



ARIPO

*African Regional Intellectual
Property Organization*

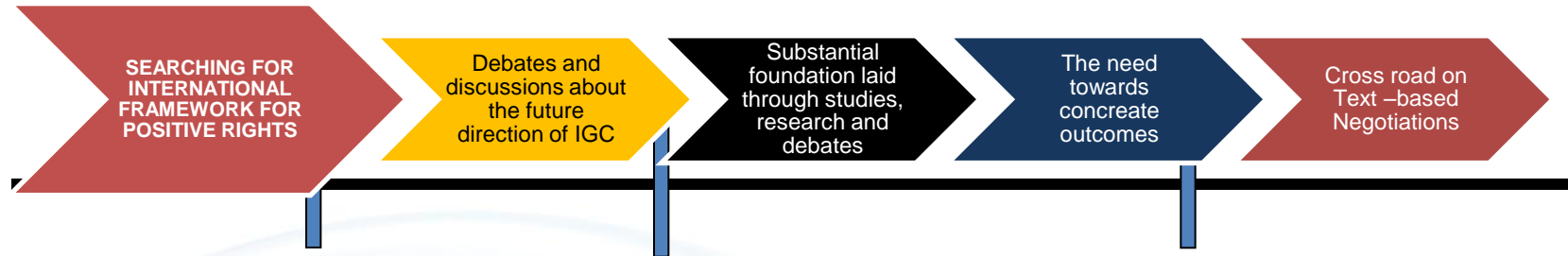
DATABASES AND OTHER DEFENSIVE MEASURES RELATING TO GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE

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Executive



Fostering Creativity and Innovation for Economic Growth and Development in Africa

Our Journey so far - the relationship between *positive rights* and *practical initiatives/Tools*



A shared interest in addressing the **Technology-rich North** and **Biodiversity-rich South imbalance** including that of IP and Public interest

PRACTICAL / ADMINISTRATIVE MEASURES
(Enablers)

- Model IP clauses in IP guidelines in ABS contracts
- IPC for TK aGR
- Documentation/Database construction

Defensive measures should not function as a *de facto* waiver of positive rights

Should documentation/database initiatives be considered as a policy objective in international norm setting?

- PCT Article 15(4) refers to “minimum documentation” and is elaborated in Rule 34 of PCT. Most IP laws provide for establishment of registers that contain essential information on patents. The information is mainly stored in databases (constitutive databases)
- The ITPGRFA makes specific reference to the development of inventories/documentation of GR in its substantive provisions (see Article 5 of the Treaty)
- The CBD, Nagoya and Cartagena Protocols provide for clearing house mechanisms for making information available to the public

All these tools facilitate the effective implementation of such instruments and technical services required thereunder. They are not an end in themselves



Challenges faced in the use of GR/TKaGR-based databases as a prior art for preventing the grant of erroneous patents

- Databases vary in chronological scope, timeliness, rights, benefits, search capabilities and enforcement mechanisms
- Databases may lead to unintentional loss of rights and control (Public domain) and conflict with customary and spiritual restrictions of TLCs
- May lead to indirect appropriation of TKaGR (facilitated bio-piracy)
- Databases are factual (systematization of existing knowledge) and cannot be construed as having legal effect on any ABS TKaGR



Challenges in the use of GR/TKaGR-based databases as a prior art for preventing the grant of erroneous patents

- Reluctance of TLCs to document their knowledge and give authorization for access to such databases
- No internationally accepted classification system for aTK and specification standards for information retrieval
- Cost of developing such databases, language barriers and capacity of TLCs to manage the databases



ARIPO's efforts in providing effective protection for TKGRF, in particular, the development of databases



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ARIPO's Swakopmund Protocol for the protection of traditional knowledge and expressions of folklore

- **Recognises the intrinsic value and equitable balance between the rights and interests of providers of TKaGR and users of such knowledge**
- **Empowers holders of TKaGR/Folklore to exercise control over their knowledge (exclusive right over knowledge including products and processes)**
- **Provides effective protection tailored to the specific characteristics of the knowledge including the collective and community context**
- **Provides for the disclosure of source/origin of TKaGR when the knowledge is used outside the traditional or customary context**



