

Seminar on the enforcement of Plant Breeders Rights under the UPOV Convention

Experiences of PVP implementation and Enforcement in Africa

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Situation in Africa

- Africa is food insecure, yet it has the potential
- Lack of appropriate varieties
- Lack of appropriate technologies
- Only South Africa, Kenya, Tunisia and Morocco, UPOV members in last 10 years
- Now more UPOV members: OAPI, Tanzania

Content

- Development of PVP in the region
- Implementation
- Enforcement

Harmonization in East African Community (EAC)

Restriction to seed trade and movement

- Lack of Legislation
- Restrictive legislation
- Availability of appropriate plant varieties
- Variety evaluation, release & registration process
- Seed certification
- Phytosanitary measures
- Plant Variety Protection
- Import/export documentation

Main Agreements

- The EAC member states will put in place a PVP System in line with the **UPOV 1991** Convention
- The member states in the Eastern Africa Region start initiatives to either develop the PVP Law or amend the existing laws to be in line with UPOV 1991 Act
- Start putting structures in place to implement PVP
- Capacity of individual states to put in place facilities was a challenge, hence the idea of pooling resources
- Members with national laws now include Kenya, Tanzania, Uganda, Rwanda, Burundi, Mauritius

Plant Variety Protection status

1. ECA countries agreed to develop a *sui generis* system of PVP based on UPOV 1991 Convention
2. Kenya and Tanzania have operational PVP systems and are UPOV compliant. Uganda has made revisions to the draft PVP and the Law passed in 2015
3. Burundi and Rwanda now have a PVP Law in place while Sudan, South Sudan and Madagascar are yet to finalize their laws
4. As of 2016, Tanzania and Kenya are members of UPOV under the 1991 Convention and have increased applications for PVP

Lessons for effective policy change

1. Facilitation, building and empowering of public-private partnerships; bringing private sector and public/regulatory authorities together to discuss and reach consensus on what has to change, why and how on key issues that needed to be changed in the key areas of seed area (variety, certification, phytosanitary and trade).
2. Observation of the importance and differences amongst **technical** (technical personnel to discuss issues based on science), **political** (get buy-in from different parties including civil society) and **legislative** (once agreement is reached, legal protection to guard against backsliding) stages in the process of reform.

Lessons cont.

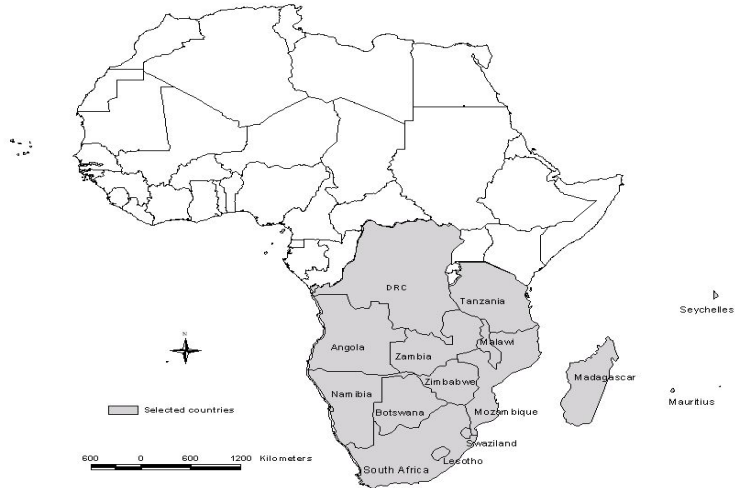
3. Dialogue at two levels:

national (to deal with, and differentiate between issues that could be rationalized and harmonized) and **regional** (to discuss issues that **need** to be harmonized)

4. Nurturing of **transparency, participatory** inter-institutionality and **multi-disciplinarity**

- differentiation between **administrative/procedural** and **legislative** issues in discussions and consensus building
- For administrative/procedural issues, implementation of desired changes can proceed under existing legislation, but with improvements in administrative procedures
- For legislative issues, desired changes have to wait until requisite laws are considered and accommodated in the existing legislation

Southern African Seed Systems Development Initiative Coverage



Partners

- SADC FANR
- SSSN
- CIMMYT
- ISU
- ICRISAT
- SDC
- USAID Southern Africa
- UPOV
- National Seed Focal Points
- Seed Companies



