

Proposed Regional Framework for the Protection of GRs, TK & TCEs in the Caribbean Region

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CARICOM



BELIZE

Garifuna

Its about a people, a culture and an experience.



SURINAME



JAMAICA

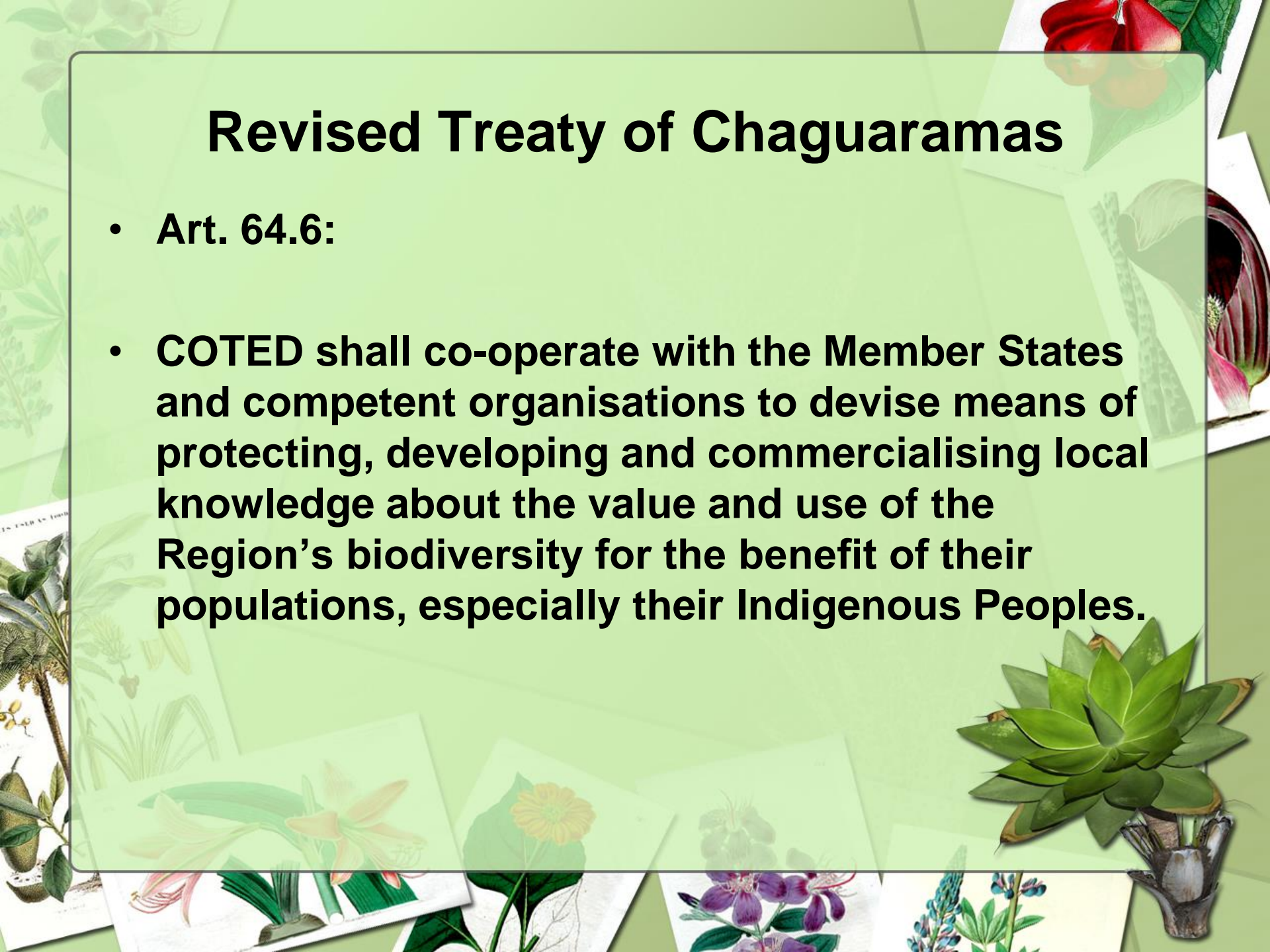


TRINIDAD & TOBAGO



Revised Treaty of Chaguaramas

- **Art. 64.6:**
- **COTED shall co-operate with the Member States and competent organisations to devise means of protecting, developing and commercialising local knowledge about the value and use of the Region's biodiversity for the benefit of their populations, especially their Indigenous Peoples.**



