



African Regional Intellectual Property Organization

Status of Development of the IP Legal and Institutional Framework in the ARIPO Member States

Fernando dos Santos
Director General

**Speke Resort Munyonyo,
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**Making better use of Intellectual Property for business
competitiveness and development in Africa**

Enforcement of IPRs (1)

- 15 Member States of ARIPO are members of WTO, thus party to TRIPS
- Liberia, Sao Tome & Principe and Sudan started negotiations to join
- Somalia is yet to undertake the process (not member of Harare Protocol)
- TRIPs - Part III — Enforcement of Intellectual Property Rights
- Enforcement measures imposed by Arts 41 – 61:
 - Legal framework for enforcement
 - Institutional framework for enforcement
 - Civil and administrative procedures
 - Provisional measures
 - Criminal procedures
 - Border measures
- ARIPO Member States are compliant with TRIPs
- LDCs ARIPO Member States did not take advantage of TRIPs flexibilities



Institutional Framework

All ARIPO Member States established specialized institutions to deal with IP:

- **Botswana** - Companies and Intellectual Property Authority
- **Ghana** - Registrar General's Department, (Industrial Property); Copyright Department (Copyright) - Ministry of Justice
- **Kenya** - The Kenya Copyright Board (KECOBO) (copyright); Kenya Industrial Property Institute (KIPI) (Industrial Property)
- **Lesotho** - Registrar General's Office, Ministry of Law and Constitutional Affairs
- **Liberia** - Liberia Copyright Office (Copyright); Liberia Industrial Property Office (LIPO) (Industrial Property)
- **Malawi** - Copyright Society of Malawi (COSOMA) (copyright); Department of the Registrar General, Ministry of Justice and Constitutional Affairs (Industrial Property)
- **Mozambique** - National Institute of Book and Records (INLD) (Copyright); Industrial Property Institute (Industrial Property)
- **Namibia** - Copyright Services, Ministry of Information and Communication Technology (Copyright); Trade and Commerce Department, Ministry of Trade and Industry (Industrial Property)
- **Rwanda** - Office of the Registrar General



Institutional Framework (2)

- **Sao Tome & Principe** - Directorate General of Culture Arts and Entertainment Promotion Center, Ministry of Education, Culture, Youth and Sports (Copyright); Industrial Property National Services (Industrial Property)
- **Sierra Leone** - Sierra Leone Intellectual Property Organisation (SLIPO) (Copyright); Registrar's General Department (Industrial Property)
- **Somalia** - Copyright Office, Ministry of Culture and Higher Education (Copyright); Patents and Trade Marks Office, Ministry of Industry (Industrial Property)
- **Sudan** - Protection of Copyright and Related Rights, Literary and Artistic Works Council, Ministry of Culture and Information (Copyright); Registrar General of Intellectual Property, Ministry of Justice (Industrial Property)
- **Swaziland** - Intellectual Property Office
- **Uganda** - Uganda Registration Services Bureau (URSB)
- **Tanzania** - Copyright Society of Zanzibar (COSOZA); Copyright Society of Tanzania (COSOTA) (Copyright); Business Registrations and Licensing Agency (BRELA); Zanzibar Business and Property Registration Agency (BPRA)
- **Zambia** - Copyright Administration (Copyright); Patents and Companies Registration Agency (PACRA) (Industrial Property)
- **Zimbabwe** - Zimbabwe Intellectual Property Office (ZIPO)