Long Term Goal of the Seed Agreements

- **Improve food security, nutrition and income of southern African resource poor farmers— to be achieved**

Through:

- Unified set of rules, regulations, policies and laws
- Changing the institutional & policy environment
- Facilitating increased and efficient availability of new varieties
- Expanding seed marketing and trade
- More choices for improved seeds to farmers

Technical Agreements

1. SADC Variety Release System
2. SADC Seed Certification System
3. SADC Quarantine and Phytosanitary Measures for Seed
4. **Draft SADC Plant Breeders Rights System**

SADC (Southern Africa Development Community)

- Initiated a process to Harmonize Seed regulatory systems in the region
- In 2007 SADC governments approved the proposed harmonization
- A Regional Plant Breeders Rights (PBR) system was developed and finalized
- It has been finally approved and awaits implementation

COMESA Countries

Burundi
Comoros
DR Congo
Djibouti
Egypt
Eritrea
Ethiopia
Kenya
Libya
Madagascar
Malawi
Mauritius
Rwanda
Seychelles
Sudan
Swaziland
Uganda
Zambia
Zimbabwe



Source AFSTA

COMESA (Common Market of Eastern and South Africa)

The 2008 Victoria Declaration of COMESA Ministers of Agriculture

- Member States **commit to harmonizing, within two years**, seed trade regulations in the region and to finalize a **regional protocol for the protection of new varieties of plants** within the same period
- It urges member States and development partners to work in collaboration with the COMESA Secretariat to implement the decisions of this Victoria Declaration on Agriculture, together with all decisions of the Ministers as contained in the Report of the Fifth Meeting of the Committee of Ministers

Status of COMESA Regulations

- March 2008 COMESA Ministers of Agriculture directed COMESA Secretariat to expedite the harmonisation of seed trade regulations and standards
- Since 2008 ACTESA worked extensively with member states, seed industry and seed stakeholders to bring about the draft COMESA Seed Trade Harmonisation Regulations
- The legal process of COMESA Seed Law Harmonisation across the 19 COMESA Member States is now completed
- COMESA Seed Trade Harmonisation Regulations are in force after approval by the COMESA Council of Ministers in Kinshasa, DR Congo on 24th February, 2014
- Member states will be supported in their obligations by ACTESA, working through the COMESA Seed Harmonization Implementation Plan (COM-SHIP)
- Domestication of the regulations and capacity building is ongoing

Target

- Within 5-7 years COMESA Seed Trade Harmonisation regulations will **be fully implemented across all the 19 member states** of COMESA
Priority actions at member state level will be focused on domestication of harmonization with:

Seed Certification Regulations, Variety Release Regulations, Quarantine and Phytosanitary Regulations.

Note that PVP was not included in the COMESA Harmonization. This was however taken up by ARIPO.

IP Specific bodies

- OAPI
- ARIPO

OAPI(Organisation Africaine de la Propriété Intellectuelle) (African Intellectual Property Organization)

- Member of UPOV 1991 Act, 2014
- 17 states
- Member States:

Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, Togo

OAPI

- The African Intellectual property organization (OAPI) was founded by a regional convention - The Bangui agreement of March 2nd, 1977 revised in 1999
- The system was in place from September 13, 1962

How it Operates

- The Bangui agreement established a common office
- The procedures for granting protection titles are centralised
- One application addressed to the Organization is deposited either directly at the OAPI headquarters, based in Yaoundé, Cameroon, or through the ministry in charge of intellectual property issues in each OAPI member state
- An application at OAPI has the effect of as a national filing in each of the member states
- Titles granted by OAPI are valid in all member states
- No national system of granting of titles which coexists with the regional system of protection
- OAPI acts on behalf and on the account of its members states on matters within OAPI's competence

Mandate areas of IP Protection

- Annex I: Patent
- Annex II: Utility models
- Annex III: Trademarks and service marks
- Annex IV: Industrial design
- Annex V: Trade names
- Annex VI: Geographical indications
- Annex VII: Literary and artistic property
- Annex VIII: Protection against unfair competition
- Annex IX: Layout designs (topographies) of integrated circuits
- **Annex X: Plant variety protection**

For DUS examinations

- a) DUS examination in OAPI member States
- b) Cooperation between authorities
- c) Purchase of DUS test reports from others authorities
- d) Bilateral arrangements to remove the need for duplication of DUS tests
- e) Centralized DUS testing at regional level

Experience

- Few Applications made
- Few enforcement issues so far
- System still developing

Purpose and Objectives of ARIPO

Purpose: Pooling of resources together for promotion, development and harmonization of IP laws and policies.