Revised Treaty of Chaguaramas

Art. 66: Protection of Intellectual Property Rights

- ***COTED shall promote the protection of IPR within the Community by:***
- ***(c) the identification & establishment of mechanisms to ensure...***
- ***(ii) the preservation of indigenous Caribbean culture; and***
- ***(iii) the legal protection of EoF, other TK and national heritage, particularly of indigenous populations in the Community***

CARICOM Charter of Civil Society

- Art. XI
- CARICOM member states undertake to *protect the historical rights of Indigenous Peoples and respect their culture and way of life.*

Caribbean TK Working Group

- Facilitated by WIPO at the request of CARICOM Ministers responsible for IP
- March 2008 - Working Group established at Regional expert meeting in Jamaica
- To gather information, undertake consultations and prepare draft materials for review, consideration and policy and political decisions by Caribbean states.
- Comprises reps. from Trinidad & Tobago, Jamaica, Suriname, St. Lucia, (formerly also Belize)
- Includes reps. of regional govts, Indigenous communities, IPOs, academia



Regional Consultations

- Consultations held with IPs&LCs, government representatives, academics and researchers involved in culture, biodiversity, TK & TCEs.
- March to Oct. 2009 - Consultations held in Belize, Dominica, Jamaica, Saint Lucia, Saint Vincent & the Grenadines, Suriname and Trinidad & Tobago
- Jan. to July 2013 - Consultations held in Antigua & Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Jamaica, Saint Lucia and Saint Vincent & the Grenadines.

