

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

Kingston, Jamaica
March 18 to 19, 2008

**LEGISLATIVE OPTIONS FOR TK AND TCEs –
THE AFRICAN EXPERIENCE**

Emmanuel Sackey

Head, Search and Examination and coordinator, GR TK and Folklore

AFRICAN REGIONAL INTELLECTUAL PROPERTY

ORGANIZATION (ARIPO)

Harare, Zimbabwe

OUTLINE OF PRESENTATION

- JUSTIFICATION FOR GLOBAL PROTECTION OF TK AND TCEs
- SCOPE AND CONTEXT OF TK/TCE PROTECTION
- POLICY CONSIDERATION AND LEGAL OPTIONS FOR TK/TCE PROTECTION
- THE AFRICAN EXPERIENCE
- RECOMMENDATIONS

JUSTIFICATION FOR GLOBAL PROTECTION OF GR, TK and TCEs

- Global Renaissance in the use of natural products
- Growing importance in Biotechnology
- High rate of success in drug development based on medicinal plants
- Extension of patents rights to genetic materials – Articles 27.1 and 27.3b of TRIPS Agreement

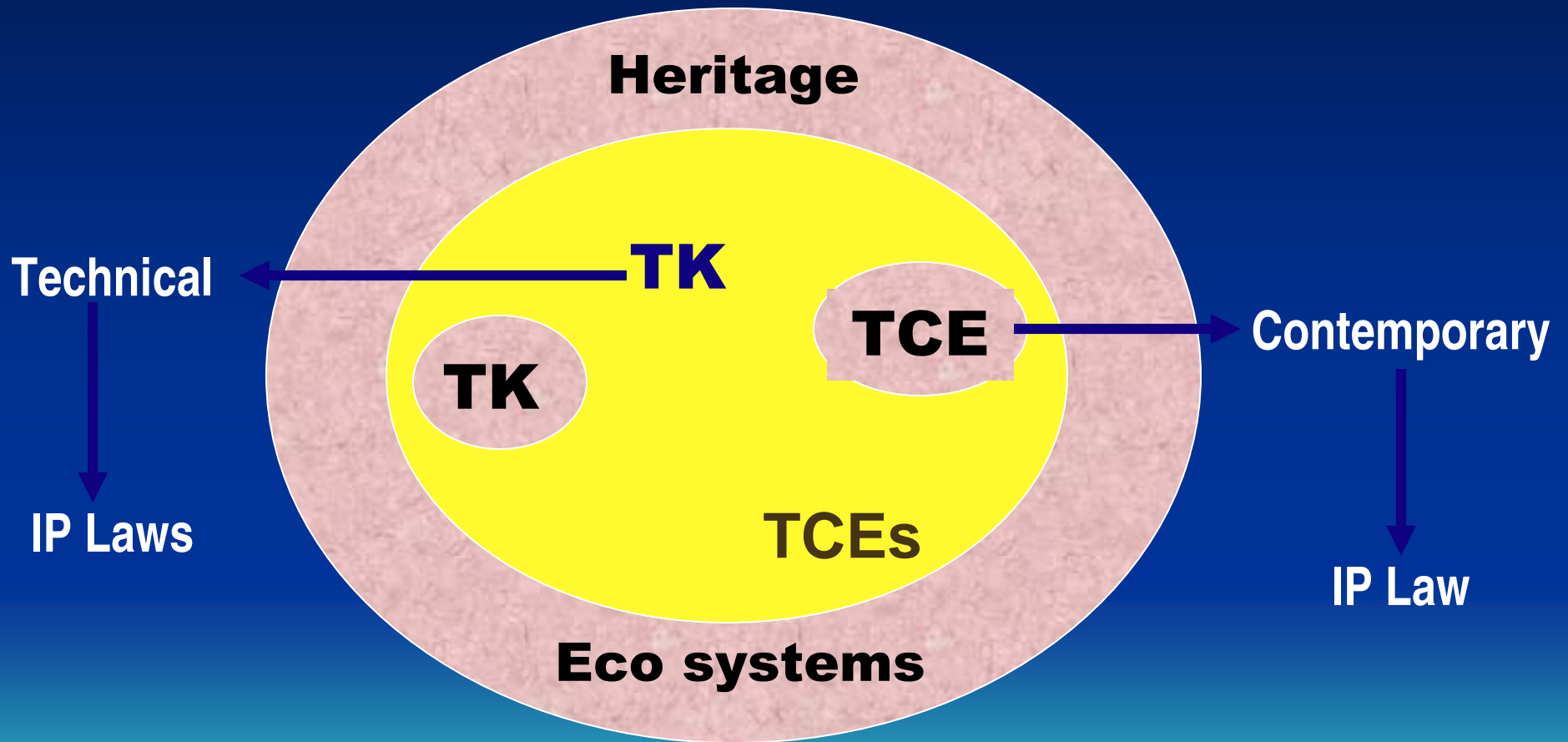
SCOPE AND COINTEXT OF TK /TCE PROTECTION