IP Legal Framework Post-TRIPs

In general, the Laws are new, modern and post-TRIPs

Exceptions are marked with *

COUNTRY	INDUSTRIAL PROPERTY			COPYRIGHTY
	PATENTS	IND. DESIGNS	TRADEMARKS	
	YEAR OF ENACTMENT OF THE LAW			
BOTSWANA	2010	2010	2010	2006
GAMBIA	1989 (2007)	1989 (2007)	1989 (2007)	2004
GHANA	2003	2003	2004	2005
KENYA	2001	2001	2007	1995
LESOTHO	1989 (2007)	1989 (2007)	1989 (2007)	1989*
LIBERIA	2003	2003	2003	1997
MALAWI	1986*	1985*	1967*	1989 (2001)
MOZAMBIQUE	2006	2006	2006	2001
NAMIBIA	1917*	1917*	1974*	1994
RWANDA	2009	2009	2009	2009
SAO TOME & PRINCIPE	2001	2001	2001	1966*
SIERRA LEONE	2012	2012	2012	2011
SUDAN	1971*	1974*	1969*	1996
SWAZILAND	1997	1997	1981*	1912*
UGANDA	1993 (2002)	1993 (2002)	2010	2006
TANZANIA	1995		1986*	1999
ZAMBIA	1965*	1994	1994	1994
ZIMBABWE	2002	2001	2001	2004



Civil, Criminal, Administrative, Provisional and Border Measures

Legislation of ARIPO member States provides for Civil, Administrative, provisional and criminal measures

Term of imprisonment indicated refers to the maximum established by the Law; fines are also provided *

Average Criminal sanctions are:
 •5 years for Industrial Property
 •3 years for Copyright

Maximum imposed: 10 years

COUNTRY	MEASURES REQUIRED BY TRIPS				
	Civil	Administrative	Criminal*	Provisional	Border
BOTSWANA	✓	✓	IP(3Yrs) © (10 Years)	✓	✓
GAMBIA	✓	✓	IP 6 months © (3 Years)	✓	-
GHANA	✓	✓	IP(2Yrs) © (3 Years)	-	✓
KENYA	✓	✓	IP(5Yrs) © (10 Years)	✓	✓
LESOTHO			IP(10Yrs) © (5 Years)		
LIBERIA	✓	✓	IP(5Yrs) © (10 days)	✓	-
MALAWI	✓	✓	IP(5Yrs) © (1 Year)	✓	✓
MOZAMBIQUE	✓	✓	© (? Year)	✓	✓
NAMIBIA	✓	✓	© (5 Years) IP(5Yrs)	✓	-
RWANDA	✓	✓	IP(5Years) © (10 Years)	✓	✓
SAO TOME & PRINCIPE	✓	✓	© (1 Year)	✓	-
SIERRA LEONE	✓	✓	IP(1Year) © (1 Year)	✓	-
SUDAN	✓	✓	IP(1Year) © (3 Years)	✓	-
SWAZILAND	✓	✓	IP(5Years) ©(2Months)	✓	-
UGANDA	✓	✓	TM (5 Years) © (3 Years)		
TANZANIA	✓	✓	IP(5Years) © (3 Years)	✓	-

COUNTRY	MEASURES REQUIRED BY TRIPS				
	Civil	Administrative	Criminal*	Provisional	Border
ZAMBIA	✓	✓	IP(5 Yrs) © (2 Yrs)	✓	-
ZIMBABWE	✓	✓	© (2 Yrs)	✓	✓



Specialized IP Courts (1)

Specialized IP Courts are available in the following countries:

ARIPO

- Board of Appeals - Review appeal cases on industrial property matters

Kenya

- Industrial Property Tribunal of the Republic of Kenya - exclusive jurisdiction to hear appeals arising from the decisions of the Managing Director of the Kenya Industrial Property Institute (KIPI) and to adjudicate upon a number of other proceedings relating to licenses, revocation or invalidation, and infringement.

Zimbabwe

- Intellectual Property Tribunal (2001) - jurisdiction to hear and determine any reference, application, appeal or other matter in terms of the Industrial Design Act, the Patents Act, the Trade Marks Act, the Copyright and Neighbouring Rights Act, the GIs Act or the Integrated Circuit Layout-Design Act.

