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INTERAFRICAN BUREAU
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Information Note

Why Inland African Union-Member States should Ratify, Domesticate and Implement the Areas Beyond National Jurisdiction (ABBNJ) Agreement

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Disclaimer: The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official Policy or position of the African Union – Inter African Bureau for Animal Resources.

Citation: AU-IBAR, 2025. Information Note – Why Inland African Union-Member States (AU-MS) should Sign, Ratify, Domesticate and Implement the ABBNJ Agreement

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Published by AU-IBAR, Nairobi, Kenya

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Key words: Areas Beyond National Jurisdiction, Ratification, Domestication, Implementation

Background:

The African Continent is adjacent to highly productive Marine ecosystems including the seven African Large Marine Ecosystems (LMEs) viz.,Agulhas Current (LME), Benguela Current (LME), Guinea Current (LME), Canary current LME, Mediterranean Sea (LME), Red Sea (LME) and Somali Current (LME). The Continent is also endowed with networks of freshwater Rivers and Lakes. The Seas, Oceans, Lakes and Rivers inhabit a significant number of biodiversity and these ecosystems provide sources of livelihoods, food security and wealth creation. These Marine and freshwater aquatic ecosystems inhabit both living and non-living resources, which when harnessed appropriately would accelerate the Continental Blue Economy transformation. However, the unsustainable exploitation of these resources is threatening the biodiversity, natural resources and environmental sustainability. These include; over-exploitation of living species, pollution from several sources (land-based municipal and agricultural activities), uncontrolled introduction of exotic species in aquaculture systems, mining activities, urban development, tourism development.

The highest political organ of the African Union endorsed the African Blue Economy Strategy (ABES) aimed at addressing some of the above challenges and for the AU–Member States to sustainably harness the resources of aquatic ecosystems. The ABES envisioned an inclusive and sustainable Blue Economy that significantly contributes to Africa's transformation and growth. Also, AU–IBAR's intervention in the fisheries and aquaculture sector is guided by the Policy Framework and Reform Strategy for fisheries and aquaculture in Africa (PFRS) which is aimed at improving governance of the sector for increased sustainable contribution to food security, livelihoods, and wealth creation. The Global aquatic and Marine resources are interconnected and of great note, inland water systems from AU-MS contribute to maintenance of a healthy Global Marine ecosystem through a closed cycle.

Marine Genetic Resources

The Marine environment is vast and covers approximately 70% of the Earth's surface, with 95% of the total Ocean volume considered Areas Beyond National Jurisdiction (ABNJ).(a) Environments in ABNJ, largely comprised of deep Ocean, remain poorly known, with up to 90% of species still undescribed. (b) However, with rapid progress being made in technological fields of Marine exploration and laboratory testing, there is potential for discovery of new and possibly valuable genetic resources with applications in a number of market sectors.(c) As such, developing our collective understanding of these genetic resources plays an important role in advancing scientific research and supporting the conservation and sustainable use of Global biodiversity.

BBNJ Agreement

This Agreement under UNCLOS on the Conservation and Sustainable use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ) – has Basic Elements and Options for an African Participation Mechanism. In-land African Nations were active participants in the negotiations, advocating for this Global framework to ensure their needs were addressed in the

Treaty's implementation. Marine Genetic Resources (MGR) of ABNJ fall outside the scope of Access and Benefit Sharing (ABS) regulations under the Nagoya Protocol. As such, there has been no International Legal framework governing how benefits associated with MGR in ABNJ should be shared. The BBNJ Agreement provides an International Legal framework and opportunity to govern how benefits associated with Marine Genetic Resources (MGR) in Areas Beyond National Jurisdiction should be shared.

Objective of Agreement & Key Pillars

- BBNJ is an implementing Agreement of the UN Law of the Sea Convention like the UN Fish Stocks Agreement (1995);
- The objective is to ensure conservation and sustainable use of Marine Biodiversity in Areas Beyond National Jurisdiction (ABNJ). ABNJ means both the high Seas and the International Seabed (the Area);

The Four pillars to the Agreement are:

- Marine genetic resources (MGRs);
- Area-based management tools (ABMTs), including Marine Protected Areas (MPAs);
- Environmental Impact Assessments (EIAs); and
- Capacity building and transfer of Marine technology – all arenas are important to Africa.

