



## **KENYA CASE STUDY**

**Introduction to Kenya's new TK law.  
TK documentation and database project, and  
associated challenges**

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# Introduction

- Kenya has incorporated this into its **National Development Agenda** through the Constitution of Kenya 2010 Article 11 , Article 40.5 and Article 69 >**state's recognition of support, promotion and protection of intellectual property rights of the people of Kenya.**



# KENYA'S TK JOURNEY

- 2006-2009: Development of TK Policy
- 2009 -2010: Constitutional Provisions
- 2010-2016:Developing of legal framework of TK and TCE's. Multi Agency Team
- 2016 to date: **Operationalize/amend the Act and do regulations- Multi Agency Team**
- IPLC were involved during the formulation of the policy by countrywide consultations with various indigenous communities: All stages



# Legislation

- Protection of Traditional Knowledge and Traditional Cultural Expressions Act, 2016
- Environmental Management and Coordination Act, 1999
- The Environmental Management and Coordination (Conservation of Biological Diversity and Resources, Access to Genetic Resources and Benefit Sharing) Regulations, 2006
- GR Bill > to be done



# DOCUMENTATION OF TK

- Within the communities> community based and controlled databases
- By the lead agencies> as record against loss
- National register> TKDR Kenya Copyright Board KECOBO



# Maintenance of registers by county governments.

- **transmit the complete and validated information of TK and TCEs**
- **collecting and compiling** information relating to traditional knowledge and cultural expressions—
- the **primary registration** of traditional knowledge and cultural expressions within a county for the purposes of recognition under this Act;
- the **receipt, documentation, storage and updating of information** relating to traditional knowledge and cultural expressions from communities within a county;



## Cont'd

- the **preservation and conservation** of traditional knowledge and cultural expressions;
- the **protection and promotion** of the traditional knowledge and cultural expressions of communities within a county; and
- the **facilitation of collaboration, access to or the sharing of information and data** relating to traditional knowledge and cultural expressions between county governments.



# Responsibility of National Government

- The National Government shall, under this Act be responsible for the establishment and maintenance of the **Repository at the Kenya Copyright Board**
- The county governments and other institutions that deal with matters relating to traditional knowledge and cultural expressions **shall cooperate** with the national government in the establishment and maintenance of the Repository. (TKDR)





## Role of customary law in an international instrument for the protection of TK

- Determining the **equitable sharing of benefits** from the commercial exploitation of TK
- Determining the **distribution of damages/compensation** in the infringement of IPRs
- Importance of recognizing the international instrument > **national treatment, reciprocity, mutual recognition**



# CHALLENGES

- Lack of a comprehensive and integrated database
- Building trust between government and the IPLCs
- Capacity and technical challenges > institutional framework
- Enforcement mechanisms



## **LOOKING FORWARD**

- Assist IPLC's in coming up with community logos, brands, designs to encourage creativity.
- Establishing inter linkages and collaborations between stakeholders.(county governments)
- Capacity Building and Technical Assistance: design and maintenance of databases
- Sensitization and awareness creation to the communities, government, donors and other relevant stakeholders(PIC,MAT,EBS ABS)



## PENDING AGENDA/WAY FORWARD

- Implementation of Act which requires a budgetary allocation(\$5M)
- Traditional Knowledge Digital Repository Project (TKDR)(\$7.5M )
- Awareness creation of the Act (\$5 M)
- Curriculum of TK/ TCEs in schools(\$10M)





# THANK YOU

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