Mozambique

- Administrative court – review the decisions taken the IP Office
- The Commercial Court of the Maputo City is the sole competent to hear IP cases arising from private disputes on IP
- Customs Court – hear cases related to import/export goods



Specialized IP Courts (2)

Malawi

- Patents Tribunal – appeals from the decisions of the Registrar concerning patents registered designs and trademarks. Decisions of the Tribunal may be appealed to the High Court

Rwanda

- Commercial Branch (High Court) – hear all commercial case, including IPRs cases

Sudan

- Khartoum Commercial and Intellectual Property Rights Court – special court for IPRs and other commercial cases. Competent to impose fines and imprisonment

Tanzania

- Commercial Division of the High Court – Most of the cases heard were pertaining trade and service marks. No case was presented on Patents and Copyright

Uganda

- Commercial Court of the High Court – Number of IPRs cases is growing



Ratification of ARIPO Protocols



Making better use of Intellectual Property for business competitiveness and development in Africa

MEMBERSHIP

- Botswana
- Gambia
- Ghana
- Kenya
- Liberia
- Lesotho
- Malawi
- Mozambique
- Namibia
- Rwanda
- Sao Tome & Principe
- Sierra Leone
- Somalia
- Sudan
- Swaziland
- Tanzania
- Uganda
- Zambia
- Zimbabwe

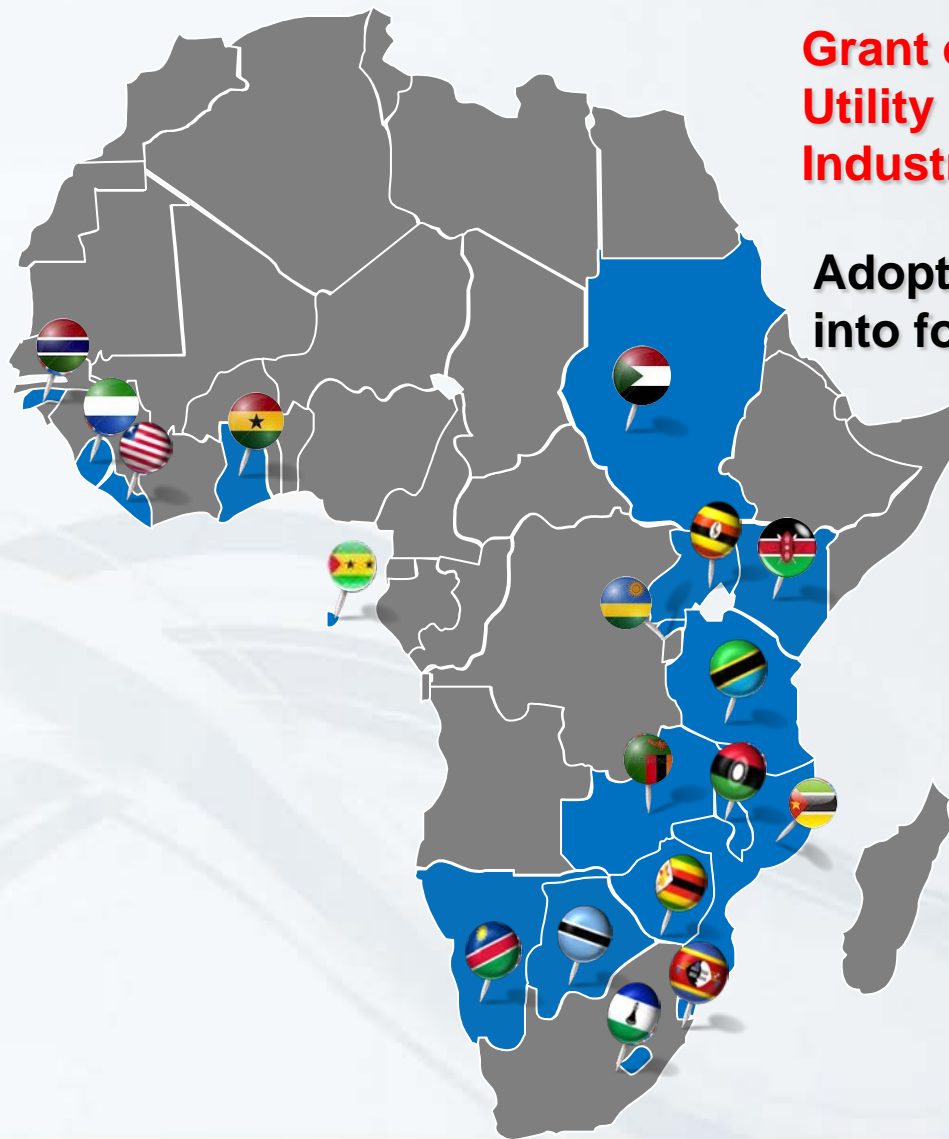
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HARARE PROTOCOL

