

RELATIONSHIP BETWEEN THE UPOV CONVENTION AND OTHER PGR TREATIES; EXPERIENCE OF KENYA

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KEPHIS Mandate

- The Kenya Plant Health Inspectorate Service (KEPHIS) was established in 1996.
- Mandate includes;
 - Plant Variety Evaluation, Release and Registration;
 - Plant Variety Protection;
 - Seed Certification;
 - Plant Protection;
 - Implementation of The National Policy on Introduction and Use of Genetically Modified Plant Species in Kenya.

International Initiatives (1)

Kenya is involved in several international initiatives including;

- WTO -TRIPs Agreement;
- International Union of Protection of New Plant Varieties (UPOV);
- Convention on Biological Diversity (CBD);
- FAO - ITPGRFA;
- the East African Community (EAC);
- the Common Market for Eastern and Southern Africa (COMESA) among others.

International Initiatives (2)

These conventions are implemented by different agencies, Ministries and Parastatals.

- UPOV – KEPHIS (Ministry of Agriculture Livestock and Fisheries – MOALF)
- CBD Nagoya protocol - NEMA (National Environmental Management Authority) – Ministry Of Environment and Natural Resources.
- ITPGRFA – FAO/CGIARS/ The Genetic Resources Research Institute (MOALF- Kenya Agricultural Livestock Research Organization)/ Ministry of Agriculture Livestock and Fisheries – MOALF

Plant Breeders Rights System (1)

- Kenya acceded to UPOV under the 1978 Convention in May 1999
- The office to administer the PVP was established in 1997 and has functioned under KEPHIS since 1998
- Legislation for protection of plant varieties in Kenya is contained in the Seeds and Plant Varieties Act (1972), which became operational in 1975, revised in 1991 and amended in 2012 to ratify the 1991 UPOV convention.



Plant Breeders Rights System(2)

- The objectives is;
 - To encourage competition among breeders by rewarding those innovating new varieties through granting of Plant Variety Protection to ensure that they benefit from their works.
 - To facilitate recovery of investments put in the breeding new plant varieties
 - To promote understanding and appreciation of intellectual creativity and properties among the general population.
 - To provide laws and regulations to ensure effective provision of Plant Variety Protection service in Kenya.

Why PVP in Kenya.

New Improved Varieties are needed;

- to feed the ever growing population
- to increase agricultural productivity with scarce resources
- With improved quality - less waste, higher value
- Better resistance to pests and diseases - higher yields, less inputs
- With ability for more efficient use of inputs
- For economic development

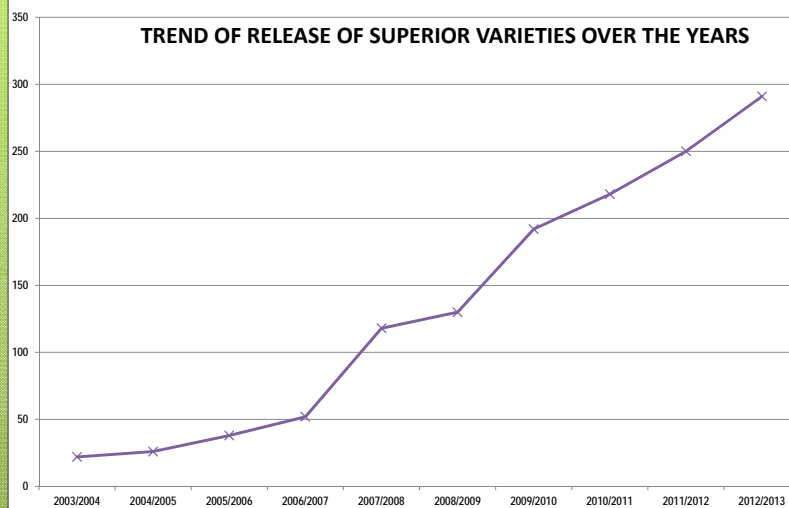
Importance of PVP

- Breeders protect their varieties;
 - firstly, if protection is necessary
 - secondly, their varieties have true market value.
- But breeders may use other forms of control over their varieties, for example in the case of some hybrid varieties.

