Research Objectives

This study aims to provide a critical and historically informed analysis of the Rooibos Benefit-Sharing Agreement (BSA), its shortcomings, and its role in perpetuating economic injustice against Khoisan Rooibos farmers.

The objectives of this article are to:

- Examine the historical dispossession of Indigenous Khoisan Rooibos farmers.
- Critically assess the Benefit-Sharing Agreement as a mechanism for economic redress.
- Identify persistent structural inequalities in the Rooibos industry.
- Evaluate the South African government's role in maintaining economic apartheid within the industry.
- Propose policy recommendations to ensure equitable participation and economic.

3. Significance of the Study

This study is significant because it 1) fills a critical gap in research on the exploitation of Indigenous farmers within the global Rooibos industry, 2) challenges the dominant narratives of industry stakeholders who claim that the BSA is fair and equitable, 3) exposes violations of international and domestic laws, including the Nagoya Protocol, NEMBA, and South Africa's Constitution (SA, 1996), and 4) advances policy discourse on Access and Benefit-Sharing (ABS) frameworks in South Africa and internationally.

4. Research Methodology and Approach



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A secondary research approach integrates two research designs. Firstly, the study scrutinised reliable secondary data to do a historical analysis of archival data on land dispossession, colonial expansion, and apartheid-era policies affecting Khoisan farmers; this included legislative documents, treaties, and government reports. Secondly, the study employed Critical Discourse Analysis (CDA) and examined industry reports, legal frameworks, and policy documents to uncover systemic biases.

The research is guided by critical Indigenous theory, decoloniality, and social justice frameworks, centring Khoisan voices and epistemologies in the analysis.

5. The Historical Context of the Rooibos Industry and Indigenous Dispossession

Early Cultivation and Market Development

Rooibos, traditionally harvested from the wild by the Khoisan, was first cultivated commercially in the early 20th century (Joubert & De Beer, 2011). In 1904, a Russian immigrant, Benjamin Ginsberg, recognised its commercial potential and introduced it to European markets under the name "Mountain Tea" (Koch *et al.*, 2020). However, large-scale cultivation remained challenging due to difficulties in germinating Rooibos seeds. Resultantly, production remained low because of germination problems. However, the breakthrough in the late 1920s was made by Dr. Pieter Le Fras Nortier, in collaboration with local farmers. Nortier succeeded in successfully developing propagation techniques and expanding Rooibos' production into a viable commercial farming product (Joubert & De Beer, 2020). (Figure 1 shows the Rooibos plant).



Figure 1: The Rooibos plant (Source: Open Wildflower, 2024)

Despite their Indigenous origins, Khoisan farming communities in regions such as Wupperthal, Clanwilliam, and Suid Bokkeveld were systematically excluded from economic benefits. Their traditional knowledge, originally instrumental in the industry's early development, was neither acknowledged nor compensated (Van Wyk, 2018). Moreover, due to the plant's unique ecological requirements, cultivation outside the Western and Northern Cape Provinces mainly remains unsuccessful.

Colonial Dispossession and Exploitation



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As the first inhabitants of Southern Africa, the Khoisan possessed a profound connection to the land and its natural resources (including Rooibos) (Penn, 2005). With the arrival of European settlers and the establishment of a docking station in 1652 at the Cape of Good Hope, the Dutch East India Company (VOC) systematically engaged in land dispossession, forced (slave) labour, and cultural suppression (Guelke & Shell, 1992).

Intergenerational Trauma and Genocide

The VOC's expansion involved violent military campaigns, indiscriminate massacres, and forced assimilation, leading to the near annihilation of entire Khoisan communities (Adhikari, 2010). European colonisers sought to erase Indigenous cultural identities through forced religious conversions and the suppression of traditional practices (Penn, 2005). These oppressive measures resulted in lasting intergenerational trauma and the continued marginalisation of the Khoisan people.

Disease and Population Decline

European settlers introduced foreign diseases such as smallpox, which decimated Khoisan populations and significantly weakened their ability to resist colonial oppression (Marks, 1989). Epidemics reduced the Indigenous population and facilitated European territorial expansion and economic control (Newton-King, 1999).

Military Campaigns and Land Seizures

The VOC waged sustained military campaigns to suppress Khoisan resistance, leading to massacres and the forcible removal of Indigenous communities from their ancestral lands (Elphick, 1977). Colonial authorities systematically expropriated Khoisan land, disrupting traditional grazing and farming practices and laying the foundation for long-term economic marginalisation (Ross, 1993).

British Colonial Expansion and Continued Dispossession

The decline of the VOC and the subsequent rise of British colonial rule in the early 19th century intensified the dispossession and subjugation of Indigenous communities (Keegan, 1996). British expansionist policies systematically displaced Khoisan populations while entrenching economic and social inequalities (Worden, 2012).

