



**Access and Benefit-Sharing Regional Consultations for the Pacific  
Region  
Auckland, New Zealand  
15<sup>th</sup> and 16<sup>th</sup> February 2010**

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## **FINAL REPORT**

### **I. INTRODUCTION**

1. The Access and Benefit-Sharing Regional Consultation for the Pacific regional countries was organized from 15 to 16 February 2010 in Auckland with the financial support of UNEP, through the Secretariat of the Pacific Regional Environmental Programme (SPREP), in close collaboration with the CBD Secretariat, and in consultation with the Co-Chairs of WG-ABS.
2. The Regional Consultation was organized in response to decision IX/12 on Access and Benefit-sharing, paragraph 17, where the Conference of the Parties (COP) emphasized the importance of consultations to advance the negotiations of the International Regime on Access and Benefit-sharing and requested the Co-Chairs of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS) to be instrumental in organizing and facilitating such consultations during the intersessional period. The decision also encouraged Parties and stakeholders to carry out bilateral, regional and interregional meetings and consultations and called upon donors and relevant organizations to provide financial resources necessary for such meetings and consultations. In addition, in paragraph 22 of the same decision, the COP invited the United Nations Environment Programme (UNEP), governments and other international organizations to support regional and interregional Consultations in close collaboration with the Secretariat.
3. In accordance with the above, and further to notification 2009-010 of 24 August 2009 announcing the tentative calendar of the Regional Consultations, and notification 70045 of 23 December 2009, announcing the meeting, the Regional Consultation for Pacific countries provided an opportunity for the negotiators from the region to consult and exchange views on the components of the International Regime during the intersessional period with a view to finalizing the negotiations of the International Regime at the ninth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing.
4. The following countries sent government-nominated officers or experts to the workshop (refer to Annex III for a complete list of participants): Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu. The Secretariat of the Pacific Regional Environmental Programme was represented by Mr. Clark Peteru, legal adviser. Also participating were the Co-Chairs of ABS and the representative of the Executive Secretary of the Convention on Biological Diversity.

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## II. PROCEEDINGS OF THE REGIONAL CONSULTATION

### ITEM 1. OPENING OF THE MEETING AND ORGANIZATIONAL MATTERS

5. Ms. Tania Temata, member of COP 9 Bureau for the Asia Pacific region, and chairperson of the meeting opened the meeting at 9am on Monday, 15 February 2010 by warmly welcoming the delegates. On behalf of the delegates, she thanked the UNEP for making the meeting possible; SCBD for their ongoing support to the Pacific islands with regards to ABS negotiations; the Co-chairs Fernando Casas and Timothy Hodges for availing themselves to provide insight and clarifications to the delegates on ABS matters. She highlighted the purpose of the meeting and acknowledged the differing levels of understanding of ABS amongst the countries in the region. She also acknowledged in the opening the linkage the Pacific Group have to make with the other part of the Asia Pacific region, who have concluded their meeting in December 2009, and the need to cross-fertilize on related or common issues. Mr. Peteru offered a blessing to assist the participants and their work.

6. Opening statements were made by Mr. John Scott, programme officer for Article 8(j) and related provisions, on behalf of the Executive Secretary of the Convention on Biological Diversity, a statement was read on behalf of the Executive Director of UNEP, the representative from SPREP (Clark Peteru); and Mr. Fernando Casas and Mr. Timothy Hodges, Co-Chairs of WG-ABS.

