

Access and Benefit Sharing Mechanisms for Genetic Resources and Associated Traditional Knowledge in Cameroon: A Legal Appraisal

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ABSTRACT

Cameroon is endowed with rich biodiversity and extensive Genetic Resources (GR), along with Associated Traditional Knowledge (ATK) held by Indigenous People and Local Communities (IPLCs). To govern access to these assets, Law No. 2021/014 of 9 July 2021, which regulates access to GR, their derivatives, and ATK, as well as the fair and equitable sharing of benefits arising from their utilization was enacted in 2021. Beyond aligning domestic legislation with international obligations, this legislative measure establishes mechanisms for sharing the benefits derived from the utilization of resources and knowledge within the national territory. Benefit-sharing is designed to be operationalized through Mutually Agreed Terms (MAT) with the active participation of the relevant IPLCs. Nevertheless, access to GR and ATK frequently occurs without securing MAT involving these communities. According to the 2026 National Report on Access and Benefit Sharing, while Cameroon has issued forty-eight (48) access permits, only four (4) of these instruments were executed subject to MAT involving IPLCs. Against this backdrop, a question arises regarding the specific legal circumstances that trigger benefit-sharing obligations. This study examines whether access to such resources and knowledge inherently generates benefits susceptible to equitable distribution among all relevant stakeholders. It adopts a dual approach, combining doctrinal legal analysis with an empirical inquiry drawing upon both primary and secondary sources. Ultimately, this paper offers a concrete recommendation that, if effectively implemented and enforced, will safeguard fair and equitable benefit-sharing, thereby fostering sustainable development.

Keywords: *Genetic resources; Associated Traditional Knowledge; Access and Benefit Sharing; Cameroon.*

INTRODUCTION

Since the adoption of the Convention on Biological Diversity (CBD) in 1992, the legal status of Genetic Resources (GR), along with Associated Traditional Knowledge (ATK) has undergone a fundamental paradigm shift. These assets transitioned from being treated as open-access resources into highly regulated and restricted access regimes governed by benefit-sharing frameworks. This transition is codified *inter alia* in Articles 8(j) and 15 of the CBD, which respectively uphold the protection and preservation of traditional knowledge and reaffirm the sovereign rights of States over their natural resources. These provisions seek to vest in the custodians of these resources and knowledge the authority to regulate access, while simultaneously establishing legal mechanisms to secure the fair and equitable sharing of benefits, in alignment with the third objective of the CBD. To operationalize these provisions and provide greater normative clarity, the Nagoya Protocol to the CBD was adopted in 2010. With the objective to facilitate the fair and equitable sharing of benefits arising from the utilization of GR, including appropriate access to GR and the transfer of relevant technologies¹.

As binding instruments of international law, both the CBD and the Nagoya Protocol obligate Contracting Parties to adopt appropriate legislative, administrative, or policy measures to implement their provisions within domestic legal systems. In fulfilling its treaty obligations as a State Party, Cameroon has enacted regulatory measures governing GR and ATK ensuring that, their utilization yields equitable benefits for all relevant stakeholders. Indeed, Cameroon frequently characterized as "Africa in miniature" is endowed with an

¹ Art.1 of the Nagoya protocol

extraordinarily diverse array of GR and ATK conserved by its numerous Indigenous People Local Communities (IPLCs). The country hosts approximately 92% of the diverse ecosystem types found across the African continent². This ecological variation is driven by diverse climatic zones and varied topographical relief, resulting in a rich biological matrix comprising over 9,000 species of vascular plants, 297 mammal species, 900 bird species, and 400 reptile and amphibian species, alongside dense marine, coastal, and mangrove flora. This diverse array of terrestrial, forest, savannah, montane, marine, and freshwater ecosystems directly correspond to the vast reservoir of GR found within Cameroonian territory³.

The integration of GR and ATK into research and development (R&D) for both commercial and non-commercial purposes render these assets vital not only to their traditional custodians but to humanity at large. To safeguard the rights of custodians over their resources and knowledge, international and regional instruments establish structured access regimes. These instruments impose binding legal obligations on both provider and user States to take appropriate measures that facilitate and govern access to GR and ATK⁴. This is operationalized through the establishment of predictable and transparent regulatory conditions, guaranteeing that any access to and utilization of GR and ATK remains strictly subject to Prior Informed Consent (PIC) and Mutually Agreed Terms (MAT).

Under the Cameroon ABS regime, benefit-sharing arrangements are generally expected to be established through MAT, negotiated with the participation of the relevant IPLCs where their resources or knowledge are concerned. Nevertheless, certain instances of access to GR and ATK occur without the conclusion of MAT involving IPLCs. According to Cameroon's 2026 national ABS report, forty-eight access permits had been issued, yet only four were subject to MAT negotiated with the participation of IPLCs. This disparity raises important legal and practical questions regarding the circumstances under which access to GR and ATK gives rise to benefit-sharing obligations. More specifically, does every instance of access generate benefits that must be shared among stakeholders, and under what legal conditions do such obligations arise? This article seeks to answer these questions through a critical examination of the ABS regime under Cameroonian law. The first part analyses the meaning of GR and ATK in the legal mechanisms governing access to GR and ATK, with particular emphasis on the relationship between the two concepts. The second part examines the legal framework for benefit-sharing and its underlying foundations in international environmental law and related legal principles. The third part evaluates the principal challenges affecting the implementation of ABS in Cameroon, highlighting normative, institutional, and operational deficiencies. Finally, the article proposes a recommendation to strengthen the effectiveness, inclusiveness, and legal certainty of Cameroon's ABS framework.