Provides for *prima facie evidence of ownership* through the registration of;

- **TKaGR belonging to TLCs taking cognisance of the legitimate interest of holders in relation to undisclosed elements of their knowledge**
- **Transboundary TKaGR**
- **Licenses/Assignments granted by TLCs**



ADOPTION AND RATIFICATION/ACCESSION OF THE SWAKOPMUND PROTOCOL

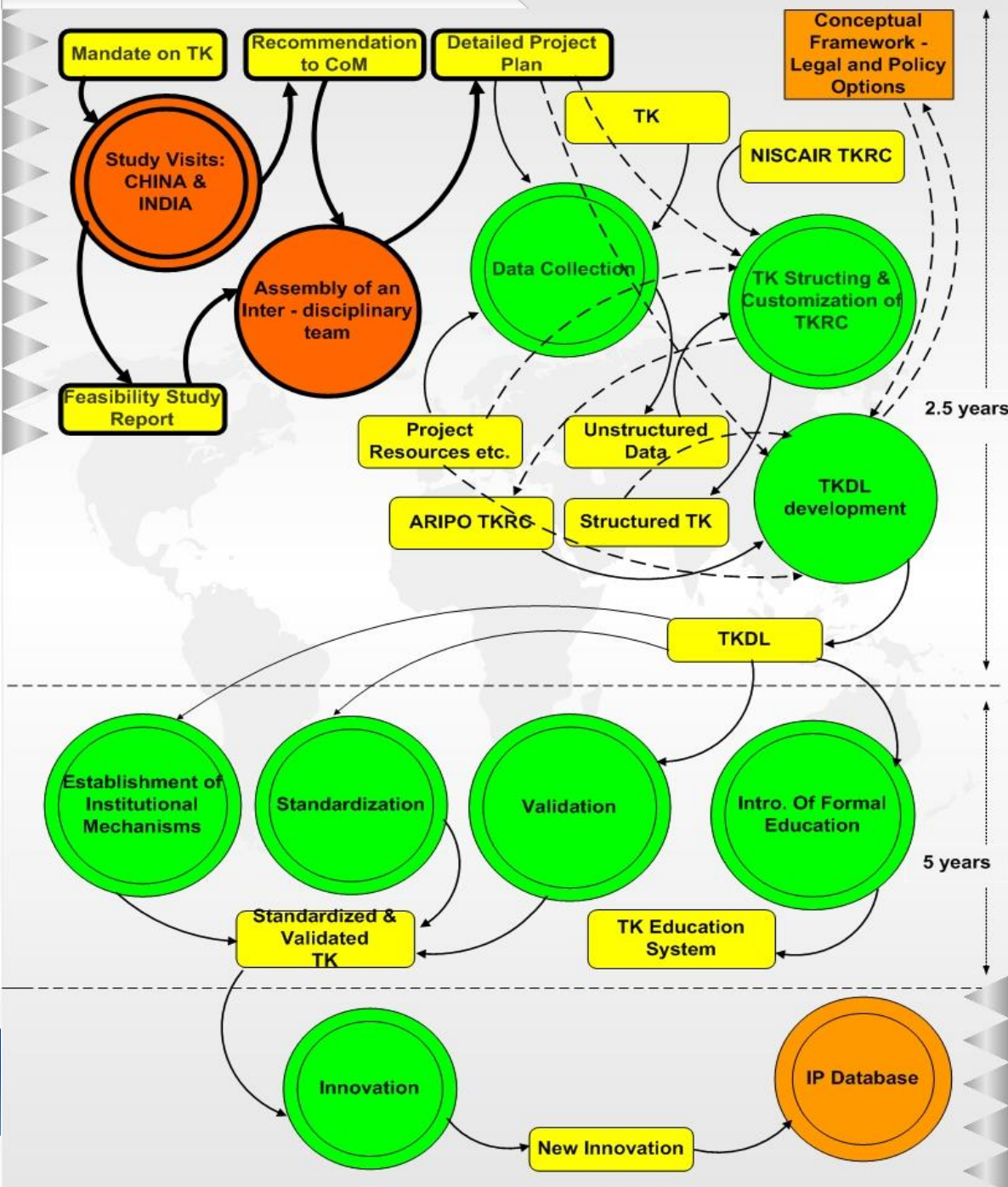
- The Swakopmund Protocol was adopted in August 2010
- Signatory member states: Botswana, Ghana, **Kenya**, Lesotho, Liberia, Mozambique, Namibia, Zambia and Zimbabwe **(9)**
- Ratifications/Accessions: **Botswana**, Malawi, Namibia, Rwanda, The Gambia, **Zambia** and Zimbabwe **(7)**
- Entry into force: 11 May 2015.
- Any state that is a member of the African Union or the United Nations Economic Commission for Africa may also sign up to the Protocol.



