

# **THE STATE OF PLAY IN THE INTERNATIONAL PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE**

## **Perspectives on the WIPO IGC**

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- Definition of IP adopted in the Stockholm Convention (Art 2.8), 1967

- *'intellectual property' shall include the rights relating to inventions in all fields of human endeavour, literary, artistic and scientific works, performances of performing artist, phonograms, and broadcasts, scientific discoveries, and industrial designs*
- inventions are not limited to S&T innovations alone, cover all fields of human endeavour including TK, TCE & Management of Genetic Resources
- Re-conceptualization of IP and rebalancing of WIPO's Mandate pursuant of the WIPO Development Agenda and MDGs

# AFRICAN CONCEPTUAL VIEWS ON TK and Expressions of Folklore

- Africa has rich biodiversity which is a major source of the livelihood of its people
- The resources are complementary, holistic, intergenerational and oral in nature
- Traditional knowledge and its associated genetic resources contributes significantly to ecological management, sustainable agriculture, health and food security
- TK has scientific validation and legitimacy and forms the basis of biomedical research and pharmacognosy
- The resources are under threat due to ongoing misappropriation, commercialization and extinction
- Holders of the knowledge are dis-inherited and marginalised

## How has the knowledge been preserved and promoted?

- Through secrecy, sacredness, superstitions and under communities' customary Laws and Protocols
- In recent times, under the existing IP regimes – e.g folklore and traditional medicines
- Promoted through cultural activities, ceremonies, performances at functions, narrations, intergenerational transmission and tourism
- Are these measures and means adequate to counter the ongoing misappropriations and impact of globalization?

# STATE OF PLAY: IGC AND AFRICAN GROUP SUBMISSIONS

- Conceptual mindset and rethinking
- Submissions and contribution of the African Group to the IGC Process
- Addressing Critical issues
- What should be put in place to make for the effective protection and promotion of TK/TCEs

Unclear  
Conceptual  
Issues

Policy and  
Legal  
Questions

Lack of  
Institutional  
Support  
Mechanisms

Lack of consensus on terminologies and definitions

Misconceptions and myths surrounding TK

TK and Public domain

Holistic vrs segregated view of TK

Lack of consensus on the nature/content of an international instruments

Complex and varied national policies

Varied perspectives on IP

Policy overlaps in other fora

Lack of National/Reg. Experiences

Lack of infrastructure and capacity building

Lack of coherence and institutional linkages

Lack of Funding

Lack of Political will

# 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)

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

# African Proposal – IGC-6

## Annex

- 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
- Subst Principl.

## TCE Principles

(WIPO/GRTKF/IC/8/5)

- Policy Obj.
- Guiding Pr.

# Alternative Proposals -

- List of Questions (10 questions)
- Gap Analysis

# The content of the outcome: three tracks . .

## ■ 1. Draft provisions for protection of TCEs and TK

- *Sui generis* provisions – collective rights, no formalities, indefinite protection. . .
- Based on extensive comments and experiences of States and communities
- Not yet adopted or agreed, but contributing to national, regional and international processes