7. Mr. Timothy Hodges mentioned that the key to success towards the adoption of the international regime is to build a better understanding within regions and across the regions in order to ensure implementation of the third objective of the CBD. He remarked about the unique issues relevant for the Pacific and in particular marine genetic resources and the need to build capacity of both governments and indigenous and local communities. He acknowledged that the Pacific region was dealing with bio-prospecting on a daily basis. Regions must come to terms with issues that are unique to them but also areas of mutual understanding. He remarked that the context of this meeting is highly relevant for the negotiation process as the time remaining for the presentation of any proposed draft instrument to be considered in Nagoya is short. He also mentioned that in order to achieve that goal it is necessary to have a successful conclusion of the work at the 9<sup>th</sup> meeting of the ABS Working Group to be held in Cali this March. He further explained the regional meetings preceding the actual Working Group negotiations and the need to have a text ready to be distributed to CBD Parties by mid-April. He concluded by mentioning several principles underlying the negotiations – sustainable use, fairness, equity, participation, and balance between users and providers,

8. Mr. Fernando Casas presented an overview of the ABS international regime negotiation process underscoring the importance of ensuring that an efficient, and most importantly, a high quality access and benefit sharing international regime is established. He stated that this working session is crucial towards that process encouraging Pacific participants to identify their regional priorities and then negotiate with other regions and countries in order to finalize the international regime in WGABS-9. He said that discussion of difficult issues in the International Regime should not be delayed to a later stage, and that Parties should address challenges at present, aiming to achieve an International Regime ready to be implemented. He noted the broad context of ABS and how GRs can contribute to human sustainable development, including health and food security. He also noted that trans-boundary issues concerning GR and TK are particularly relevant to the Pacific region. The chairperson Ms. Temata, emphasized that Pacific cultures have a culture of giving without expectation and the concept of benefit-sharing is new for many. Ms. Temata also added that bio-prospecting is well known in the Pacific and thus the issues arising from this are familiar in this region, although sometimes capacity to deal with it may still be in its infancy.

9. To conclude the opening of the meeting, the Chairperson offered a tour de table so that each participant could introduce themselves.

### ITEM 2. ADOPTION OF THE AGENDA

10. The following agenda was adopted, on the basis of the provisional agenda (ABSRC-PAC-01-01):

<b>Pacific Regional Consultation in support of the finalization of IR on ABS</b>		
<b>Day 1: 15<sup>th</sup> February 2010</b>		
<b>8:30 – 9:00</b>	Registration	SPREP Staff
<b>9:00 – 10:00</b>	OPENING SESSION	
	Welcome remarks	SCBD representative
	Welcome address	UNEP representative
	Welcome address	SPREP – Clark Peteru
	Welcome address	Co-chair of ABSWG
	Participants Introduction	Ice Breaker
<b>10:00 – 10:30</b>	<b>COFFEE BREAK</b>	
SESSION 1: SETTING THE SCENE		
10.30 – 12.00	ABS Issues in the Pacific	Clark Peteru – SPREP
	Current status of negotiation of IR Road to Nagoya	SCBD
	IR Negotiations Challenges	Co-chairs
<b>12:00 – 13:30</b>	<b>LUNCH</b>	
SESSION 2: IR SUBSTANTIVE COMPONENTS		
<b>13.30 – 16.00</b>	Discussion on substantive components: - Access - Benefit sharing	
	- Compliance - Scope	
<b>16:00 – 16:30</b>	<b>AFTERNOON TEA</b>	
<b>16:30- 17:00</b>	Day 1 Sum up – General Discussion	
<b>Day 2: Tuesday 16<sup>th</sup> January 2010</b>		

9.00 – 10:00	- Traditional Knowledge - Capacity Building - Objective - Terms and Definitions	
<b>10:00 – 10:30</b>	<b>Coffee break</b>	
10:30 – 12:00	- Objective - Terms and Definitions - Nature	
<b>12:00 – 13:00</b>	<b>LUNCH</b>	
13.00 – 14:00	Meeting with NZ Delegation	Tania Temata
14:00 – 15:00	Overview of the CIIC Meeting Workshop summary Closing remarks	Co-chairs SPREP SCBD – John Scott Tania Temata
16.00 – 17.00	Closed Meeting – Pacific Delegates	Tania Temata

### **ITEM III      INTERNATIONAL REGIME ON ACCESS AND BENEFIT SHARING**

#### **SESSION I - SETTING THE SCENE**

11. Mr. Clark Peteru spoke about the rich biological and genetic diversity especially marine biodiversity in the Pacific region. Some Pacific countries such as Papua New Guinea are also particularly rich in terrestrial biodiversity. The Pacific are very familiar with bioprospecting. Many Pacific countries are characterised by a lack of capacity to deal with these issues – lack of technology, etc. Historically the Pacific has not benefited from the exploitation of its resources. Benefit sharing remains a controversial issue in the ABS discussions. Terms of particular significance for the Pacific is access, mutually agreed terms, and benefit sharing.