Permanent British Occupation (1806)

Following the Battle of Blaauwberg in 1806, the British reoccupied the Cape Colony, instituting legal and economic structures favouring European settlers over Indigenous populations (Ross, 1993). Although slavery was officially abolished in 1834, coercive labour structures persisted, maintaining systemic oppression of the Khoisan (Keegan, 1996). The restriction of Indigenous land ownership further dismantled traditional farming systems, forcing many into exploitative labour arrangements (Worden, 2012).

Economic Marginalisation of Khoisan Rooibos Farmers

The British colonial administration entrenched economic disparities by barring Indigenous communities from meaningful participation in commercial agriculture (Trapido, 1978). Despite their ancestral ties to Rooibos cultivation, Khoisan farmers were systematically excluded from the financial benefits of the



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growing industry (Van Wyk, 2018). Instead, European settlers monopolised production and trade, further deepening Indigenous economic disenfranchisement.

British Settler Expansion and Indigenous Displacement

The arrival of British settlers in 1820 marked a turning point for the Khoisan. Colonial authorities intensified land dispossession and further alienated Indigenous communities from their economic and cultural heritage (Elphick & Giliomee, 1989). The categorisation of the Khoisan as an inferior class legally facilitated their continued marginalisation (Penn, 2005).

Arrival of British Colonial Settlers (1820)

The influx of British settlers led to large-scale agricultural expansion, exacerbating Indigenous land alienation (Newton-King, 1999). As settler farms displaced Khoisan communities, many were forced into precarious labour arrangements, permanently severing their economic independence (Keegan, 1996).

First British Occupation (1795–1803)

Although initially intended to prevent French territorial control, British rule from 1795 to 1803 introduced land tenure policies that disrupted Indigenous agricultural systems (Ross, 1993). The Treaty of Amiens (1802), a temporary peace agreement between Britain and France, marked a brief reprieve in the Napoleonic Wars, with both powers making territorial concessions. Under its terms, Britain was compelled to return the Cape Colony to the Batavian Republic, a French-aligned Dutch puppet state. This was merely a political manoeuvre by Napoleon, who used the Batavian Republic to control the colony while preventing British expansion indirectly.

This treaty, though short-lived, had dire consequences for the Khoisan and their lands, as the French, by facilitating Dutch colonialism, exacerbated their dispossession. In their power struggle, the French and British exploited the Khoisan's land and resources, with the French playing a key role in deepening the tensions over the control of South Africa's vital agricultural assets, including Rooibos (McCracken, 1997).

Their manipulation of colonial powers ultimately left the Khoisan further vulnerable to exploitation and brutality, with both European powers disregarding the Indigenous population in their rivalry for territorial dominance. Even after temporarily relinquishing control under the Treaty of Amiens (1803), Khoisan communities experienced severe land displacements, which would be exacerbated under subsequent British rule (Elphick & Giliomee, 1989).

Expansion of Settler Agriculture and Indigenous Displacement

The large-scale expansion of European agriculture, prioritising settler economic interests, systematically displaced Indigenous farming communities (Trapido, 1978). British agricultural policies favoured European landowners while stripping the Khoisan of access to fertile lands (Worden, 2012). The continued monopolisation of Rooibos cultivation by European settlers ensured that Indigenous farmers remained excluded from the industry's economic benefits, despite their invaluable traditional knowledge and agricultural contributions (Van Wyk, 2018).

6. The Contemporary Rooibos Industry and The Benefit-Sharing Agreement

The Structure of the Rooibos Benefit-Sharing Agreement (BSA)



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The Benefit-Sharing Agreement (BSA) for Rooibos, formalised in 2019, represents a landmark recognition of Indigenous Khoisan communities as custodians of traditional knowledge related to Rooibos (*Aspalathus linearis*). This agreement, a result of protracted negotiations under the Nagoya Protocol on Access and Benefit Sharing (ABS), mandates a financial redistribution of 1.5% of the farm gate price of Rooibos tea to Khoisan representative councils (Wynberg & Laird, 2022). The implementation of this agreement raises serious concerns regarding the equitable distribution of benefits, bureaucratic inefficiencies, and the continued economic marginalisation of Indigenous farmers (Chennells, 2020).

Economic Disparities and Limited Empowerment

Despite the formalisation of the BSA, economic disparities persist within the Rooibos industry. Large-scale commercial farmers and multinational corporations dominate the value chain, reaping substantial profits while smallholder Indigenous farmers remain economically disenfranchised (Wynberg & Laird, 2022). The BSA's limited financial returns, high operational costs, and restrictive land ownership laws have stifled genuine economic empowerment for Indigenous communities (Joubert, 2021). Structural inequalities entrenched by historical land dispossession exacerbate these challenges, preventing equitable participation in the lucrative Rooibos sector.

The Impact on Khoisan Rooibos Farmers

Land Dispossession and Forced Relocation: The Khoisan were the original stewards of the Rooibos plant, cultivating and using it for medicinal and cultural purposes long before European colonisation (Van Wyk, 2016). Successive waves of land dispossession, beginning with Dutch and British colonial expansion, followed by apartheid-era forced removals, systematically excluded Indigenous farmers from prime agricultural land (Carruthers, 2020). Today, most Khoisan Rooibos farmers operate on marginal lands with limited access to water and infrastructure (Wynberg & van Niekerk, 2021).

