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 Co-ordination (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;
• 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 co-operate 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)
• Implementation of Act which requires a budgetary allocation($5M)
• Traditional Knowledge Digital Repository Project (TKDR)($7.5M)
• Awareness creation of the Act ($5M)
• Curriculum of TK/ TCEs in schools($10M)
THANK YOU!

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