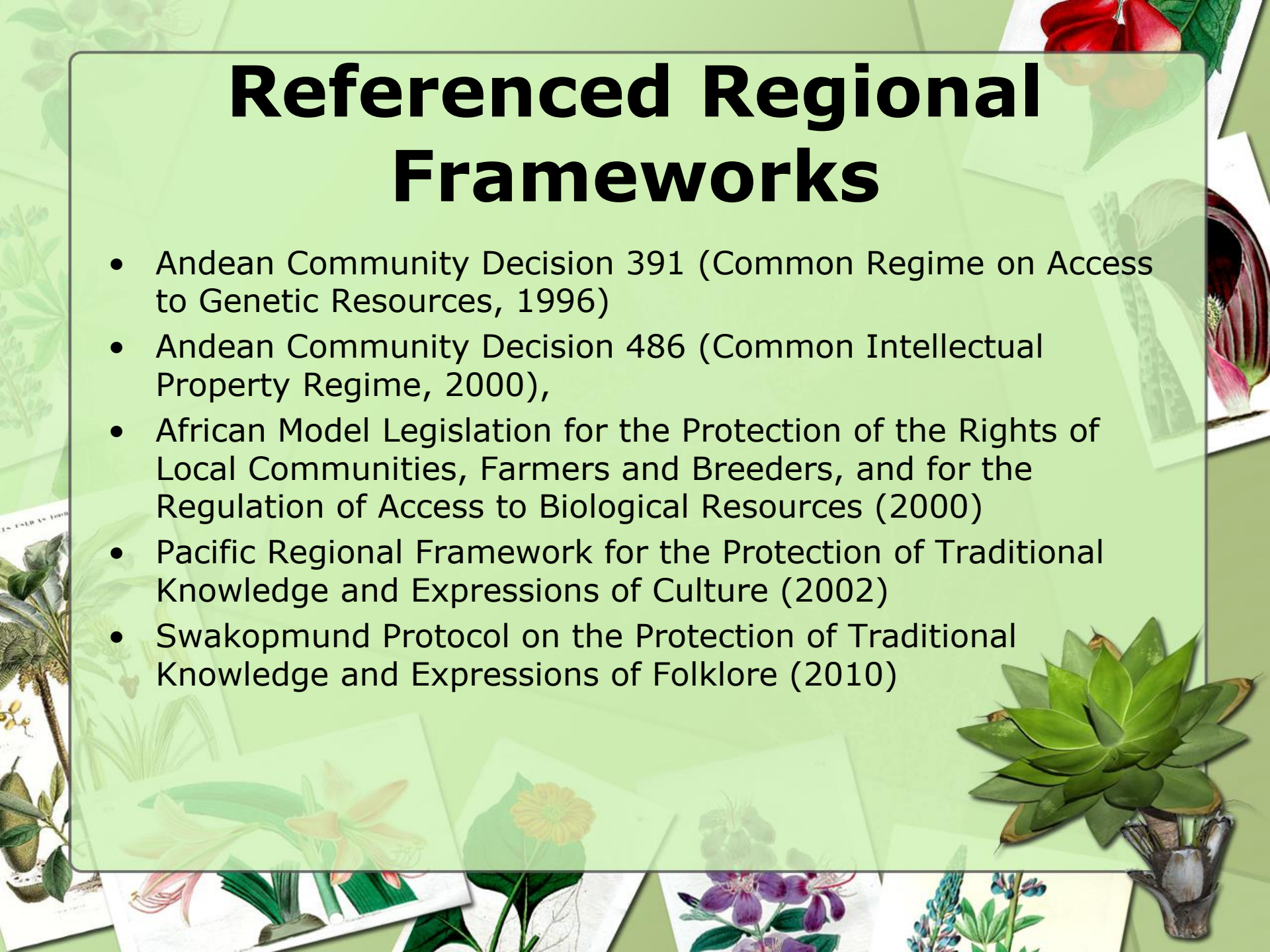
Policy objectives

- To protect the rights of States and IPs&LCs over their GRs and to protect the collective rights of IPs&LCs over their TK and TCEs.
- To encourage tradition-based creativity and innovation, including commercialisation thereof, subject to the FPIC of and F&EBS with the beneficiaries, on MATs.



Referenced Regional Frameworks

- Andean Community Decision 391 (Common Regime on Access to Genetic Resources, 1996)
- Andean Community Decision 486 (Common Intellectual Property Regime, 2000),
- African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (2000)
- Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture (2002)
- Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (2010)



Draft Regional Model Law

- A new legal regime for the Protection of GRs, TK & TCEs consistent with intl law, best practices & WIPO Draft Articles
- A basis for Caribbean countries to enact legislation for the protection of GRs, TK & TCEs.
- Outlines rights for traditional owners of GRs, TK & TCEs and improves procedures to access GRs, TK & TCEs
- Requires FPIC of the State and/or IPs&LCs (called beneficiaries in the Model Law) upon MATs to access GRs, TK & TCEs

KEY PROVISIONS

- Beneficiaries – IPs&LCs, not individuals (individual rights subject to customary law)
- Exclusive rights – economic & moral, incl. right to challenge or oppose the application for or registration of any IPRs that use, utilize, concern, involve or otherwise rely on or benefit from their GRs, TK &/or TCEs
- Exceptions & Limitations - Not applicable to 'moral' rights and secret/sacred TK&TCEs