MEANING OF GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE IN THE CONTEXT OF ACCESS AND BENEFIT SHARING GOVERNANCE

GR are defined under Article 2 of the CBD as "*genetic material of actual or potential value.*" In the same provision, "*genetic material*" is defined as "*any material of plant, animal, microbial or other origin containing functional units of heredity*"⁵. This definition has attracted scholarly criticism for its lack of conceptual precision, particularly because it focuses exclusively on the presence of functional units of heredity⁶. In legal and scientific terms, GR constitute a subset of biological resources and encompass genetic material possessing actual or potential value for humanity, in addition to their ecological significance within biological systems⁷. The value of GR is often realised through their utilisation in conjunction with ATK held by IPLCs. ATK may be understood as knowledge developed, preserved, and transmitted within indigenous and local communities over generations,

² National Biodiversity Strategic Action Plan 2025-2030 (2025).

³ Ibid.

⁴ Art 8 (j) and 15 (2) of the CBD; See also art. 6 (1) and art (7) of the Nagoya protocol.

⁵ These definitions are duplicated word verbatim in Cameroonian law. So, clarifying this concept will ease understanding within the Cameroon context.

⁶ Zheng, X. (2019), Key legal challenges and opportunities in the implementation of the Nagoya Protocol: the case of China. Review of European, Comparative and International Environmental Law. Vol 28, Is 2 Pp. 175-184. From <https://doi.org/10.1111/reel.12282> accessed on the 20 July 2022 at 7pm

⁷ Ibid. p.176

and intrinsically linked to GR. Unlike GR, ATK⁸ has not been accorded a universally accepted definition, particularly within the normative frameworks of the CBD and the Nagoya Protocol⁹. Scholars attribute this absence of definitional uniformity to several factors. First, traditional knowledge is conceptualised and practised differently across cultural and geographical contexts¹⁰. Secondly, a single universal definition would be incapable of adequately capturing the diversity, complexity, and dynamic nature of knowledge systems maintained by indigenous and local communities¹¹. Against this backdrop ATK has been defined under the Cameroonian ABS Law as a “*dynamic and evolving body of knowledge, developed within in a traditional context, collectively preserved and passed on from one generation to another, including know-how, techniques, innovations, practices and learning, that subsists in biological and GR*”¹².

One of the most significant legal issues arising from the utilisation of GR and ATK concerns access and use without the fair and equitable sharing of benefits. GR and ATK constitute valuable inputs in the pharmaceutical, cosmetic, agricultural, biotechnology, and industrial sectors, generating substantial economic returns. It has been estimated that, in 2006 alone, products derived from GR generated approximately US\$22 billion¹³ in the botanical, food, and beverage industries, US\$30 billion¹⁴ in the agricultural seed sector, US\$31 billion¹⁵ in the personal care industry, and up to US\$640 billion¹⁶ in the pharmaceutical sector. Notwithstanding these considerable economic gains, the resulting benefits have not always been shared fairly and equitably with the providers and custodians of such resources and knowledge, particularly IPLCs.

To address this imbalance, the concept of Access and Benefit-Sharing (ABS) was introduced through international legal instruments as a mechanism for ensuring that access to GR and ATK gives rise to the fair and equitable sharing of benefits derived from their utilisation. In Cameroon, ABS is principally regulated by Law No. 2021/014 of 9 July 2021 governing access to genetic resources, their derivatives, traditional knowledge associated with genetic resources, and the fair and equitable sharing of benefits arising from their utilisation (Cameroon ABS Law), together with Decree No. 2023/7526/PM of 6 October 2023 laying down the conditions for its implementation. Collectively, these legislative and regulatory instruments establish the legal framework governing access to GR and ATK, as well as the distribution of benefits arising from their utilisation within the national territory.

ACCESS MECHANISMS FOR GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE UNDER CAMEROONIAN LAW

Access and Benefit-Sharing (ABS) mechanisms require that, prior to access being granted, PIC must be obtained and MAT must be established. Before examining the legal significance and operational functions of PIC and MAT, it is necessary to clarify the concept of “access,” given that a proper understanding of this notion is fundamental to analyse the legal mechanisms governing benefit-sharing. Neither the CBD nor the Nagoya Protocol provides an explicit definition of “access.” This omission has generated interpretative challenges regarding the precise legal acts and activities that constitute access to GR and ATK for stakeholders seeking to utilise such resources and knowledge. At the regional level, the African Model Law on the Rights of Communities, Farmers, Breeders, and Access to Biological Resources, adopted in 2000, defines access as “*the*

⁸ From a linguistic perspective, the constituent terms of the concept offer some clarification. According to the Cambridge Dictionary (3rd ed.), “associated” denotes a connection or relationship; “traditional” refers to customs, practices, and ways of life transmitted across generations; and “knowledge” signifies understanding, awareness, or familiarity acquired through experience and practice.

⁹ Ke, Y. and Chen, J. (2020), Interrelationship between GR and Traditional Knowledge: An Example from Earthworm Fibrinolytic Enzyme. *39 Biotechnology Law Report 440 Number 6*. P. 440-451.

¹⁰ Collot, P.A (2007), The Protection of Traditional Knowledge, from the International Intellectual Property Law to a *Sui Generis* Protection. *Revue Internationale Interdisciplinaire*. Pp.181-209. Results from the investigations of WIPO in 1998 to 1999 revealed that, each continent and culture attached a different meaning to the concepts of TK. TK is considered by the World Health Organisation to be precious resources

¹¹ Ibid.