12. Mr. Peteru discussed many of the issues in a framework of how they unfold on the ground in the Pacific region. He discussed the use of TK that can fast track the discovery of useful compounds and how that TK could be protected. The Taro plant is a common Pacific resource but who owns the GR in taro plant is one example of a genetic resource which has transboundary components. It was noted that the nature of GRs in the Pacific involved transboundary dimensions that included questions of how benefits may be shared between countries or ILCs where TK is involved. He touched on the role of national laws – domestic legislation – interim measures – pending the outcomes of the negotiations on the IR on ABS.

13. Mr. John SCOTT presented a power-point presentation to bring participants up to speed on the current negotiation process, including the intercessional work and the final steps on the road to Nagoya.

14. Co-Chair Hodges focussed on the need for a clear process to achieve the desired outcomes on ABS. He further commented that the ABS International Regime needed to be defined, saying that despite time constraints the regime needs to have both a strong core and sufficient flexibility. He reminded participants that two issues have to be covered by the international regime: the provision of a regulatory structure and a facilitating regime for the access and the sharing of benefits. He remarked on the relevance for the Pacific region, of capacity building at different levels, including at the national, community level,

and scientific institutions. He also highlighted the relevance of the compliance component of the international regime, especially regarding its domestic enforcement. Mechanisms used for the negotiation process such as small groups have greatly assisted the broader discussions on difficult issues. The FoCC meeting – provided for a frank and open discussion regarding problems and more important to develop some possible solutions. He explained in detail the next steps forward and in particular the CIIC meeting.

15. Co-Chair Casas introduced some key points concerning this matter. He remarked that at this point it is important to understand how the three components of access, benefit sharing and compliance will interact. He wondered about how the regions and countries would address the traditional knowledge associated to genetic resources issue and the clarification of certain definitions. He said that after last ABS WG meeting in Montreal the components for the regime are already identified, and that we should not step back, but move forward to achieve high quality results on this negotiation process.

## **SESSION 2 SUBSTANTIVE COMPONENTS OF THE INTERNATIONAL REGIME**

16. Drawing upon the Montreal Annex, Ms. Temata invited participants to exchange views and identify areas of coordinated actions/proposals with respect, among others, to the following issues:

- Access
- Benefit- sharing
- Compliance
- Traditional Knowledge and Capacity-building
- Nature, objective, scope

17. The representative of the Secretariat of the Convention provided an introduction to each component and a group discussion was lead by the Chairperson. The representatives presented their views on each of the elements which were analyzed from different perspectives during an active debate.

18. Many participants noted that **access** was a balancing act between facilitation or regulation by government and decision-making by communities. Governments want to avoid users shopping around or island-hopping for the weakest regulatory regimes within the Pacific. All felt that access should address misappropriation and agreed that access should be based on PIC and MAT and that the costs for facilitating these processes be borne by the user. Local examples were provided regarding issues involving different levels of consent: community, provincial, national etc. The participants also discussed the role of the IR for countries currently without national legislation. It was noted that a sufficient body of rules and practices had emerged which could provide sufficient guidance for domestic law makers. . When the Protocol enters into force, there will be a transition period as countries seek to align their existing laws to the Protocol. Many participants felt there was need for a regional mechanism to assist countries in negotiating MAT and PIC concerning access.

