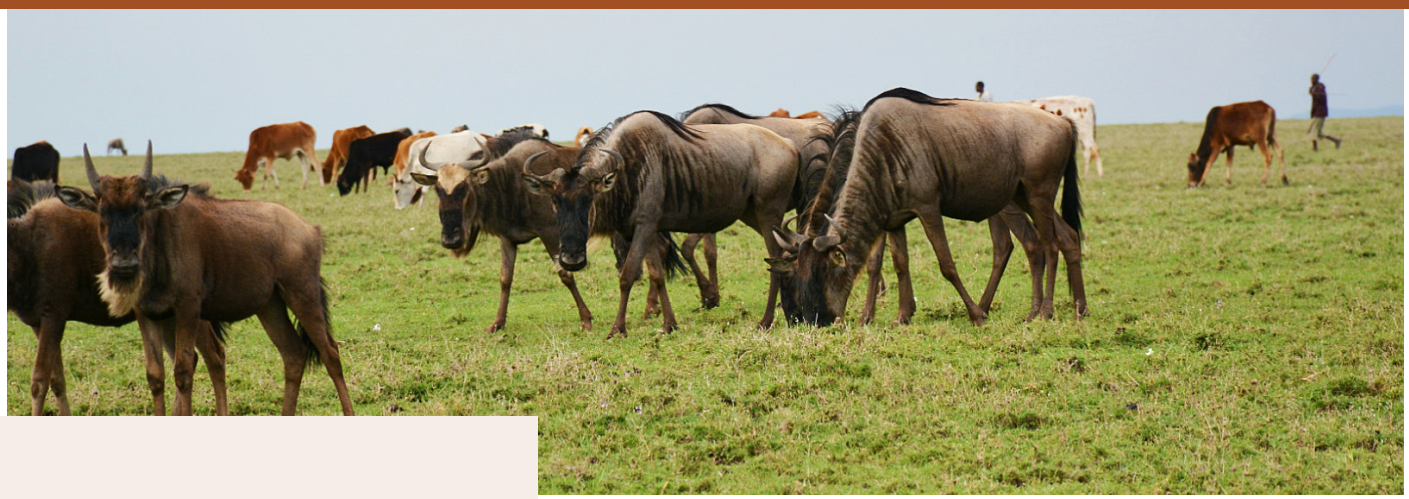
Kenya Wildlife Conservancies Association
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THE NATURAL RESOURCES (BENEFIT SHARING), BILL 2022:

IMPACTS ON WILDLIFE CONSERVATION



FACTSHEET MARCH 2023

The Natural Resources (Benefit Sharing) Bill 2022, which was first introduced in Senate in 2014, re-published in 2018 and 2020. The Bill seeks to establish a consolidated system of benefit sharing in natural resource exploitation. The Bill inspires to realize the aspirations of the Constitution of Kenya in ensuring that there is equitable sharing of the accruing benefits from sustainable exploitation, utilization, management and conservation of the environment and natural resources.

What's the issue?

Natural resources benefit sharing in Kenya has been inequitable, where local communities that interface with the resources, and who bear the highest costs of overexploitation and conservation, are the least beneficiaries.

Benefit sharing regimes of the natural resources are currently governed by different legislations, and subsequently overseen by different government ministries and agencies.

This Bill seeks to collectively govern benefit sharing for renewable and non-renewable resources-wildlife, genetic resources, biological resources, forest, wind, sun, industrial fishing and minerals.

The Bill has the unintended consequence of negatively affecting, disincentivize and eventually annihilate the conservation and management of wildlife in community and private lands.

In particular, the Bill establishes:

1 Inequitable Sharing of Benefits

An inequitable revenue sharing ratio to communities who bear the direct burden of living with wildlife and conserving biodiversity~:

- *Sovereign Wealth Fund (National Government): 20%*
- *National Government: 48%*
- *County Government: 19.2%*
- *Local Communities: 12.8%*

The 12.8% allocation to local communities is set for community projects, allocated by County Benefit Sharing Committees.

2 Failure to consider costs associated with exploitation of natural resources.

In computing the revenue ratio, the Bill fails to consider the high costs of managing the natural resources, incurred by communities and landowners, especially for the biological resources e.g. wildlife

3 Narrow view of Benefits

The Bill views benefit sharing only in terms to revenues and monies. There is dis-regard of other significant benefits that are generated from exploitation of natural resources, especially the genetic resources, which have wider and long-term values.

4 Ambiguity and Generality

The Bill creates substantial, legal and administrative challenges, characterized by ambiguity and generality:

i. The Bill lumps together different categories of natural resources, failing to appreciate the complexity of each of the resources in terms of exploitation, management, conservation, and utilization.

ii. The Bill fails to align with the provisions of the specific sectoral laws like the *Wildlife Act 2013, Forest Act 2016, Water Act 2016, Fisheries Act 2016, Renewable Energy Regulations of the Energy Act of 2019 and Nagoya Protocol on Access to Genetic resources and Benefit Sharing.* This presents a potential conflict of laws, inconsistencies and deepening vagueness and uncertainty in access to benefits from natural resources.

iii. The Bill excludes benefit sharing to private landowners, who in some of the natural resources such as wildlife, have significantly contributed through management of their lands for wildlife conservation.

iv. The Bill introduces a highly bureaucratic process for accessing benefits from natural resource exploitation. Multiple government agencies and the two levels of government (National and County) are involved from the collection of royalties and fees (KRA), developing benefit sharing agreements (County governments and Commission on Revenue Allocation-CRA), monitoring (CRA) and county benefit sharing committees.

v. The Bill assumes the County Governments mandate over all the natural resources, yet wildlife is a national function, to which County Government cannot enter into benefit sharing agreements







What is at stake?

Kenya has experienced long term wildlife population declines, **estimated at 68% in the past 4 decades** through loss of habitat and migratory corridors to other land uses.

Nevertheless, wildlife conservancies are securing the vastly diminishing wildlife habitats and corridors and creating livelihood and economic options for communities and landowners who take up wildlife as a land use.

A minimal and inequitable allocation of benefits to local communities will inevitably make them shift to other more competitive land uses that exclude wildlife, resulting in further closure of wildlife dispersal areas and injuring Kenya's position as a global leader in environment conservation.

If the Bill is to become law as is, it will downplay the recent advances in wildlife policy and legislative reforms; diminish growing interest by Kenyan communities and landowners to coexist with wildlife through voluntary stewardship; risk upsurge of human wildlife conflicts; and a downward spiral on wildlife populations, localised extinctions and threatening the country's wildlife and tourism industry, a major foreign exchange earner and GDP contributor.





What can be done?

To ensure that people, wildlife, and the ecosystems thrive, there is need to have policies that establish innovative equitable benefit sharing regimes, that recognizes the dynamics of each resource, accommodate emerging issues, principles, and global regulatory frameworks on the biological resources.

In particular:

a. A review of the Bill to distinguish benefit sharing structures and processes for biological and genetic resources from extractive resources.

b. Exclusion of Wildlife from the Bill, since wildlife utilization outside National Parks and Reserves is structured to offset the costs of managing wildlife by communities and landowners. This is already regulated by the Wildlife Act 2013, which requires that wildlife conservancies develop conservancy management plans that demonstrate benefit sharing.

c. Restructure of the Bill to serve as an overarching legislation that provides guiding principles on natural resource benefit sharing to the various sectoral legislations that then establish percentages.

d. Recognition of both monetary and non-monetary benefits from natural resources utilization and exploitation, including material and technology transfer, and intangible cultural heritage and traditional knowledge.

e. Align with the various specific sectoral laws.



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