



African Regional Intellectual Property Organization

**COMMERCIAL AND NON COMMERCIAL USES OF TRADITIONAL
KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS –
EXAMPLES AND LESSONS LEARNED**

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

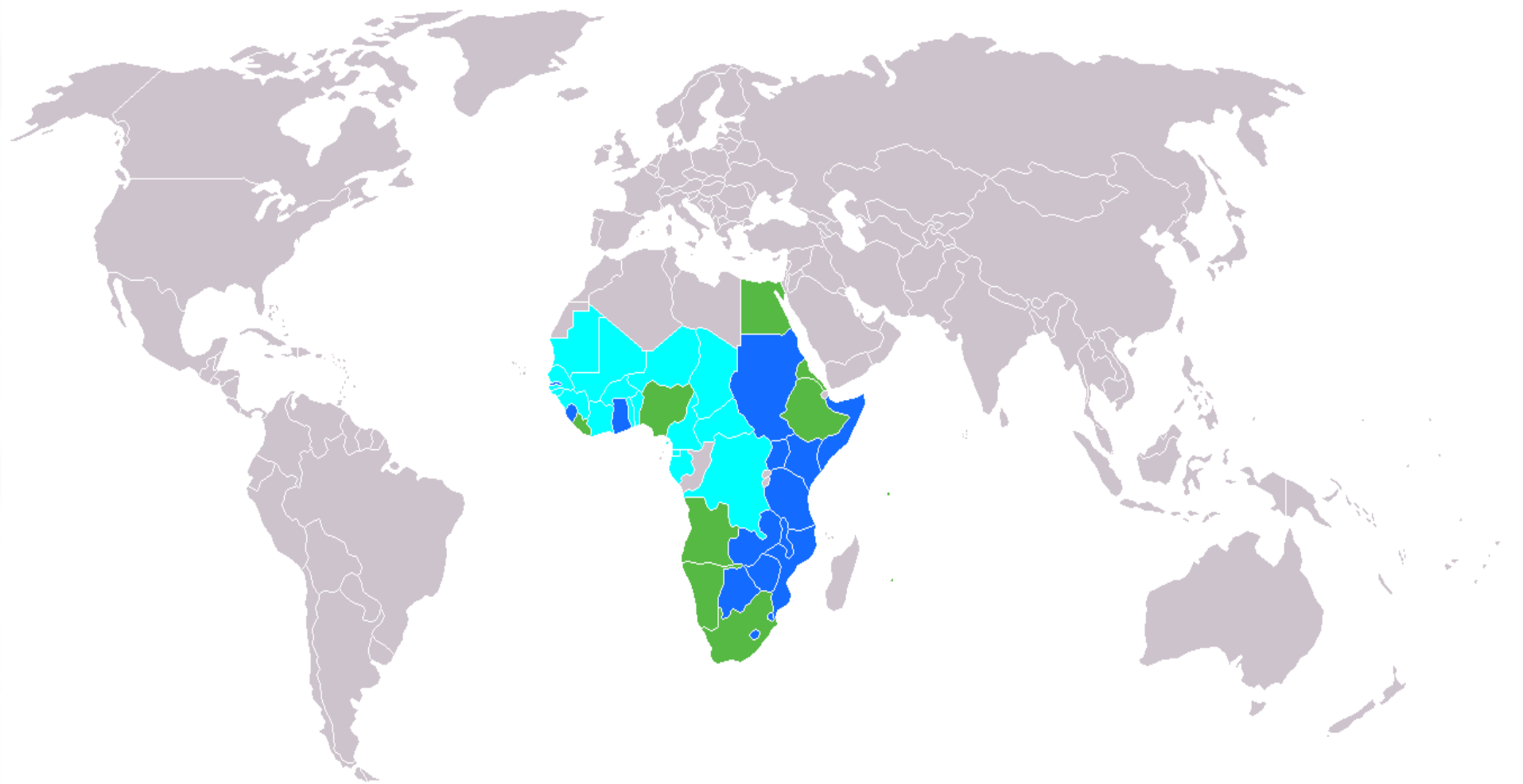
MEMBERSHIP OF ARIPO

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

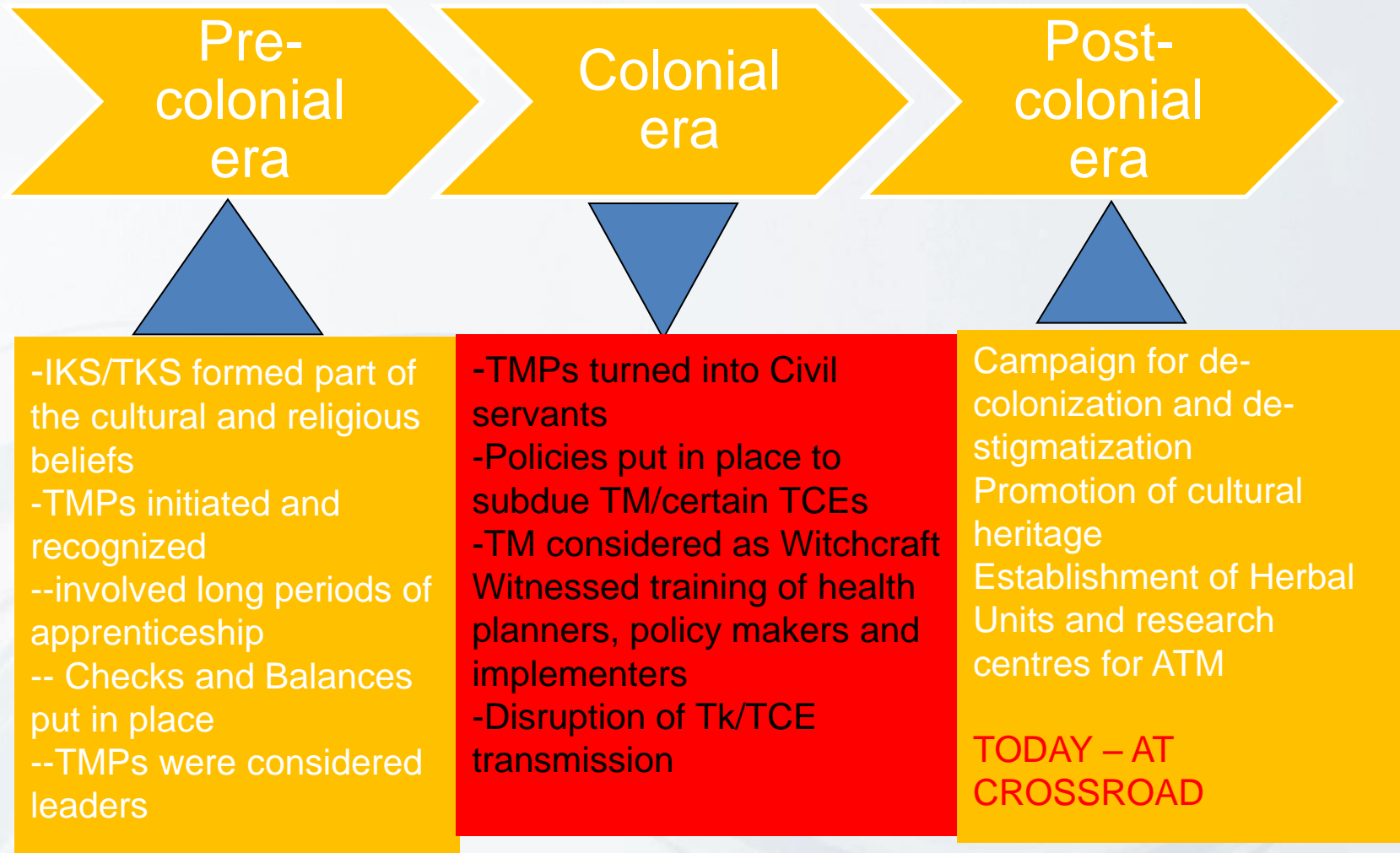
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Territory Covered by Regional IP Offices in Africa – Including Observers