19. A detailed discussion was held on **benefit sharing**. Upfront benefits should be sought especially as it was inherently uncertain whether any further benefits might result. In addition the value of any samples taken is also uncertain. It was suggested that milestone payments be set nonetheless and the opportunity be left open to negotiate additional benefits further down the track. Government can play a facilitating or supervisory role. Many benefits, apart from money, can be negotiated. Whether global benefits resulted from the genetic resources or not, the benefit sharing should still be a matter for determination by the provider country. It was noted that MAT should be renegotiated when the agreed use of a GR subsequently changed. The high seas, was discussed, particularly pockets of high-seas totally enclosed by EEZs of Pacific island countries. It was noted that there were regional arrangements which could guide regional benefit-sharing regarding genetic resources found in one or more countries, for example benefit-sharing among multiple beneficiaries in the context of the harvesting of Pacific tuna

stocks. It was noted that there also needed to be tools to monitor and track the movement of genetic resources especially when it leaves national jurisdiction.

20. Under **compliance** many participants expressed the need for the IR to develop tools to ensure monitoring and enforcement. Existing extraterritorial modalities in the legal system (eg, extradition, reciprocal judgements) were not considered feasible although a “Lacey Act” type prosecution (bringing a resource prosecution for an offence committed in a different jurisdiction) may offer some hope. Non-legal means particularly monitoring by watchdog groups and blacklisting or adverse publicity could ensure a measure of compliance. At the domestic level it was possible for courts to deliver judgments in absentia for some minor criminal offences and though such judgements might not be enforceable they would nonetheless have a huge negative impact on the reputations of delinquent users. The participants also discussed the difficulties providers of GR face in monitoring long term agreements and processes due to problems with record maintenance, staff turnover, etc. The idea for an ombudsman was favoured because of minimal cost involved, the ease of lodging a complaint and the broad investigative powers of that office. The use of recognized certificates of origin was discussed and it was felt there needed to be more awareness raising amongst communities to prevent misappropriation.

21. Participants discussed **TK** issues and noted that ownership should rest with the relevant ILCs. Customary laws and practices should be respected. ILCs have traditional and/or community structures for supplying PIC however, many felt that governments should play an active role concerning PIC and MAT to ensure a level playing field and respect for their rights. It was mentioned there is a regional project funded by a European-based organisation regarding the preservation and legal protection of traditional knowledge and linkages should be made to that project. Again, a monitoring and compliance regime should provide safeguards against infringement of TK rights.

22. There was universal agreement of the need for broad **capacity building** for governments, ILCs and other stakeholders regarding the entire PIC and MAT processes. While reports and assessments such as the NCSA were useful there needed to be follow-up on the ground. It was agreed that parties should identify their own capacity building needs (eg, technology transfer, training opportunities, equipment etc.) and that a financial mechanism established to assist in delivery of capacity building to ILCs, SIDS and other stakeholders.

23. The participants had a brief discussion on **scope, objective and nature**. Issues such as human genetic resources, derivatives, pre-CBD samples, the high seas, and migratory species were discussed.

24. Participants completed their discussions on the main components on Tuesday morning with a discussion of **terms and definitions**. The Secretariat of the Convention recalled terms and definitions already articulated in article 2 of the Convention and noted that various terms being used in the negotiation process for the International Regime remain as yet undefined and/or without consensus. It was noted that scope will be dependant on a clear common understanding of terms and definitions used in the International Regime. In the discussions participants noted that in relation to some contentious terms common understandings would be more helpful than a definitive definition. A detailed discussion followed concerning the terms “derivative” and “biological resource”, in the context of the negotiation of the IR. It was noted that “derivatives” was usually understood within the context of benefit-sharing but complexities arose in considering this within the context of “access”. The senior legal advisor of the Convention, Mr. Lyle Glowka, addressed the meeting via video-link-up and offered advice about the use of definitions and options, such as common understandings or use of preamble text, which could be alternatives to legal definitions, on which it may be hard to reach consensus.

