



PACIFIC ISLANDS FORUM SECRETARIAT

Excelling Together for the People of the Pacific



PACIFIC ISLANDS FORUM
40th Anniversary 1971-2011



Regional Traditional Knowledge Action Plan

Indigenous Peoples and Local Communities Day (IPLC only)

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Apia, Samoa

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Outline

- Background: Pacific Islands Forum
- Pacific Model Laws on TK, TCEs & TBKIP
- Traditional Knowledge Action Plan I
- Update on TKAPI
- Prioritized Activities for Phase II
- Proposed Way Forward

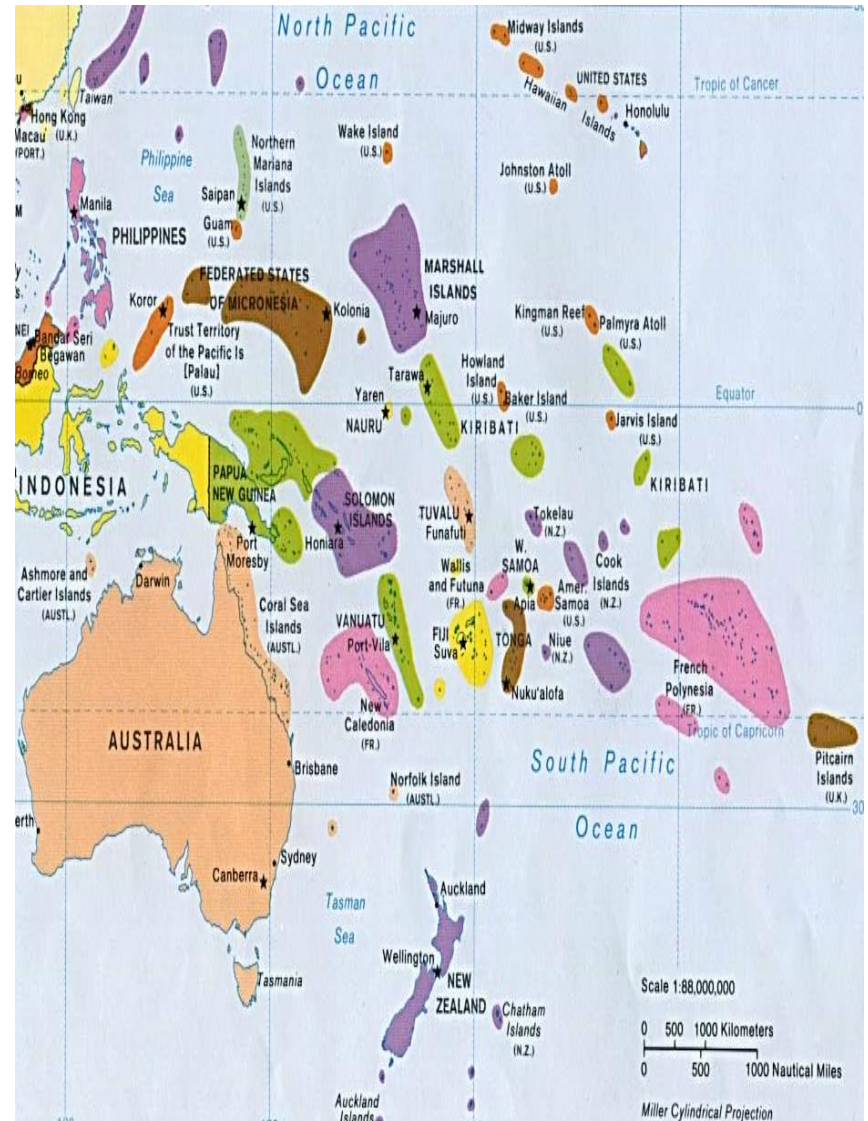
Pacific Islands Forum

A political grouping of 16 independent and self-governing states: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

- The Pacific Islands Forum Secretariat (PIFS) is the Secretariat
- PIFS is an international organisation established by treaty, enjoying legal personality in each of its sixteen member countries.

Primary Goals:

- Stimulate economic growth;
- Enhance political governance and security for the region, through the provision of policy advice; and
- Strengthen regional cooperation and integration through coordinating, monitoring and evaluating implementation of Leaders' decisions.



Pacific Model Laws on TK, TCEs & TBKIP

- In response to calls from the region due to **increasing exploitation and inappropriate commercialization** of their **traditional knowledge and traditional expressions of culture**; and in the absence of a multilateral treaty, two Frameworks/Model Laws were developed in 2002:
 - Model Law on Traditional Knowledge (TK) & Traditional Expressions of Culture (TEC) – developed in consultation with SPC, UNESCO, Pacific Forum Island Countries & territories and Council of Pacific Arts;
 - Model law on Traditional Biological Knowledge, Innovation and Practices (TBKIP) developed in consultation with SPREP.
- Both Model Laws took account of developments at the international level (WIPO IGC, WTO);
- Both Model Laws establish new range of statutory rights for traditional owners of traditional knowledge, expressions of culture, innovations and practices related to traditional biological knowledge; provide basis for protection through appropriate policy and legislation developments:

- While the Model Laws do not specify policy objectives, it can be suggested:
 - *“protect the rights of traditional owners and provide them with the means to control the commercialization of their TK & TCEs and TBKIPs, and ensure that such commercialization is subject to their prior informed consent and fair and equitable sharing of benefits arising from that utilization with traditional owners – **exclusive property rights.**”*
 - *Provides that the traditional owners of TK and TCEs are the holders of **moral rights** which comprise the right of attribution of ownership in relation to their TK and TCEs; and the right not to have ownership of TK falsely attributed to them; and the right not to have their TK and TCEs subject to derogatory treatment.*

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- The SPC and Forum Secretariat are assisting members, on request, wishing to proceed with the adaptation and enactment of national legislation for the protection of Traditional Knowledge and Expressions of Culture (TK & TCE);
- The SPC and the Forum Secretariat are to seek legal-technical assistance from WIPO and UNESCO as appropriate on the establishment, strengthening and effective implementation of the TK & TCE Model Law in accordance with the Regional Implementation Action Plan/TKAPs.