¹² Art 7 of the Cameroon ABS Law

¹³ This represents approximately 129,206,330,000 francs CFA.

¹⁴ This is approximately 176,190,450,000 francs CFA.

¹⁵ This is close to 182,063,465,000 francs CFA.

¹⁶ This is approximately 375,758,720,000,000 francs CFA.

acquisition of biological resources, their derivatives, community knowledge, innovations, technologies or practices as authorised by the National Competent Authority.” Although the Model Law has not entered into force, its definition provides useful normative guidance for understanding the concept of access. It was designed to serve as a legislative template for African States in developing national ABS frameworks and, more broadly, as an instrument contributing to the establishment of a *sui generis* regime for the protection of plant varieties and community rights¹⁷. Nevertheless, the definition does not expressly refer to GR or ATK. This may be explained by the fact that GR constitute a subset of biological resources; consequently, the acquisition of biological resources does not necessarily entail access to GR as such. At the national level, the Cameroon ABS Law defines access as the “*possibility for a person or group to acquire, own and master knowledge. It entails collection and acquisition including any transaction involving genetic resources, their derivatives or ATK*”¹⁸. This definition reflects a broader conception of *access*, encompassing not only the collection and acquisition of GR and ATK but also the ability to obtain and exercise control over such knowledge and resources. These definitions illustrate the multidimensional nature of access within ABS governance. The definition contained in the African Model Law conceptualises access primarily as the authorised acquisition of biological resources and related knowledge, subject to the approval of the National Competent Authority. By contrast, the Cameroon ABS Law places greater emphasis on collection, acquisition, ownership, and the exercise of control over GR, their derivatives, and ATK.

For the purposes of this study, access may be considered as the legally authorised ability to enter a designated area within the sovereign territory of a State, or to obtain GR and ATK, whether through collection, acquisition, or other legally recognised means, with the approval of the competent authority and, where applicable, the concerned IPLCs. Access constitutes a foundational element of the ABS regime, as it establishes the legal basis upon which subsequent benefit-sharing obligations arise. Consequently, the regulation of access serves as an essential mechanism for ensuring that benefits derived from the utilisation of GR and ATK are shared fairly and equitably with their legitimate holders, notably provider States and IPLCs.

3.1 The nexus between Genetic Resources and Associated Traditional Knowledge

The fundamental doctrinal issue in ABS governance is addressed under this section to determine whether access to GR necessarily entails access to ATK. In this context, it is important to emphasise that the intrinsic relationship between GR and ATK has generated significant debate. Recognition of the nexus between GR and ATK is reflected in the Preamble to the Nagoya Protocol, which acknowledges “*the interrelationship between GR and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities.*” This recognition suggests that, GR and ATK are often closely interconnected and may, in certain circumstances, constitute complementary components of a single knowledge-resource system. Nevertheless, a different approach is reflected in the Bonn Guidelines on Access to GR and Fair and Equitable Sharing of the Benefits Arising out of their Utilization. The Guidelines provide that “*permission to access GR does not necessarily imply permission to use associated knowledge and vice versa*”¹⁹. This position indicates that access to GR may occur independently of access to ATK, just as access to ATK may occur without access to GR.

Although the Bonn Guidelines constitutes a *Soft Law* instrument, they have significantly influenced the development of national Access and Benefit-Sharing regimes by affording States discretion in determining the legal relationship between GR and ATK within their domestic legal frameworks. This approach appears to have informed the legislative architecture adopted under Cameroonian law, which allocates rights over GR and ATK to distinct categories of rights holders. The Cameroon ABS Law provides that “*GR and their derivatives of national origin belonging to the State shall constitute the common heritage of the Nation and no person may*

¹⁷ Medaglia, J. Perron-welch, F. and Phillips, F. (2014). Overview of National and Regional Measures on CCESS and Benefit Sharing: Challenges and Opportunities in Implementing the Nagoya Protocol (3rd ed.) CISDL Biodiversity and Biosafety Law Research Programme. p.89.

¹⁸ Article 7 Cameroon ABS Law.

¹⁹ Art 37 of the Bonn Guidelines on Access to GR and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, 2002.

*utilise them ... without Prior Informed Consent*²⁰. By contrast, the same legislation stipulates that “*ATK shall belong to the indigenous and local communities that developed, preserved and handed it down from generation to generation, or to individuals identified by them in their midst*”²¹. Consequently, while the State exercises sovereign rights over GR, ownership and custodianship of ATK are vested in the relevant IPLCs.

This distinction is further reinforced by Decree No. 2023/7526/PM of 6 October 2023 laying down the conditions for the implementation of Law No. 2021/014 of 9 July 2021 governing access to genetic resources, their derivatives, traditional knowledge associated with genetic resources, and the fair and equitable sharing of benefits arising from their utilisation²². The combined effect of these legislative and regulatory instruments demonstrates that, under Cameroonian law, GR and ATK are recognised as interconnected yet legally distinct subject matters, each governed by separate ownership and access regimes. Therefore, this implies that, access to GR may not automatically mean access to ATK under Cameroonian law.

