

Kenya: Interaction Between UPOV and ITPGRFA

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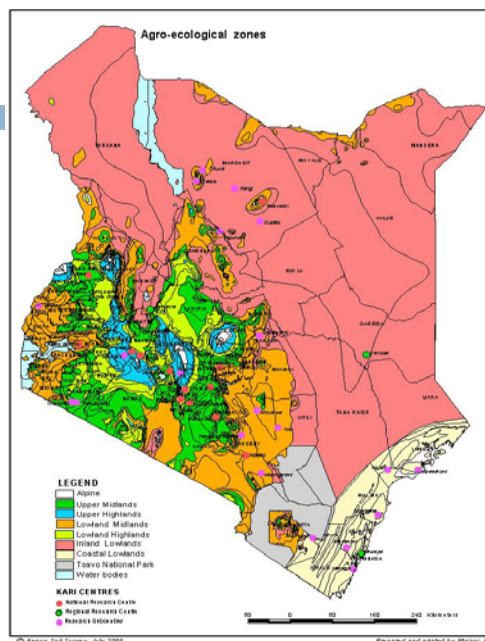
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Kenya's Agriculture

- Contributes 51% of the GDP, 26% directly and 25% indirectly
- Accounts for 65% of Kenya's exports and 60% of foreign exchange earnings
- Principal source of rural income and livelihoods
- Supplies 18% of formal employment and over 70% of employment in rural areas
- Source of raw materials for agro-industries

Rich Biodiversity

- **Diverse agro-ecologies:**
 - location in the tropics
 - varied relief
 - Varied landscapes
 - Varied habitats



Status of Implementation of UPOV Convention and ITPGRFA

Constitutional provisions:

- The State shall support, promote and protect the intellectual property rights of the people of Kenya – Article 40 (5).
- Parliament shall enact legislation to *recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya* – Article 11 (3) (b)

Status of Implementation of UPOV Convention and ITPGRFA

UPOV Convention

- Kenya joined UPOV in 1999 under the 1978 Convention.
- In 2012, the Seeds and Plant Varieties Act was amended to incorporate components of the 1991 UPOV Convention.
- On April 11, 2016, Kenya deposited the instrument of accession to the 1991 UPOV Convention.
- Kenya is now bound by the 1991 UPOV Convention effective from May 11, 2016.

Status of Implementation of UPOV Convention and ITPGRFA

ITPGRFA

- Establishment of a National Gene bank was initiated in 1983 and became fully operational in 1987
- Started of as Crop plant genetic resources Centre
- Expanded to cover the entire plant diversity in 2000
- Kenya acceded to the ITPGRFA in 2003
- The Seeds and Plant Varieties Act was amended in 2012 and 2016 to create a Plant Genetic Resources Centre with functions aligned to components of the ITPGRFA

Status of Implementation of UPOV Convention and ITPGRFA

- The legal framework for both the UPOV Convention and ITPGRFA is in the Seeds and Plant Varieties Act.
- Implementing regulations for plant variety protection are under review while those of the Plant Genetic Resources are under preparation.
- The focal point for the UPOV Convention is the Kenya Plant Health Inspectorate Service (KEPHIS).
- The focal point for the ITPGRFA is the Genetic Resources Research Institute (GeRRI) established under the Kenya Agricultural and Livestock Research (KALR) Act of 2013.

Interaction: UPOV and ITPGRFA

- Breeders obtain plant germplasm for breeding from farmers.
- This creates the need for benefit sharing resulting from varieties protected after breeding exercise.
- Implementation of the concept of Prior informed Consent (OIC) and Mutually Agreed Terms (MAT) therefore becomes necessary.

Varieties under protection in Kenya

- Most of the PVP applications in Kenya are for varieties of ornamental and agricultural crops
- The diversity of crops under PVP application has been increasing over the years.
- Applications have been received for varieties of crops that have not been included in PVP before.
- These include the 'traditional high value crops', previously referred to as 'orphan crops'.

Varieties developed from farmer varieties and landraces

- A number of locally developed varieties are derived from farmer varieties and landraces.
- These include varieties of maize, beans, cowpeas, green grams, sorghum, finger millet, sweet potato, grasses and traditional vegetables.
- Many of these varieties are developed by public breeders and have not been submitted for plant variety protection.
- Some applications for PVP have been submitted for some varieties of maize, pasture grass and traditional vegetables.

The Case of *Cenchrus ciliaris*



The Case of *Cenchrus ciliaris*

- *Cenchrus ciliaris* has for many years been utilized by pastoralist communities as a naturally occurring rangeland grass in the semi-arid parts of Kenya.
- An application for protection of a variety of *Cenchrus ciliaris* was gazetted in 2014.
- Following publication, an objection was made by the Kerio Valley Development Authority (KVDA).
- KVDA is a Parastatal responsible for initiating development projects in marginalised areas.

The Case of *Cenchrus ciliaris* cont'd

- Grounds for the objection:
- *Cenchrus ciliaris* has been held and maintained by communities for many years and should not be subject to plant variety protection.
- After discussion with the parties, it was agreed that “side by side” comparison be done to establish if the variety in question is distinct from landraces held by farmers.
- Question – even if distinctness is established, would the communities demand a share of the benefits accruing from the protection, considering that they have been conserving the germplasm from which the new variety is developed?

The Case of Traditional Vegetables



The Case of Traditional Vegetables

- A breeder has applied for protection of varieties of 5 traditional vegetables.
- These are selections derived from landraces, whose characteristics have not been documented before in descriptors.
- There is much traditional knowledge associated with these species regarding their use as food and medicine.
- Questions on benefit sharing are likely to arise once the applications are gazetted.

Harmonization Efforts

- Plant Genetic Resources Regulations once developed will streamline the process of access and benefit sharing.
- Guidelines on farmer exceptions for plant breeders' rights on selected species will **partly** deal with the question of farmer's rights.
- The National Platform on Plant Genetic Resources for Food and Agriculture brings together all players in the area of genetic resources and creates a forum for implementation of ITPGRFA while considering other treaties and conventions.

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Thank You