Economic Disenfranchisement: The commercialisation of Rooibos, dominated by large agribusinesses, has resulted in the systematic economic disenfranchisement of Khoisan farmers. Limited access to financing, high input costs, and exclusion from lucrative export markets hinder their competitiveness (Schneider, 2022). Furthermore, a handful of companies' monopolistic control of processing facilities and international distribution channels exacerbates this imbalance, ensuring that Indigenous farmers remain at the periphery of economic benefits (Laird, 2021).

Cultural and Social Erosion: Beyond economic disenfranchisement, the marginalisation of Khoisan Rooibos farmers has led to a significant erosion of cultural and social structures. Traditional knowledge associated with Rooibos cultivation, harvesting, and preparation is at risk because of industrialised farming methods that prioritise yield over heritage-based practices (Joubert & De Beer, 2020). This phenomenon represents a broader pattern of cultural erasure, where Indigenous identity is undermined by economic exclusion and modern agribusiness models (Wynberg & Laird, 2022).

Exploitation of Indigenous Labour: The labour-intensive nature of Rooibos farming has historically relied on Khoisan labour under exploitative conditions. During both colonial and apartheid eras, Indigenous workers faced exploitative wages, poor working conditions, and systemic discrimination (Carruthers, 2020). Post-apartheid reforms have made little impact, as many Indigenous farmworkers remain trapped in cycles of seasonal employment with limited labour protections (Schneider, 2022).



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Apartheid Policies and Further Dispossession

Economic Marginalisation Post-Apartheid: Post-1994 land reform policies have failed to redress historical injustices for Khoisan Rooibos farmers (Hall, 2018). Despite legislative frameworks aimed at land restitution, Indigenous farmers remain excluded from commercial agriculture's economic mainstream. The continued dominance of white-owned agribusinesses perpetuates economic disparities (Claassens & Cousins, 2021).

Cultural and Knowledge Erosion: Apartheid-era educational and economic policies deliberately undermined Indigenous knowledge systems, displacing traditional Khoisan farming practices in favour of Western agricultural models (Van Wyk, 2016). The lack of institutional support for Indigenous agroecological practices further marginalises Khoisan communities from sustainable economic development (Wynberg & Laird, 2022).

The Establishment of the Rooibos Tea Control Board

The Role of the Rooibos Tea Control Board: The Rooibos Tea Control Board, established in 1954 under apartheid's racially discriminatory policies, functioned as a regulatory body that consolidated control over Rooibos pricing and production under white commercial farmers (Schneider, 2022). This system entrenched economic exclusion by restricting Indigenous farmers' access to markets and resources (Wynberg & van Niekerk, 2021).

Exclusion from Economic Benefits: Even after the dissolution of the Rooibos Tea Control Board in 1993, economic disparities persisted, as major corporations and cooperatives maintained monopolistic control over pricing structures and processing facilities (Carruthers, 2020). Indigenous farmers continue to face barriers to entry into the formal Rooibos market (Schneider, 2022).

Monopolistic Practices: The dominance of a few multinational corporations in the Rooibos sector has led to monopolistic price-setting, making it difficult for smallholder Indigenous farmers to compete (Laird, 2021). These companies dictate export pricing structures, further marginalising Khoisan farmers from lucrative international markets (Joubert, 2021).

Post-Apartheid Reforms and Persistent Challenges

Continued Challenges: Despite the post-apartheid government's efforts to introduce policies supporting Indigenous farmers, practical implementation remains weak. The BSA, while a step towards economic justice, has failed to materially transform the industry's power dynamics (Wynberg & Laird, 2022). Indigenous farmers still lack access to land, financing, and direct market linkages (Hall, 2018).

Challenges in Enforcing Benefit-Sharing Agreements (BSAs): Enforcing the BSA is fraught with challenges, including inadequate oversight, financial mismanagement, and the absence of clear guidelines on fund allocation (Chennells, 2020). Additionally, Indigenous communities have limited bargaining power in negotiations with dominant industry players, weakening their ability to secure fair economic returns (Laird, 2021).

The Rooibos Benefit-Sharing Agreement: An Instrument of Perpetual Exclusion



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The 2019 Rooibos Benefit-Sharing Agreement (BSA) was heralded as a historic milestone for Indigenous Knowledge Holders, specifically the Khoisan communities, in securing equitable compensation for their Traditional Knowledge (TK) of Rooibos (Wynberg & van Niekerk, 2021). A closer examination of the agreement's structural and legal framework reveals that it is, in fact, an instrument of perpetual exclusion. The South African government's endorsement of the BSA serves to reinforce economic apartheid by maintaining white agribusiness dominance, marginalizing Khoisan farmers, and circumventing the fundamental principles of Access and Benefit-Sharing (ABS) as mandated by both national and international legal frameworks (Nagoya Protocol, 2010).

