

# **Traditional Knowledge Implementation Action Plan**

## **Part I**

### Summary Sheet

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| Beneficiary Countries:                             | Cook Islands, Fiji, Kiribati, Palau, Papua New Guinea and Vanuatu   |
| Project Title:                                     | Pacific Islands Forum Countries Traditional Knowledge Implementation Action Plan  |
| Estimated Cost:                                    | USD\$570,400 (FJD\$905,440*) for Phase I activities only (see Annex 2)  |
| Estimated Duration:                                | 24 months commencing March 2009   |
| Regional & International Counterpart Institutions: | Secretariat of the Pacific Community (SPC), Secretariat of the Pacific Regional Environment Programme (SPREP), World Intellectual Property Organization (WIPO)  |
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\* exchange rate as at March 2009

## Part II

### **Overview: Background, Objective, Justification, Planned Activities and Outputs**

#### **Background**

The mandate of the Pacific Island Forum Secretariat (PIFS) to develop frameworks for Traditional Knowledge (TK) protection arose at the Forum Trade Ministers Meeting in 1999 out of a recognition that the region's traditional and cultural resources were being improperly exploited without due compensation to TK owners. Work on TK aims to address this on two levels through the development of regional frameworks for 1) Traditional Biological Resources (protection of traditional plants, medicinal knowledge etc), in collaboration with the Secretariat of the Pacific Regional Environmental Programme (SPREP); and 2) Traditional Knowledge and Expressions of Culture (TKEC) (protection of traditional arts, songs, dances etc.), in collaboration with the Secretariat of the Pacific Community (SPC).

2. The Pacific Plan recognizes the need for protection of cultural values, identities and TK. In that regard, the Plan recognizes the role that Intellectual Property Rights (IPRs) may have, particularly in ensuring the sustainable development and ownership of the region's TK resources. Pacific Leaders have approved the creation of an institution to advocate protection of TK and IPRs and a study into its feasibility will be undertaken in 2009.

3. In 2002, the Model Law on Traditional Knowledge and Expressions of Culture (TKEC) was completed. It was subsequently endorsed for adoption by member countries by the SPC Ministers for Culture followed by Forum Trade Ministers in 2003. A regional framework on Traditional Biological Resources, Innovations and Practices was developed in 2001 and recently received the formal endorsement of Pacific African Caribbean Pacific (ACP) Trade Ministers in March 2008. Some six countries have taken commendable steps to implement the Model Law on TKEC, with two countries, Fiji and Palau, now having draft TK Bills in place for public consultations with the view to consideration and legislative enactment.

4. In March 2007, at a high-level meeting of the executives of the PIFS and the SPC, it was decided that lead agency responsibilities relating to the Model Law would move from the SPC, which had held those responsibilities since 1999, to the PIFS. As a first step in this new role, the PIFS convened a Workshop in June 2007 to determine member countries' technical assistance needs with regard to progressing the Model Law's implementation at the national level (the conclusions and recommendations of that Workshop were subsequently endorsed by Forum Trade Ministers in August 2007). This Traditional Knowledge Implementation Action Plan (hereafter 'the Action Plan') is, in part, a response to member countries' requests for technical assistance as conveyed to the PIFS at the above Workshop.

5. The Action Plan is based on a distillation of Forum Trade Ministers' directives since 1999 and the broader context and more recent directives set out in the Pacific Plan. The Action Plan is cognizant of the wider economic reforms countries are engaged in to respond to rapid globalization, diminishing trade preferences and aid. Improved policy transparency, the creation of a supportive environment for private sector expansion and economic growth, and assuring accountability and good governance underpin the Action Plan.

6. In view of the above, the Action Plan promotes broadly a two-pronged approach which guides the implementation activities. The first part, which is the subject of this Action Plan, involves the development of national systems of protection setting out new rights and obligations in TK that will complement existing forms of protection for intellectual property. This shall

comprise essentially legal measures; however, non-legal measures such as that of customary and cultural practices and databases, amongst others, will form part of a holistic approach to the development of frameworks of protection. This will ensure that TK is not only sustainably managed but also regulated in a transparent manner. The second part of this Action Plan, which is predicated on progress being achieved in the first part referred to above, will involve the development of cultural industries in the region through activities to promote the commercialization of TK. The consolidation of TK resources, through the development of regulatory mechanisms and the establishment of databases to promote accessibility to TK, is intended to encourage economic activity and market access opportunities at all levels of the community. Ultimately, the project aims to contribute to the improvement of livelihoods and the eradication of poverty in the region.

