

Access and Benefit-Sharing in Africa: Ensuring Equity and Transparency through Effective Legal Frameworks

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Abstract

This paper critically examines the landscape of Access and Benefit-Sharing (ABS) in Africa. The paper notes that Africa is endowed with genetic resources. It argues that sound utilization of these resources can spur the conservation of biodiversity and Sustainable Development in the continent. Despite being endowed with genetic resources, the paper posits that Africa faces several barriers in ensuring fair and equitable ABS thus undermining the continent's development efforts. The paper discusses some of the key challenges facing ABS in Africa. In light of these challenges, the paper proposes reforms towards ensuring equity and transparency through effective legal frameworks in order ensure sound utilization of genetic resources for Sustainable Development in Africa.

1.0 Introduction

Access and benefit-sharing (ABS) refers to the manner in which genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers)¹. ABS has also been defined as an approach through which biodiversity, ecosystem services and other natural resources may be accessed and how the benefits arising from these resources (including both monetary and non-monetary benefits) are shared between the people or countries using the resources (users) and the people or countries that provide them (providers)². It has been argued that ABS usually involves

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¹ Secretariat of the Convention on Biological Diversity., 'Introduction to Access and Benefit-Sharing' Available at <https://www.cbd.int/abs/infokit/revise/web/brochure-en.pdf> (Accessed on 12/11/2025)

² Access and Benefit Sharing., Available at <https://isfaa.ke/biosafety-gmos-and-seed-sovereignty-twgaccess-and-benefit-sharing-twg/biosafety-gmos-and-seed-sovereignty-twg/> (Accessed on 12/11/2025)

agreement between user and provider in the access of genetic resources and how benefits are shared between them³. Further, in some cases, ABS also includes valuable traditional knowledge associated with genetic resources that comes from indigenous peoples and local communities⁴.

Realising equitable ABS is one of the fundamental objectives of the *Convention on Biological Diversity*⁵. The Convention seeks to foster the conservation of biological diversity, the sustainable use of its components and the *fair and equitable sharing of the benefits arising out of the utilization of genetic resources (Emphasis added)*⁶. Article 15 of the Convention sets out a global set of principles governing access to genetic resources, as well as the fair and equitable distribution of the benefits that result from their use⁷. It requires each contracting party to take legislative, administrative or policy measures, as appropriate, with the aim of sharing in a fair and equitable way benefits arising from the commercial and other utilization of genetic resources⁸.

Further, the *Nagoya Protocol*⁹ was adopted to foster effective implementation of article 15 of the Convention on Biological Diversity on fair and equitable sharing of the benefits arising out of the utilization of genetic resources. The Protocol aims to ensure appropriate access to genetic resources and transfer of relevant technologies; create greater legal certainty and transparency for both providers and users of genetic resources; and ensure fair and equitable sharing of benefits from genetic resources upon mutually agreed terms

³ Access and Benefit-Sharing: Ensuring the fair and equitable sharing of benefits from the utilization of genetic resources., Available at <https://asean.chm-cbd.net/documents/access-and-benefit-sharing-ensuring-fair-and-equitable-sharing-benefits-utilization> (Accessed on 12/11/2025)

⁴ Access and Benefit Sharing., Available at <https://www.ipbes.net/glossary-tag/access-and-benefit-sharing> (Accessed on 12/11/2025)

⁵ Convention on Biological Diversity, 5 June 1992 (1760 U.N.T.S. 69)

⁶ Ibid, article 1

⁷ Ibid, article 15

⁸ Ibid

⁹ 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., UNTS, vol. 3008, p. 3

and prior informed consent taking into account traditional knowledge and all rights arising from those genetic resources¹⁰.

Further, realising fair and equitable ABS is also a key theme under the *Kunming-Montreal Global Biodiversity Framework (GBF)*¹¹. One of the key goals of the GBF is to ensure that the monetary and non-monetary benefits from the utilization of genetic resources are shared fairly and equitably, including, as appropriate with indigenous peoples and local communities while ensuring that traditional knowledge associated with genetic resources is appropriately protected, thereby contributing to the conservation and sustainable use of biodiversity, in accordance with internationally agreed access and benefit-sharing instruments¹². Target 13 of the Kunming-Montreal GBF urges all contracting states to put in place effective legal, policy, administrative and capacity-building measures at all levels, as appropriate, to ensure the fair and equitable sharing of benefits that arise from the utilization of genetic resources¹³.