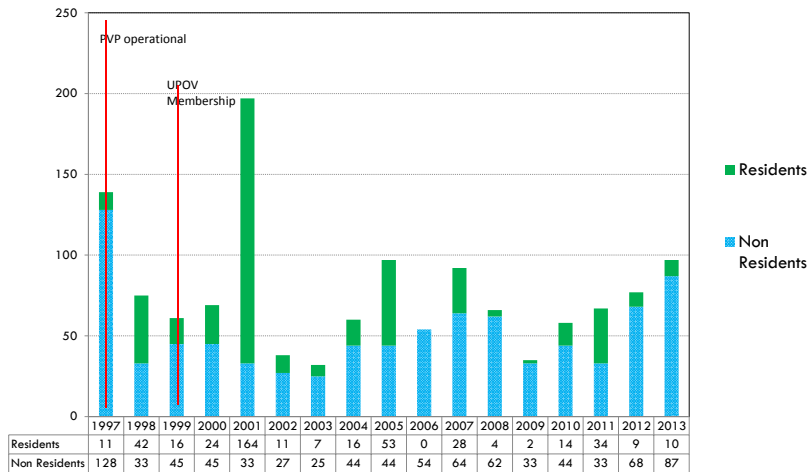
Impact of PVP in Kenya

- Significantly higher number of varieties developed and released after the introduction of PVP.
- Increased introduction of foreign varieties, especially in the horticultural sector (for example the emergence of the flower industry)
- Increased introduction of foreign germplasm which are being used by Kenyan breeders for further breeding

TREND OF RELEASE OF SUPERIOR VARIETIES OVER THE YEARS



NUMBER OF PBR APPLICATIONS



CBD and ITPGRFA in Kenya

- CBD and ITPGRFA together have their focus on access and sustainable use of Plant Genetic Resources (PGR).
- CBD is based on the principle of national sovereignty over genetic resources and access on the basis of Prior Informed Consent (PIC) and Mutually Agreed Terms (MATs).
- ITPGRFA provides for 'unrestricted' availability of PGR as a common heritage of humankind.

CBD – Nagoya Protocol on Access to Genetic Resources and Benefit Sharing

- Article 15 of CBD requires parties to institute measures for fair and equitable benefit sharing arising from utilization of genetic resources.
- the implementation of CBD related Conventions and Treaties in Kenya is by NEMA through the Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Legal Notice No. 160 of 2006.

CBD Access to Genetic Resources and Benefit Sharing

- NEMA coordinates all activities of environmental conservation, sustainable use of biodiversity and access and benefit sharing in liaison with lead Agencies.
- Legal Notice requires that anybody intending to access genetic resources in Kenya must acquire access permit from NEMA, subject to Prior Informed Consent (PIC) and evidence of benefit sharing with the local communities or responsible research institution or organization in form of MTA or Technology Transfer Licenses.

CBD Access to Genetic Resources and Benefit Sharing

- However, access permit does not apply;
 - to exchange of genetic material by local communities within Kenya,
 - access for research and experimental purposes and
 - Access procedures subject to the Intellectual Property Rights (IPRs)
- NEMA Regulations do not apply to on access to genetic resources derived from plant breeders in accordance with Cap. 326 Seeds and Plant Varieties Act;

FAO-ITPGRFA in Kenya

- Kenya signed the ITPGRFA in 2006.
- The International Treaty on Plant Genetic Resources for Food and Agriculture (ITGRFA) of FAO, 2004 - Creates a framework for national strategies and international cooperation regarding the conservation, use and exchange of PGRFA.

