

## Kenya: Interaction Between UPOV and ITPGRFA

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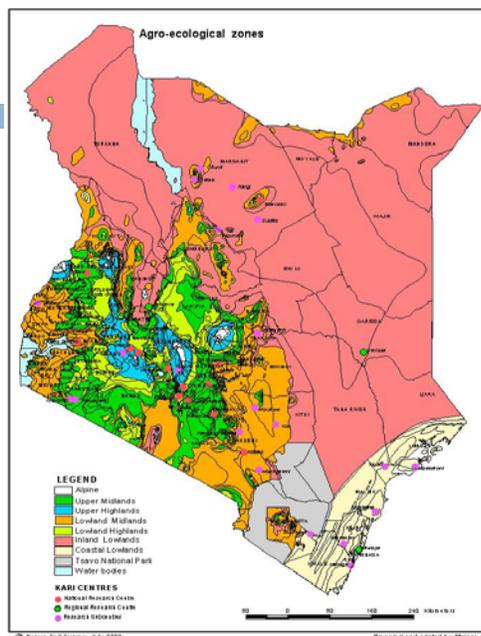
## Kenya's Agriculture

- 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*



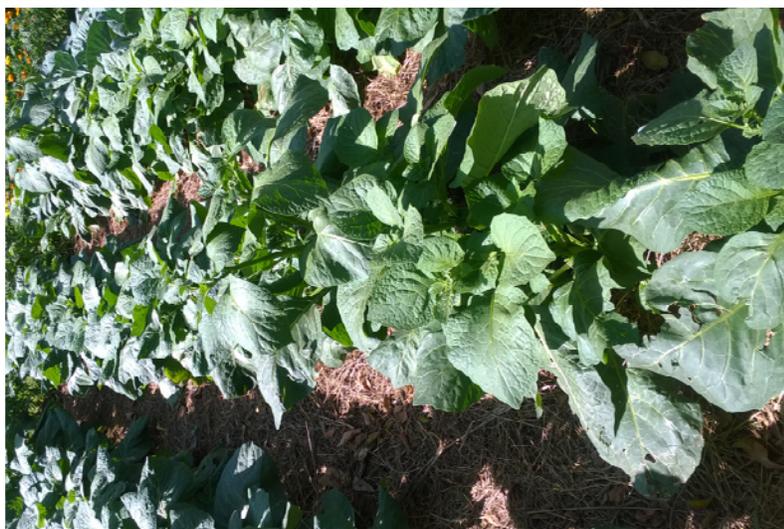
## The Case of *Cenchrus ciliaris*

- *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