

**WIPO REGIONAL EXPERT MEETING ON THE  
ESTABLISHMENT OF A CARIBBEAN FRAMEWORK  
FOR THE PROTECTION OF TRADITIONAL  
KNOWLEDGE, FOLKLORE AND GENETIC  
RESOURCES**

**Kingston, Jamaica  
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**ARIPO REGIONAL LEGAL INSTRUMENT ON  
THE PROTECTION OF TK AND FOLKLORE**

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# OUTLINE OF PRESENTATION

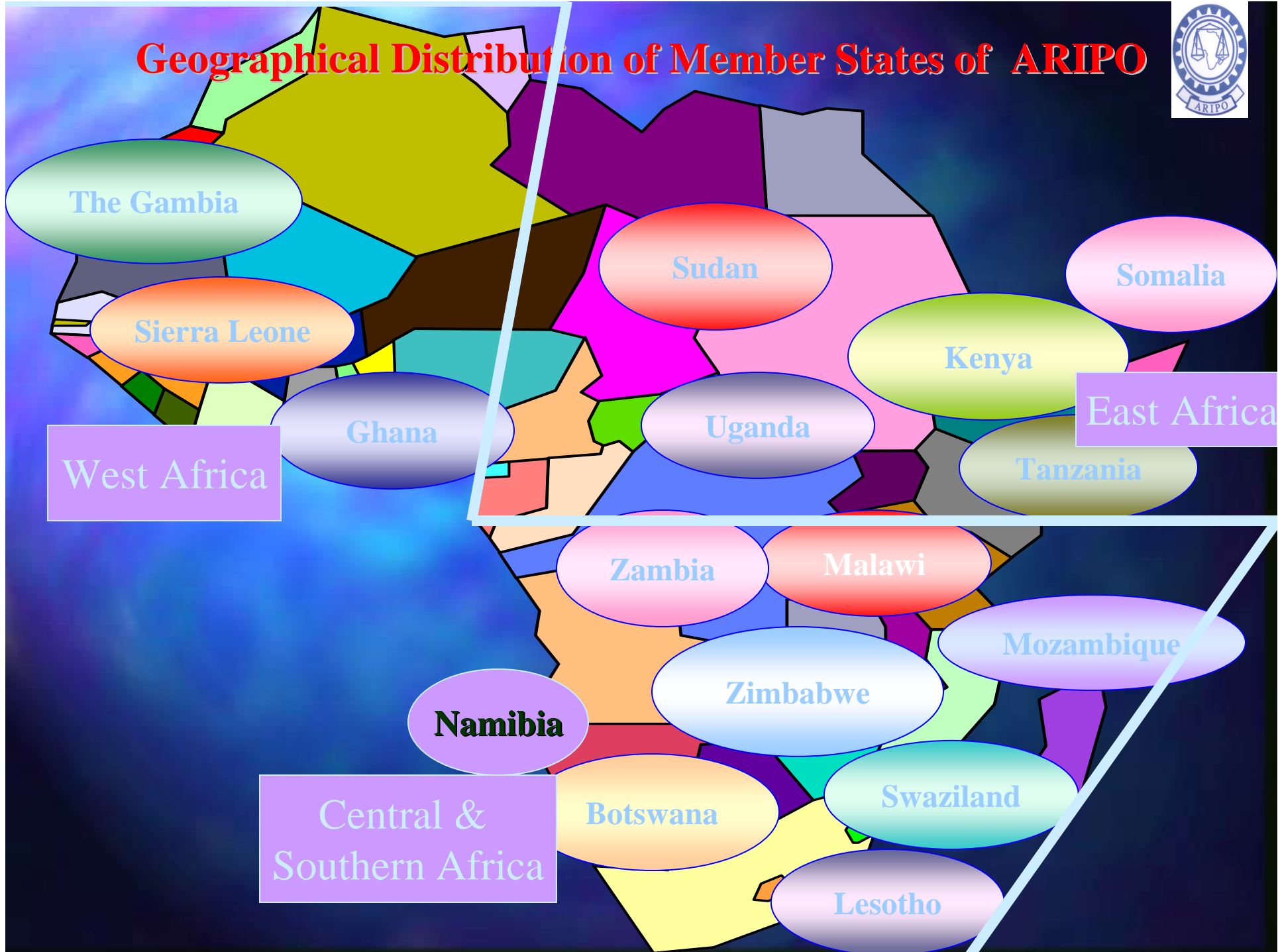
- BRIEF INTRODUCTION OF ARIPO
- ARIPO ROAD MAP FOR LEGISLATIVE DEVELOPMENT
- PROVISIONS OF ARIPO INSTRUMENT ON THE PROTECTION OF TK AND TCEs
- NEXT STEPS
- CHALLENGES FACING THE IMPLEMENTATION OF THE INSTRUMENT