## **Objective**

7. The overall objective of the Action Plan is to assist the Forum Island Countries (FICs) in their efforts to establish a regional infrastructure for TK that will consist of a mutual recognition and enforcement regime founded on uniform national legal systems of protection. As a first step, the Action Plan will assist the FICs to develop policy and draft legislation based on the Model Law on TKEC and the Traditional Biological Resources framework. Then, as a second step a regional system of TK protection will be developed. A regional system maximizes the benefits of participation in ways that national systems are unable to, particularly when an international treaty on TK is still being discussed. The regional infrastructure may be made operational through an instrument such as a treaty and entail a co-ordinated legal approach to the protection of the region's TK, including the mutual recognition and enforcement of rights and obligations between participating jurisdictions. This mechanism will allow for a more effective approach to the protection of TK, including recourse measures for the infringement of TK owners and users' rights. National systems of protection in comparison to that of a regional system, are limited by virtue of their jurisdictional reach and ability to provide effective recourse measures, particularly for those infringements taking place beyond national jurisdictions. Given that a large number of infringements often take place across and outside individual national jurisdictions, a regional regime would provide more effective recourse measures.

8. The Action Plan promotes a "bottom-up" approach, i.e. through the development of national and regional systems of protection while work is continuing on the development of international instruments for the protection of TK. The continued exposure of Pacific TK to improper exploitation without due compensation demands that a regional approach be adopted as a matter of urgency while an international regime is being finalised. Thus, while targeted activities will be undertaken at the national and regional levels, the Action Plan also provides for activities promoting the positive engagement of FICs and regional partners in the work of international fora on TK such as the WIPO Intergovernmental Committee on Intellectual Property, TK, Genetic Resources and Folklore (WIPO IGC).

9. The provision of assistance under the Action Plan is divided into activities for the short- and medium-term over a 24-month period. Those activities address measures to be taken at, or which are impacted by, developments at the national, regional and international levels.

10. The bulk of activities in the short-term (first 12 months of the Action Plan) focus predominantly at the national level and provide the foundation for further work to be undertaken on the regional dimension. National level activities will involve assisting FICs develop similar national legislation which will not only address domestic TK concerns but also facilitate and promote regional recognition and enforcement of rights to TK, TK policy frameworks (some

countries have already requested assistance in this area) and databases to store TK. These activities will be delivered through national workshops, commissioning of consultancies and the provision of equipment. In the medium-term (12-24 months) of the Action Plan, a comprehensive cultural mapping exercise will commence and involve the fielding of officers for the purpose of gathering and documenting TK. This exercise will, depending on the size of the country in question, differ in logistical and resource requirements. Also to be undertaken in this medium-term period will be a range of activities aimed at realizing the objectives of TK legislation. This will include determining a range of reforms to intellectual property laws and exploring the role of customary laws and practices, amongst other legal and non-legal measures. This area of assistance responds to the recognition that, if the best possible outcomes for TK owners and TK users are to be achieved, a holistic approach to the protection and management of TK is required. Other assistance to be rendered on an on-going basis and which is aimed at addressing the international dimension of the Action Plan involves the participation of FICs in meetings of the WIPO IGC (subject to funding provision to be made available), preparation of briefs by the PIFS and its regional partners for participating national delegations and the development of a process that promotes caucusing with other like-minded groupings within the WIPO IGC and other international fora. The Pacific Islands Forum's Geneva Office will play a key role in the co-ordination of positions with other delegations.