Fair and equitable ABS is therefore a key component of sound biodiversity conservation as envisaged under the Convention on Biological Diversity, the Nagoya Protocol and the Kunming-Montreal GBF. This approach ensures the right of every person to access genetic resources and realise fair and equitable sharing of the benefits that arise from their use¹⁴. These benefits can be monetary, including sharing royalties when the resources are used to create a commercial product, or non-monetary, such as the development of research skills and knowledge¹⁵. ABS aims to enhance sound utilization of genetic

¹⁰ Ibid

¹¹ Convention on Biological Diversity., 'Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity: 15/4. Kunming-Montreal Global Biodiversity Framework' Available at <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf> (Accessed on 12/11/2025)

¹² Ibid

¹³ Ibid

¹⁴ What is Access and Benefit Sharing?., Available at <https://www.genres.de/en/access-and-benefit-sharing/what-is-access-and-benefit-sharing> (Accessed on 12/11/2025)

¹⁵ Secretariat of the Convention on Biological Diversity., 'Introduction to Access and Benefit-Sharing' Op Cit

resources in order to contribute to development and conservation and sustainable use of biodiversity in the countries that provide the resources¹⁶. Further, it seeks to guarantee legal access to genetic resources and to ensure that benefits from their utilization are shared in a fair and equitable manner¹⁷.

However, despite its appropriateness in ensuring sound utilization of genetic resources and biodiversity conservation, ensuring fair and equitable ABS remains a challenge globally. For example, it has been argued that most developing countries face challenges in effectively implementing effective ABS arrangements. Such challenges include limited awareness and understanding of ABS principles, insufficient scientific and technical capacity and inadequate legal and institutional frameworks¹⁸. Further, indigenous peoples and local communities who are the main custodians of genetic resources are usually excluded from decision-making process about their own resources, and in most cases they do not receive equitable benefits from their extraction and use of genetic resources in their territories¹⁹. Addressing these among other challenges is key in ensuring fair and equitable ABS towards sound biodiversity conservation and Sustainable Development.

This paper critically examines the landscape of ABS in Africa. The paper notes that Africa is endowed with genetic resources. It argues that sound utilization of these resources can spur the conservation of biodiversity and Sustainable Development in the continent. Despite being endowed with genetic resources, the paper posits that Africa faces several

¹⁶ Implementing access and benefit sharing for biodiversity., Available at <https://www.giz.de/en/worldwide/151610.html> (Accessed on 12/11/2025)

¹⁷ Global Environment Facility., 'Access and Benefit-Sharing' Available at <https://www.thegef.org/what-we-do/topics/biodiversity/access-and-benefit-sharing> (Accessed on 12/11/2025)

¹⁸ Secretariat of the Convention on Biological Diversity., 'Introduction to Access and Benefit-Sharing' Op Cit

¹⁹ International Union for Conservation of Nature., 'Supporting the shift towards fair and equitable access and benefit sharing of genetic resources in Saint Lucia' Available at Available at <https://iucn.org/news/202403/supporting-shift-towards-fair-and-equitable-access-and-benefit-sharing-genetic> (Accessed on 12/11/2025)

barriers in ensuring fair and equitable ABS thus undermining the continent's development efforts. The paper discusses some of the key challenges facing ABS in Africa. In light of these challenges, the paper proposes reforms towards ensuring equity and transparency through effective legal frameworks in order ensure sound utilization of genetic resources for Sustainable Development in Africa.

2.0 Access and Benefit Sharing in Africa: Opportunities and Challenges

Africa is endowed with genetic resources including unique animal genetic resources and a high diversity of plant genetic resources²⁰. It has been argued that Africa's prospects for Sustainable Development lies in its vast natural resources, including the genetic resources that are the foundation for growth and stability in key sectors including agriculture, forestry, climate change action and sound environmental conservation²¹. Most economies in Africa are reliant on the use of plant genetic resources in agriculture and industry among other economic activities²².

The abundance of genetic resources in Africa provides opportunities to accelerate progress towards Sustainable Development. For example, the continent's unique plant and animal species provide vital ecosystem services including clean air, water, food, fuelwood and medicinal plants²³. In particular, it has been pointed out that wild and domesticated components of plant genetic resources in Africa are a vital source of food, medicines and industrial products²⁴. Further, the continent has numerous genetically diverse breeds of domesticated farm animal stock and native animals that are

²⁰ Our Genetic Resources., Available at <https://www.iita.org/research/genetic-resources/> (Accessed on 12/11/2025)

²¹ Kiambi. D.K., Attere. F., & Mgonja. M., 'Plant Genetic Resources in Africa: Opportunities, Challenges and Priorities' Available at <https://repo.pacuniversity.ac.ke/items/fc2ada72-e1bb-4531-849f-5de223c3394f> (Accessed on 12/11/2025)