The South African Government's Complicity in Economic Apartheid

The government's complicity in economic apartheid is evidenced through:

- Violations of the Constitution (Sections 9, 25, and 195). The government has failed to uphold the constitutional rights of the Khoisan by allowing white-dominated agribusinesses to monopolize the Rooibos industry, relegating Indigenous farmers to an exploitative farmgate pricing system (Republic of South Africa, 1996). Currently 72% of farms and agricultural holdings are owned by white individuals (comprising 7.3% of the population), while black Africans (constituting 81.4% of the population) own only 4% of the land (Action for South Africa, 2025).
- Failure to enforce NEMBA (2004) and BABS Regulations (2008). The government's regulatory oversight ensures that multinational corporations extract disproportionate profits while Indigenous communities receive only minimal benefits (SA, 2004, 2008).

Breach of international treaties (Nagoya Protocol & CBD).

By limiting benefit-sharing obligations solely to the farmgate level, the government contravenes South Africa's commitments under the Nagoya Protocol (CBD, 2010). (The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity). Likewise, the obligations to protect Rooibos against GI, as ruled by the United Nations' 1992 Convention on Biological Diversity (CBD), are not followed. Manipulation of Geographical Indications (GI) to exclude Khoisan participation. The government successfully lobbied for Rooibos to receive GI protection while ensuring that profits from this recognition flowed exclusively to commercial farmers (WIPO, 2020). (See the World Trade Organization's 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Section 3: Geographical Indications. (WTO, 1994)).

Engineering a fraudulent pricing scheme to undercut Khoisan royalty payments. White commercial farmers benefit from hidden financial mechanisms such as Service Level Agreements (SLAs), while Khoisan farmers remain subject to artificially depressed farmgate prices (SARC, 2021).

The South African Government's Violation of its Own Legal, Ethical, and Policy Frameworks

The following violations of the South African Constitution (1996) exist:

- Section 9: The Right to Equality: The Constitution guarantees equal protection under the law and prohibits unfair discrimination (Republic of South Africa, 1996). The BSA, however, institutionalizes economic inequality by allowing white-controlled agribusinesses to retain control over pricing,



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market access, and industry decision-making. The structural exclusion of the Khoisan from industry leadership perpetuates systemic disenfranchisement.

- Section 25: The Right to Property and Equitable Resource Access: The Khoisan remain economically marginalized despite being recognized as the custodians of Rooibos TK. The BSA fails to provide any mechanisms for land redistribution or economic empowerment, ensuring that Indigenous communities remain dependent on white agribusinesses for cultivation and marketing.
- Section 195: Ethical Governance Principles: Public administration is required to uphold transparency and fairness. However, the Rooibos Council, dominated by white agribusiness interests, operates without Indigenous representation, violating ethical governance mandates.

Failure to Enforce the National Environmental Management Biodiversity Act (NEMBA, 2004) that governs ABS and mandates equitable benefit-sharing for Indigenous biological resources (Government of South Africa, 2004). The BSA's benefit-sharing mechanism, on the contrary:

- Excludes multinational corporations, exporters, and retailers from royalty payments.
- Limits benefit-sharing to the farmgate level, ensuring negligible economic returns for the Khoisan.
- Allows corporations to accumulate billions without financial obligations to Indigenous farmers.

South Africa's Non-Compliance with the Nagoya Protocol (2010)

- Article 5.1: Equitable Benefit Sharing: The Khoisan were inadequately represented in BSA negotiations, and the 1.5% farmgate levy is insufficient given the global Rooibos industry's multi-billion-dollar revenue. The agreement excludes the most lucrative segments of the value chain from benefit-sharing obligations (Nagoya Protocol, 2010).
- Article 6.3: Prior Informed Consent (PIC): The government failed to obtain genuine prior informed consent from Indigenous Knowledge Holders before formalizing the agreement, violating international principles of Indigenous self-determination (UNDRIP, 2007).

Failure to Protect Traditional Knowledge through Intellectual Property Laws happen despite obtaining Geographical Indications (GI) protection for Rooibos, the Khoisan derive no direct financial benefits. Unlike Champagne producers in France or Darjeeling tea farmers in India, Khoisan TK Holders remain excluded from economic gains generated by GI status (WIPO, 2020).

The Intellectual Property Laws Amendment Act (2013) was intended to protect Indigenous Knowledge Holders from commercial exploitation, but remains unenforced in the Rooibos industry. This legal failure allows multinational corporations to monopolize Rooibos branding and international sales while denying the Khoisan rightful compensation.

The Profit-Sharing Fraud: Circumventing Royalties to the Khoisan

Farmgate Price Manipulation as a Tool of Economic Subjugation: Since the BSA's signing, the farmgate price of Rooibos has plummeted by nearly two-thirds (SARC, 2021). White commercial farmers, protected by SLAs, continue to receive profit-sharing payouts, while Khoisan farmers, being excluded from such agreements, have been pushed deeper into economic precarity.