Renaissance of African TK/TCEs



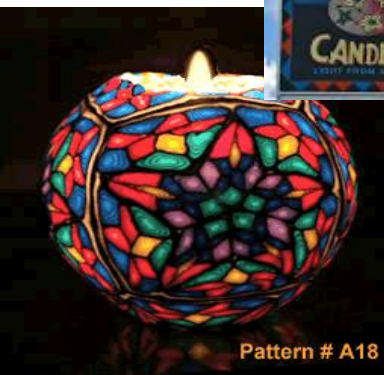
The Ananse Folktales – Non commercial use of TCEs

- In 1985 author Anne Cameron began publishing a series of children's books based on West-coast Indigenous traditional stories – Ananse Folktales
- In the series Anne Cameron is author and has copyright and is sole royalty beneficiary



Cameron's books came under severe Indigenous criticism; not only on the grounds of cultural appropriation, but the Indigenous TK holders asserted that some of the stories and aspects of the stories were incorrect.





Pattern # A18



“Patenting” The Late Nobel Laureate Wangari Maathai’s Hyacinth Casket



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Limitations under classical IP

- Problems with direct protection via copyright and industrial property:
 - Fixation requirement
 - Originality
 - Authorship and Ownership
 - Duration
 - Management of shared TK/TCEs
 - Criteria of patentability
 - Administrative Cost
 - Up-scaling challenges
 - Holistic nature of African TK/TCEs



Lessons Learnt

- High degree of stigmatization
- Oral nature of the African TK/TCEs
- Extensive misappropriation and bio-piracy
- Inadequacy of the conventional IP system to provide effective protection for the holistic TK/TCEs
- Need for Bundle of rights approach/comprehensive approach



Bundles of Rights Approach

- Limited use of the conventional IP system
- Positive protection based on the Swakopmund Protocol (Exclusive/Collective rights)
- Defensive approach-derived from the Swakopmund Protocol



Amendment of the definition of Utility Model under the Harare Protocol

‘Utility Model means any form, configuration or disposition of elements of some appliance, working tools and implements as articles of everyday use, electrical and electronic circuitry, instrument, handicraft, mechanism or other object or any part thereof in so far as they are capable of contributing some benefit or new effect or saving in time, energy and labour or allowing a better or different functioning, use, processing or manufacture of the subject matter or that gives utility advantages, environmental benefit, and includes micro-organism or other self-replicable material, products of genetic resources, herbal as well as nutritional formulations which give new effects’.



SPECIFIC PROVISIONS OF THE SWAKOPMUND PROTOCOL DEALING WITH COMMERCIAL AND NON COMMERCIAL USE

- Exploitation – by the right holders or authorization to exploit based on PIC/MAT for TK (Sec. 7) and protection against all forms of misappropriation, misuse and unlawful exploitation for TCEs (Sec. 19) and provides for authorization mechanism through CNAs
- Shared TK which will be accessed through a regional recordal system
- Authorization shall be subject to benefit sharing arising from commercial or industrial use of TK
- Exceptions and Limitation – shall not be prejudicial to the continued availability of the knowledge for the practice, exchange, use and transmission by its holders in the traditional context/non commercial use such as teaching, research, reviews, etc



NEXT STEPS

- Ratification/Accession to the Protocol
 - High level Missions
- Development of national policies and legislations using the Protocol as a model
 - IP offices to kick-start the process
- Establishment of Competent National Authorities/Appropriate Authorities
 - Council of Ministers to initiate the process
- Development of 5 year implementation plan
- - Valorization and branding of TK/TCE based products and Industries





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