- Botswana
- Gambia
- Ghana
- Kenya
- Liberia
- Lesotho
- Malawi
- Mozambique
- Namibia
- Rwanda
- Sao Tome & Principe
- Sierra Leone
- Sudan
- Swaziland
- Tanzania
- Uganda
- Zambia
- Zimbabwe

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**Grant of Patents,
Utility Models and
Industrial Designs**

**Adopted in 1982 (entered
into force in 1984)**



BANJUL PROTOCOL

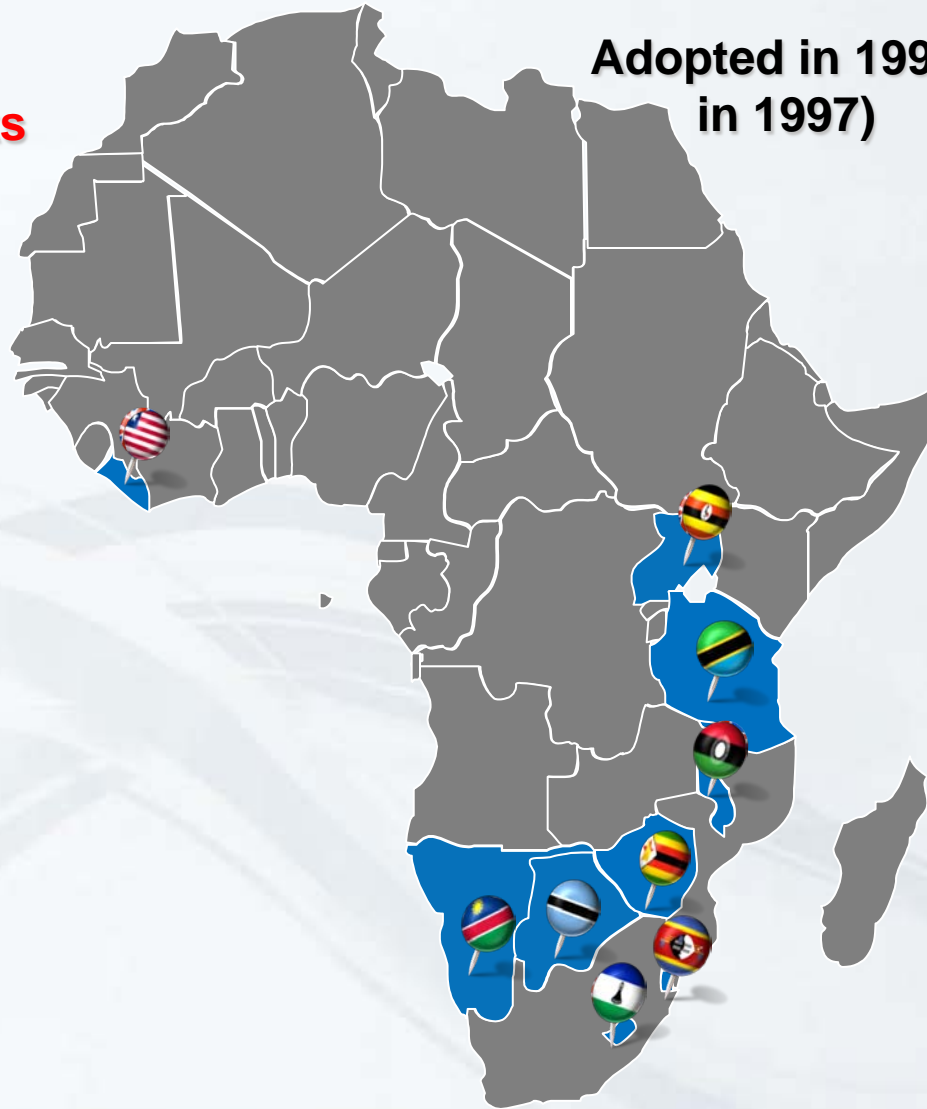
Adopted in 1993 (entered into force in 1997)