Objectives:

1. Promotion, harmonization and development of IP
2. Establish common services and organs for IP coordination, development and harmonization
3. Establish IP training schemes
4. Organize conferences, seminars and meetings on IP
5. Promote exchange of ideas and research on IP
6. Promote a common view and approach in dealing with IP matters
7. Support members in acquisition of IP based technologies
8. Development of Copyright systems for the economic benefit of its member states

ARIPO (African Regional Intellectual Property Organization)

- 19 Member states : Botswana, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, The Gambia, Uganda, Zambia and Zimbabwe

Mandate areas of IP Protection

- Patents and Utility Models - 1982
- Industrial Designs – 1982
- Trademarks - 1993
- Copyright and related rights – 2002
- Protection of genetic Resources, Traditional Knowledge and Expressions of folklore 2010
- Access and benefit Sharing - Draft Regional Framework
- Geographical Indications-Regional and National Frameworks
- **Plant Variety Protection** – Regional Protocol 2015

PROPOSALS FOR CONSIDERATION AND APPROVAL BY THE 12th SESSION OF THE COUNCIL OF MINISTERS OF ARIPO

- ARIPO should develop policy and legal framework based on situational analysis of the level of development of plant variety protection in the member states of the Organization. The policy and legal framework should form the basis for the elaboration of a regional plant variety protection system
- Such initiatives should be **linked to initiatives being undertaken by ARIPO Member States, UPOV and other relevant international and regional organizations**

Licenses, assignment and transfer

- The holder of a breeder's right may grant, to any person, exclusive or non-exclusive license relating to all or any of the rights granted to him or her
- An application for the grant of a breeder's right or a registered breeder's right may be assigned or otherwise transferred
- The assignment or transfer shall be in writing, signed by the parties concerned **and shall be registered in the register**

ARTICLE 35: ENFORCEMENT OF BREEDERS' Enforcement of Rights

The Contracting States shall put in place appropriate enforcement measures to address:

- Civil Measures (forfeiture, seizure, damages)
- Administrative Measures
- Customs Measures
- Criminal Measures (Wilful violation on commercial scale)
- Measures resulting from Alternative Dispute Resolution

New membership to UPOV

- OAPI - July 10, 2014
- United Republic of Tanzania - November 22, 2015
- Accession 1991 Act Kenya as of May 11, 2016

Experience in Kenya

- These experiences are similar to the other countries

Distribution of PVP Applications in Kenya by Country

Country	Percentage of Applications
Kenya	35.3
Netherlands	33.6
Germany	11.8
France	7.1
United States	1.1
Israel	0.9
Italy	0.6
South Africa	0.6
Zimbabwe	0.6
Japan	0.6
New Zealand	0.6
United Kingdom	0.6
Mexico	0.1
Australia	0.4
Paraguay	0.2
Republic of Korea	0.1

Enforcement in Kenya

- The enforcement of rights is by the owner of the rights.
- The Act has provision for the Plant Breeder whose rights are infringed to **seek remedy in the courts of law** by means of damages, injunction, account or otherwise. We may not have specialised courts for this.
- The Act also provides for Plant and Seed Tribunal to determine any dispute arising from PVP . No case has been brought up yet.
- Additionally, KEPHIS being the designated Authority for phytosanitary, seed certification and PVP matters, has the added advantage of helping the enforcement of PBR through the licensing and certification process.

Challenges for the Region

- Facilities and capacity to test some varieties still low
- Awareness for breeders(mainly public) and the policy makers still low.
- Institutional IP Policies either absent, not finalized or not implemented
- Lack of capacity to carryout out effective licensing including management and collection of royalty
- Review of the necessary legal instruments too slow and takes a long time
- Lack of political will or sentiments from the civil society slow down the process

Thank You