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Structural Exclusion from the Global Rooibos Value Chain: The BSA strategically limits benefit-sharing to the farmgate level, ensuring that all post-harvest value-added activities, including processing, branding, and global retail, are exempt from compensation obligations (Nagoya Protocol, 2010). This exclusion contravenes international treaties mandating benefit-sharing across the entire commercial value chain (UNDRIP, 2007; WIPO, 2020).

Exclusion from Rooibos Intellectual Property and Patent Royalties

Despite being formally recognized as Traditional Knowledge Holders, the Khoisan remain excluded from:

- International patents on Rooibos extracts for medicinal, cosmetic, health and other applications.
- Geographical Indications (GI) protections are controlled by commercial farming interests.
- Exclusive intellectual property agreements between corporations and large agribusinesses.

These exclusions violate:

- The Nagoya Protocol (Article 5) mandates fair and equitable benefit-sharing.
- UNDRIP (Article 31) protects Indigenous cultural and intellectual property (UNDRIP, 2007).
- The WIPO Framework on Traditional Knowledge and Genetic Resources prevents unauthorized commercial exploitation of Indigenous knowledge (WIPO, 2020).

7. The Root Cause: Structural Economic Apartheid in The Rooibos Industry

The ongoing economic subjugation of Indigenous Khoisan Rooibos farmers is not incidental; it is the result of deliberate structural economic apartheid entrenched within South Africa's agricultural sector. International frameworks such as Access and Benefit-Sharing (ABS) guidelines acknowledge Traditional Knowledge (TK), yet Khoisan farmers are systematically excluded from the high-value segments of the Rooibos industry, namely processing, branding, and global trade. This entrenched inequity underscores the failures of industry governance to facilitate genuine economic empowerment.

White-led Industry Control and Policy Exclusion

The Rooibos industry remains dominated by a white-controlled agribusiness model that marginalizes Khoisan farmers from key decision-making platforms, financial resources, and policy formulation. The Rooibos Council, the principal regulatory body overseeing pricing, Geographical Indication (GI) protections, and export strategies, operates without Khoisan representation. This exclusion mirrors global patterns where Indigenous producers are denied equitable industry participation. Conversely, in France's Champagne region, strict GI regulations ensure that only local producers control branding and pricing, and in Darjeeling, India, Indigenous tea growers directly benefit from GI protections. South Africa's failure to adopt similar measures perpetuates the extraction of Indigenous knowledge and resources without economic return.

Apartheid-era Land Dispossession and Continued Economic Exclusion

The inequalities within Rooibos farming stem directly from historical land dispossession, a legacy of apartheid that continues to dictate production control. Despite Khoisan farmers constituting 60% of cultivators, they control less than 10% of total production, while white agribusinesses, beneficiaries of apartheid land allocations, dominate over 90% of output and processing (South African Rooibos Council,



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2021). The South African government's failure to implement effective land reform perpetuates this imbalance, leaving Khoisan farmers in a state of economic servitude.

Similar dynamics are evident in East Africa, where Maasai pastoralists remain dispossessed due to external interests and ineffective land policies (Alemu, 2018). The persistence of colonial-era land ownership patterns entrenches economic stagnation among Indigenous communities.

Racial Monopoly in the Rooibos Value Chain

The structural apartheid of the Rooibos industry extends to the value chain, where white agribusinesses monopolize the lucrative segments of processing, branding, and international trade. Even the legal framework for benefit-sharing, including GI protections, has been captured by these agribusinesses, reinforcing racial and economic inequality. International case studies demonstrate viable alternatives, Hawaii's Kona Coffee GI system, for instance, ensures fair compensation for Indigenous growers (Nguyen *et al.*, 2015). These examples illustrate that when GI protections are properly implemented, they can serve as vehicles for economic justice. South Africa's failure to extend these benefits to Khoisan farmers is a deliberate act of economic exclusion.

Violation of International Agreements

The structural exclusion of Khoisan farmers contradicts South Africa's commitments under global agreements designed to protect Indigenous rights and ensure equitable benefit-sharing. The ratification of the Nagoya Protocol under the Convention on Biological Diversity (CBD) obliges the state to provide fair compensation for the commercial use of Indigenous knowledge. Yet, the Rooibos industry continues to operate in flagrant violation of these obligations (Nagoya Protocol, 2010). This is reminiscent of failures in Peru, where the UN Convention on Biological Diversity has been repeatedly undermined by weak enforcement mechanisms (López & Reed, 2023).

Global Double Standards: Rooibos and Intellectual Property Theft: The EU-SADC Economic Partnership Agreement has been manipulated to serve the interests of white agribusinesses, sidelining Khoisan farmers from the profits generated by their cultural heritage. Unlike the robust protections afforded to Champagne or Darjeeling Tea, Rooibos GI protections fail to ensure equitable industry participation for Indigenous communities (SARC, 2021). This selective application of intellectual property law exposes the industry's exploitative nature.