Registration of Marks

MEMBERSHIP

- Botswana
- Liberia
- Lesotho
- Malawi
- Namibia
- Swaziland
- Tanzania
- Uganda
- Zimbabwe

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Domestication of International IP Instruments

- 16 Member States domesticated Harare Protocol
- 5 out of the 9 Members of Banjul Protocol domesticated it
- 12 Member States of ARIPO domesticated the PCT
- 6 Member States domesticated the Madrid System

COUNTRY	ARIPO Protocol		WIPO Instruments	
	Harare	Banjul	PCT	Madrid
BOTSWANA	✓	✓	✓	✓
GAMBIA	✓	N/A	N/A	N/A
GHANA	✓	N/A	✓	×
KENYA	✓	N/A	✓	✓
LESOTHO	✓	✓	✓	✓
LIBERIA	✓	✓	×	×
MALAWI	✓	×	×	N/A
MOZAMBIQUE	✓	N/A	✓	✓
NAMIBIA	✓	✓	✓	✓
RWANDA	✓	N/A	✓	✓
SAO TOME & PRINCIPE	×	N/A	×	×
SIERRA LEONE	✓	N/A	✓	
SUDAN	×	N/A	×	×
SWAZILAND	✓	×	✓	×
UGANDA	✓	×	✓	N/A
TANZANIA	✓	×	✓	N/A
ZAMBIA	✓	N/A	×	×
ZIMBABWE	✓	✓	✓	N/A



Example of Provisions of domestication of ARIPO Protocols

- Zimbabwe
- *Patents Act,*

Chapter 26:03, as amended up to Act No. 14/2002, Section 82): (2) Any patent, in respect of which Zimbabwe is a designated State, granted to an applicant by the African Regional Industrial Property Organization in accordance with the provisions of the Protocol set out in the Schedule shall, mutatis mutandis, have the same effect in Zimbabwe as a patent granted under this Act” .

Trade Marks Amendment Act, 2001

Section 97 (A) (1) (4): “Any trade mark which has been registered by the ARIPO Office in accordance with the Protocol and in respect of which Zimbabwe has been designated—(a) shall have the same effect, mutatis mutandis, as a trade mark registered under this Act; and (b) shall be accorded the same protection, mutatis mutandis, as a trade mark registered in accordance with section ninety-seven” .



Development of the Regional Framework for the Protection of Biological Diversity



Making better use of Intellectual Property for business competitiveness and development in Africa