BENEFITS AND KEY REASONS THE BBNJ AGREEMENT IS IMPORTANT FOR IN-LAND AU–MS AND WHY THEY SHOULD RATIFY, DOMESTICATE AND IMPLEMENT THE ABBNJ AGREEMENT

The ABBNJ Agreement presents opportunity especially for the inland African Union Member States to be part of the Global framework regarding management of Marine Biological Diversity as well as the non–Biological Resources. The Agreement (High Seas Treaty) matters to in-land Countries because it establishes equitable benefits and capacity-building for Marine Genetic Resources and sustainable use of Ocean resources, recognizing that all Nations share in the "Common Heritage of Humankind" principle, despite their lack of direct access to the Sea.

Capacity-Building under the BBNJ

- Capacity development for BBNJ will require all areas of knowledge relevant to Marine Scientific Research, Area-based management, environmental impact assessment, development of Marine Genetic Resources, development of National and regional Policy vis-à-vis ABNJ (Legal and Policy capacity; Scientific capacity; monitoring and enforcement capacity). Under the ABBNJ Agreement, Capacity-Building and Technology Transferwill be accessed. The Agreement promotes capacity-building and the transfer of Marine technology, providing vital support for landlocked Countries to participate in sustainable Ocean economies and management efforts;
- Many streams of capacity-building already exist (Law of the Sea stream; climate change stream etc;

- Access to Marine Genetic Resources (MGRs): The Treaty ensures fair and equitable sharing of benefits derived from MGRs found in Areas Beyond National Jurisdiction, a concept that benefits landlocked Nations as it applies to all of humanity;
- Global framework for Ocean Governance: Landlocked Nations' participation helps establish a holistic framework for conservation and sustainable use of Marine biodiversity, ensuring that Global goals for Ocean health, like those in the 2030 Agenda for Sustainable Development, are met for the benefit of all Countries;
- Influence on Implementation: Early participation allows landlocked Countries to influence how the Treaty is implemented, ensuring their unique needs and perspectives are integrated into the new governance system for the high Seas;
- "Common Heritage of Humankind" The Treaty's principles are rooted in the Common Heritage of Humankind principle, recognizing that the resources of the Ocean are a shared inheritance, including for developing Countries like those that are landlocked; and,
- Although in-land Countries do not have direct access to the high Seas, the BBNJ Agreement provides them with a means to access and benefit from Marine resources and contribute to their sustainable use, ensuring a more inclusive and equitable Global Ocean governance system.
- Participation in the establishment and Governance of Marine Protected Areas with in the Marine Spaces.

That is why it is important to ratify, domesticate and implement this Agreement.

Current BBNJ Status

- The Agreement opened to signature on 20th September, 2023. BBNJ must be ratified by 20th September, 2025. Entry into force requires 60 ratifications.
- So far, AU-MS States: Angola, Botswana, Burkina Faso, Djibouti, Egypt, Equatorial Guinea, Lesotho, Cameroon, Comoros, Gabon, Gambia, Ghana, Guinea, Kenya, Madagascar, Morocco, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, Togo, United Republic of Tanzania, Zimbabwe and Zambia have Signed.
- Malawi, Cabo Verde, Congo, Côte d›Ivoire, Guinea-Bissau, Liberia, Mauritania, Mauritius, Seychelles, have ratified the Agreement as of 02nd, 09, 2025.

BBNJ Milestones – 2023 – 2025

- 2023: 19th June – Final text of Agreement adopted.
- 2024: 24th April: UN General Assembly adopted resolution 78/272, establishing a BBNJ Preparatory Commission (PrepCom)
- 2024: 24th – 26th June: First BBNJ Prep-Com held & elected two Co-Chairs: Janine Coye-Felson (Belize) and Adam McCarthy (Australia); elected Bureau members & adopted 2025 Prep-Com work programme
- 2025 schedule agreed: 14th – 25th April, 2025 & 18-29 August, 2025 (2 weeks each) covering: Governance issues; Operation of BBNJ Clearing – House Mechanism; BBNJ financial Rules, resources and mechanism.