Corporate Exploitation of Indigenous Knowledge: Despite generating billions in revenue, the global Rooibos market systematically exploits Khoisan Traditional Knowledge without equitable compensation. The industry's tokenistic benefit-sharing mechanism, a meagre 1.5% levy, reinforces economic subjugation rather than rectifying historical injustices (Wynberg & van Niekerk, 2021). This exploitation mirrors corporate strategies in Latin America, where multinational firms profit from Indigenous agricultural knowledge while offering little in return (Kepe & Tessaro, 2020).

8. The Urgent Need for Restorative Economic Justice

Restorative economic justice is not a request; it is an imperative. The Rooibos industry's continued economic apartheid demands immediate intervention to dismantle the systemic barriers that exclude



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Khoisan farmers. The Rooibos Benefit-Sharing Agreement (BSA) is a weak, compliance-driven mechanism that serves corporate interests rather than Indigenous empowerment.

9. **Structural Reforms to End Economic Exclusion for Restorative Khoisan Rooibos Economic Justice**

The Rooibos Benefit-Sharing Agreement (BSA), as constituted in 2019, is a minimalist, compliance-driven mechanism designed to appease international scrutiny under the Nagoya Protocol while leaving intact the structural economic apartheid entrenched in South Africa's agricultural sector. By confining redistribution to a meagre 1.5% farmgate levy, the BSA serves as a corporate firewall against deeper transformation when it should be a vehicle of restorative agricultural justice. The Khoisan, the original knowledge holders and cultivators of Rooibos, are once again positioned at the margins of an industry that extracts billions annually while returning crumbs to its rightful custodians.

Measures required as a Radical Framework of Intervention and Full Value-Chain Participation and Ownership

Measure: Extend benefit-sharing obligations beyond the farmgate to include processing, branding, extraction, exporting, and retail. Establish statutory requirements that no Rooibos product may be exported or retailed without verifiable Khoisan equity participation and direct royalty flows.

Reason: Limiting benefit-sharing to the farmgate artificially depresses Indigenous compensation while enabling multinational corporations to accumulate monopoly profits.

Global Case: In *New Zealand*, the Māori secured ownership and licensing rights over *Mānuka honey*, requiring international producers to certify authenticity through Māori-controlled channels (Harmsworth & Awatere, 2013).

Expected Benefit: Redistribution of profits across the entire commercial structure would generate sustainable revenue streams, reducing dependence on government grants and fostering intergenerational wealth creation for Indigenous communities.

Mandatory Land Redistribution and Agroecological Support

Measure: Enforce targeted land restitution in the Rooibos-producing regions by expropriating commercial farms with apartheid-era provenance and reallocating them to Khoisan communities under legitimate beneficiary collective ownership models. Provide state-subsidised infrastructure and agroecological training focused on Indigenous methods.

Reason: Historical land dispossession remains the primary determinant of exclusion. Without land, the Khoisan remain labourers in their own industry.

Global Case: In *Ecuador and Bolivia*, Indigenous movements secured constitutional recognition of collective land rights and agroecological sovereignty, embedding Indigenous farming systems within national law (Walsh, 2010).

Expected Benefit: Land redistribution would enable Indigenous farmers to scale production, reclaim traditional practices, and assert sovereignty over their resources.

Geographical Indication (GI) Reform and Indigenous Control



Measure: Reconfigure Rooibos GI protections to require Indigenous governance and revenue management, modeled after Champagne (France) and Darjeeling (India). Any global use of “Rooibos” branding must be contingent on Khoisan certification.

Reason: Current GI protections serve only apartheid beneficiary agribusiness.

Global Case: In India, GI protection of *Darjeeling Tea* requires growers in the region to control certification, ensuring profits remain within the local economy (Das, 2010). Similarly, *Hawaii’s Kona Coffee* GI system mandates strict local oversight to protect Indigenous growers from counterfeit imports (Nguyen *et al.*, 2015).

Expected Benefit: International brand leverage for Indigenous producers, ensuring that global consumers contribute directly to restorative justice.

Legally Enforced Indigenous Representation

Measure: Restructure the Rooibos Council to mandate at least 50% Indigenous representation, with veto powers over pricing, export strategies, and ABS negotiations.

Reason: Current governance structures institutionalize exclusion.

Global Case: The *Sami Parliament in Norway* provides an institutional precedent where Indigenous representation is embedded in governance over land and natural resources (Josefsen, 2010).

Expected Benefit: Democratized governance would dismantle white monopoly capital’s stranglehold and embed Indigenous sovereignty in industry regulation.

Intellectual Property and Patent Redistribution

Measure: Enforce the Intellectual Property Laws Amendment Act (2013) to compel royalties from all Rooibos-related patents, pharmaceutical applications, and confectionery, cosmetic uses directly to Khoisan trusts.

Reason: The commodification of Rooibos knowledge without compensation constitutes intellectual theft.