# OVERVIEW OF ARIPO

## Strategic Goals

- Promotion of an IP culture
- Development of balanced/responsive IP laws
- Delivery of quality services in the grant, registration and administration of industrial property titles
- Enhancement of cooperation, partnerships and institutional linkages
- Awareness promotion and capacity building

# Geographical Distribution of Member States of ARIPO

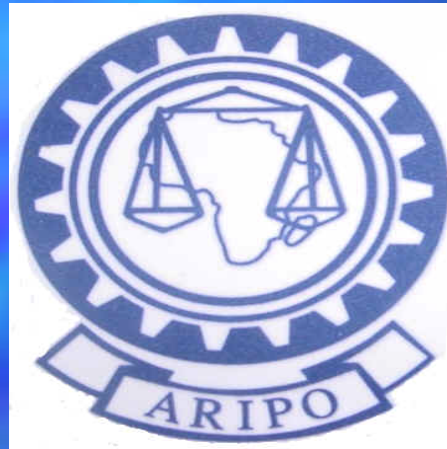


# GOVERNANCE OF ARIPO



# ARIPO's Activities

Grant and  
Administration  
of IP Titles



Promotion,  
Development  
and  
Harmonization  
of IP Laws

IP Services  
Techno-economic  
development

# Capacity Building and Outreach

Public Sector & Policy-Makers



General Public & Civil Society

# Our New Mandates

- COPYRIGHTS AND RELATED RIGHTS(since 2002)
- PROTECTION OF GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE (since 2000, extended mandate in 2002)
  - Legislative development
  - Development of databases



# ARIPO'S ROAD MAP FOR TK and EoF PROTECTION

- **Development of legislative instruments**
  - \* **Synthesis of shared core principles**
  - \* **Draft substantive provisions**
  - \* **Review of substantive provisions by Experts**
- **Establishment of databases on TK**
  - \* **Study visits to China and India**
  - \* **Implementation plan**
  - \* **Prototype development**
  - \* **Pilot phase**
- **Sensitization and Training**
  - \* **National workshops and awareness campaigns**
  - \* **Tailor-made courses for TK holders**

# ARIPO's ROAD MAP FOR LEGISLATIVE DEVELOPMENT

- Proposals based on the Report of WIPO Fact Missions for consideration by the competent Organs of ARIPO
- Participation in global, regional and national debates and for a
- Amendment of ARIPO Protocol on Patents and Industrial Designs
- Development of ARIPO Concept Paper (Note)

## ARIPO ROAD MAP Contd

- Development of ARIPO Legislative framework
- Implementation of the framework and processes
- Establishment of ARIPO Protocol, databases and Centre of Excellence on the protection of genetic resources, TK and TCEs

# CONSULTATIVE PROCESSES

- Policy and Political decisions
- Expert Review Meetings
- ARIPO-OAPI Harmonization processes
- National and Regional Consultations