Development of databases

- Development was based on familiarization/study visits to China, India and secondary data obtained from the WIPO portal, Peru, Venezuela(Biozulua), SINGER database etc
- Initial proposal was to develop ARIPO TKDL based on the following;
 - Codification of oral TKaGR in Africa, particularly the Member States of ARIPO
 - Establishment of African TK Resource Classification
 - Data collection and entry into the TKDL
 - Preservation, standardization, validation which will become building blocks for innovation and education of future generations
- However, this approach was criticised by Member States and Stakeholders including TLCs





ARIPO TKDL

Move (Edit Record) Find Record Count

EDIT RECORD

Knowledge Holder / Custodian: Priscilla Dlamini

Physical Address: Department of General Nursing Science
University of Swaziland

Name or descriptive title of the process or product: Acanthaceae

Botanical / Latin Name: Justicia Betonica L.

Local / Common Name: Instelo yemehlo

Summary description of the Process or Product: Slender somewhat zigzag stems and well-spaced leaf-pairs; few hairs at the stem-joints, otherwise hairless. Leaf-stalks up to 1 cm long, blade oval or lance-shaped, narrowing to tip, c 5 cm long x 1.8 cm wide, texture thin. Inflorescences terminal.

Click this button for image

TK Resource Classification: A 01 E 35 / 09 Classify

Areas of Application: Priscilla Dlamini has a special way of treating his animals for stiffness of the body. She prepares a mixture of 250 g varyiali (Foeniculum vulgare). 50 g turmeric powder.

Administration: It is given to the animal to drink, mixed with drinking water, half dosage for very young

Click this button for Spatial Data

F5 - PREVIOUS F6 - NEXT F7 - FIRST F8 - LAST

ARIPO TKDL

Move (Edit Record) Find Record Count

EDIT RECORD

Knowledge Holder / Custodian: Priscilla Dlamini

Physical Address: Department of General Nursing Science
University of Swaziland

Name:

Description:

Administration: It is given to the animal to drink, mixed with drinking water, half dosage for very young

Click this button for Spatial Data

Edit Clear Cancel

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TRADITIONAL KNOWLEDGE RESOURCE CLASSIFICATION

- [-] A - AFRICAN TRADITIONAL KNOWLEDGE - SECTION
 - [+] 01 - PHARMACEUTICAL PREPARATION - CLASS
 - [+] A - BASED ON ANIMAL PRODUCTS - SUBCLASS
 - [+] E - BASED ON PLANT - SUBCLASS
 - [+] 02 - MEDICINAL OR VETERINARY SCIENCE - CLASS
 - [+] A - BASED ON MEDICAL PREPARATIONS - SUBCLASS

Classify Cancel

Recycle Bin

Digital Magazines

Internet Explorer

Documents To Go

FranklinCovey PlanPlus for...

Gregory Intellect...

Free Games & Music

ACD FotoCan...

Help and Support

Adobe Reader 7.0

HP Compaq tc4200 Tab...

Alias SketchBook ...