²² Mugabe. J., 'Conservation and Utilization of Plant Genetic Resources in Africa: A Profile of Policy, Legislative and Institutional Measures' Available at <https://www.cbd.int/doc/case-studies/agr/cs-agr-acts.pdf> (Accessed on 12/11/2025)

²³ The Eight Biodiversity Hotspots of Africa., Available at <https://www.worldatlas.com/articles/the-eight-biodiversity-hotspots-of-africa.html> (Accessed on 12/11/2025)

²⁴ Kiambi. D.K., Attere. F., & Mgonja. M., 'Plant Genetic Resources in Africa: Opportunities, Challenges and Priorities' Op Cit

contributing significantly to the livelihoods of millions of Africans²⁵. It has been argued that plant and animal genetic resources in Africa form the basis of sustainable agriculture and regional food security²⁶. For instance, genetic diversity enables plants and crops to adapt to new pests and diseases as well as to environmental and climatic changes thus ensuring food security²⁷.

Harnessing Africa's genetic resources including through fair and equitable benefit sharing frameworks is therefore key in the quest towards Sustainable Development. However, achieving equitable and transparent ABS frameworks remains a challenge for Africa. For instance, it has been pointed out that limited awareness and understanding of ABS principles undermines the ability of most African countries to implement effective policies that can enhance sound biodiversity conservation²⁸. It has been correctly noted that limited awareness and access to information on ABS can hinder effective realization of fair and equitable ABS²⁹. Further, it has been noted that ABS frameworks in most African countries are fragmented and are being governed by different legislations and subsequently overseen by different government ministries and agencies³⁰. For example, the current ABS regime in Kenya is regulated by many entities including the Kenya Wildlife Service (KWS), Kenya Forest Service (KFS) and Kenya Plant Health Inspectorate Service (KEPHIS) among others³¹. It has been argued that lack of a coordinated approach on ABS negatively impacts safe and secure research, innovation, conservation and sustainable use of biological resources³².

²⁵ Africa's animal genetic resources – the wealth within., Available at <https://www.ilri.org/news/africas-animal-genetic-resources-wealth-within> (Accessed on 12/11/2025)

²⁶ Our Genetic Resources., Op Cit

²⁷ Ibid

²⁸ Kenya Biodiversity., 'Access and Benefit Sharing' Available at <https://ke.chm-cbd.net/access-and-benefit-sharing> (Accessed on 12/11/2025)

²⁹ Natural Justice., 'Access and Benefit Sharing: Toolkit.' Op Cit

³⁰ Kenya Wildlife Conservancies Association., 'Factsheet: Natural Resources (Benefit Sharing) Bill 2022.' Available at <https://kwkenya.com/download/factsheet-natural-resources-benefit-sharing-bill-2022/> (Accessed on 12/11/2025)

³¹ Brink. M., 'Implementation of Access and Benefit Sharing Policies in Sub-Sahara Africa: Inventory, Analysis and Proposals.' Available at <https://edepot.wur.nl/280508> (Accessed on 12/11/2025)

³² Ibid

Corruption is another major challenge affecting fair and equitable ABS arrangements in Africa. It has been argued that corruption hinders equity and transparency in ABS through diversion of conservation funds for private use, systemic bribery, and rent seeking in wildlife and forestry contracts³³.

Further, indigenous peoples and local communities who are usually the main custodians of genetic resources are often excluded from decision-making processes on ABS³⁴. Further, they do not receive fair and equitable monetary and non-monetary benefits accruing from genetic resources³⁵. It has been pointed out that ABS arrangements in most African countries are inequitable where indigenous peoples and local communities who interface with these resources and who bear the highest costs of overexploitation and conservation are the least beneficiaries³⁶.

In light of the foregoing challenges, it is imperative to build and implement fair, equitable and transparent ABS arrangements in Africa towards sound biodiversity conservation for Sustainable Development.