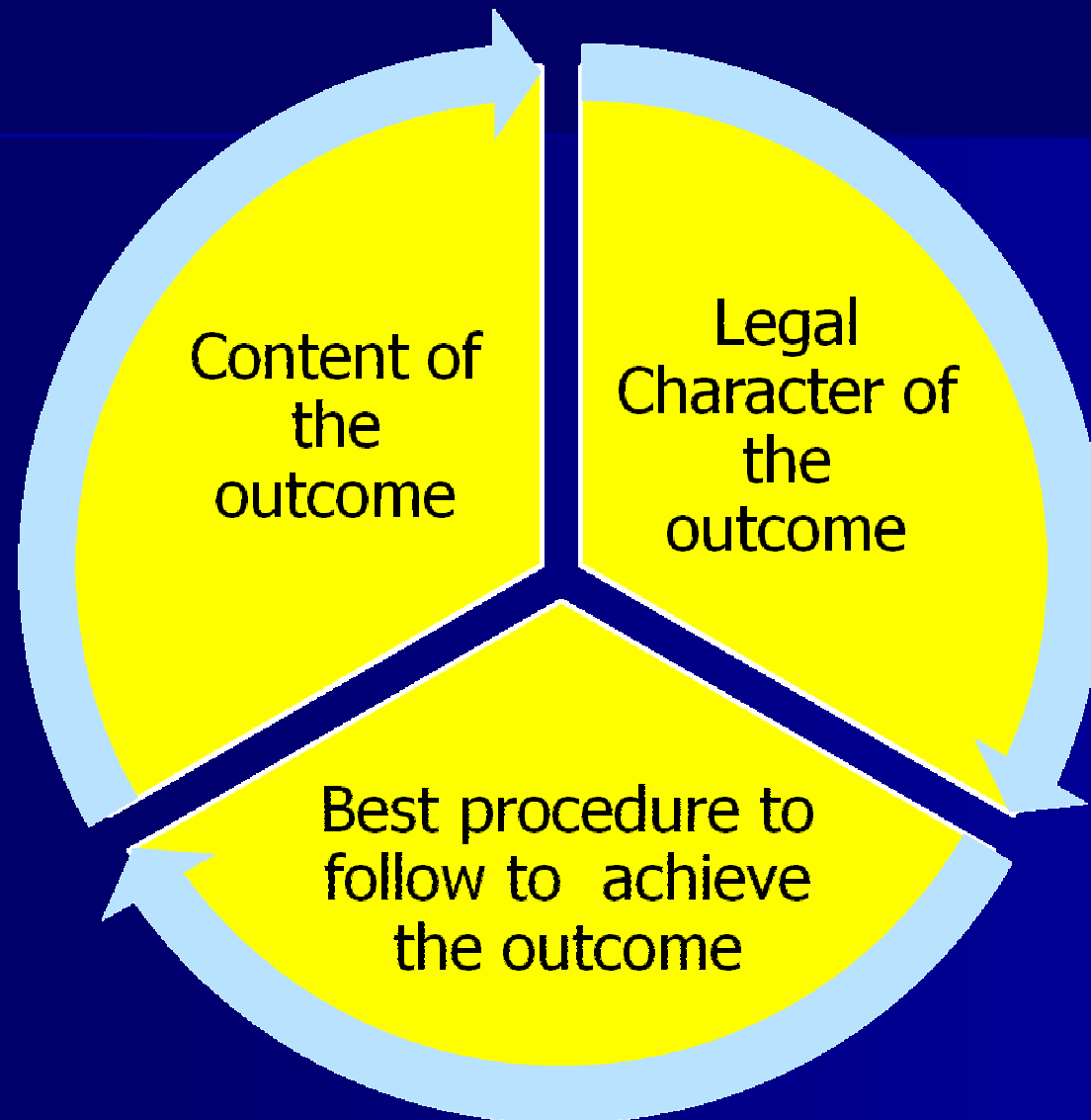
## ┌ 2. Lists of issues

- 10 core policy issues identified at 10<sup>th</sup> session
- Comments on Issues collated for 11<sup>th</sup> session
- Comments on Issues prepared in form of a “factual extraction” for 12<sup>th</sup> session

## ■ 3. Gap analyses

- Requested at 12<sup>th</sup> session (Feb 08)
- Made available on WIPO web site for comments
- Initial review at 13<sup>th</sup> session (October 13 to 17, 2008)

# KEY CHOICES OF THE IGC



## **Breaking the ice and charting the way forward**

- Proposals of the African Group during the 13<sup>th</sup> and 14<sup>th</sup> Sessions of the IGC
- Decision of the General Assembly in September, 2009
- Fifteenth Session of the IGC

# Addressing critical issues at the IGC: Global response

- to clarify the scope of the subject matter and the rights of the holders
- The relationship between the international sui generis system and the existing IP regimes
- Need to clarify positions, objectives, content and practical realities
- How to build consensus among all players
- TK/TCEs as priority on the political agenda of developing countries
- Need to build upon national and regional experiences and make the international instrument<sup>14</sup> reflect the future value of the resources

# CONCLUSION

- Need effective and workable policy and legal tools for the protection of TK,GR and Folklore
- Need to demystify TK and create awareness
- Need to build capacity and put in place practical measures for the promotion of TK
- Urgently need Global action in shaping landscape on norm setting

**THANK YOU**