3.2 Access Mechanisms for Genetic Resources in Cameroonian legal framework

As noted above, although GR and ATK are closely interconnected, certain legal indicators demonstrate that, under Cameroonian law, GR may be accessed independently of ATK. These indicators can be identified through an examination of the legal mechanisms governing access to GR. Prior to the enactment of the Cameroon Access and Benefit-Sharing (ABS) Law, the regulation of access to GR was principally governed by Law No. 94/01 of 20 January 1994 laying down forestry, wildlife and fisheries regulations and Law No. 96/12 of 5 August 1996 relating to environmental management, as amended in 2022. The 1994 Law provides that GR forming part of the national heritage belong to the State and may not be utilised for scientific, commercial, or cultural purposes without prior authorisation, which is subject to the payment of royalties to the State²³. Similarly, the 1996 Framework Law on Environmental Management emphasises the sustainable utilisation of biodiversity through a system regulating access to GR²⁴. It further envisages the adoption of an implementing decree establishing the conditions under which foreign researchers, national research institutions, and local communities would collaborate in matters relating to GR²⁵. Although such decree was never adopted, the enactment of the Cameroon ABS Law and its implementing Decree filled this regulatory lacuna.

Under the Cameroon ABS regime, the requirements for accessing GR vary according to the applicable access regime. The legal framework distinguishes between a standard regime and two specific regimes, namely the declaratory and the emergency regimes. Under the standard regime, which is available to any person seeking access to GR and their derivatives, the National Committee on Access and Fair and Equitable Sharing of Benefits first examines the application and provides its opinion. Thereafter, the Competent National Authority (CNA) may grant PIC²⁶. Upon obtaining PIC, the applicant becomes eligible to apply for an ABS permit²⁷ and may subsequently enter into negotiations for the conclusion of MAT where required by law, particularly when the access involves ATK or the rights of IPLCs²⁸.

The declaratory regime constitutes a specific access mechanism applicable to professionals engaged in fundamental research or development programmes within the national research system. Under this regime, applicants are exempt from the requirement to obtain PIC and are instead required to submit a declaration of their research project to the CNA²⁹. The rationale underlying this special regime is to facilitate scientific research

²⁰ Art. 5 of the Cameroon ABS Law

²¹ Art. 6 of the Cameroon ABS Law

²² Chapter II on the general conditions of access. under section i: access to GR and their derivatives and section 2 section ii access to ATK

²³ Article 11(1) Law No.94/01 20 January 1994 laying down regulations for forestry, wildlife and fisheries

²⁴ Art 64(1) Law No.96/12 of August 5 1996 laying down the framework law for environmental management amended in 2022

²⁵ Art 65 (2) Law No.96/12 of August 5 1996 laying down the framework law for environmental management amended in 2022

²⁶ Art 4 (1) of the Decree

²⁷ Any application for ABS Permits for the export of samples for commercial purposes shall be supported by a receipt of payment of study fees to the National Environment and Sustainable Development Fund amounting to CFAF two hundred thousand (200 000) for natural persons and CFAF five hundred thousand (500 000) for legal entities. And Applications subject to the declaration regime shall be exempt from the study fees. Art. 24 and art. 36 of the ABS Decree

²⁸ Art 6(1) of the Decree

²⁹ Art 17 of the ABS Decree.

and technological development by reducing administrative constraints that could otherwise impede activities aimed at advancing knowledge relevant to the conservation and sustainable use of biological diversity. Another specific mechanism is the emergency regime which applies in situations of actual or imminent emergencies affecting human, animal, or plant health, or threatening food security. Such situations must be formally recognised by the CNA upon receipt of evidence demonstrating the existence of the emergency. In these circumstances, access to GR, their derivatives, and, where necessary, ATK is facilitated through a simplified authorisation procedure³⁰. The objective of this regime is not to derogate entirely from the sovereign rights of the State over its GR but rather to ensure the availability of resources necessary to respond effectively to emergencies. Nevertheless, users benefiting from this expedited procedure remain subject to obligations relating to the fair and equitable sharing of benefits arising from the utilisation of GR including, where appropriate, access to resulting treatments at affordable costs³¹. This demonstrates that, the Cameroonian legal framework establishes multiple pathways to illustrate flexibility for accessing GR, depending on the nature and purpose of the intended utilisation.

3.3 Access Mechanisms for Associated Traditional Knowledge in Cameroon legal framework

ATK, in conjunction with GR, constitutes a valuable body of knowledge that facilitates the identification, utilisation, and sustainable management of GR across various sectors³². It enhances the capacity of IPLCs to derive benefits from the utilisation of their knowledge, innovations, and customary practices. The Cameroon ABS Law provides that ATK belongs to the IPLCs that have developed, preserved, and transmitted it from generation to generation, or to individuals designated by such communities³³. Consequently, the authority to grant access to ATK is vested primarily in the concerned IPLCs. This entitlement is consistent with international legal instruments governing access to GR and ATK, which recognise the rights of IPLCs over their knowledge systems³⁴. The procedural requirements governing access to ATK are set out in the implementing ABS Decree. The Decree stipulates that access to ATK is subject to a formal request addressed to the concerned IPLC through the CNA, following the opinion or assent of the National ABS Committee³⁵. Accordingly, access to ATK is not solely a matter between the applicant and the knowledge holders; it is also subject to administrative oversight by the relevant national authorities. Nevertheless, ATK constitutes an intangible form of property and is therefore particularly vulnerable to unauthorised access, misappropriation commonly described as biopiracy³⁶. To address these risks, Cameroon has implemented the requirements of the Nagoya Protocol by imposing an obligation on IPLCs possessing ATK to develop and submit a Community Biocultural Protocol (CBP) to the CNA³⁷. A CBP is a participatory governance instrument through which IPLCs articulate their values, customary norms, decision-making procedures, priorities, and expectations regarding access to their resources and knowledge. It identifies the rights and responsibilities of communities under customary, domestic and international law, thereby providing a normative framework for engagement with external actors seeking access to GR and ATK³⁸.