Traditional Knowledge Action Plan

Phase 1 [2009- 2011] [2012-2013 follow up actions]

- Assist members to develop policy and draft legislation on the Model law on TKEC and the Traditional Biological Resources framework;
- Capacity-Building and Outreach Activities Related to TK and IP;
- Database development;
- Regional Workshop on Framework for Traditional Biological Resources, Innovation & Practices.
- Technical assistance was rendered through partnership arrangements between the African, Caribbean, Pacific – European Union TradeCom Facility, WIPO, Forum Secretariat, Secretariat of the Pacific Community (SPC) and South Pacific Regional Environmental Programme (SPREP).

Phase 2 [2015]

- Draft Phase 2 TK Action Plan

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- Derived from individual request from FICs upon completion of Phase 1.
 - A significant part of TKAPII therefore includes coordination between PIFS and SPC, taking into account regional studies including *Development and Marketing Strategies for Pacific Cultural Industries* which addresses amongst other things, the important balance between the commercialization of and the protection of Traditional Knowledge;
- ❑ The TKAPII's expected outputs:
- For each beneficiary country, preparation and drafting of a **national policy** addressing all the IP issues relevant to the protection or TK and TCEs, including aspects regarding their documentation;
 - Practical implementation of the policy, either through **legislative enactment**, administrative measures or infrastructural means.
 - Participation in workshops on IP and **commercialization of TK and TCEs**.
 - Participation at **IGC Meetings**, if and where possible.

Update on PIFS Traditional Knowledge and Intellectual Property Work Program

Status of TK Frameworks in the FICs, Phase 1 of the TK Action Plan

FIC	Policy Status	Legislative Framework Status	Peer Review Status
Cooks	Policy Document is completed and approved by Cabinet.	TK Bill was drafted and considered by national government agencies.	Policy document went through a peer review process, and the consultant incorporated comments in the final draft. TK Bill yet to be submitted for peer reviewing.
Fiji	TK Policy completed and is before Cabinet for consideration.	Drafted TK LAW currently being vetted by AG office since April 2014	TKEC draft adapts the Model Law but extends the draft law to protect genetic and biological resources.
Kiribati	Policy document completed and with the Cultural Ministry. There has been no indication if it has progressed to cabinet.	NA	Peer reviewing completed and consultant has incorporated the comments in the final draft.
Palau	NA	NA	Peer reviewing completed and consultant has provided the comments
PNG	Policy completed and is before Cabinet for consideration	TK Bill drafted and is available for Cabinet's consideration	Peer reviewing completed on both documents and consultants have incorporated the comments in the final draft
Vanuatu	NA	A TK bill was drafted following consultations with the Malvatumauri Council of Chiefs, and submitted to the Government of Vanuatu.	The draft TK Bill was submitted for the Peer review

Prioritised Activities for Phase II

Prioritized Activities for Phase 2 of the TK Action Plan				
FIC	Policy Status		Legislative Framework Status	Peer Review Status
Cook Islands			A TK law and copyright law has been enacted	
Palau	Lack of legislation to address dual chieftaincies Lack of assistance to design & implement traditional court system Weak legislative frameworks Weak IP & TCE knowledge and understanding of laws and lack of enforcement (capacity building)			
PNG	Address Cultural diversity (which is huge) adequately in the current policy Need for a Design concept and plan that will Incorporate culture into livelihoods			
Solomon Islands	Review model laws to address collective ownership of TK or TCE and protection for Custodians – whether absolute as in copyright or recognition to rights Training/up skilling to heighten understanding of TK and IP that will assist in the design of appropriate strategies for implementation of Policy Framework			
RMI				
Tuvalu	Require technical expertise to assist in the crafting, promotion and to conduct awareness campaign of the draft policy			
Niue				

Proposed Way Forward

Re-engaging with members on their feedback to the needs assessment

- Seek feedback on the TK and IP related technical assistance required based on the following questions:
- What are the interests and needs of your country in relation to IP and TK/TCEs?
- Which activities on IP and TK/TCEs have already been undertaken or initiated in your country?
- Which type(s) of assistance as mentioned above would your country need?
- Who is/are the focal point(s) of your Government regarding the implementation of the Action Plan?
- Any other information related to your country's IP and TK/TCEs initiatives in support of your request for technical assistance.

Implementation of the Phase 2 TK Action Plan

- The TKAPII would set a reasonable timeframe with clear aims and objectives all the while remaining flexible. Assistance coordinated with relevant donors for the following types of assistance:
- Policy and legislative advice and assistance
- Legal advice on IP management related to TK/TCE documentation;
- Legal advice on IP management related to the commercialization of TK-based products;
- Participating in the IGC.
- MOU between PIFS and Donors (including WIPO) for the Mobilisation of support under TKAP2.