25. The Co-chairs on ABS also offered some questions to focus thinking on terms and definitions including within the context of the IR, beyond the terms and definitions provided in article 2 of the Convention. Definitions of terms can be very problematic so it needed to be asked what terms are absolutely necessary for the IR ABS and whether the Bonn Guidelines offer assistance? Furthermore they urged the participants to articulate regional concerns regarding certain terms and definitions such as “derivatives”. On one view it was better to look beyond a definition which might not be agreeable to everyone, and ask what situations (eg, whether a genetic resource, derivative or a product) needed to be addressed and ensure the IR covers that situation.

### **SESSION 3 SUMMING UP BY THE CHAIRPERSON**

26. Based on the discussions the Chairperson noted it was possible to arrive at common understandings on some of the elements which constitute the main principles for the negotiation of an International Regime in the region. The elements identified are further detailed in Annex I to this report which reaffirms the following principles:

- The Protocol must be legally binding, comprehensive and integral in order to provide legal certainty especially considering our limited capacity to ensure compliance and enforcement beyond national jurisdiction;
- Underpinning the IR is benefit-sharing and ways must be identified to ensure that benefits reaches those rightful owners;
- Capacity building on all levels is essential for the success of the IR and need to be supported. Furthermore, capacity development should be part of the capacity building framework to ensure that provider countries also have the ability to develop and add value to their GRs, to the extent possible;
- Reaffirm the sovereign rights of countries on their genetic resources;
- Respect the rights of indigenous and local communities in conformity with Article 8j of the Convention over their traditional knowledge associated to genetic resources, including their right to use and practice their traditional knowledge and to ensure their equitable access to benefits resulting from its use.
- Traditional knowledge should form a succinct chapter and be maintained as a cross-cutting issue with the IR.

26. The Chairperson decided to pursue further common understandings during the closed Pacific regional meeting, which would be added to the report as Annex I. The close meeting would also attempt to reach consensus on the nominations of two Pacific representatives for the CIIC meeting in Cali, from 16-18 March 2010.

#### **ITEM 6. OTHER MATTERS**

27. No other matters were discussed under this item.

#### **ITEM 7. CLOSURE OF THE MEETING**

28. Mr. Joe Aitaro, representative of Palau expressed thanks on behalf of the Pacific delegates. The Co-Chairs on ABS also thanked the participants and invited them to continue the ABS journey on the road to Nagoya. The Secretariat of the Convention also thanks the participants for allowing them to appear through video-link-up. The Chairperson closed the meeting, reminding the participants that further meetings had been planned in the afternoon so that pacific representatives could meet with Australia and New Zealand, as well as a closed Pacific meeting to allow delegates to finalize their common understandings. The Regional Consultation closed at Midday on Tuesday, 16 February 2010. Mr. Peteru (SPREP) offered a prayer of thanks for the delegates and the outcomes of the meeting.

**ANNEX I****COMMON UNDERSTANDINGS AMONG PACIFIC COUNTRIES CONCERNING THE MAIN COMPONENTS OF THE PROTOCOL ON ACCESS AND BENEFIT SHARING.**

The countries from the Pacific region:

- a) Reaffirm their position in favor of a legally binding International Regime in the form of a single Protocol, which allows for the full implementation of the third objective of the Convention on Biological Diversity to be adopted by the 10<sup>th</sup> Conference of the Parties; Reaffirm that the Protocol ensures compliance by the acquiring and user country with legislation and national requirements, including PIC and MAT, of the provider country
- b) Encourage developing countries that share similar genetic resources to cooperate regarding access and benefit sharing arrangements relating to those resources. ??
- c) Agree that the Protocol should include clear provisions towards strengthening the means to achieve adequate capacity building in developing countries including finance, particularly for least developed countries and SIDS.
- d) Reiterate that the Protocol should guarantee the sovereign right of countries over their genetic resources.
- e) Reaffirm that, in conformity with Article 8j of the Convention, the Protocol should respect the rights of indigenous and local communities over their traditional knowledge associated to genetic resources, and ensure their participation in the benefits resulting from its use.

Because of these, the following common understandings were identified related to the main components of the Protocol.

**1. NATURE.**

- a) The Protocol must be a single legally binding Protocol which ensures the effective implementation of the third objective of the Convention.