The widespread adoption of CBP would significantly strengthen the protection of IPLCs rights over ATK and enhance legal certainty in access and benefit-sharing processes. More importantly, CBPs could contribute to ensuring that access to ATK is systematically linked to benefit-sharing arrangements. However, despite the importance of this mechanism, implementation remains limited in Cameroon. Out of approximately 250 IPLCs, only two communities have reportedly developed CBP³⁹. Looking at the diversity of cultural practices, customary institutions, and traditional knowledge systems the absence of CBP may therefore weaken the capacity of communities to safeguard their rights over specific forms of ATK.

³⁰ Art 26 (1) of the ABS Decree

³¹ Art 26 (6) of the ABS Decree

³² Preamble of the Nagoya protocol.

³³ Art. 6 of the Cameroon ABS Law

³⁴ Preamble of the Nagoya protocol, *Mindful* that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities

³⁵ Art 11 of the ABS Decree

³⁶ Dutfield G., (2004). "Intellectual property, biogenetic resources and traditional knowledge", Earthscan.

³⁷ See art. 12 (3) (a) of the Nagoya Protocol; art. 20 of the Cameroon ABS Law; see article 10 of the ABS Decree.

³⁸ Art 7 of the ABS Law

³⁹ CBP for the IPLCs of Mintoum village in 2022.

It should nevertheless be recognised that CBP do not constitute the sole mechanism for protecting ATK. Additional forms of protection may be employed to establish the provenance of traditional knowledge and to identify the specific IPLC to which such knowledge belongs. In this regard, the literature generally distinguishes between defensive protection and positive or offensive protection. Defensive protection seeks to prevent third parties from acquiring illegitimate intellectual property rights (IPRs) or other exclusive rights over traditional knowledge. By contrast, positive protection empowers IPLCs to manage, control, use, and derive benefits from their traditional knowledge, including the ability to pursue legal remedies against unauthorised use. Within this framework, the Cameroon ABS Law may be regarded as a form of positive protection, insofar as it expressly recognises IPLCs as the holders of rights over ATK and grants them legal authority to regulate access thereto. Despite this recognition, important challenges remain, regarding the identification and attribution of specific forms of traditional knowledge to particular communities. An illustrative example of defensive protection may be found in India, where a digital traditional knowledge database has been established to prevent the unauthorised appropriation and patenting of traditional knowledge by external actors.

In the Cameroonian context, CBP performs certain functions comparable to those associated with defensive protection mechanisms, particularly with respect to documenting and identifying community-held knowledge. This demonstrates that defensive and positive protection mechanisms should operate in a complementary manner. Such protection is essential for guaranteeing that access to ATK occurs under legally recognised conditions and serves as a prerequisite for the fair and equitable sharing of benefits arising from its utilisation.

BENEFIT SHARING MECHANISMS UNDER CAMEROONIAN LAW

Benefit-sharing is generally understood as a mechanism of distributive justice through which providers of GR and ATK receive compensation or other forms of benefits arising from access to and utilisation of their resources and knowledge⁴⁰. It emerged as a response to concerns regarding the expansion of IPR, particularly patents over life forms and innovations derived from GR, as well as the private appropriation and commercial exploitation of ATK without adequate recognition or compensation for their holders⁴¹. Benefits may be monetary or non-monetary and are generally determined on a case-by-case basis through MAT. MAT constitute a contractual arrangement between the users and providers of GR and ATK⁴². Benefit-sharing may be implemented through a bilateral mechanism or a Global Multilateral Benefit-Sharing Mechanism (GMBSM)⁴³. Therefore, what are the defining characteristics of bilateral and multilateral benefit-sharing mechanisms? To what extent do these mechanisms incorporate both monetary and non-monetary forms of benefits? How do they contribute to the conservation and sustainable use of biodiversity while advancing principles of equity and justice? These questions will be addressed by examining bilateral benefit-sharing mechanisms and the GMBSM, and subsequently analysing the different categories of benefits recognised under the ABS framework.

4.1 Bilateral and Multilateral Benefit-Sharing Mechanisms

MAT is generally regarded as the cornerstone of the Access and Benefit-Sharing (ABS) regime. Recognised under legal instruments⁴⁴, MAT possess legal significance insofar as they operationalise the obligations associated with access to and utilisation of GR and ATK. Together with PIC, MAT constitute the principal legal mechanisms through which benefit-sharing arrangements are negotiated and implemented. The establishment of MAT gives rise to a bilateral benefit-sharing mechanism (BBS), which operates through a contractual relationship between a provider and a user of GR and/or ATK. Such a mechanism is generally applicable where the providers of the resources or knowledge are identifiable and where the subject matter of access can be clearly attributed to a particular State, community, institution, or individual. In this context, MAT function as a form of

⁴⁰ Nozick, R. (1973). *Distributive Justice*. Philosophy and Public affairs. *Autumn*. Wiley. Pp.45-126.

