

DEVELOPING A REGIONAL SUI GENERIS SYSTEM FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE

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OUTLINE OF PRESENTATION

- BACKGROUND OF ARIPO
- POLICY FRAMEWORK FOR THE PROTECTION OF TK
- ARIPO ROAD MAP
- DEVELOPMENT OF A REGIONAL SYSTEM FOR THE PROTECTION OF TK AND TCEs
- SPECIFIC ISSUES OF CONCERN
- INSTITUTIONAL MECHANISMS

BACKGROUND OF THE ORGANIZATION

- Inter-Governmental Organization;
- Created by Diplomatic Conference;
- Conference adopted - Lusaka Agreement;

Purpose

- Pooling of resources together for promotion, development and harmonization of IP laws and policies.

Membership

Membership open to UNECA and AU

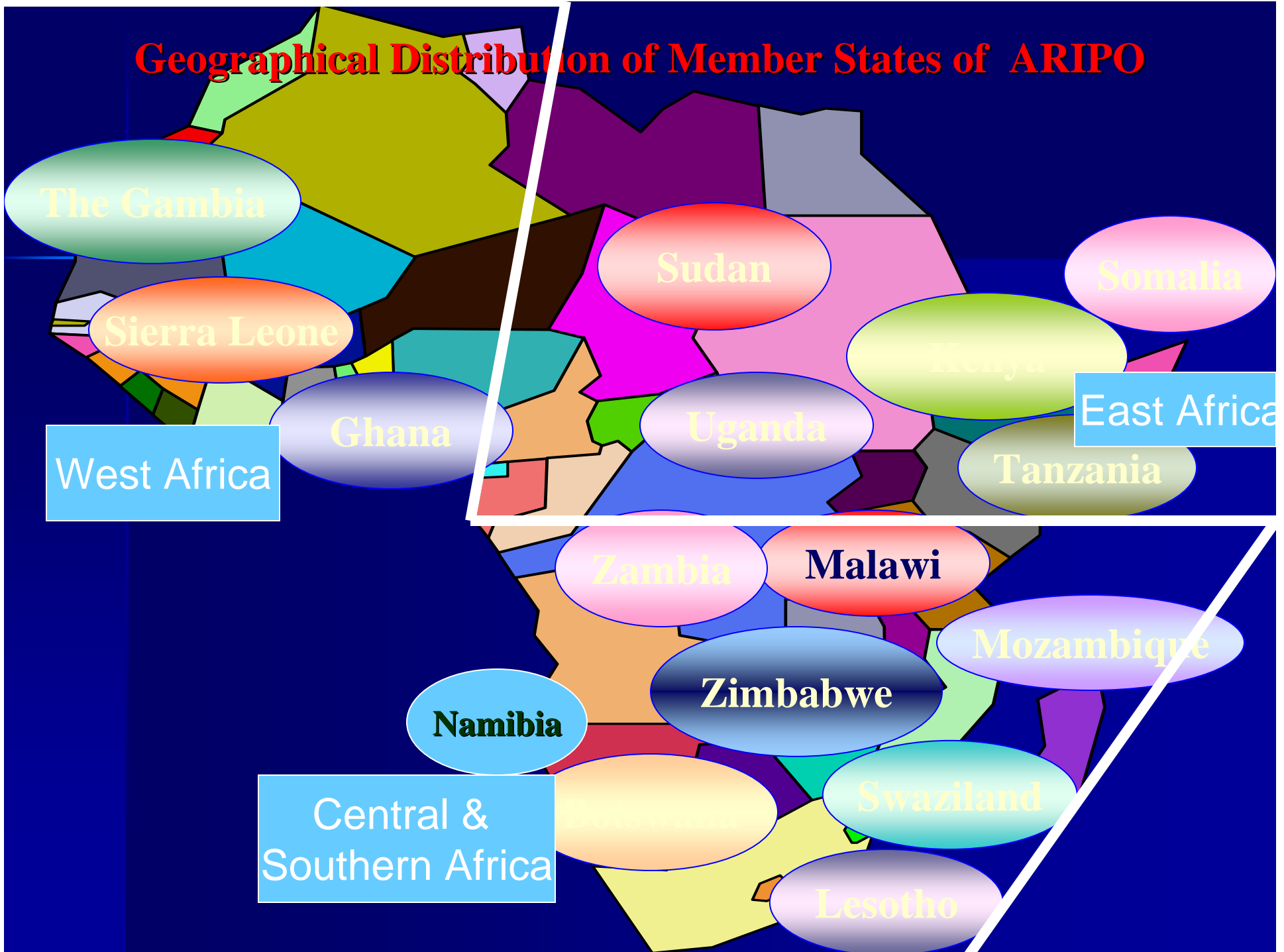
Current Member States

Botswana, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe

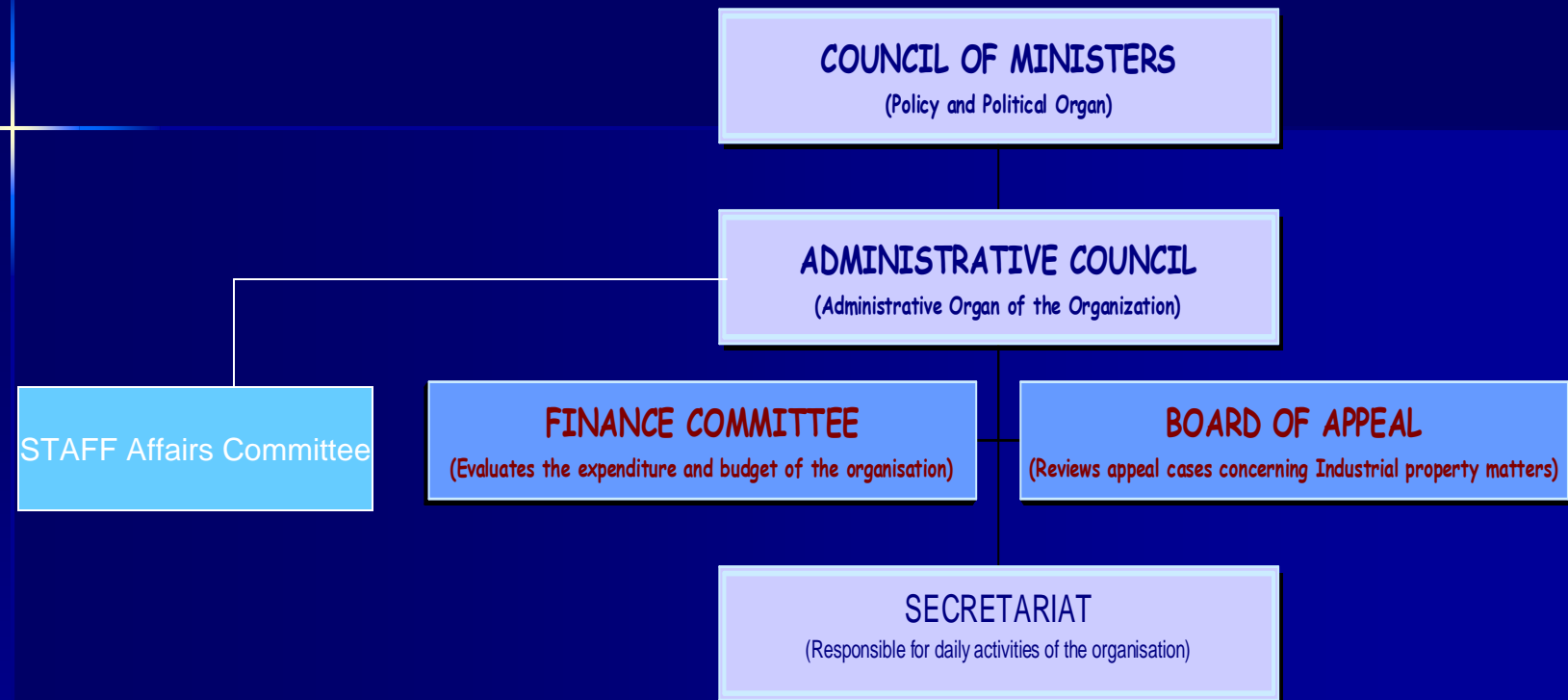
Potential Member States

Angola, Burundi, Egypt, Eritrea, Ethiopia, Liberia, Mauritius, Nigeria, Rwanda, Seychelles and South Africa

Geographical Distribution of Member States of ARIPO



Organs of ARIPO



- Ministers responsible for IP matters – IP High Level Forum for Decision Making on Policy Issues;
- Administrative Council – Forum for IP Experts to determine development of IP;
- Committees and Board of Appeal – for specialized functions ;