Global Case: The *San people’s Hoodia case* set precedent in South Africa itself: after years of corporate exploitation, the San negotiated royalties from Hoodia’s use in weight-loss products (Chennells, 2007). Though flawed, this case demonstrates the enforceability of IP-based benefit-sharing when Indigenous communities demand accountability.

Expected Benefit: Royalty revenues would finance Indigenous education, healthcare, and cultural revitalisation.

Global Trade Justice

Measure: Re-negotiate the EU-SADC Economic Partnership Agreement to include enforceable Indigenous benefit-sharing clauses, or suspend Rooibos exports until compliance is secured.

Reason: Trade frameworks that exclude Indigenous peoples are structurally colonial.

Global Case: In *Peru*, Indigenous federations successfully challenged biopiracy of *Maca root* by lobbying for ABS protections in international trade agreements (López & Reed, 2023). This demonstrates the feasibility of embedding Indigenous clauses in global trade deals.



Expected Benefit: South Africa would set a global precedent in enforcing Indigenous trade justice, turning Rooibos into a symbol of decolonised commerce.

Reason Why These Measures Must Be Enforced

The persistence of structural economic apartheid within Rooibos mirrors the broader failure of South Africa's post-apartheid order to dismantle white monopoly capital by not having reforms as imperatives of agricultural justice in place. Confining reform to symbolic agreements like the BSA, the state legitimises dispossession under the guise of compliance. Expected Benefits include:

Economic transformation: dismantling rural poverty and dependency on state grants.

Cultural revitalisation: restoring Indigenous practices, languages, and identity.

Global precedent: Rooibos as a model for Indigenous-led governance, comparable to Champagne, Mānuka honey, or Darjeeling Tea.

Moral legitimacy: realising constitutional and international obligations not as empty promises but enforceable justice.

To correct these historical and ongoing injustices, the following measures must be enforced:

- *Equitable Revenue Distribution:* Khoisan farmers must receive a minimum 10-20% allocation of total industry earnings instead of the token 1.5% levy (Wynberg & van Niekerk, 2021).
- *Indigenous-Controlled Processing and Trade:* Khoisan-led cooperatives must gain direct ownership of processing, branding, and export enterprises to ensure economic self-sufficiency.
- *Mandatory Industry Accountability:* The South African government must enforce legally binding benefit-sharing agreements that compel multinational corporations to adhere to fair trade practices (Kepe & Tessaro, 2020).
- *Land Restitution and Agrarian Development:* State policies must prioritize land redistribution and financial support to enable Khoisan farmers to control all stages of Rooibos production.

Policy Interventions for Fair Industry Governance

While legislative instruments such as the *Biodiversity Act* and the *Nagoya Protocol* formally require benefit-sharing, in practice these policies remain *inert, weakly enforced, and co-opted by corporate and state elites* (Wynberg & van Niekerk, 2021). The urgent need for *radical restructuring of enforcement and governance of existing policy must be accompanied by:* punitive measures for non-compliance, institutionalized Indigenous leadership in decision-making, genuinely independent monitoring mechanisms, and a proactive South African role in reshaping Indigenous intellectual property regimes globally. These interventions are necessary since current frameworks are *performative (be seen to be compliant) rather than transformative in nature*, leaving Khoisan farmers without real bargaining power or material redress.

Comparative evidence highlights the extent of this failure. The *San-Hoodia case* in Southern Africa revealed how Indigenous communities were systematically excluded from commercial gains until international pressure forced partial redress, producing an outcome that exposed the weakness of national enforcement mechanisms (Chennells, 2007). In Latin America, *Kichwa communities in Ecuador* have successfully mobilized transnational alliances to protect their knowledge and secure direct participation in biodiversity governance. In Asia, *India's Biological Diversity Act* has provided communities with stronger



legal standing to demand equitable benefit-sharing. In Brazil, the *constitutional recognition of Indigenous authority in Amazonian biodiversity management* demonstrates that embedding Indigenous governance in law transforms symbolic rights into material justice.

The stark contrast where other Global South nations have demonstrated political will to elevate Indigenous authority, South Africa has chosen *regulatory inertia and symbolic compliance*, thus exposing its *political choice of systemic bias*. The South African state has repeatedly prioritized the interests of extractive capital, agribusiness, and pharmaceutical corporations over its own Indigenous citizens. Unless enforcement is coupled with *Indigenous-led governance and global solidarity mechanisms*, benefit-sharing will remain a hollow promise as another gesture in the long history of rhetorical recognition without material restitution. This requires:

- Stronger Legislative Enforcement: Non-compliance with benefit-sharing obligations under national and international frameworks must be punished severely, ensuring accountability.
- Capacity Building for Indigenous Farmers: Training in financial literacy, agribusiness development, and legal advocacy is essential to enhance Khoisan bargaining power (Jansen & Nel, 2022).
- Independent Monitoring and Transparency: Third-party oversight mechanisms must be established to prevent the diversion of benefit-sharing funds (Wynberg & van Niekerk, 2021).
- Global Alliances for Indigenous Rights: South Africa must engage with institutions like the World Intellectual Property Organization (WIPO) and the United Nations Permanent Forum on Indigenous Issues (UNPFII) to uphold Indigenous intellectual property rights.