⁴¹ Cullet, P. (2009). *Environmental Justice in the Use, Knowledge and Exploitation of Genetic Resources*. In Jones Ebbesson and Phoebe Okowa eds, *Environmental Law and Justice in Context*. Cambridge University Press. p. 378

⁴² Art 7 of the Cameroon ABS Law

⁴³ During the second Intergovernmental Committee for the Nagoya Protocol (ICNP-2) in 2012, recommendation was made to discuss about GMBSM during the COP-11. During this COP consultations were made and experts were convened to hold meetings on this issue. This discussion was held online in 2013. It was then recognised that the mechanism should not undermine State Sovereignty, the mechanism is not intended to replace bilateral protocol but to supplement it.

⁴⁴ See article 15 (4) of the CBD; Art. 5 (2) and (5) of the Nagoya Protocol; art 10 and 11 of Cameroon ABS Law.

contractual or material transfer arrangement specifying, inter alia, the objectives of access, dispute settlement procedures, benefit-sharing obligations, IPRs, conditions governing third-party transfers, provisions concerning changes in the intended use of resources, and the modalities for the distribution of benefits. They further establish parties' rights and obligations, including the nature, timing, allocation, and mechanisms of benefit-sharing.

Notwithstanding the relative clarity of the bilateral approach, circumstances may arise in which the providers of GR or ATK cannot be readily identified, thereby rendering the negotiation of MAT impracticable. Such situations include transboundary resources and cases in which PIC cannot be obtained⁴⁵. Transboundary situations may arise where GR occur across the territories of several States or where biological resources move across national borders. Migratory species provide a useful illustration. Certain animal GR found within the Congo Basin ecosystem may migrate between the territories of Cameroon, Gabon, the Republic of the Congo, and other neighbouring States. In such circumstances, attributing the resources to a single provider State may be difficult, thereby necessitating cooperative mechanisms.

Similarly, challenges arise in relation to GR located beyond national jurisdiction, including marine Genetic Resources (MGRs) found in the deep seabed and the High Seas. In such cases, it may be impossible to identify a specific State or IPLCs capable of granting PIC. The adoption of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, commonly referred to as the BBNJ Agreement or High Seas Biodiversity Treaty, in 2023 provides an emerging framework for addressing benefit-sharing relating to MGR⁴⁶. In this context, the GMBSM envisaged under Article 10 of the Nagoya Protocol may constitute an appropriate mechanism for facilitating equitable benefit-sharing. A similar rationale applies to ATK. Where the holders of ATK cannot be identified, or where knowledge has become widely disseminated and is regarded as generic or shared among multiple communities, the bilateral model may prove inadequate. In such circumstances, a multilateral approach may provide a more appropriate framework for benefit-sharing. The GMBSM is understood to be triggered by the utilisation of GR and ATK in situations not adequately addressed through bilateral arrangements. Such utilisation may involve genetic material derived from the same species but exhibiting distinct characteristics due to ecological, geographical, or climatic variations. For example, a plant species such as *Aloe vera* may possess different biochemical properties depending on the environmental conditions under which it has evolved.

Numerous arguments have been advanced in favour of the establishment of a GMBSM. Proponents contend that such a mechanism would capture benefits that fall outside the bilateral system, reduce transaction and administrative costs associated with negotiating MAT, promote equity and broader participation, mitigate information asymmetries between users and providers, enhance legal certainty and transparency, support countries with limited ABS implementation capacity, strengthen incentives for biodiversity conservation, and generate additional financial resources for the conservation and sustainable use of biodiversity. These perceived advantages have nevertheless attracted significant criticism. One of the principal concerns relates to State sovereignty over GR. Critics argue that a comprehensive multilateral mechanism could weaken or dilute sovereign rights by reallocating benefits that would otherwise accrue directly to provider States or IPLCs. Consequently, sovereignty concerns may partially explain why the GMBSM envisaged under Article 10 of the Nagoya Protocol has not yet been operationalised to the same extent as bilateral ABS arrangements. Additional concerns relate to distributive justice and equity. Benefits channelled through a multilateral mechanism may not necessarily reach the specific States or IPLCs from which resources or knowledge originate. Provider countries may receive a reduced share of benefits due to redistribution among multiple beneficiaries, while also incurring administrative and governance costs.

A further challenge concerns the status of Digital Sequence Information (DSI), a term generally used to describe genetic sequence data and related information stored and exchanged through digital platforms. DSI is of

⁴⁵ Art 10 of the Nagoya Protocol

⁴⁶ This treaty is an agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of areas beyond national jurisdiction. It states in Art 9 (a) that benefits arising from activities with respect to MGR resources and DSI on MGR of areas beyond national jurisdiction should be shared fairly and equitably for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

considerable importance for pharmaceutical, agricultural, cosmetic, and biotechnology industries. However, its legal status within the ABS framework remains highly contested⁴⁷. Some scholars argue that DSI constitutes a form of genetic resource and should therefore be subject to benefit-sharing obligations. Others maintain that DSI should remain openly accessible as part of the global scientific commons and should not be subjected to ABS requirements. The divergent positions regarding DSI reveal a significant normative gap within the Nagoya Protocol. While the Protocol introduced the concept of a GMBSM, it did not provide detailed guidance regarding its operationalisation or the categories of resources and information that should fall within its scope.

4.2 Monetary and Non- Monetary Benefit Sharing

GR and ATK are valuable resources and knowledge. According to scholars, for either monetary or non-monetary benefits to be shared, it is important to establish the *use* and *exchange values* of GR and ATK especially for GR⁴⁸. All GR have *use* value. They acquire an *exchange* value when there is a possibility to trade them for other exchange values. Exchange value can either be monetary or non-monetary and it can be expressed in terms of price. Whereas use value of GR can only be expressed in non-monetary manner. The use value therefore depends only on the properties of the resources and how the user will use it as well as the need to balance *present* and *future* benefits⁴⁹. Unfortunately, there is always a confusion about these values and this confusion has an effect on how the types of benefits will be shared.