Secretariat – day to day operations of the Organization on IP matters

SUBSTANTIVE ACTIVITIES OF THE ORGANIZATION

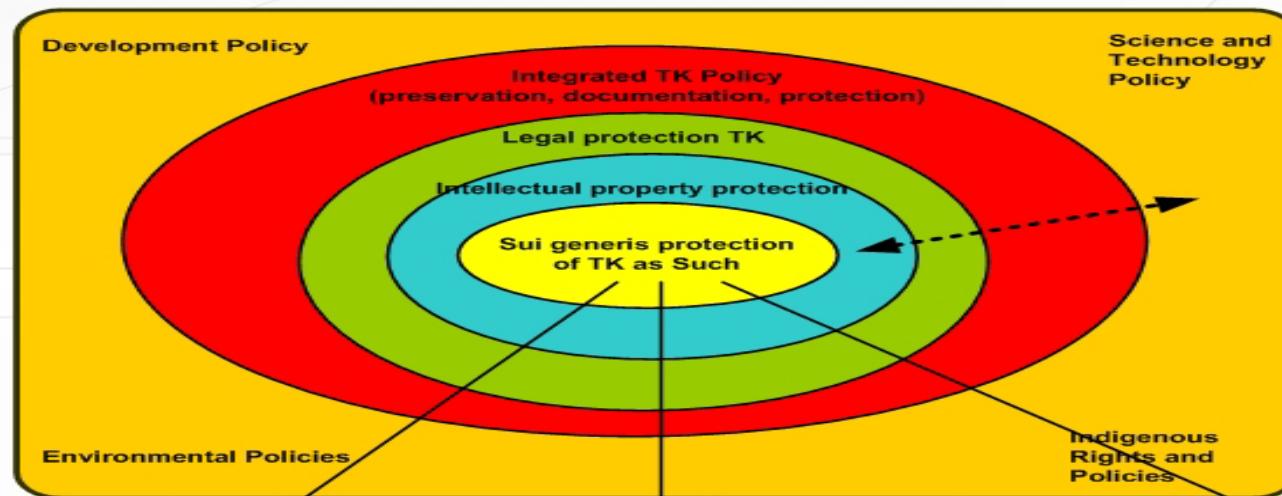
- Intellectual Property Rights registration and administration
 - Harare Protocol
 - Banjul Protocol
- Implementation of the mandate on Copyright and Related Rights
- Implementation of the mandate on Genetic Resources, Traditional Knowledge and Expressions of Folklore
- Capacity building activities of the ARTC

OPERATIONAL AND SUPPORT ACTIVITIES

- Information and Communication Technologies
- Documentation and Information Services
- Promotion of innovation and creativity
- Development of model IP policy framework
- Establishment of enforcement measures
- Development Cooperation, Partnership And Institutional Linkages

ARIPO POLICY FRAMEWORK FOR TK PROTECTION

01 June 2004



Core Principles

- Principle of holistic recognition
- Principle of equity
- Principle of prior informed consent
- Principle of moral and economic right
- Principle of fair competition
- Principle of ordre public and morality
- Principle of safeguarding and promoting customary uses

Guiding Principles

- Promotion of Individual Innovation and Creative works derived from creative works
- No one-size-fit all approach
- Full participation of all stakeholders in protection mechanisms
- Promotion of International and regional cooperation for benefit sharing

Institutional Mechanisms

- 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

POLICY CHALLENGES FOR A SUI GENERIS SYSTEM

- **What** does one want to protect (subject matter)?
- **Why** does one wish to do so (policy objectives)?
- **Which** acts should be prevented/subject to prior authorization (scope of protection)?
- **Who** should benefit from this protection (rightsholders and beneficiaries)?
- **How** would rights be obtained and lost, managed and enforced (formalities, term, administration)?