# THE REGIONAL LEGAL INSTRUMENT

## PREAMBLE

PART I: PRELIMINARY PROVISIONS

PART II: PROTECTION OF TRADITIONAL  
KNOWLEDGE

PART III: PROTECTION OF EXPRESSIONS OF  
FOLKLORE

PART IV: GENERAL PROVISIONS

# PREAMBLE

- (i) Recognize the intrinsic value of TK and EoF**
- (ii) Convinced that TK and EoF are frameworks for ongoing innovation and Creativity**
- (iii) Need to respect the dignity, integrity, spiritual values and continuing customary use of TK and EoF**
- (iv) Concerned at the gradual disappearance, erosion, misuse, exploitation and misappropriation of TK and EoF**
- (v) Empower TK holders and Communities**
- (vi) Support traditional knowledge systems**
- (vii) Contribute to preservation and safeguarding of traditional knowledge**
- (viii) Prevent unlawful acts and preclude the grant and exercise of improper intellectual property rights**
- (ix) Promote innovation and creativity**
- (x) Permit intellectual and technological exchange**
- (xi) Promote equitable benefit sharing**
- (xii) Promote community development and legitimate trading activities**
- (xiii) Need to maintain the specific characteristics of the collective and intergenerational nature of TK and EoF including their evolving character**

# PART I: PRELIMINARY PROVISIONS

## [Art 1] Purpose of instrument

- To protect TK and EoF against infringement, misappropriation, misuse and exploitation beyond their traditional context

## [Art 2] Definitions

- Community
- TK and EoF
- Appropriate authority

## **PART II. PROTECTION OF TRADITIONAL KNOWLEDGE**

- [Art 3] Protection criteria for TK**
- [Art 4] Formalities relating to protection of traditional knowledge**
- [Art 5] Beneficiaries of protection of TK**
- [Art 6] Rights conferred to holders of TK**
- [Art 7] Assignment and Licensing**
- [Art 8] Equitable remuneration**
- [Art 9] Recognition of Knowledge holders**
- [Art 10] Exceptions and Limitations**
- [Art 11] Compulsory license**
- [Art 12] Duration of Protection**
- [Art 13] Administration and Enforcement**
- [Art 14] Access to TK associated with genetic resources**



## **PART III. PROTECTION OF EXPRESSIONS OF FOLKLORE**

**[Art 15] Protection criteria for EoF**

**[Art 16] Formalities relating to protection of Expressions of folklore**

**[Art 17] Beneficiaries of protection of EoF**

**[Art 18] Protection of EoF against unlawful acts**

**[Art 19] Exceptions and Limitations**

**[Art 20] Duration of Protection**

**[Art 21] Management of Rights**

## PART IV: GENERAL PROVISIONS

[Art 22] Sanctions. Remedies and Enforcement

[Art 23] Regional protection of TK and EoF

[Art 24] Transitional Measures

[Art 25] Protection under other legal mechanisms

# SPECIFIC PROVISIONS OF INTEREST

## ARTICLES 4 AND 16

### *Formalities relating to protection of traditional knowledge*

- (1) Protection of traditional knowledge shall not be subject to any formality.**
- (2) In the interests of transparency, evidence and the preservation of traditional knowledge, relevant national authorities of Contracting States and regional bodies may maintain registers or other records of the knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of the traditional knowledge holders concerned.**
- (3) The registers maintained under paragraph (2) of this article may be associated with specific forms of protection, and shall not compromise the status of hitherto undisclosed traditional knowledge or the interests of holders of traditional knowledge in relation to undisclosed elements of their knowledge**

## ARTICLE 5

### *Beneficiaries of protection of traditional knowledge*

The owners of the rights under this Part shall be the holders of traditional knowledge, namely the local and traditional communities and **recognized individuals within the communities**, who create, preserve or transmit knowledge in a traditional and intergenerational context in accordance with the provisions of Article 3.