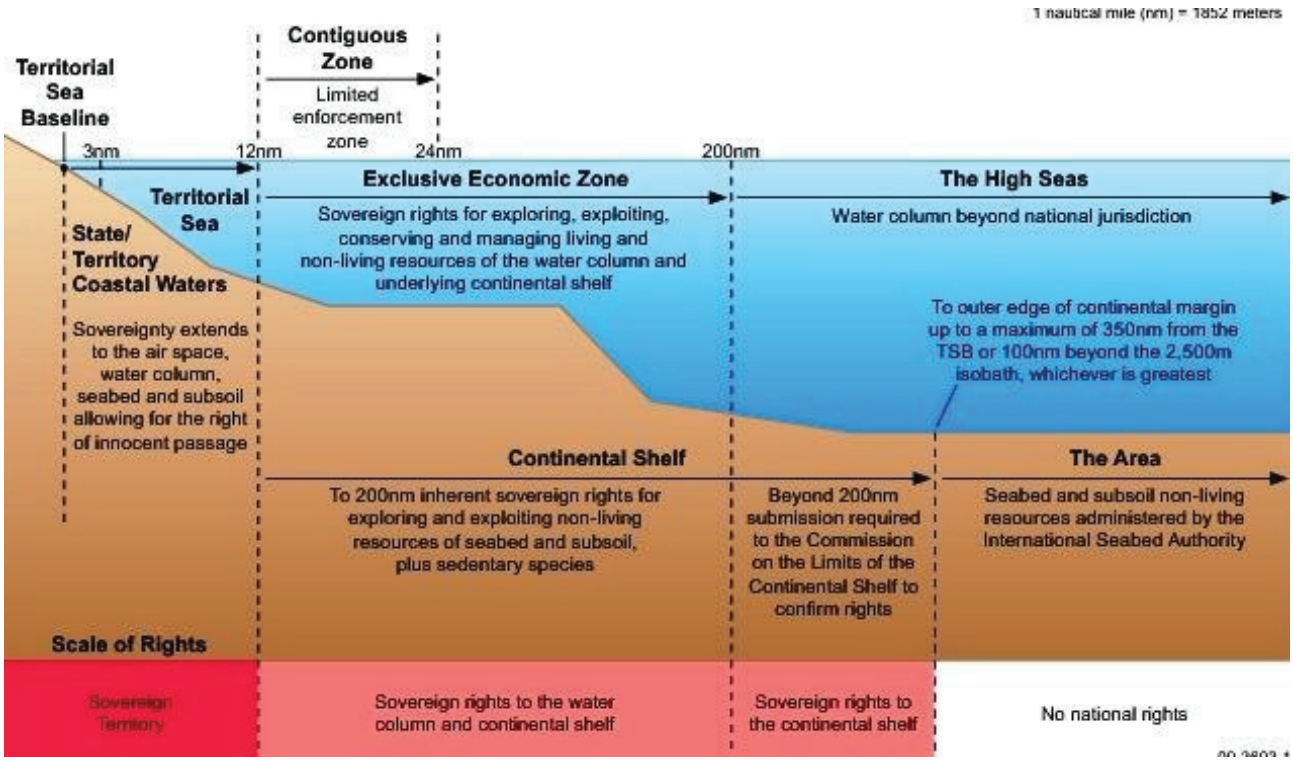
Scope of the Agreement I High Seas (Green) & EEZs (White)



(Source: Tufts University, Law of the Sea) ***Legal boundaries of the Oceans***

Legal Scope of the Agreement

This Agreement shall cover the High Seas (The Area Beyond the Exclusive Economic Zone for the Coastal MS