3.0 Ensuring Equity and Transparency in Access and Benefit Sharing in Africa

Ensuring equity and transparency in ABS is important towards harnessing Africa's vast genetic resources for Sustainable Development. It has been argued that through fair, equitable and transparent ABS frameworks, African countries can ensure that their genetic resources are conserved and sustainably used for economic growth and poverty

³³ Mbeche. R., 'Anti-corruption and Equitable Benefit Sharing in Kenya's Wildlife and Forest Sectors: Gaps and Lessons.' Available at <https://www.worldwildlife.org/pages/tncr-topic-brief-anti-corruption-and-equitable-benefit-sharing-in-kenya-s-wildlife-and-forest-sectors-gaps-and-lessons> (Accessed on 12/11/2025)

³⁴ International Union for Conservation of Nature., 'Supporting the shift towards fair and equitable access and benefit sharing of genetic resources in Saint Lucia' Op Cit

³⁵ Ibid

³⁶ Kenya Wildlife Conservancies Association., 'Factsheet: Natural Resources (Benefit Sharing) Bill 2022.' Op Cit

alleviation³⁷. African Union's *Agenda 2063*³⁸ enshrines the importance of equitable and transparent redistribution of returns from Africa's natural resources. Agenda 2063 seeks to ensure equitable access, use and sharing of benefits accruing from natural resources in the continent including land, minerals, water, forests, wildlife, fisheries, energy and *genetic resources*³⁹.

Further, the *African Union Strategic Guidelines for the Coordinated Implementation of the Nagoya Protocol*⁴⁰ provide strategic policy guidance to support the implementation of the Nagoya Protocol in Africa. The Guidelines require African states to promote sustainable utilisation of genetic resources and associated traditional knowledge by instituting transparent and functional access regulations in accordance with Articles 6.3 and 12.1 of the Nagoya Protocol⁴¹. In order to foster transparency, the Guidelines urge African countries to ensure that benefits arising from the utilisation of genetic resources and associated traditional knowledge are shared in a fair and equitable manner with indigenous and local communities and all relevant stakeholders holding such resources and knowledge⁴². They also urge African countries to cooperate, share information and coordinate their policies with a view to establishing transparent, fair, equitable and uniform benefit-sharing standards that uphold the intrinsic, cultural and socio-economic values of genetic resources and associated traditional knowledge⁴³.

Ensuring fairness, equity and transparency in ABS is therefore a key priority for Africa. In order to achieve this ideal, it is imperative to design and implement effective legal

³⁷ Wekundah, J., 'Why Access and Benefit Sharing Policy and Legal Frameworks are Important for Africa' Available at <https://atpsnet.org/wp-content/uploads/2017/05/sps42.pdf> (Accessed on 13/12/2025)

³⁸ Africa Union., 'Agenda 2063: The Africa we Want.' Available at https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed on 13/11/2025)

³⁹ Ibid

⁴⁰ African Union Strategic Guidelines for the Coordinated Implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation., Available at <https://snrd-asia.org/african-union-strategic-guidelines-for-the-coordinaetd-implementation-of-the-nagoya-protocol-on-access-to-genetic-resources/> (Accessed on 13/11/2025)

⁴¹ Ibid, Part 8

⁴² Ibid, Part 18

⁴³ Ibid, Part 19

frameworks. By designing effective legal frameworks, African countries can be able to promote the conservation of genetic resources, ensure the fair, equitable and transparent sharing of benefits arising from genetic resources, and recognise and uphold the rights of indigenous peoples and local communities over genetic resources⁴⁴. For ABS legal and policy frameworks in Africa to be effective, there is need to ensure transparency of decision-making processes and accountability of national institutions⁴⁵. It is also imperative to ensure that the custodians of biological resources in African countries receive fair and equitable benefits⁴⁶. In particular, there is need to uphold the right to Free, Prior and Informed Consent (FPIC) in order to realise equitable access to and fair benefit-sharing of genetic resources for indigenous peoples and local communities⁴⁷. It is also vital for legal frameworks to protect traditional knowledge relating to the use of genetic resources in order to achieve equitable and transparent access to and fair benefit-sharing of genetic resources for both present and future generations⁴⁸.

4.0 Conclusion

Africa is endowed with genetic resources with the potential to accelerate the continent's progress towards Sustainable Development. However, challenges relating to ABS undermine the use of Africa's genetic resources for Sustainable Development. It is therefore necessary to enact and implement effective legal frameworks in order to strengthen ABS arrangements in Africa. Through effective legal frameworks, it is possible to ensure equity and transparency in ABS towards harnessing Africa's vast genetic resources for Sustainable Development.

⁴⁴ Wekundah, J., 'Why Access and Benefit Sharing Policy and Legal Frameworks are Important for Africa' Op Cit

⁴⁵ Access and Benefit Sharing (ABS) in Africa., Available at <https://www.cbd.int/financial/bensharing/several-caseafrica2006.pdf> (Accessed on 13/12/2025)

⁴⁶ Ibid

⁴⁷ Secretariat of the Convention on Biological Diversity., 'Introduction to Access and Benefit-Sharing' Op Cit

⁴⁸ Ibid

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