## ARTICLE 6

### *Rights conferred to holders of traditional knowledge*

- (1) This instrument shall confer on the owners of rights referred to in Article 5 the exclusive right to exploit their traditional knowledge.
- (2) Subject to the conditions and limits established by this instrument, owners of rights in traditional knowledge shall have the right to prohibit any person from exploiting and disseminating their protected traditional knowledge without their prior informed consent.
- (3) For the purposes of this instrument, the term "exploitation" with reference to protected traditional knowledge shall refer to any of the following acts:
  - (a) where the traditional knowledge is a product:
    - (i) manufacturing, importing, offering for sale, selling or using the product beyond the traditional context; or
    - (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context; and
  - (b) where the traditional knowledge is a process:
    - (i) making use of the process beyond the traditional context; or
    - (ii) carrying out the acts referred to under subparagraph (a) of this paragraph with respect to a product that is a direct result of the use of the process.
- (4) In addition to all other rights, remedies and action available to them, the owners of the rights in tradition knowledge shall have the right to institute legal proceedings against any person who carries out any of the acts mentioned in paragraph (3) of this article without the owners' permission.

## ARTICLE 7

### *Assignment and licensing*

- (1) Owners of rights in traditional knowledge shall have the right to assign and conclude licensing agreements, notwithstanding that traditional knowledge belonging to a local or traditional community may not be assigned.
- (2) All access, authorizations, assignments or licences granted in respect of protected traditional knowledge shall be granted in writing, otherwise they shall be of no force or effect.
- (3) A document drawn up for the purpose of paragraph (2) of this article shall be approved by the appropriate authority, failing which the document shall be void.

## **ARTICLE 11**

### ***Compulsory licence***

- (1) Where protected traditional knowledge is not being sufficiently exploited by the rights holder, or where the holder of rights in traditional knowledge refuses to grant licences subject to reasonable commercial terms and conditions, a Contracting State may, in the interests of public security or public health, grant a compulsory licence in order to fulfil national needs.
- (2) In the absence of an agreement between the parties, an appropriate amount of compensation for the compulsory licence shall be fixed by a court of competent jurisdiction.

## ARTICLE 12

### *Duration of protection of traditional knowledge*

Traditional knowledge shall be protected for so long as the knowledge fulfils the protection criteria referred to under article 3, **except that where traditional knowledge belongs to an individual, protection shall last for 25 years following the exploitation of knowledge beyond its traditional context by the individual.**



## ARTICLE 14

### *Access to traditional knowledge associated with genetic resources*

Authorization under this instrument to access protected traditional knowledge associated with genetic resources shall not imply authorization to access the genetic resources derived from the traditional

## ARTICLE 23

### *Regional protection of traditional knowledge and expressions of folklore*

- (1) Existing or new regional organizations may be entrusted with the task of:
  - (a) settling cases of concurrent claims from communities of different countries with regard to traditional knowledge; and
  - (b) resolving opposing claims to expressions of folklore by communities from different countries.
- (2) For the purpose of paragraph (1) of the article, the organizations referred to in that paragraph shall make use of customary laws, local information sources and extrajudicial means for settling disputes, and any other practical mechanism which the organization may consider necessary.

## ARTICLE 25

### *Protection under other legal mechanisms*

The protection of traditional knowledge and expressions of folklore provided for by this instrument shall not preclude alternative legal protection mechanisms.

# NEXT STEPS

## I IMPLEMENTING REGULATIONS AND ENFORCEMENT

- Bio-collecting society model/international enforcement pyramid
- Phyto-Trade Africa Bio-prospecting Guidelines
- Others

## II THE DEVELOPMENT OF ARIPO PROTOCOL ON TK AND FOLKLORE

- Formulation of the ARIPO Legal Instrument into a draft Protocol with Administrative Guidelines
- Review of the draft Protocol by Technical Expert Committee as well as stakeholder institutions
- Diplomatic Conference for the adoption of the Protocol

# CHALLENGES FACED

- Administration of TK and TCEs that cut across national boundaries and multicultural in nature
- Effective royalty distribution mechanism and enforcement
- Formality requirement and registration of TK/TCEs at the Regional Levels
- The relationship between conventional IP and the sui generis system
- The International dimension

THANK YOU FOR YOUR  
ATTENTION