**2. OBJECTIVE.**

- a) To effectively apply the provisions of articles 8 j), 15, 16 and 19.2 of the Convention on Biological Diversity.

**3. SCOPE.**

- a) The Protocol on access and benefits sharing should apply to genetic resources and its derivatives, as well as associated knowledge, innovations and traditional practices, pursuant to the relevant provisions of the Convention and subject to national legislation.
- b) Marine genetic resources, including migratory species, occurring in pockets of high seas fully enclosed by the EEZs of adjacent country Parties to the Protocol should fall within the ambit of the Protocol.
- c) The Protocol must be respectful, and to the extent possible, mutually supportive of other international instruments such as the International Treaty on Plant Genetic Resources for Food and Agriculture.

**4. DEFINITIONS.**



- a) Definitions are useful but in relation to contentious terms in which agreement cannot be reached a broad understanding of the term is more helpful, leaving the specific meaning of a particular term to be decided at individual negotiations or in accordance with national legislation of provider country.

## **5. ASSOCIATED TRADITIONAL KNOWLEDGE.**

- a) Associated traditional knowledge is a cross-cutting element that should be incorporated in all the components of the Protocol.
- b) Local and indigenous communities have rights linked to their traditional knowledge associated with genetic resources and these rights must be protected.
- c) Indigenous and local communities have the inherent right to exchange amongst themselves genetic resources and associated traditional knowledge and customary practices, for traditional purposes.
- d) There is a need to identify regional mechanisms for access and benefit sharing regarding cases of transboundary traditional knowledge.
- e) Indigenous and local communities are the holders of their TK and its utilisation requires PIC and MAT

## **6. CAPACITY BUILDING.**

- a) Capacity building is a priority for developing countries, particularly least developing countries and SIDS.
- b) The Protocol must create and strengthen the capacity of stakeholders, including indigenous and local communities.
- c) The Protocol must provide for a funding mechanism to support national capacity building and development programmes to assist developing countries, in particular LDCs and SIDS
- d) Developing countries must identify their own needs and define their priorities

## **7. ACCESS.**

- a) Prior Informed Consent is a precondition to obtaining access to genetic resources and is also a precondition to obtaining any traditional knowledge associated with the genetic resource.
- b) A national competent authority that is responsible for access requests should be appointed and supported.
- c) A “Clearing house” mechanism should be established to enable information exchange

## **8. BENEFIT SHARING.**

- a) The Protocol must incorporate transparent and clear provisions to guarantee the fair and equitable sharing of monetary and non monetary benefits, resulting from the use of the genetic resources and derivatives, under mutually agreed terms.
- b) Regional mechanisms should be established to ensure the fair sharing of benefits arising from the use of a genetic resource that occurs in more than one country.

**9. COMPLIANCE.**

- a) Both legal and non-legal compliance measures should be utilised.
- b) There should be an environmental ombudsman funded by the protocol to receive complaints and investigate accordingly.
- c) An information clearing-house is needed in order to track the use of genetic resources and associated traditional knowledge.

## Annex II

**Issues Paper draft by Bureau Member****An International Regime on Access to Genetic Resources and the Equitable Sharing of Benefits****Pacific Islands Relevance****Preamble**

This short paper aims to highlight some of the key issues which may be of direct relevance to the Pacific islands regarding ABS. These issues were drawn from the Montreal Annex, which will be the basis for the upcoming negotiations in Cali, Colombia in March 2010. It aims to also reach a common understanding on these key issues amongst Pacific negotiators in order to reach a successful completion of the negotiation on the IR on ABS.

Some questions have been designed in order to generate discussion and to gain common understanding.

**IR SUBSTANTIVE COMPONENTS****1. ACCESS**

- Sovereign Rights over the Genetic Resources – if the state has sovereign right over their GRs, how is this authority to be determined? How can we assure legal certainty and transparency of access procedures, including within country?
- What does it mean when means for access is referred to as “facilitated access” or “endeavour to create conditions to facilitate access, or “regulate access?” What best reflects the sovereign right over the GRs in our context?
- Would you agree to access without any Prior Informed Consent? Or a Mutually Agreed Terms?
- Who exactly do we think should be granting access, and how should this be done?