FAO-ITPGRFA

- ITPGRFA is enforced by FAO and is implemented by
 - CGIARS (ICRAF, CYMMIT, ICRISAT..)
 - The Genetic Resources Research Institute (GeRRI), under the Kenya Agricultural and Livestock Research Act of 2013 under the Ministry of Agriculture Livestock and Fisheries (MOALF) in Kenya.

FAO-ITPGRFA

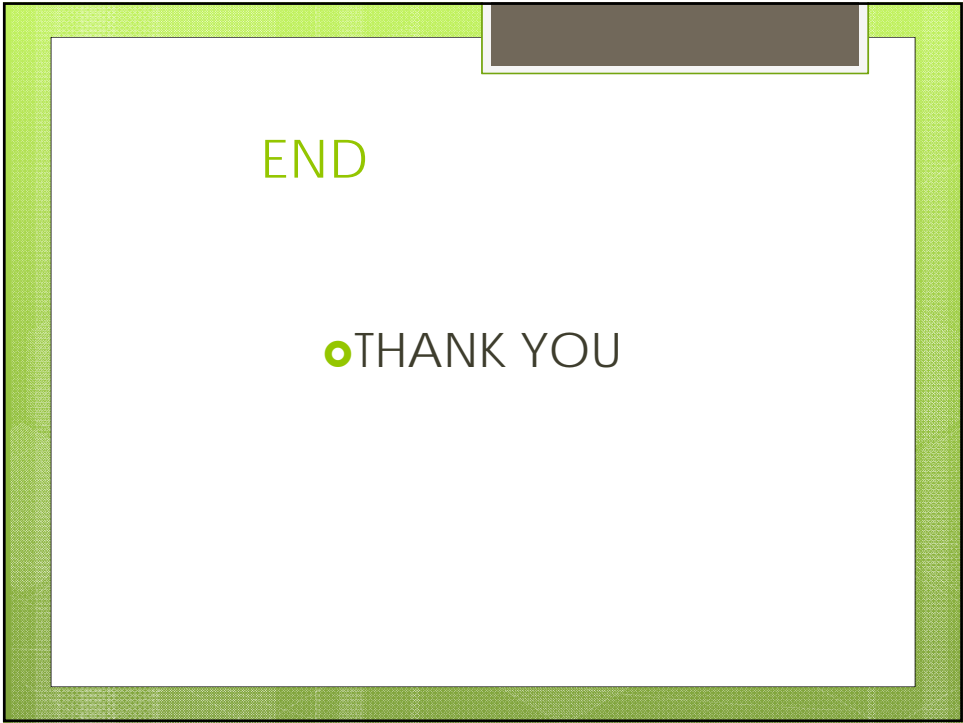
- Under the ITPGRFA, all germplasm is provided to users royalty free.
- Users/breeders usually sign a material transfer agreement of standard material transfer agreement (SMTA).
- For example at CIMMYT sends out accompanied with an STMA.
- The SMTA/MTA usually has conditions under which the germplasm can be used.

FAO-ITPGRFA in Kenya

- The synergies between UPOV and FAO-ITPGRFA on farmers' rights and farm saved seeds are issues of international debate in terms of bio- prospecting and benefit sharing.
- The government of Kenya has formed a national steering committee comprising of various lead agencies such as Kenya Plant Health and Inspectorate Service (KEPHIS), GeRRI, National Museum of Kenya (NMK), NEMA, National Council of Science and Technology (NCST), Kenya Industrial Property Institute (KIPI) to come up with measures on how Kenya should ratify the Treaty.

Managing Expectations

- Harmonization of legislations and policies relating to plant genetic resources (complex). Since in some instances, implementation is done through different legislation or policies leading to weak coordination.
- Coordination and coherence in the implementation of international initiatives in Kenya. In all these conventions, no proper mechanisms have been put in place to complement one another, which is a major challenge to implementing parties.
- Comprehensive sensitization exercises of all stakeholders including local communities on the international initiatives.



END

● THANK YOU