Constructing an Equitable Rooibos Industry

- End-to-end Industry Inclusion: Benefit-sharing agreements must be restructured to encompass every stage of the Rooibos value chain.
- Indigenous Intellectual Property Protections: Khoisan communities must be legally recognized as co-owners of Rooibos Traditional Knowledge (WIPO, 2020).
- Representation in Industry Governance: The Rooibos Council must include Khoisan leaders to ensure policy decisions reflect Indigenous interests.
- Investment in Indigenous Processing Facilities: The state and private sector must fund Khoisan-led Rooibos enterprises to dismantle monopolistic industry control (SARC, 2021).
- Reparative Economic Justice Fund: A Rooibos Indigenous Development Fund must be established to rectify economic disparities, modelled on successful reparations initiatives globally (Carruthers, 2017).

10. Recommendations to Transform Rooibos into a Model of Economic Justice

The Rooibos Benefit-Sharing Agreement (BSA), rather than facilitating economic redress, has become a state-sanctioned mechanism of dispossession. It entrenches the systemic exclusion of Khoisan farmers from meaningful economic participation, perpetuating economic apartheid under the guise of compliance with international frameworks like the Nagoya Protocol. Acknowledging Indigenous Traditional Knowledge without ensuring substantive economic empowerment is an empty gesture that sustains the economic stranglehold of multinational corporations and white agribusiness monopolies over an industry built upon the ancestral knowledge and historical stewardship of the Khoisan people.



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The persistence of structural inequalities in the Rooibos sector is emblematic of broader post-apartheid economic injustices, where legal and regulatory frameworks serve to reinforce, rather than dismantle, the colonial and apartheid-era economic architecture. The South African government's failure to implement meaningful Access and Benefit-Sharing (ABS) mechanisms constitutes a violation of constitutional rights, regulatory obligations, and international treaty commitments. The continued exclusion of Khoisan farmers from land ownership, fair market access, and the Rooibos intellectual property value chain is not just an economic oversight; it is an act of institutionalized injustice that demands immediate rectification.

The following interventions are strongly recommended:

- Land and Resource Redistribution: The rightful return of land to Khoisan farmers and the development of cooperative farming models to establish economic self-sufficiency. Prioritize Indigenous land restitution, cooperative farming models, and agrarian reform policies that enable Khoisan farmers to cultivate, process, and trade Rooibos independently.
- Legally Enforceable Indigenous Rights: Binding intellectual property protections ensuring that Khoisan Traditional Knowledge is legally safeguarded from exploitation and that its holders receive direct and equitable compensation.
- Fair and Inclusive Market Access: The immediate implementation of anti-monopoly legislation, fair pricing mechanisms, global accountability measures to prevent industry exploitation and an end to exploitative farmgate pricing structures.
- Indigenous Leadership in Industry Governance: The restructuring of the Rooibos Council to place decision-making power directly in the hands of Khoisan leaders.
- Global Accountability for Indigenous Economic Sovereignty: Strengthened enforcement of ethical sourcing and fair-trade practices through international legal bodies such as WIPO, the UNPFII, and other global regulatory frameworks.

The time for symbolic gestures and incremental reforms has passed. The systematic economic exclusion of Khoisan Rooibos farmers is an unresolved crime. Corrective measures are not negotiable; they are fundamental to dismantling economic apartheid and establishing an industry built on justice and equity. Without decisive structural reform, the Rooibos industry will remain an instrument of economic dispossession rather than a model of restorative justice.

The South African government, industry leaders, and international partners must act urgently to transform Rooibos from a symbol of exploitation into a global case study of sustainable Indigenous economic development. Recognising traditional knowledge must extend beyond rhetoric to ensure tangible economic empowerment and legally binding equity mechanisms. The moment for bold action is now. The Khoisan people will no longer accept being spectators in an industry that rightfully belongs to them.

The continued economic exclusion of Indigenous people is an indefensible act of institutionalized injustice that must be confronted with unwavering resolve. Without radical structural reform, the Rooibos industry will remain a tool of corporate profiteering at the expense of those it rightfully belongs to.

The Khoisan people cannot be spectators in an industry built on their knowledge, land, and heritage. The choice before South Africa, its government, and the global Rooibos industry is obvious: Commit to real economic justice or stand as complicit enablers of modern economic apartheid. There is no middle ground.

11. CONCLUSION



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The Rooibos industry serves as a stark example of post-apartheid economic disparities, where Indigenous farmers continue to be excluded from meaningful participation in a multi-billion-dollar sector. While the current benefit-sharing agreement acknowledges Khoisan Traditional Knowledge, it fails to address the structural barriers that keep Indigenous farmers locked into primary production with minimal financial returns (Kepe & Tessaro, 2020). Instead of fostering economic redress, the agreement primarily serves as a legal compliance tool that protects corporate interests.

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