



Legal Traditional Knowledge Protection in Kenya.

Traditional knowledge evolution and law process in Kenya: 2006-2016

2006-Formation of a Taskforce by the State Law Office to:

1. To develop a National Policy
2. Draft Bill and regulations

2009-Formation of a Traditional knowledge and Genetic Resources Unit at KIPI

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2009-Formation of a Traditional knowledge and Genetic Resources Unit at KIPi on 30th March 2009 to develop a traditional knowledge and associated genetic resources database and simplified classification system in Kenya.

Traditional knowledge evolution and law process in Kenya.....

- ▶ **2010**-Promulgation of the constitution with provisions on protection of intellectual property rights associated with traditional knowledge and associated genetic resources.(Articles 11, 40.5 and 69), among others.
- ▶ **2016**-The Kenyan Traditional Knowledge Bill is signed into law by the president

TK Act, and how it relates to access, use and benefit sharing

- ▶ Conservation of biological diversity
- ▶ Sustainable use of its components
- ▶ Fair and equitable sharing of benefits accruing from utilization

Constitutional provisions in Article 11

This Constitution recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.

The State shall—

- ▶ (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
- ▶ (b) recognise the role of science and indigenous technologies in the development of the nation; and
- ▶ (c) promote the intellectual property rights of the people of Kenya.

Parliament shall enact legislation to—

- ▶ (a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and
- ▶ (b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.

Constitutional provisions in Article 69.

- ▶ (a) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- ▶ (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- ▶ (d) encourage public participation in the management, protection and conservation of the environment;
- ▶ (e) protect genetic resources and biological diversity;
- ▶ (h) utilize the environment and natural resources for the benefit of the people of Kenya.

NEMAs BIODIVERSITY REGULATIONS

- ▶ NEMAs Biodiversity Regulations of 2006-Annex 1

NAGOYA PROTOCOL

- ▶ Nagoya Protocol Articles 6 and 7, and the Annex.

ARIPOs SWAKOMPOND PROTOCOL

- ▶ Signatory to ARIPOs Swakompond Protocol on protection of Traditional knowledge.

TRIPS -Article 29.(3 biss)-Patent Applications

- ▶ Developing countries, led by India, submitted a proposal to the World Trade Organization (WTO) suggesting changes to international trade law to include specific requirements for disclosure of origin of Biological Resources and/or Associated Traditional knowledge in patent applications.
- ▶ It requires the patentee to show that the owners of the material agreed to let them use it and that there will be appropriate sharing between the two parties of potential commercial or other benefits arising from the process.

NEMAs BIODIVERSITY REGULATIONS-2006

- ▶ Review the regulations in line with the constitutional provisions, Nagoya and Swakompond protocols.

TRADITIONAL KNOWLEDGE ACT

- ▶ Development and management of the databases at the National and County levels.
- ▶ Manage access, development and commercialization **beyond the traditional context.**

WAY FORWARD

- ▶ Development of the implementing regulations and involvement of all stakeholders in the process.

Thank you, and God bless!!!