### **Justification**

11. The justification for the project may be summarised as follows:

- the establishment of national systems of TK protection and a regional system will 1) accord ownership of TK resources to their rightful TK owners; 2) promote the sustainable and transparent management of TK resources; and 3) facilitate the commercialisation of TK for the benefit of TK owners and TK users. More broadly, this will result in increased potential for improvements across all levels of the economy from local/village communities to large-scale cultural industry and private sector developments;
- the heightened global competition for new products, processes and services, including the growing global market for culturally-distinguishable products brought about by increased travel, globalisation of trade and advances in information technology, relies on intellectual capital which is considered an input to economic production. Technology transfer can be effected and intellectual capital can be made available in accordance with appropriate legislation to potential users and investors to develop new, or to improve existing products or processes using TK in a manner which will realise genuine benefits for the TK holders themselves;
- the slow evolution of international rules on TK compels the need to develop national and regional systems of protection so that exploitation of TK resources can be contained and managed whilst parallel work continues on broader international arrangements. To ensure consistency between national and regional developments in TK with evolving developments at the international level, national and regional positions will be reflected and promoted at relevant international fora dealing with the subject.

### **Planned Activities**

12. The Action Plan involves progressive implementation of structured activities for the development of TK regimes in the FICs. It provides for coordinated development of similar legislation that would form the basis for a regional arrangement (such as a treaty) for mutual

recognition and enforcement. The Action Plan involves two phases comprising the following elements:

**Phase I – Implementation of Activities in the Short-term (first 12 months)**

13. Phase I Activities include those to be implemented in the short-term period and provide the basis for later activities to be undertaken. They form the building blocks of the Action Plan and their completion is a pre-requisite for subsequent activities.

- i) *TK Legislation & TK Policy Framework.* This activity entails the provision of technical assistance for developing new legislation based on the Model Law on TKEC and Traditional Biological Resources Framework. The initial step will be the convening of national workshops in those countries which presently do not have a draft Bill to address the legal and policy aspects of the Model Law in the national context and to gauge stakeholders' response. The discussions will allow for instructions to be prepared for the drafting of a Bill. For countries that already have draft Bills, the national workshops will allow consultations involving all stakeholders to take place and revisions to be made to existing draft Bills where necessary in preparation for parliamentary approval;
- ii) *Capacity-Building and Outreach Activities Related to TK and IP.* Capacity-building and outreach activities at the provincial and sub-national levels are envisaged to ensure comprehensive engagement with key stakeholders, in particular the involvement of TK owners, in the legislative development process. The need for TK owners to understand the implications of the Model Law and the effect of subsequent proposed legislation on their resources mandates their full participation in the above process. This will ensure trust to develop between the state and TK owners and the promotion of a sense of ownership and buy-in for the initiative by TK owners. Effective prior engagement with stakeholders will allay fears that might exist amongst TK owners concerning the role of the state in relation to their TK. Furthermore, it will contribute to minimizing the potential for conflict within and between TK communities over the ownership and protection of TK resources. Meaningful capacity building and outreach activities at the district and sub-national levels will be critical to the success of consultations that will follow at the national level (i.e. national workshops referred to in i) above) where the Bill will be subjected to wider public scrutiny in preparation for its passage through the parliamentary process.
- iii) *Database development.* This activity aims to consolidate TK in a database so that it can be made available to and accessible by TK users. The provision of tailored software and computer hardware and equipment, the upgrade of existing databases and legal advice in connection to database developments will comprise the technical assistance to be rendered under this element.
- iv) *Regional Workshop for the Framework for Traditional Biological Resources, Innovations & Practices.* The Framework received the endorsement of legal and environment officials as a final draft in 2006 and for adoption by member countries, by Trade Ministers in 2008. To assist member countries to develop draft legislation on this aspect of TK using the Framework as a guide, guidelines are presently being developed (through the commissioning of a consultancy) which will provide countries with policy and legal options to consider in the development of their TK legislation. The guidelines will be similar to those developed to assist countries in the

implementation of the Model Law on TKEC. The Regional Workshop will provide an opportunity for member countries to be consulted in relation to the use of the guidelines. The Regional Workshop will also allow consultations on a draft regional arrangement for reciprocal recognition and enforcement and the preparation of an implementation plan of activities to bring the regional arrangement into full operation.