When parties negotiate the MAT for the access and use of GR and ATK, they must be clear on the types of benefits that must be shared to ensure proper implementation. Such benefits must be mentioned in the MAT for each party to be aware of their rights and obligations during the existence of the contract. All benefits do not grant to parties to the contract, same rights and obligations, this is why, benefits have been classified into two types namely: monetary benefit and non-monetary benefits. These types of benefits, listed in the annex of the Nagoya Protocol are non-exhaustive. Why types of benefits grant distinct rights to the parties involved in the contract? Are the benefits shared for the exploitation of GR similar for the exploitation of the ATK?

Benefits arising from the use of GR and ATK are intended to be shared fairly and equitably. Monetary benefits are considered as financial gains from the use of GR and ATK. In Cameroon, depending on the types of monetary benefits, payment is made to the National Environment and Sustainable Development Fund for the benefit of society and in the special fund of the IPLCs created for that purpose with the aim of contributing to the development of the IPLCs⁵⁰. But little information is available on how it is managed. On the other hand, non-monetary appears as non-financial gains including capacity building, strengthening of collaboration, cooperation as well as enhancement of diplomatic relationship, participation in product development, sharing of research results, transfer of technology under fair and most favorable terms, and social recognition⁵¹. Furthermore, there are benefits which are both monetary and nonmonetary; that is joint ownership of relevant IPRs. This can be justified by the fact, having IPRs over a product or invention implies that, the owner of the product has exclusive right to commercialise the product or invention and make profit. So, the profit accrues there is a need for a joint ownership, the recognition of the owners. Although the implementation of this benefit is irregular, it is advisable that provider should be included as joint owner in the IPRs. Although there is no priority over the types of benefits, scholars in field of ABS opine that, IPLCs should request non-monetary benefits rather than monetary benefits because it will stay in the long term. In an attempt not to reject this assertion, it is crucial to mention that for IPLCs to carry out development projects, monetary benefits are needed. Hence, monetary and nonmonetary benefits are both relevant in ABS contracts looking at the values of GR and ATK.

To conclude, for the implementation of ABS to be effective, benefits must be shared fairly and equitably. There are two categories of benefits recognized by legal frameworks, and in sharing benefits, parties need to

⁴⁷ Bagley M. (2022), « Just » Sharing: The Virtues of Digital Sequence Information Benefit Sharing for the Common good. *63 Harvard International Law Journal*. P.54

⁴⁸ Bystrom, M., Einarsson, P. and Nycander G. (1999). Fair and Equitable: Sharing the Benefits from the Use of Genetic Resources and Traditional Knowledge. *Swedish Scientific Council on Biodiversity*. P. 90

⁴⁹ *ibid*. P.16

⁵⁰ Art. 34 of the ABS Decree

⁵¹ Annex of the NP. An example of social recognition is the recognition of the Khoi and San Communities as traditional knowledge holders of rooibos which is a plant of south Africa used globally in teas and cosmetics.

negotiate and agree on the benefit to be shared, in spite of the fact that all parties do not have the same rights over an ABS contract.

CHALLENGES IN THE IMPLEMENTATION OF ACCESS AND BENEFIT SHARING UNDER CAMEROONIAN LAW

Despite notable legislative progress through the enactment of the Cameroon ABS Law and its enabling instrument, a number of institutional, technical, and legal constraints continue to impede the effective realisation of ABS objectives. These challenges are evident in relation to inadequate financial and technological capacity, insufficient protection of ATK, and limited human capacity coupled with centralised governance structures.

5.1 Insufficient Financial and Technological Capacity

The effective implementation of ABS requires adequate financial resources, technological and institutional support mechanisms. However, persistent funding constraints continue to undermine the governance of GR and ATK in Cameroon. Public institutions entrusted with biodiversity conservation and ABS implementation frequently operate with limited financial resources, while national budgetary priorities are often directed towards competing sectors such as health, education, infrastructure, and security. As a result, the institutions responsible for monitoring access activities, enforcing compliance measures, documenting GR, and facilitating community participation encounter significant operational difficulties. Technological limitations further exacerbate these challenges. The implementation of modern ABS systems increasingly relies on scientific and technological tools capable of identifying, documenting, monitoring, and valorising GR and ATK. Effective governance requires biodiversity inventories, digital databases, monitoring systems, and documentation mechanisms capable of tracing the origin and utilisation of GR. Yet, many developing countries, including Cameroon, continue to face technological deficits that restrict their ability to effectively implement the obligations arising under the CBD and the Nagoya Protocol. The lack of financial and technological resources also affects the development of CBPs, which constitute an important mechanism through which IPLCs articulate their customary norms, governance structures, and procedures relating to access to GR and ATK.

5.2 Inadequate Protection and Identification of Associated Traditional Knowledge

Another challenge concerns the protection, identification, and recognition of ATK. While the Cameroon ABS Law recognises IPLCs as the legitimate holders of rights over ATK, significant legal and practical difficulties persist in identifying, documenting, and protecting such knowledge. These characteristics make it particularly vulnerable to unauthorised access, misappropriation, and exploitation. The challenge is compounded by the limited number of CBPs established by IPLCs in Cameroon. CBPs are intended to provide a framework through which communities identify their traditional knowledge, define procedures for granting access, and clarify customary rules governing the use of such knowledge. However, the limited operationalisation of these instruments creates uncertainty regarding the ownership, provenance, and custodianship of ATK.