- Socio-cultural context**
- Techno-economic context**
- Intersection with modern science**
- Relationship with Intellectual Property Rights (IPRs)**

DISTINCTIONS BETWEEN TRADITIONAL AND SCIENTIFIC KNOWLEDGE SYSTEMS

Traditional Knowledge	Scientific Knowledge
Tacit Knowledge (Subjective)	Explicit Knowledge (Objective)
Knowledge of Experience (body)	Knowledge Of Rationality (mind)
Simultaneous Knowledge (here and now)	Sequential Knowledge (there and then)
Analog Knowledge (Practice)	Digital Knowledge (Theory)

TK, TCE, Biodiversity and IP



III POLICY CONSIDERATIONS AND APPROACHES FOR ANY TK/TCE PROTECTION INITIATIVE

- **DEFINING POLICY OBJECTIVES**
- **CRITICAL APPRAISAL OF LEGAL AND POLICY OPTIONS**
- **CONSIDERATION OF MACRO AND INSTITUTIONAL POLICIES**
- **INSTITUTIONAL MECHANISMS FOR IMPLEMENTATION**

DEFINING POLICY OBJECTIVES

- Prevent misappropriation and third party claims of IP rights over TK subject matter
- Encourage and promote TK-based innovations
- Protect distinctive TK related commercial products
- Enable communities to continue using TK in the context of their traditional lifestyles
- Encourage sustainable use of TK related biodiversity and equitably share the benefits arising from the commercial use of TK, etc.
- Preserve and Conserve TK

CRITICAL APPRAISAL OF LEGAL AND POLICY OPTIONS

- Making better use of existing IP rights and adaptations
- Creating a distinct category of rights in TK
- Using Customary Laws and Protocols
- Developing a comprehensive approach

Appraisal of policy options for TK protection

Approach	Examples	Merits	Demerits
Use of IPRs including adapted forms	<ul style="list-style-type: none">-TK innovations-Compositions-Motifs-Handicrafts, etc-Indication of source of TK-based products	<ul style="list-style-type: none">- Legal standards in place- Complete disclosure- segregated subject matter	<ul style="list-style-type: none">- Incompatibility- Prohibitive cost-Utilitarian-Temporary rights- Lack of capacity
Distinct <i>sui generis</i> systems	<ul style="list-style-type: none">-All forms of TK	<ul style="list-style-type: none">-Embrace holistic TK- Allow for collective ownership	<ul style="list-style-type: none">-Parameters and operational definitions not agreed upon- Effectiveness?-International instrument is yet to be established-Administrative cost?

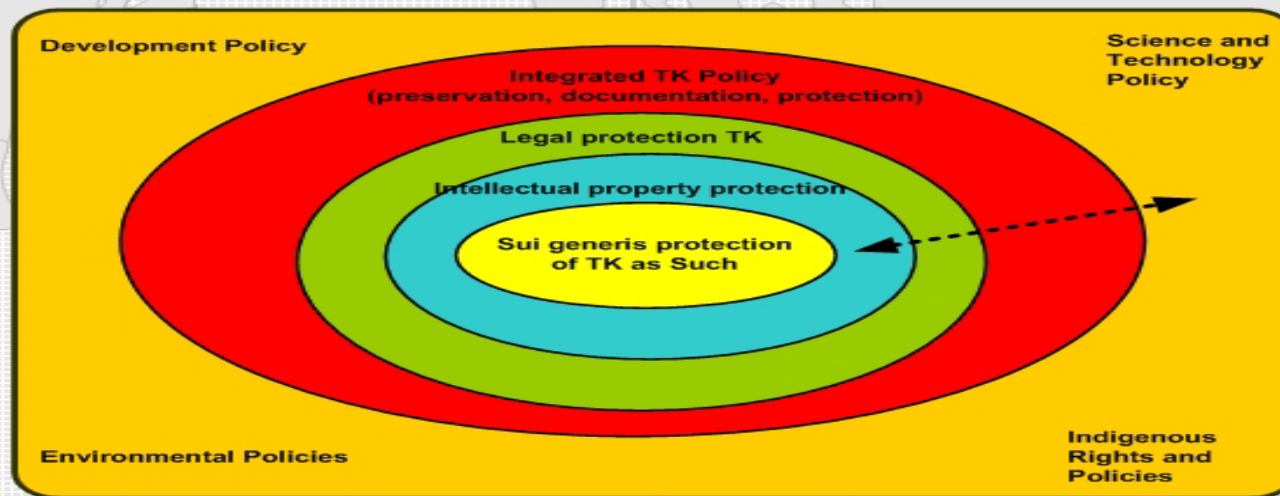
Policy option	Examples	Merits	Demerits
Use of customary Laws and Protocols	<ul style="list-style-type: none"> - All forms of tangible and intangible TK 	<ul style="list-style-type: none"> - Compatible with oral TK - Less costly - Simple and easy to understand - Practical measures and mechanisms in existence 	<ul style="list-style-type: none"> - Lack of international practice - Difficult to enforce - Little economic gains and disincentive for creativity
Comprehensive approach		<ul style="list-style-type: none"> - Allow application of different models - Provide maximum flexibility 	<ul style="list-style-type: none"> - Administrative cost may be high

