Benefit Sharing in International Law

Human Rights

1946 - Universal Declaration of Human Rights

Art. 27.1: Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

1986 - UN Declaration on the Right to Development

Article 2. 3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

1989 - ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries

Article 15.2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

2012 - Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO)

Para. 8.6. States should develop and publicize policies covering the use and control of land, fisheries and forests that are retained by the public sector and should strive to develop policies that promote equitable distribution of benefits from State-owned land, fisheries and forests. Policies should take into account the tenure rights of others and anyone who could be affected should be included in the consultation process consistent with the principles of consultation and participation of these Guidelines (...).

Biodiversity

1983 - International Undertaking on Plant Genetic Resources for Food and Agriculture

Preamble. Considering that it is the responsibility of governments to undertake such activities as are needed to ensure the exploration, collection, conservation, maintenance, evaluation, documentation and exchange of plant genetic resources in the interest of all mankind; (...) and to ensure the equitable and unrestricted distribution of the benefits of plant breeding.

1992 - Convention on Biological Diversity

Art. 1. The objectives of this Convention (...) are (...) the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Art. 15.7. Each Contracting Party shall take legislative, administrative or policy measures...with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

1992 - Agenda 21

Para 15.4. Governments at the appropriate level, (...) should: (d) Take appropriate measures for the fair and equitable sharing of benefits derived from research and development and use of biological and genetic resources, including biotechnology, between the sources of those resources and those who use them.

2001 - International Treaty on Plant Genetic Resources for Food and Agriculture

Art. 1.1. The objectives of this Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

Art. 9.2. Parties agree that the responsibility for realizing Farmers' Rights, as they relate to plant genetic resources for food and agriculture, rests with national governments. In accordance with their needs and priorities, each Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including: a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture; b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

Art. 10.2. In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis.

Art. 13.1. The Parties recognize that facilitated access to plant genetic resources for food and agriculture which are included in the Multilateral System constitutes itself a major benefit of the Multilateral System and agree that benefits accruing therefrom shall be shared fairly and equitably in accordance with the provisions of this Article.

Art. 13.2. The Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body: (...)

Art. 13.3. The Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

2002 - Johannesburgh Plan of Implementation

Para. 44. (...) The Convention is the key instrument for the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from use of genetic resources. A more efficient and coherent implementation of the three objectives of the Convention and the achievement by 2010 of a significant reduction in the current rate of loss of biological diversity will require the provision of new and additional financial and technical resources to developing countries, and includes actions at all levels to: (...).

2010 - Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (CBD)

Art. 1. Objective. The objective of this Protocol is the fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Art. 5. Fair and Equitable Benefit-Sharing.
1. In accordance with Article 15, paragraphs 3 and 7 of the Convention, benefits arising from the utilization of genetic resources as well as subsequent applications and commercialization shall be shared in a fair and equitable way with the Party providing such resources that is the country of origin of such resources or a Party that has acquired the genetic resources in accordance with the Convention. Such sharing shall be upon mutually agreed terms.
2. Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.
3. To implement paragraph 1 above, each Party shall take legislative, administrative or policy measures, as appropriate.
4. Benefits may include monetary and non-monetary benefits, including but not limited to those listed in the Annex.

Common Heritage

1979 - Agreement Governing the Activities of States on the Moon and Other Celestial Bodies

Article 11(7): The main purposes of the international regime to be established shall include: (...) (d) An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the Moon, shall be given special consideration.

1982 - UN Convention on the Law of the Sea

Article 82: 1. The coastal State shall make payments or contributions in kind in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (...). 4. The payments or contributions shall be made through the [International Seabed] Authority, which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them.

Art. 140: 1. Activities in the Area [international seabed] shall, as specifically provided for in this Part, be carried out for the benefit of mankind as a whole (...) 2. The [International Seabed] Authority shall provide for the equitable sharing of financial and other economic benefits derived from activities in the Area through any appropriate mechanism, on a non-discriminatory basis, in accordance with article 160, paragraph 2(f)(i).

Traditional Knowledge

1992 - Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation, and Sustainable Development of All Types of Forests

Para. 12(d). Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

1992 - Convention on Biological Diversity

Art. 8(j). Each Contracting Party shall, as far as possible and as appropriate: Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

1992 - Agenda 21

Para. 15.4. Governments at the appropriate level (...) should: (g) Recognize and foster the traditional methods and the knowledge of indigenous people and their communities, emphasizing the particular role of women, relevant to the conservation of biological diversity and the sustainable use of biological resources, and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge.

Para 15.5. Governments at the appropriate level (...) should, as appropriate: (e) Subject to national legislation, take action to respect, record, protect and promote the wider application of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation of biological diversity and the sustainable use of biological resources, with a view to the fair and equitable sharing of the benefits arising, and promote mechanisms to involve those communities, including women, in the conservation and management of ecosystems.

1994 - UN Convention to Combat Desertification

Art. 16. Information collection, analysis and exchange. The Parties agree, according to their respective capabilities, to integrate and coordinate the collection, analysis and exchange of relevant short term and long term data and information to ensure systematic observation of land degradation in affected areas and to understand better and assess the processes and effects of drought and desertification. This would help accomplish, inter alia, early warning and advance planning for periods of adverse climatic variation in a form suited for practical application by users at all levels, including especially local populations. To this end, they shall, as appropriate: (g) subject to their respective national legislation and/or policies, exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations concerned.

Art. 17.1. The Parties undertake, according to their respective capabilities, to promote technical and scientific cooperation in the fields of combating desertification and mitigating the effects of drought through appropriate national, subregional, regional and international institutions. To this end, they shall support research activities that: (...) (c) protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge.

Art. 18.2. The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to: (...) (b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as mutually agreed, from any commercial utilization of them or from any technological development derived therefrom.

2002 - Johannesburgh Plan of Implementation

Para. 44. (...) A more efficient and coherent implementation of the three objectives of the Convention (...) will require the provision of new and additional financial and technical resources to developing countries, and includes actions at all levels to: (...) (j) Subject to national legislation, recognize the rights of local and indigenous communities who are holders of traditional knowledge, innovations and practices, and, with the approval and involvement of the holders of such knowledge, innovations and practices, develop and implement benefit -sharing mechanisms on mutually agreed terms for the use of such knowledge, innovations and practices.

2004 - World Bank Operational Policy

OP 4.10: 19. If the project involves the commercial development of Indigenous Peoples' cultural resources and knowledge (for example, pharmacological or artistic), the borrower ensures that as part of the free, prior, and informed consultation process, the affected communities are informed of (a) their rights to such resources under statutory and customary law; (b) the scope and nature of the proposed commercial development and the parties interested or involved in such development; and (c) the potential effects of such development on Indigenous Peoples' livelihoods, environments, and use of such resources. Commercial development of the cultural resources and knowledge of these Indigenous Peoples is conditional upon their prior agreement to such development. The IPP reflects the nature and content of such agreements and includes arrangements to enable Indigenous Peoples to receive benefits in a culturally appropriate way and share equitably in the benefits to be derived from such commercial development.

2008 - UN General Assembly Resolution 62/98. Non-legally binding instrument on all types of forests

Para. 6. To achieve the purpose of the present instrument, and taking into account national policies, priorities, conditions and available resources, Member States should: (...) (f) Support the protection and use of traditional forest-related knowledge and practices in sustainable forest management with the approval and involvement of the holders of such knowledge, and promote fair and equitable sharing of benefits from their utilization, in accordance with national legislation and relevant international agreements.

2010 - Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (CBD)

Art. 5. Fair and Equitable Benefit-Sharing.
5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.

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