Furthermore, conventional IPRs regimes provide only limited protection for ATK. Existing intellectual property frameworks are generally designed to protect individual and novel creations, whereas traditional knowledge is collective, cumulative, and transmitted across generations. Consequently, these mechanisms are often ill-suited to address the unique characteristics of ATK. This regulatory gap exposes communities to risks of biopiracy and unauthorised commercial utilisation of their knowledge without recognition or benefit-sharing.

5.3 Limited Human Capacity and Centralised ABS Governance

The implementation of ABS in Cameroon may be hindered by limited human capacity and highly centralised governance structures. The governance of GR and ATK requires expertise across multiple disciplines, including international environmental law, intellectual property law, biotechnology, and traditional knowledge systems. The shortage of adequately trained personnel restricts the ability of institutions to effectively regulate access, monitor compliance, negotiate benefit-sharing arrangements, and support IPLCs in asserting their rights. This capacity deficit also affects awareness and participation in ABS processes. According to Cameroon's first

national report submitted to the Secretariat of the Nagoya Protocol, approximately 90 per cent of IPLCs have limited awareness of ABS mechanisms. This situation is largely attributable to inadequate dissemination of information, particularly in local languages and through culturally appropriate communication channels and this weakens the ability of communities to exercise their rights relating to PIC, MAT, and benefit-sharing⁵².

The challenge is further aggravated by the centralised nature of Cameroon's ABS institutional framework. Under the Nagoya Protocol, Parties are required to establish a National Focal Point and a Competent National Authority (CNA) to facilitate access procedures and coordinate implementation. In Cameroon, both institutions are located in Yaoundé. While such centralisation may facilitate administrative coordination, it creates significant barriers for IPLCs residing in remote and rural areas where most GR and ATK are found. Physical distance, administrative complexity, and limited institutional outreach reduce accessibility to ABS procedures and decision-making processes. Although information relating to GR and ATK is available through the ABS Clearing-House, digital accessibility alone cannot adequately address existing structural inequalities. Consequently, strengthening ABS implementation in Cameroon requires not only enhanced technical expertise but also more decentralised, inclusive, and community-oriented governance mechanisms capable of ensuring effective participation, accessibility, and accountability.

CONCLUSION AND RECOMMENDATION

This study examined the legal framework governing ABS for GR and ATK in Cameroon. The analysis demonstrates that Cameroon has made significant legislative progress in implementing the objectives of the CBD and the Nagoya Protocol through the adoption of Law No. 2021/014 and its implementing Decree. The study reveals that, although GR and ATK are often interconnected, access to GR does not necessarily imply access to ATK. This distinction is reflected in the dual ownership structure established under Cameroonian law, whereby the State exercises sovereign rights over GR while ATK belongs to IPLCs.

Notwithstanding these advances, the study identifies persistent challenges regarding the protection and governance of ATK. While the law recognises IPLCs as the holders of rights over ATK, significant practical difficulties remain in identifying, documenting, and protecting such knowledge. The limited development of CBPs, the absence of a comprehensive legal framework specifically dedicated to ATK protection, and the continued risks of misappropriation and unauthorised utilisation weaken the capacity of IPLCs to exercise effective control over their knowledge and to secure fair and equitable benefits arising from its utilisation. As a result, the legal recognition of ownership over ATK does not always translate into effective participation in ABS processes or meaningful benefit-sharing outcomes.

In light of these findings, this study recommends the establishment of a comprehensive *sui generis* legal framework for the protection of ATK in Cameroon. Such a framework should establish clear rules for the identification, recognition, documentation, and protection of ATK, while safeguarding the customary laws, practices, and decision-making processes of IPLCs. It should further require that access to ATK be subject to the effective participation of the concerned communities and provide mechanisms for ensuring that benefits arising from the utilisation of such knowledge are shared fairly and equitably with its holders. The adoption of a dedicated legal regime for ATK would strengthen legal certainty, reduce the risks of misappropriation and biopiracy, reinforce the rights of IPLCs, and the effectiveness of Cameroon's ABS framework in achieving its objectives.

⁵² Submission of the first national report on the implementation of the Nagoya Protocol on Access and Benefit-Sharing https://absch.cbd.int/en/?_gl=1*1da3mxi*_ga*MzgyOTc5NzA2LjE3NzYwODU2MDQ.*_ga_7S1TPRE7F5*czE3NzYxMDI0MzMkbzlkZzEkdDE3NzYxMDI0MDMkajEyJGwwJGgw access on 10 April 2026

www.rsisinternational.org

medicines#:text=Lack%20of%20capital%2C%20technology%20and,pharmaceutical%20projects%20considered%20highly%20risky . Access on 23 April 2024

20. UNCTAD. (2017). Bio trade and Access and Benefit Sharing: From Concept to Practice. A Handbook for Policymakers and Regulators. United Nations New York and Geneva.
21. Zheng, X. (2019), Key legal challenges and opportunities in the implementation of the Nagoya Protocol: the case of China. Review of European, Comparative and International Environmental Law. Vol 28, Is 2 Pp. 175-184. From <https://doi.org/10.1111/reel.12282> accessed on the 20 July 2022 at 7pm