MACRO AND INSTITUTIONAL POLICIES THAT NEED TO BE TAKEN INTO ACCOUNT

- Development policy
- Science and Technology policy
- Environmental policies
- Indigenous rights and policies
- Other relevant national policies

ARIPO POLICY FRAMEWORK FOR TK PROTECTION

01 June 2004



INSTITUTIONAL MECHANISMS

- Capacity building, sensitization and Technical Assistance
- Promoting innovation , standardization and commercialisation of TK
- Documentation of Traditional Knowledge
- Promoting institutional linkages and exchange of information

LEGISLATIVE OPTIONS – THE AFRICAN EXPERIENCE

- The Tunis Model Law on the Protection of Expressions of Folklore
- African Union (OAU) Model Legislation for the protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources
- ARIPO –OAPI Legal Instruments on the Protection of traditional knowledge and expressions of Folklore

African Union (OAU) Model Legislation for the protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources

OBJECTIVE

- ASSIST MEMBER STATES TO DELIBERATE ON AND IMPLEMENT INSTRUMENTS COMPATIBLE WITH THEIR NATIONAL GOAL/ASPIRATIONS AND SATISFY THEIR INTERNATIONAL OBLIGATION

THE CORE PRINCIPLES OF THE MODEL LAW INCLUDE

- NATIONAL FOOD SECURITY
- SOVEREIGN RIGHT OF STATES
- COMMUNITY RIGHTS
- IMPORTANCE OF COMMUNITY KNOWLEDGE
- PARTICIPATION IN DECISION MAKING

Core Principles contd

- REGULATION OF ACCESS TO BIOLOGICAL DIVERSITY (BIOLOGICAL RESOURCES)
- PRIOR INFORMED CONSENT (PIC)
- EQUITABLE SHARING OF BENEFITS
- NO PATENT ON LIFE FORMS
- PIVOTAL ROLE OF WOMEN IN THE CONSERVATION OF NATURE

- ARIPO – OAPI Legal Instruments on the Protection of traditional knowledge and expressions of Folklore

African Proposal – IGC-6

“OBJECTIVES, PRINCIPLES & ELEMENTS OF AN INTERNATIONAL INSTRUMENT ... ON INTELLECTUAL PROPERTY IN RELATION TO GENETIC RESOURCES AND ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE”

(document WIPO/GRTKF/IC/6/12)

- welcomed by other delegations at IGC-6
- ARIPO & OAPI were instrumental in initial development of the proposal

African Proposal – IGC-6

- Objectives
- Principles
- General elements
- Genetic Resources
- Traditional Knowledge
- Expressions of Folklore
- Institutional Mechanisms
- Enforcement
- Dispute Settlement

African Proposal – IGC-6

African Proposal (WIPO/GRTKF/IC/6/12)

- Objectives
- Principles

- General elements
- Genetic Resources

- Traditional Knowledge
- Expressions of Folklore

- Institutional Mechanisms
- Enforcement
- Dispute Settlement

TK Principles (WIPO/GRTKF/IC/8/4)

- Policy Obj.
- Guiding Principl.

- Subst Principles

TCE Principles (WIPO/GRTKF/IC/8/5)

- Policy Obj.
- Guiding Pr.

- Subst Principl.

ARIPO-OAPI PROCESSES

- Development of concept paper
- Development of legislative framework
- Harmonization of the frameworks
- National and Regional consultations
- Formulation and Harmonization of Legal instruments