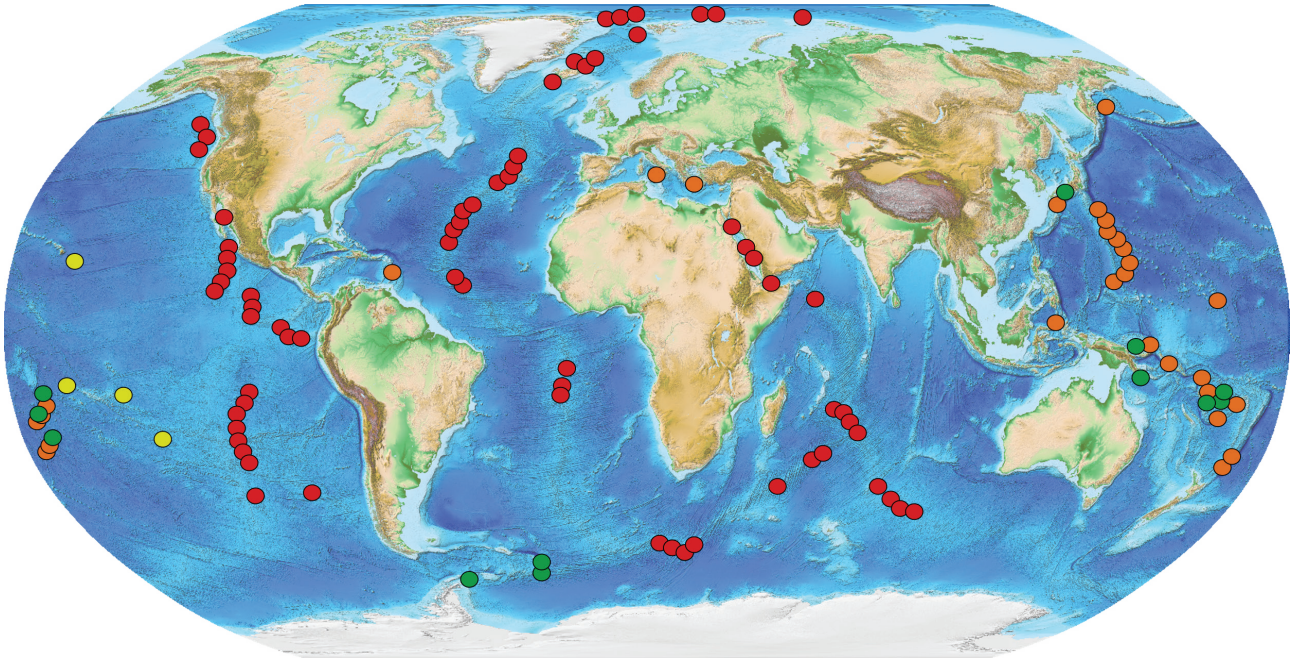


Source: UNESCO Intergovernmental Oceanographic Commission. The Area with no Sovereignty will now be managed by this Agreement

BBNJ and Other Regimes

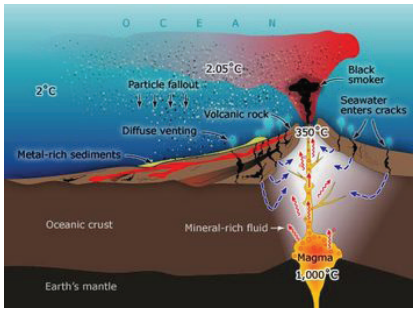
- BBNJ applies to the water column
- BBNJ applies to the Seabed or Seafloor of the Area, regulating living organisms and biodiversity on the Ocean floor, while the International Seabed Authority (ISA) regulates activities with respect to non-living resources in the same zone.
- BBNJ is to be interpreted and applied in the context of and in a manner consistent with UNCLOS (Art 5(1)) and is to be interpreted and applied in a manner that: (a) does not undermine relevant legal Instruments and frameworks; (b) does not undermine relevant Global and sectoral bodies; and (c) promotes coherence and coordination with those Instruments, frameworks and bodies (Art 5(2)).