CHALLENGES CONTD

- Administration of TK and TCEs that cut across national boundaries and multicultural in nature
- Effective royalty distribution mechanism and enforcement
- Formality requirement and registration of TK/TCEs at the Regional Levels
- The relationship between conventional IP and the sui generis system
- The International dimension

ARIPO'S ROAD MAP

PROTECTION OF TK AND FOLKLORE

- **Development of legislations**
- **Documentation initiatives**
- **Capacity building and awareness creation**

PROTECTION OF GENETIC RESOURCES

- **Development of ABS framework**
- **Establishment of Centre of Excellence on Biodiversity**

PROTECTION OF NEW VARIETIES OF PLANTS

- **Development of Regional framework for the protection of new varieties of plants**
- **Providing Technical support**

to the member states of
ARIPO

POLITICAL AND CONSULTATIVE PROCESSES

- Policy and Political decisions
- Expert Review Meetings
- ARIPO-OAPI Harmonization processes
- National and Regional Consultations

THE REGIONAL LEGAL INSTRUMENT

PREAMBLE

PART I: PRELIMINARY PROVISIONS

PART II: PROTECTION OF TRADITIONAL
KNOWLEDGE

PART III: PROTECTION OF EXPRESSIONS OF
FOLKLORE

PART IV: GENERAL PROVISIONS

PREAMBLE

- (i) Recognize the intrinsic value of TK and EoF**
- (ii) Convinced that TK and EoF are frameworks for ongoing innovation and Creativity**
- (iii) Need to respect the dignity, integrity, spiritual values and continuing customary use of TK and EoF**
- (iv) Concerned at the gradual disappearance, erosion, misuse, exploitation and misappropriation of TK and EoF**
- (v) Empower TK holders and Communities**
- (vi) Support traditional knowledge systems**
- (vii) Contribute to preservation and safeguarding of traditional knowledge**
- (viii) Prevent unlawful acts and preclude the grant and exercise of improper intellectual property rights**
- (ix) Promote innovation and creativity**
- (x) Permit intellectual and technological exchange**
- (xi) Promote equitable benefit sharing**
- (xii) Promote community development and legitimate trading activities**
- (xiii) Need to maintain the specific characteristics of the collective and intergenerational nature of TK and EoF including their evolving character**

PART I: PRELIMINARY PROVISIONS

- [Sec 1] Purpose of instrument
- To protect TK and EoF against infringement, misappropriation, misuse and exploitation beyond their traditional context
- [Sec 2] Definitions
- Community
 - TK and EoF
 - Prior Informed Consent
- [Sec 3] National Competent Authority

PART II. PROTECTION OF TRADITIONAL KNOWLEDGE

[Sec 4] Protection criteria for TK

[Sec 5] Formalities relating to protection of traditional knowledge

[Sec 6] Beneficiaries of protection of TK

[Sec 7] Rights conferred to holders of TK

[Sec 8] Assignment and Licensing

[Sec 9] Equitable remuneration

[Sec 10] Recognition of Knowledge holders

[Sec 11] Exceptions and Limitations

[Sec 12] Compulsory license

[Sec 13] Duration of Protection

[Sec 14] Administration and Enforcement

[Sec 15] Access to TK associated with genetic resources

PART III. PROTECTION OF EXPRESSIONS OF FOLKLORE

[Sec 16] Protection criteria for EoF

[Sec 17] Formalities relating to protection of Expressions of folklore

[Sec 18] Beneficiaries of protection of EoF

[Sec 19] Protection of EoF against unlawful acts

[Sec 20] Duration of Protection

[Sec 21] Exceptions and Limitations

[Sec 22] Management of Rights

PART IV:GENERAL PROVISIONS

[Sec 23] Sanctions. Remedies and Enforcement

[Sec 24] International and Regional protection of TK/EoF

[Sec 25] Transitional Measures

[Sec 26] Regulations

[Sec 27,28] Entry into force and Reservation

[Sec 29-31] Signature, Annulment and Denunciation of Protocol

SPECIFIC PROVISIONS OF INTEREST

SECTIONS 5 AND 17

Formalities relating to protection of traditional knowledge

- (1) **Protection of traditional knowledge shall not be subject to any formality.**
- (2) **In the interests of transparency, evidence and the preservation of traditional knowledge, relevant national authorities of Contracting States and regional bodies may maintain registers or other records of the knowledge, where appropriate and subject to relevant policies, laws and procedures, and the needs and aspirations of the traditional knowledge holders concerned.**
- (3) **The registers maintained under paragraph (2) of this article may be associated with specific forms of protection, and shall not compromise the status of hitherto undisclosed traditional knowledge or the interests of holders of traditional knowledge in relation to undisclosed elements of their knowledge**

SECTION 6

Beneficiaries of protection of traditional knowledge

The owners of the rights under this Part shall be the holders of traditional knowledge, namely the local and traditional communities and **recognized individuals within the communities**, who create, preserve or transmit knowledge in a traditional and intergenerational context in accordance with the provisions of Article 3.