KEY PROVISIONS

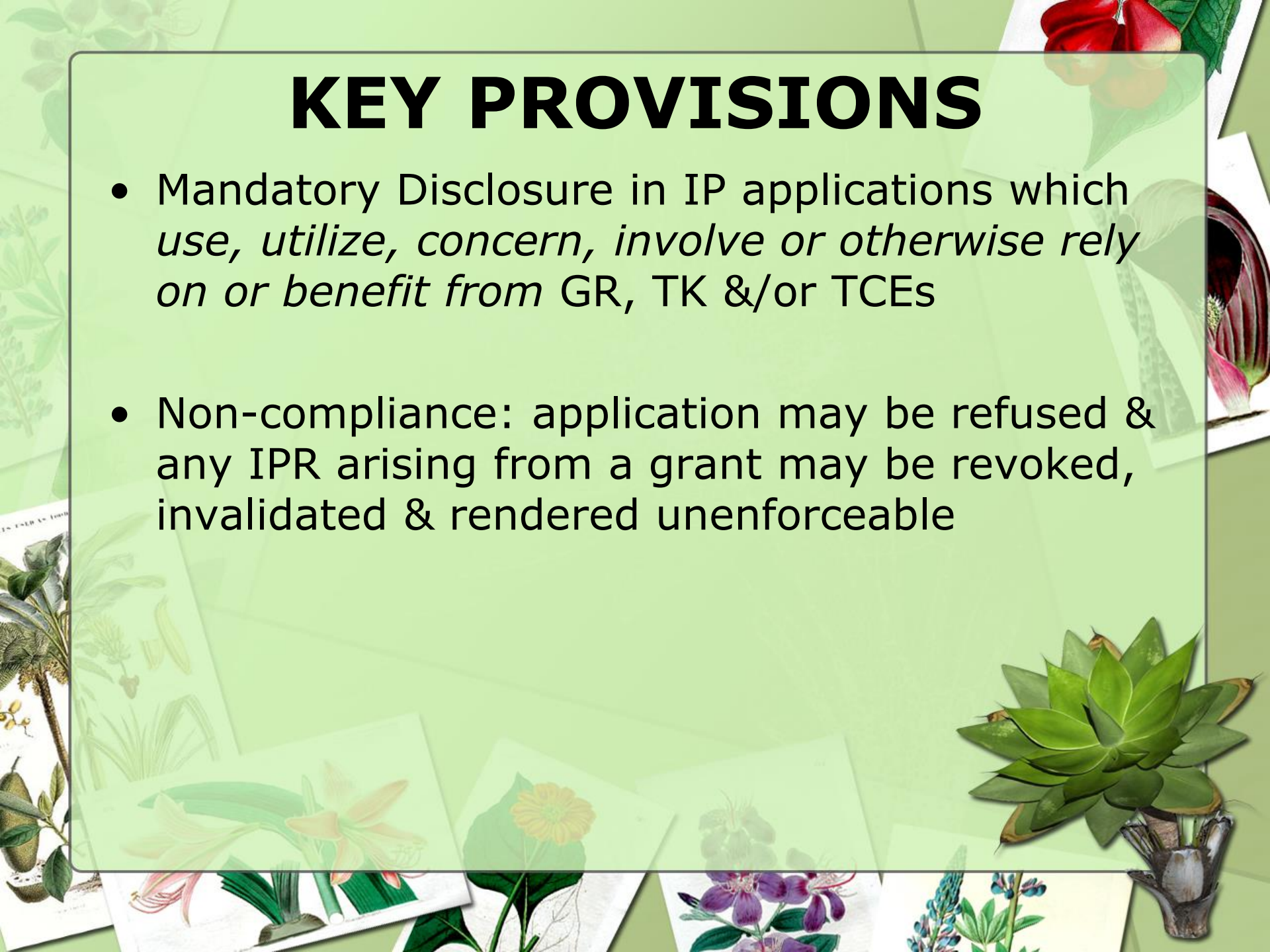
- Term of protection - *as long as the resource, knowledge or expression fulfils the criteria of eligibility for protection; unlimited for secret/Sacred TK & TCEs & Cultural Identifiers*
- Protection of GRs, TK & TCEs not subject to formalities.
- Competent authorities incl. IPOs may maintain registers, databases or other records of GRs, TK & TCEs, with the FPIC & F&EP of IPs&LCs

KEY PROVISIONS

- Access and use of GRs, TK & TCEs in the traditional &/or customary context, governed by customary laws, protocols and procedures of the relevant IPs&LCs
- Access to, utilization &/or use of GRs, TK & TCEs outside of the customary and traditional context requires an ABS contract (and relevant ancillary contracts, permits & licences)
- An applicant shall submit an application for access to the CNA and, where it involves GRs, TK &/or TCEs of IPs or LCs, to the competent authority of the relevant IP or LC

KEY PROVISIONS

- Mandatory Disclosure in IP applications which *use, utilize, concern, involve or otherwise rely on or benefit from* GR, TK &/or TCEs
- Non-compliance: application may be refused & any IPR arising from a grant may be revoked, invalidated & rendered unenforceable



KEY PROVISIONS

- Defensive & positive protection
- No provisions regarding public domain
- No set benefit sharing %
- Govt assistance for IPs&LCs with negotiation of contracts
- Shared TK issues to be resolved through mediation, with access to CCJ
- TK Registers only with FPIC & F&EP of IPs&LCs
- Integration of GRs, TK & TCEs in one ABS Framework

Next Steps

- CARICOM to review & comment
- Heads of IP Offices to review & comment
- To be presented to CARICOM IP Ministers in 2015



THANK YOU