• Adoption of the Legal Instruments

Documentation Initiatives

Rationale for TK documentation initiative

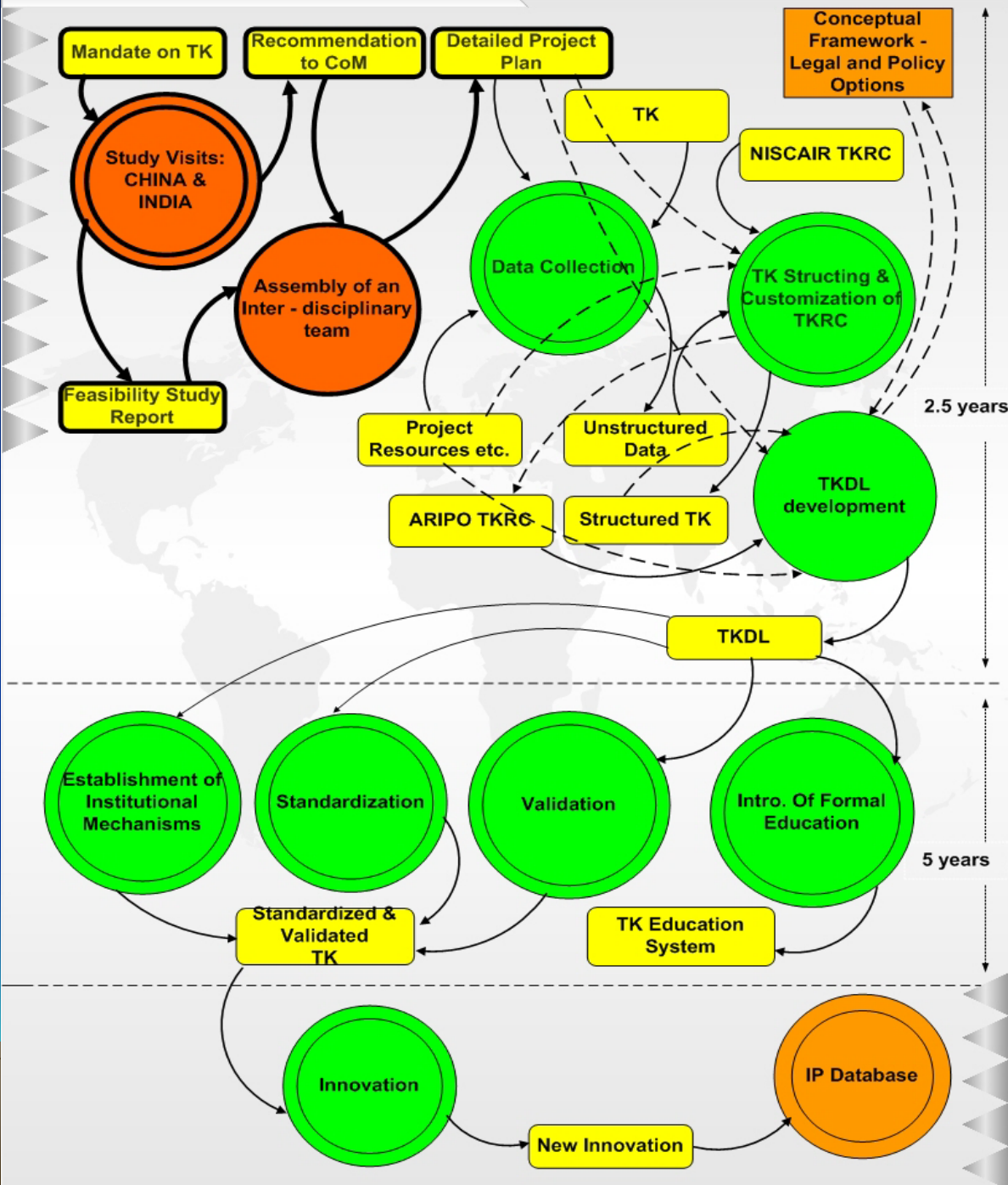
- To avoid granting of patents for TK –based inventions (Defensive protection)
- To avoid the cost for TK holders and third parties of challenging such patents
- For the management of IP Assets (Positive protection)
- To safeguard against unintentional, unauthorised and undesirable public disclosure of TK
- For the preservation and conservation of TK
- For educational programs on TK

KINDS OF INVENTORY/DATABASE

- Inventory of existing periodical, ethno-botanical pharmacopoeia, journals or gazette concerning traditional knowledge related issues.
- Inventory of existing traditional knowledge related databases
- Inventory of codified and un-codified traditional knowledge

ARIPO IMPLEMENTATION ROAD MAP

04 June 2004



SENSITIZATION AND CAPACITY BUILDING

- Developing strategies for awareness campaign
- Repackaging technological information for innovation promotion
- Developing educational programs for TK holders and stakeholders
- Offering tailor-made courses at the Regional Training Centre for targeted stakeholders
- Establishment of Centre of Excellence at ARIPO

THE WAY FORWARD

- **Need for the Caribbean Countries to come together to establish a regional system on IP**
- **Need to prepare a concept paper (note) with the view to developing a comprehensive legislative framework on the protection of TK and TCEs**
- **Need to take steps to establish TK and TCEs inventories and databases for defensive and positive protection**
- **Coordinate and develop partnerships among stakeholders and communities to present a united body of opinion**

THANK YOU