Launch PHPEdit

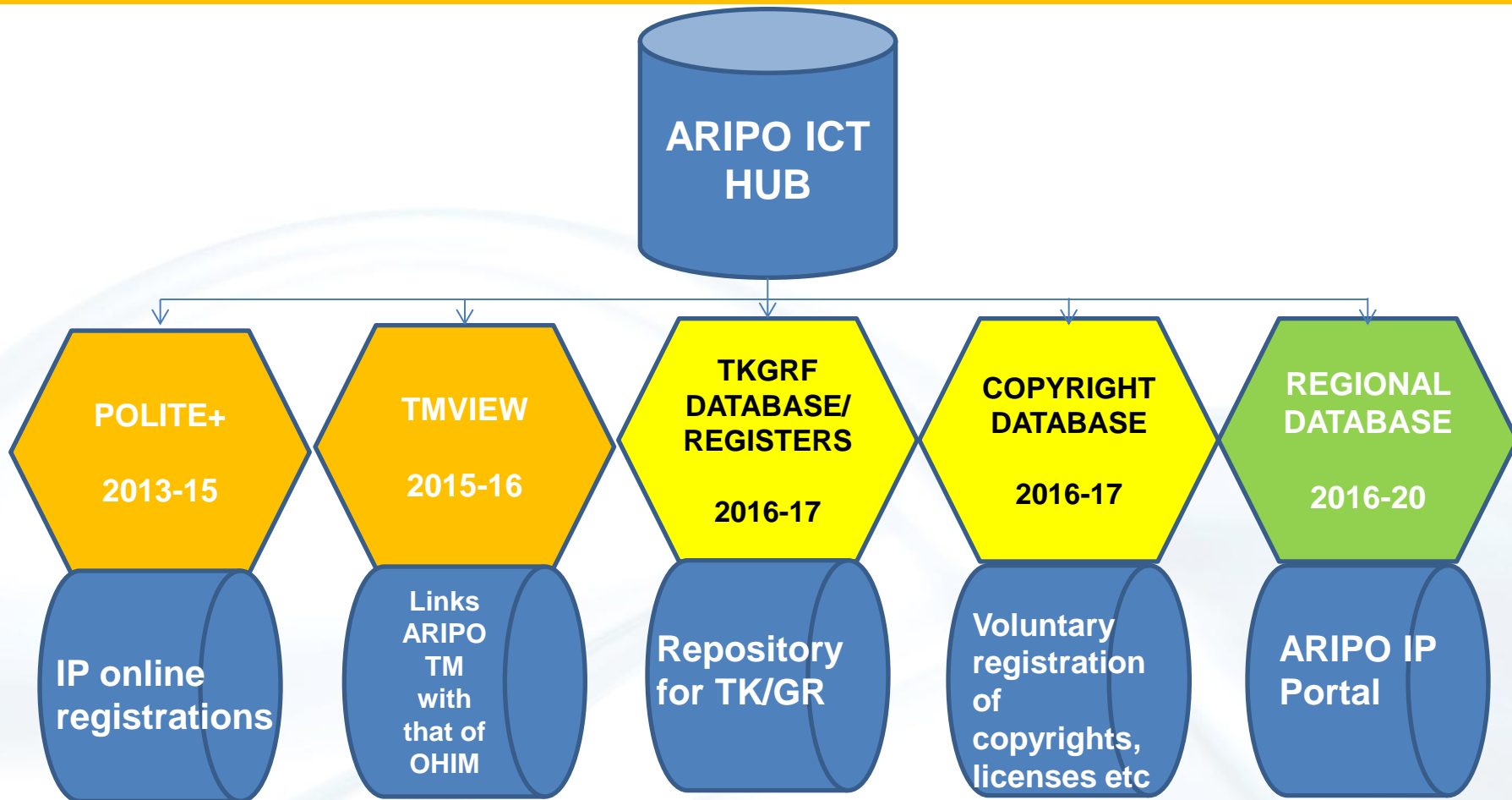
Corel Grafigo Free Download

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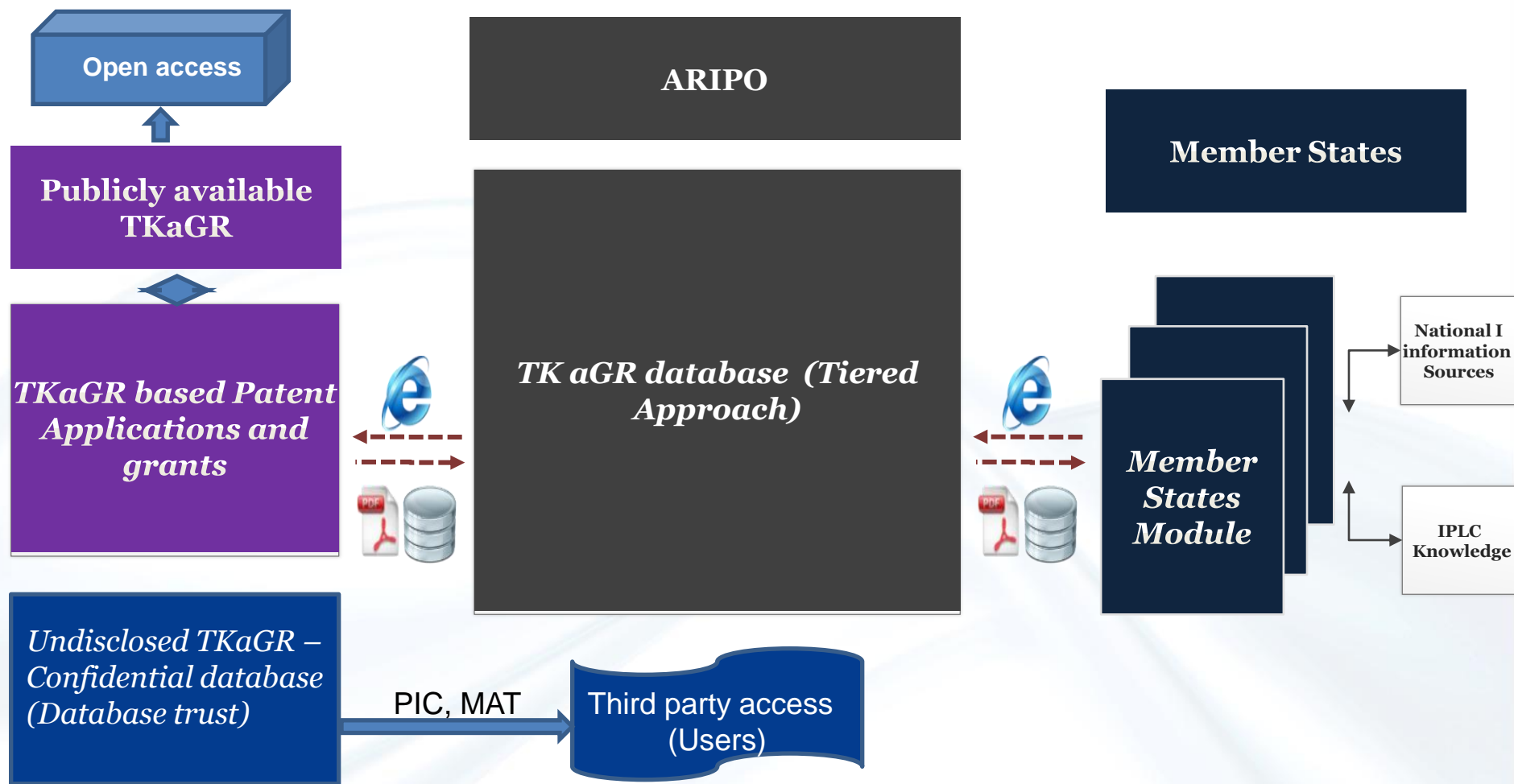
MindManager X5

ARIPO's new thinking: Establishment of IP ICT HUB for shaping the IP landscape in Africa



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ARIPO's differentiated (Tiered) approach to database construction



Recommendations for the 30th Session of the IGC

- It is our hope that these experiences will help to clarify the fact development of databases are mainly enablers and means to an end and that the IGC 30 will focus its work on legal principles and substantive issues that will enhance the transparency and mutual supportiveness of the IP and ABS systems
- WIPO should provide technical assistance to Member States that seek to develop such databases and encourage them to link them with the WIPO Portal
- Should ensure that undisclosed information is not put into open access databases and also bear in mind that some TLCs may not want to document/digitize their knowledge and where this has been done, may not want to give access to third parties





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