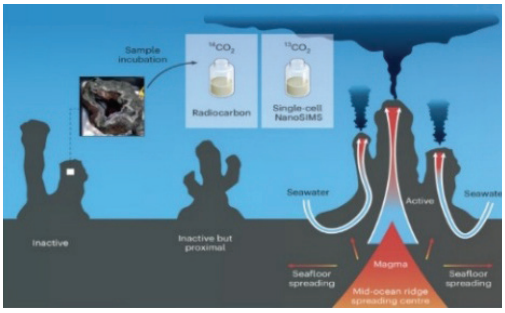
Global Sites Marine Genetic Resources

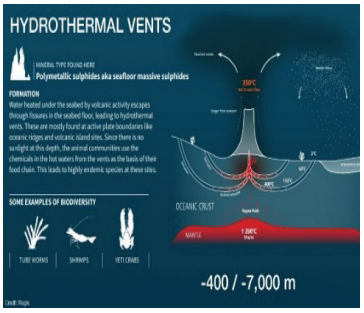


Source: https://environmental-geol.pressbooks.tru.ca/chapter/metal-deposits/

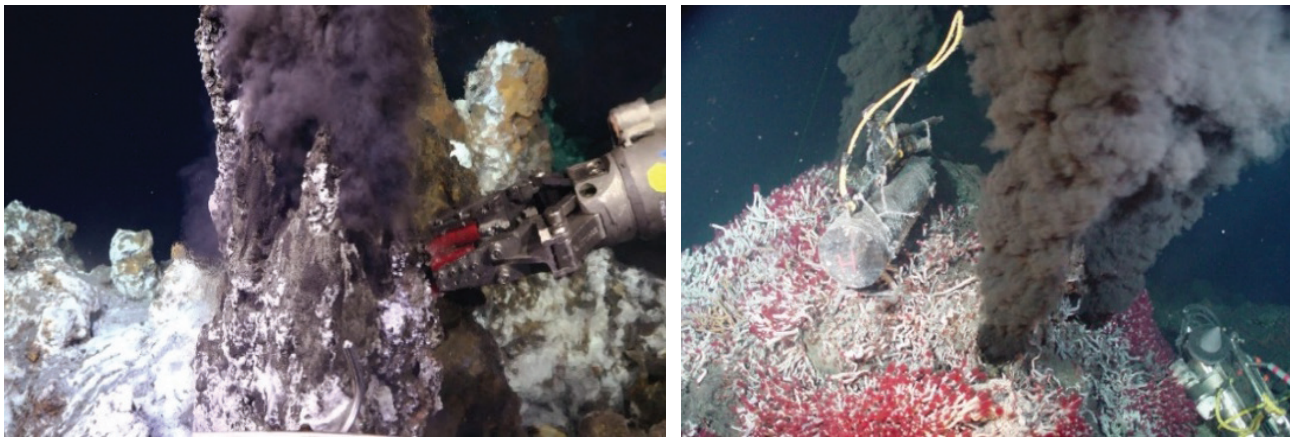
Example of MGR from Hydrothermal Vents on the Seabed







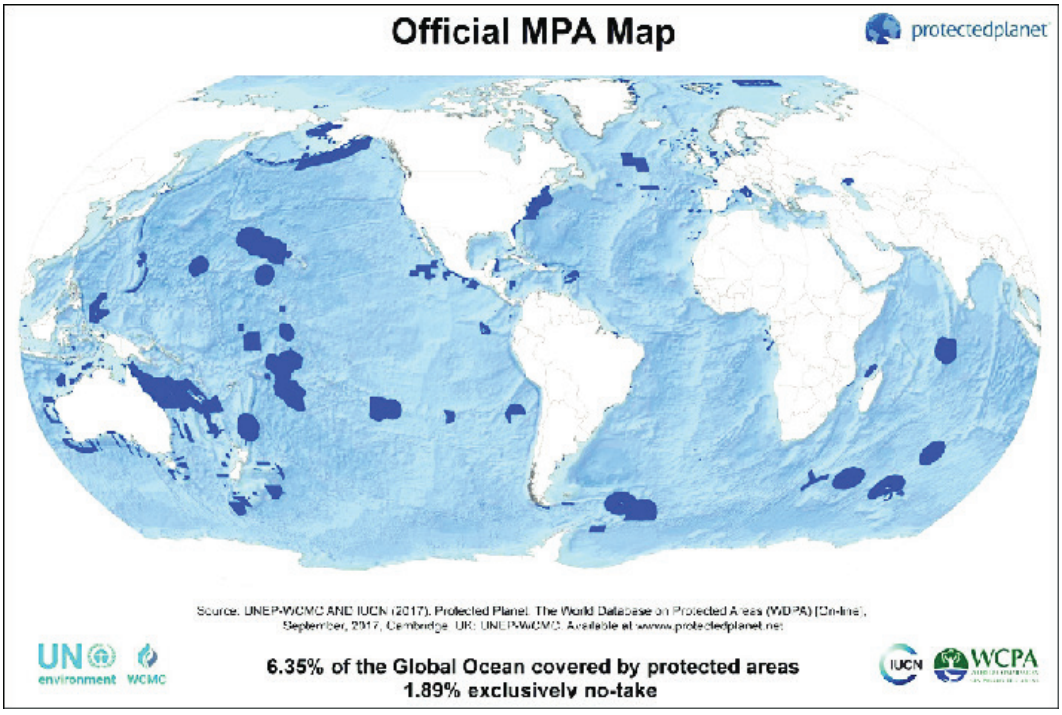
Example of MGR Bioprospecting/Bio-Collection from High Seas Sea Floor Hydrothermal Vent



Source *National Oceanic and Atmospheric Administration*

U.S. Department of Commerce

High Seas MPAs – Current Status



Legal regime governing MGRs and DSI

- Developed States argued that access and use of MGRs should be part of the freedom of high Seas as a part of the Marine scientific research freedoms and that DSI benefits should be excluded from benefits-sharing;
- Developing States argue that MGRs are part of the Common Heritage of Mankind (CHM) and should be administered by an International body that ensures fair sharing of benefits from their utilization – a regime identical to the utilization of the deep Seabed mineral resources. Developing States also wanted DSI to be subject to benefits-sharing;

- Current MGR regime is a compromise between the two; and,
- In particular, utilisation of DSI will be subject to a degree of payment by companies that benefit from DSI information.

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