SECTION 7

Rights conferred to holders of traditional knowledge

- (1) This instrument shall confer on the owners of rights referred to in Article 5 the exclusive right to exploit their traditional knowledge.
- (2) Subject to the conditions and limits established by this instrument, owners of rights in traditional knowledge shall have the right to prohibit any person from exploiting and disseminating their protected traditional knowledge without their prior informed consent.
- (3) For the purposes of this instrument, the term "exploitation" with reference to protected traditional knowledge shall refer to any of the following acts:
 - (a) where the traditional knowledge is a product:
 - (i) manufacturing, importing, offering for sale, selling or using the product beyond the traditional context; or
 - (ii) being in possession of the product for the purposes of offering it for sale, selling it or using it beyond the traditional context; and
 - (b) where the traditional knowledge is a process:
 - (i) making use of the process beyond the traditional context; or
 - (ii) carrying out the acts referred to under subparagraph (a) of this paragraph with respect to a product that is a direct result of the use of the process.
- (4) In addition to all other rights, remedies and action available to them, the owners of the rights in tradition knowledge shall have the right to institute legal proceedings against any person who carries out any of the acts mentioned in paragraph (3) of this article without the owners' permission.

SECTION 8

Assignment and licensing

- (1) Owners of rights in traditional knowledge shall have the right to assign and conclude licensing agreements, notwithstanding that traditional knowledge belonging to a local or traditional community may not be assigned.
- (2) All access, authorizations, assignments or licences granted in respect of protected traditional knowledge shall be granted in writing, otherwise they shall be of no force or effect.
- (3) A document drawn up for the purpose of paragraph (2) of this article shall be approved by the appropriate authority, failing which the document shall be void.

SECTION 12

Compulsory licence

- (1) Where protected traditional knowledge is not being sufficiently exploited by the rights holder, or where the holder of rights in traditional knowledge refuses to grant licences subject to reasonable commercial terms and conditions, a Contracting State may, in the interests of public security or public health, grant a compulsory licence in order to fulfil national needs.
- (2) In the absence of an agreement between the parties, an appropriate amount of compensation for the compulsory licence shall be fixed by a court of competent jurisdiction.

SECTION 13

Duration of protection of traditional knowledge

Traditional knowledge shall be protected for so long as the knowledge fulfils the protection criteria referred to under article 3, except that where traditional knowledge belongs to an individual, protection shall last for 25 years following the exploitation of knowledge beyond its traditional context by the individual.

SECTION 15

Access to traditional knowledge associated with genetic resources

Authorization under this instrument to access protected traditional knowledge associated with genetic resources shall not imply authorization to access the genetic resources derived from the traditional

SECTION 24

Regional protection of traditional knowledge and expressions of folklore

- (1) Existing or new regional organizations may be entrusted with the task of:
 - (a) settling cases of concurrent claims from communities of different countries with regard to traditional knowledge; and
 - (b) resolving opposing claims to expressions of folklore by communities from different countries.
- (2) For the purpose of paragraph (1) of the article, the organizations referred to in that paragraph shall make use of customary laws, local information sources and extrajudicial means for settling disputes, and any other practical mechanism which the organization may consider necessary.

DRAFT REGULATIONS

- Applications for authorization and Grant/Refusal
- Forms and Fees
- Publication and Issuance of Certificates
- Administration of Regional TK/TCEs
- Maintenance of Registers
- Benefit sharing and distribution of fees
- Licensing Agreements
- Dispute Settlements