Protection of Biological Diversity at ARIPO

Patents and Utility Models

Industrial Designs

Trademarks

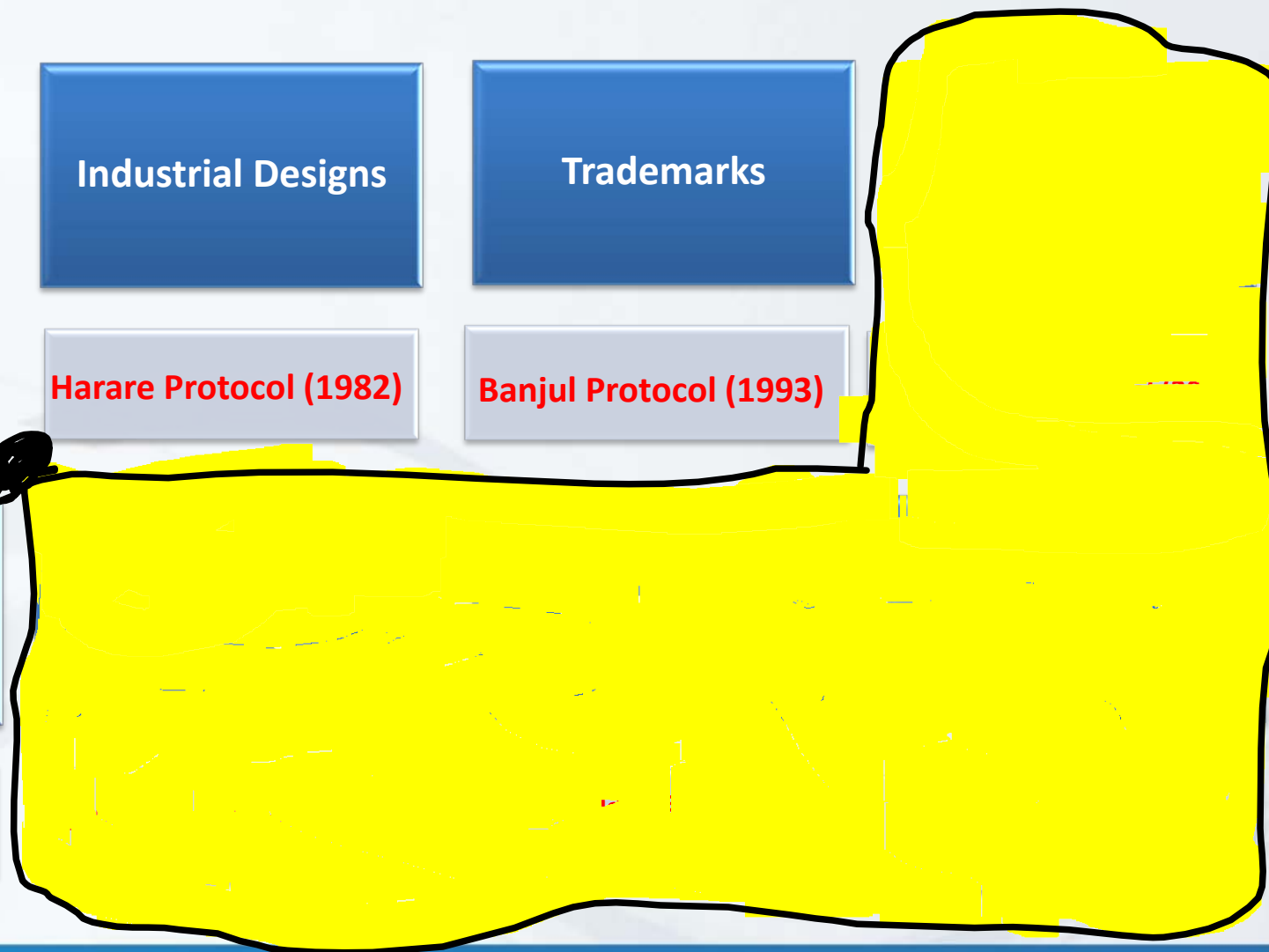
Harare Protocol (1982)

Harare Protocol (1982)

Banjul Protocol (1993)

Copyright

Council Min (2002)



MANDATE ON THE PROTECTION OF TRADITIONAL KNOWLEDGE, FOLKLORE AND GENETIC RESOURCES

PROTECTION OF TK AND FOLKLORE

- Development of legislations
- Documentation initiatives
- Capacity building and awareness creation

PROTECTION OF GENETIC RESOURCES

- Development of ABS guidelines
- Establishment of Centre of Excellence on Biodiversity

PROTECTION OF NEW VARIETIES OF PLANTS

- Development of Regional framework for the protection of new varieties of plants
- Providing Technical support to the member states of ARIPO



ADOPTION AND RATIFICATION/ACCESSION OF THE SWAKOPMUND PROTOCOL

- The Swakopmund Protocol was adopted in a Diplomatic Conference held in August 2010 in Swakopmund, Namibia
- Signatory member states: Botswana, Ghana, Kenya, Lesotho, Liberia, Mozambique, Namibia, Zambia and Zimbabwe.
- Ratifications: Botswana, Malawi, Namibia, Rwanda, The Gambia and Zimbabwe
- The Swakopmund Protocol will **enter into force May 11, 2015**