#### **Phase II – Implementation of Activities in the medium-term (second 12 months)**

- v) *Cultural-mapping programme.* This element of the Action Plan involves the deployment of field officers to gather and document TK. It will be the most costly activity to be undertaken under the Action Plan in terms of financial and human resources and, for that reason, is deferred to the second phase, to be implemented after a degree of progress with the activities set out in Phase I above is achieved. The scale of the human resource requirement will depend on the size and the needs of the country in question. Thus, it is to be expected that the provision of technical assistance under this element would differ for the Cook Islands, Kiribati, Palau and Vanuatu on the one hand, compared to Fiji, and to a much greater extent, PNG, on the other. An estimation of costs involved is yet to be determined and countries have been requested to provide an estimation of likely costs involved. As a guide, the Fiji Government established a cultural-mapping programme for a two-year period which involved the recruitment of field officers, training workshops, administrative expenses and equipment totalling \$FJD 1.8 million (\$USD 1.34 million). The programme covered only 3 of Fiji's 15 provinces and has been put on hold until further funding can be made available.
- vi) *Holistic programming.* This element will involve the reform of broader contextual processes impacting the ability of TK legislation to attain its objectives. In particular, it will involve identification of potential legal and non-legal measures that might be utilized to support the effectiveness of TK legislation and the management of TK resources more broadly. Activities envisaged under this element will include, where necessary, reform to intellectual property laws so that they are amenable to the objectives of TK law and policy, the role of customary law and practices and linkages to indigenous institutions. The Action Plan recognizes that the effective management of TK requires a multi-level approach that integrates with the broader context rather than promotes an over-reliance on one set of measures (e.g. legal measures) alone. Furthermore, a holistic approach recognizes the inability of one set of measures on its own, whether these are legal or non-legal, to achieve the overall objectives of the Action Plan. Each set of measures has its own limitations, requiring a combination of them to be adopted for maximum effectiveness to be achieved. It is also recognized that this element of the Action Plan will be critical to promoting an environment conducive for activities relating to the commercialisation of TK. Under this element of the Action Plan, a study will be commissioned to determine the scope, nature and costs of activities to be undertaken in the six beneficiary countries.
- vii) *Commercialisation of TK.* This element of the project aims to assist countries develop market access opportunities in TK, including enhancing the work taking place in this area in the PIFS and other regional organizations. As a first step, a study will be commissioned to determine the scope, nature and costs of undertaking activities to promote the development of cultural industries at all levels in the community, from local village settings to industry level. The study will determine what countries'

requirements will be for each stage of the production process, from the creation of TK-based products, compliance with standards and certification, marketing and distribution, amongst others.

- viii) *Implementation of the Regional Arrangement for Reciprocal Recognition And Enforcement.* This element of the project will aim to assist member countries to make the regional system fully operational. The study alluded to in (iv) above will set out amongst other things a range of activities, including public awareness raising and training, that will be required to bring the regional system into effect.

#### **Ongoing Technical Assistance**

- ix) This element of the Action Plan involves the provision of ongoing advice to member countries by the PIFS and/or its partners. Ongoing legal advice will be provided by WIPO upon request by countries. The PIFS, in collaboration with its partners and in conjunction with the Pacific Islands Forum's Geneva Office, will be responsible for the provision of briefs for beneficiary countries at international meetings and for caucusing purposes with other like-minded regional groupings at WIPO, World Trade Organization (WTO) and the Convention on Biological Diversity (CBD). This process is a critical part of promoting the visibility of Pacific TK issues and activities at international forums and its reflection in evolving internationally-binding instruments. It also bridges the gap and thereby minimizes any potential risk of inconsistency of developments taking place in TK at national and regional levels with those evolving at the international level.

#### **Outputs**

14. The expected overall output of the Action Plan is an effective and efficient system of protection and promotion of the region's TK systems and resources. Legal certainty of ownership and management of resources will be established, providing security and predictability for economic developments in business, technology and investment, local creativity and innovation. While the timelines below are indicative only, specifically, the Action Plan will result in:

- i) completion of six TK Bills to be considered by Parliament in the Cook Islands, Fiji, Kiribati, Papua New Guinea, Palau and Vanuatu by the end of 12 months;
- ii) completion of a draft legal arrangement for reciprocal recognition and enforcement at the regional level by the end of 12 months;
- iii) functional regional system of recognition and enforcement by the end of 24 months;
- iv) establishment of a modern national TK database by the end of 12 months;
- v) commencement of a cultural-mapping programme by the end of 18 months;
- vi) endorsement by the region's FIC Trade Ministers of the Draft Framework for Traditional Biological Resources, Innovations and Practices by the end of 12 months;
- vii) attendance of at least 3 FICs at meetings of the WIPO IGC;
- viii) increased number of FIC proposals at international fora on TK;
- ix) development of alliances with like-minded groupings at the WIPO IGC;
- x) on-going provisions of technical assistance to beneficiary countries;
- xi) completion of the study on reforms to promote a holistic approach and conducive context for TK legislation and beginning of implementation of the study's recommendations at the end of 24 months;

- xii) completion of the study to promote the commercialization of and market access opportunities for TK-based products; and beginning of implementation of the study's recommendations at the end of 24 months.

**Implementation Update and Timeline for Activities**

15. See Attachment I for an update on the current status of implementing the Model Law on TKEC in the six beneficiary countries and their technical assistance requirements to progress its implementation. A timeline setting out the proposed time frame for each activity to be undertaken in-country will be developed in consultation with the six beneficiary countries.

## Part III

### RESOURCE REQUIREMENTS

The overall resource requirement for the project is estimated at USD\$570,400 (FJD\$905,440) for Phase I activities. An estimation of costs for activities for Phase II, i.e. cultural mapping programme, holistic programming activities, commercialization of TK and the implementation of a regional system of recognition and enforcement is still to be determined. With regard to the first-mentioned activity, (cultural mapping), an assessment of costs will be determined by countries themselves, while the latter three (holistic programming activities, commercialization of TK and the implementation of a regional system of recognition and enforcement), will be determined through studies to be undertaken to assess the nature, scope and costs of activities envisaged.

#### I. INPUTS BY WIPO

i) WIPO is a key partner in the implementation of the project. The PIFS has requested that WIPO consider funding, in particular, the following activities which will focus on capacity building and outreach activities related to TK and Intellectual Property (IP) (see 13(i) and 13(ii) of Part II).

##### **Cook Islands**

- 11 Provincial/District-Level Consultations
- 2 National Workshops

##### **Fiji**

- 15 Provincial/District-Level Consultations
- 2 National Workshops

##### **Kiribati**

- 1 Workshop in North Tarawa
- 2 National Workshops

##### **PNG**

- 2 National Workshops

##### **Palau**

- 16 community consultations
- 1 National Workshop

##### **Vanuatu**

- 6 Provincial Consultations
- 1 National Workshop.

ii) WIPO will also provide advice, when requested, on all legal aspects of the Action Plan, including but not limited to legislation development, policy frameworks, regional enforcement and reciprocal recognition mechanisms, international dimension and database development.

#### II. INPUTS BY THE PIFS

The PIFS contribution to the project will include the provision of legal and policy advice in connection to its mandated area of work and financial assistance to fund the

consultancies relating to activities outlined in 13(i) and 13(ii) of Part II. PIFS will also co-fund the development of Guidelines for the Draft Framework on Traditional Biological Resources, Innovations and Practices with SPREP. Subject to the availability of funding, PIFS will endeavour to fund a regional workshop to address the above-mentioned Guidelines as well as the cost of developing a draft regional reciprocal recognition and enforcement arrangement. As lead agency responsible for the project, the PIFS will assume all functions connected to co-ordination with member countries, the management of consultant contracts and the organization of consultations and workshops.

### **III. INPUTS BY THE SPC**

The PIFS has requested the SPC to assist with the provision of TK databases in the 6 beneficiary countries (13(iii) of the Part II above). SPC is yet to confirm whether it will be in a position to undertake this responsibility. The SPC holds the lead agency role for the development of cultural industries at the regional level and, to that end, it will be commissioning a study to address the valuation of culture. While this activity is not formally reflected as part of the activities under this Action Plan, its direct relevance to, in particular, the Phase II activity that will address the commercialization of TK is recognized here. SPC will also provide legal and policy advice in connection with its mandated area of work.

### **IV. INPUTS BY SPREP**

SPREP has confirmed that it will co-fund the development of Guidelines to assist countries with the implementation of the Regional Framework on Traditional Biological Resources, Innovations and Practices with the PIFS. SPREP will also provide legal and policy advice in connection with its mandated area of work.