NEXT STEPS

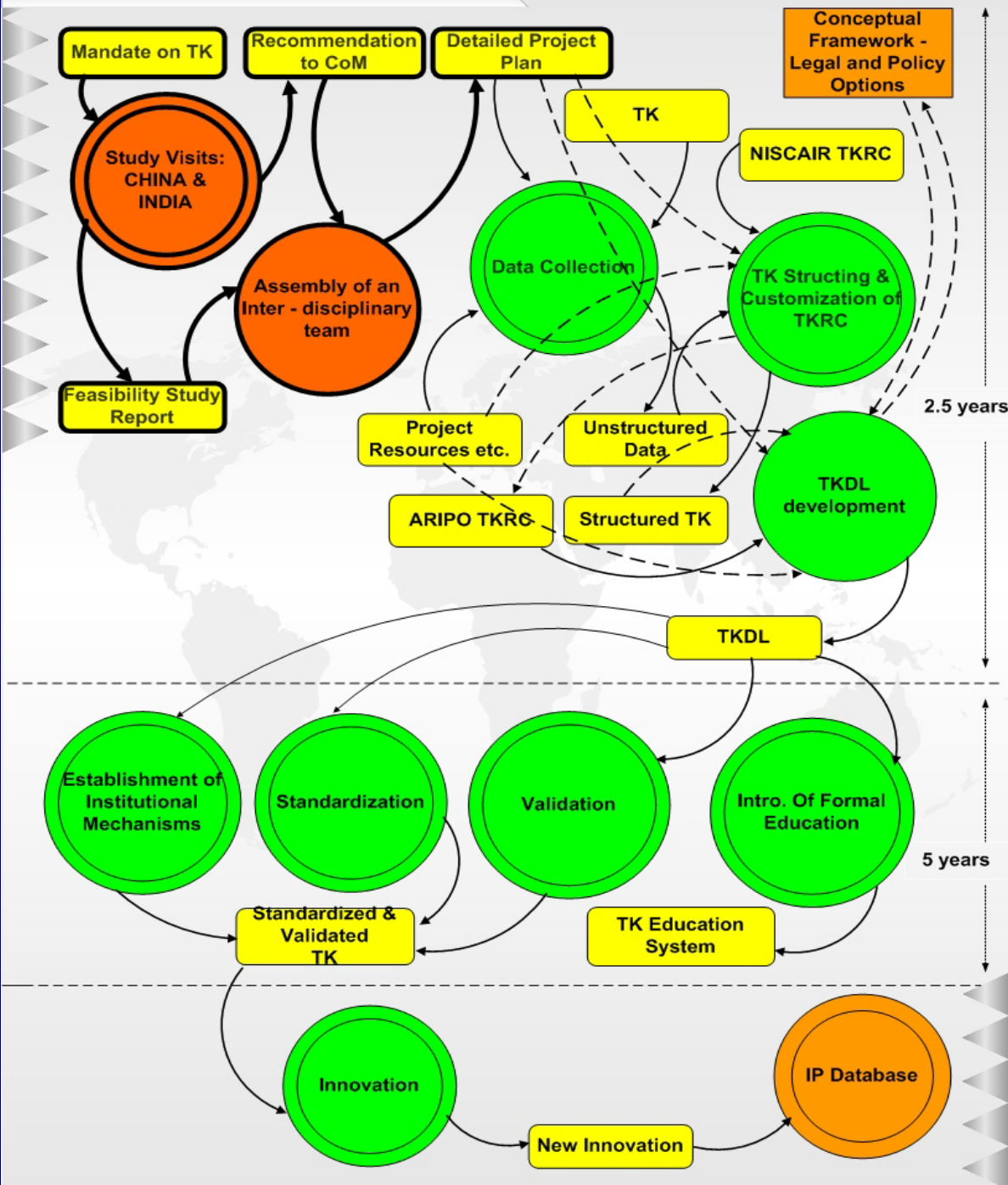
- Comments from the Member States
- Experts to finalize the Draft Protocol and Regulations
- Endorsement by the Council of Ministers
- Adoption by Diplomatic Conference

ARIPO DATABASE DEVELOPMENT – STAGES INVOLVED

- PRELIMINARY INVESTIGATIONS
- STUDY VISITS TO CHINA AND INDIA
- DEFINING THE OBJECTIVES FOR THE DATABASE
- DEVELOPMENT OF IMPLEMENTATION PLAN
- ESTABLISHMENT OF PROTOTYPE AND PILOT DATABASE DEVELOPMENT
- THE WAY FORWARD

ARIPO IMPLEMENTATION ROAD MAP

04 June 2004



CAPACITY BUILDING AND AWARENESS CREATION

- Training courses on TK, GR and TCEs
- Establishment of Centre of Excellence for Biodiversity and ABS Mechanisms
- Academic and Internship Programmes
- Development of Training modules
- Consultative meetings, seminars and Publications

BENEFITS TO KNOWLEDGE HOLDERS

- Promotion of TK and Folklore
- Empowerment of Custodians
- Wealth Creation
- Promotion of Innovation and Creativity
- Enhanced Utilization and Dissemination

CONCLUSION

- It is expected that the ARIPO Protocol will be submitted to WIPO as a working document for the text-based negotiations
- The Protocol will also serve as a model for national legislative development.

**THANK YOU FOR YOUR
ATTENTION**