**2. BENEFIT SHARING**

- How can the IR ensure the equitable sharing of benefits arising from the utilisation of GRs, including the use of associated traditional knowledge?
- What does it mean in the Pacific context, when we say “equitable”? Equitable for whom? State? Community? Family? Individual? Should this be included in the IR or be left to each Party to determine? If in the IR, why is it important?
- How can we address our unique situation of customary land tenure in terms of Benefit Sharing?
- In the Pacific many of our GRs can be found across many of the islands – how can the benefits be equitably shared if the GRs are being sourced from all islands? How can we best address associated TK if many communities claim ownership of such knowledge?
- What about GRs for global benefits? Do we waiver our rights and benefits to these GRs or not?

**3. TK ASSOCIATED WITH GRs**

- Should TK be mainstreamed in the IR or should it be a standalone component? How can the IR address and protect respect for TK?
- Should the IR include provisions for the protection of TK, innovations and practises? And if so, how can it be enforced and monitored both at the national and international level?
- Where and how to draw the line between the granting of PIC by communities (ILCs) and by the government? Should the communities grant the PIC for associated TK? How or what can be most appropriate mechanism for granting consent for associated TK? Single or multi-layered systems of granting PIC?
- Can the ILCs have right to exchange amongst themselves, GRs and associated TK, for traditional purposes?

- How do you get the consent of ILCs? In what way? What is respectable and in accordance with customary practises? Where should these issues be articulated, in the IR or the domestic legislation? Are there community structures in place to provide for these consents?

#### **4. COMPLIANCE**

- There is an interpretation that there are two MATs under Article 15 of the CBD. 1) Art. 15.4 - Access  
2) Art.15.7 - Benefit Sharing  
How can the IR ensure that these requirements are complied with?
- What measures should be in the IR to promote compliance?
- How or what tools should be in the IR to monitor compliance? How can GRs be tracked or monitored especially outside of national jurisdictions?
- Should there be remedies or sanctions in the IR to address non-compliance to national legislation?
- If not a Party to the IR, should the Protocol still be obligatory to them? How can the IR reflect on this?
- How can our region best ensure that access to marine genetics are monitored properly given our limitations with surveillance in our vast ocean areas?

#### **5. CAPACITY BUILDING**

- Where is capacity building most needed in terms of effectively implementing the IR?
- Should capacity building form part and parcel of the IR? How should capacity building be reflected in the IR? As a provision of the IR or as an add-to to the IR?
- What practical approaches can be undertaken to build capacity? Is regional? Or sub-regional etc?
- Should there be a funding mechanism in the IR for CB?

#### **6. SCOPE**

- Should the scope be that as agreed in the Bonn Guidelines? Or the Article 15 of the CBD? Or should it be something else?
- Of particular interest to Pacific islands is the proposal to expand scope to include all:
  - biological resources
  - GRs of migratory species
- How can marine genetics beyond national jurisdictions, but within pockets totally encompassed by EEZs of Pacific island countries be reflected in the overall IR?

#### **7. OBJECTIVE**

- There is obviously a need to streamline this part of the IR to ensure that the objective is succinct and clear to prevent any misinterpretation of the IRs intent. What particular components need to be reflected in the Objective?

#### **8. NATURE**

What should the nature of the IR be? Legally binding or merely guidelines? What do we think the implications will be on small islands such as the Pacific in terms of the nature of the IR?

#### **9. TERMS AND DEFINITIONS**

- Why do we need to define terms? Legal certainty? Do we need to define everything or can existing related definitions suffice ie CBD, biosafety protocol, bonn guidelines, etc?
- Derivatives – what is the point of entry for considering derivatives in the ABS process? PIC? MAT?
- What about synthetic materials derived from GRs?

## Annex III

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