Need for the Development of Plant Variety System in the ARIPO Member States



INTRA-AFRICAN TRADE AND FOOD NEEDS

- Intra-african trade accounts only for **12%** of continent total trade with the world [62% Europe; 50% Asia; 25% Latin America]
- **72% Africa exports** (unprocessed hard commodities): **mineral fuels, pearls and precious stones and metals; ores slag and ash and copper**
- **Africa priority: Food!** Millennium Development Goals (MDG), Nr 1: Eradicate extreme poverty and **hunger!**
- Production of food is the cornerstone MDG 1
- Africa's population will double to 2 billion by 2050
- Continent's food demand will double next decade (World Bank)

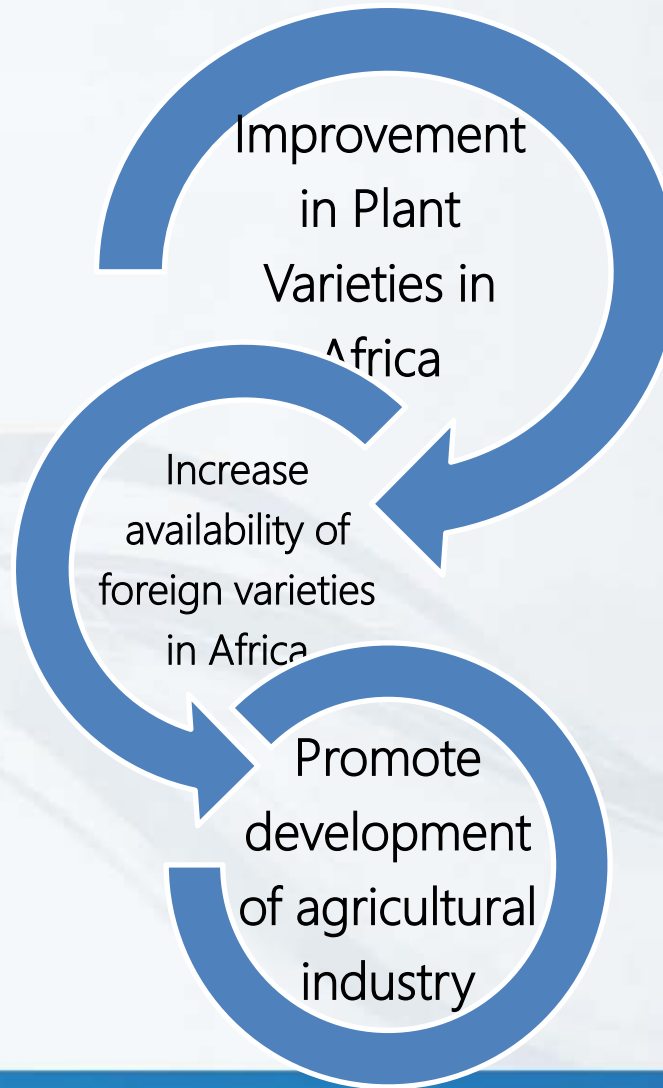


AGRICULTURAL PRODUCTIVITY IN AFRICA

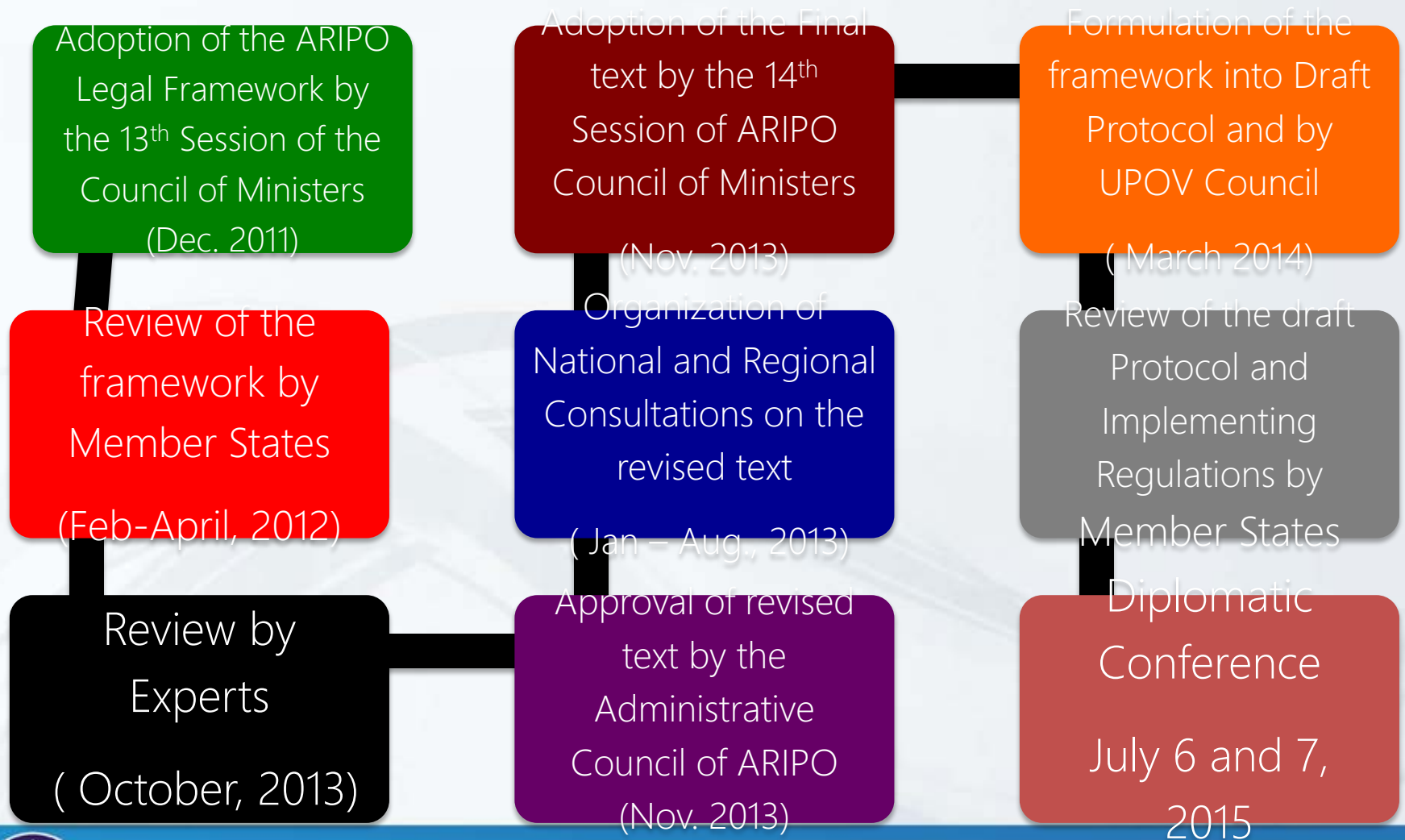
- Only 3% of African cereal imports originates from Africa
- African rice imports accounts for 35% global production (Nigeria is 3rd largest rice importer in the world)
- Africa produces only 3.5% of that rice – **Why?**
- *Weak agricultural productivity*
- *Cereal Yields: Nigeria (1,413kg/ha);*
- *US (6,988kg/ha);*
- *Malasya (3,800kg/ha);*
- *Thailand (2,939kg/ha)*



ROLE OF PVP IN THE DEVELOPMENT OF AGRICULTURE IN AFRICA



ROAD MAP FOR THE ESTABLISHMENT OF THE REGIONAL PVP SYSTEM



Recommendations

- Need for establishment of Inter-ministerial forums/committees on IP
- Uplift and boost IP systems in the member states
- Ratify Banjul Protocol on registration of Marks
- Promote domestication of the Banjul Protocol
- Ratify Swakopmund Protocol on Protection of Traditional Knowledge and Folklore
- Promote participation in the Diplomatic Conference on the Protection of New Varieties of Plants in Arusha, Tanzania from 6 to 7 July 2015





African Regional Intellectual Property Organization

Address: **11 Natal Road, Belgravia, Harare, Zimbabwe**

Tel: **+263 4 794 065 /6/8/54/74**

Fax: **+263 4 794 072/3**

Email: **fsantos@aripo.org**

mail@aripo.org

Website: **www.aripo.org**

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