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AD HOC OPEN-ENDED WORKING GROUP ON
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Agenda item 3

**COMPILATION OF SUBMISSIONS PROVIDED BY PARTIES, GOVERNMENTS,
INDIGENOUS AND LOCAL COMMUNITIES AND STAKEHOLDERS ON CONCRETE
OPTIONS ON SUBSTANTIVE ITEMS ON THE AGENDA OF THE FIFTH AND SIXTH
MEETINGS OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND
BENEFIT-SHARING**

Note by the Executive Secretary

Addendum

**SUBMISSION FROM THE SECRETARIAT OF THE PACIFIC REGIONAL ENVIRONMENT
PROGRAMME (SPREP)**

1. The Secretariat is circulating herewith, as an addendum to the original compilation of submissions on concrete options on substantive items on the agenda of the fifth and sixth meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (UNEP/CBD/WG-ABS/6/INF/3), a submission from the Secretariat of the Pacific Regional Environment Programme (SPREP).
2. The contribution has been reproduced in the form and language in which it was received by the Secretariat.

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The Secretariat for the Pacific Regional Environment Programme (SPREP) welcomes this opportunity to provide its views on concrete options on the substantive items on the agenda of the fifth and sixth meetings of the Access and Benefit Sharing (ABS) Working Group. Accordingly, we have organised these views under headings that correspond to the relevant agenda items.

The 14 Pacific island countries (PICs) of the Pacific region have high species endemism (80 per cent or more on some islands) and globally significant biodiversity but relatively low species diversity. There are about 2,000 different types of ecosystems throughout the Pacific. The huge expanse of ocean supports the most extensive and diverse coral reefs in the world, the largest tuna fishery, and the healthiest and in some cases, largest remaining populations of many globally rare and threatened species including whales, sea turtles, dugongs and saltwater crocodiles.

The combined land area, EEZ and population of the PICs without Papua New Guinea are approximately 65,240 square kilometres, 17 million square kilometres and 2 million people, respectively. Including Papua New Guinea these figures increase to approximately 527,483 square kilometres, 20 million square kilometres and 7.6 million people.

Access to genetic resources and fair and equitable benefit sharing

Ownership of genetic resources

In crafting an international access and benefit sharing regime (hereafter “IR”) that complies with Article 15 of the Convention on Biological Diversity (CBD) but is relevant to PICs, Parties must bear in mind the property rights systems operating in the Pacific. Most PICs are in the very early stages of developing national-level ABS legislation, and generally existing policy and law in the region does not deal directly with the issue of ownership over genetic resources. In the absence of relevant law and policy, ownership of genetic resources depends on ownership of the biological resource encapsulating it; and land and marine tenure in the Pacific dictates who ‘owns’ these corresponding biological resources.

Land held according to custom is by far the dominant form of land holding in the Pacific. The Constitutions of many PICs prevent the sale of such land. Customary land is owned¹ by a group, usually consisting of blood relatives. Although a customary landowner does not truly ‘own’ the land, ownership usually extends to all fauna and flora on the land. Given that a clan or extended family ultimately controls customary lands, a potentially large number of individuals would have the right to intervene in the negotiation of a ‘bio-prospecting’ scheme.

Under customary law, land is perceived to also include water, sea areas, reefs and shelves and the principles of marine tenure differ little from those of land tenure. Nevertheless, in most PICs today ownership of land below the high water mark now vests in the State. Governments would be wise to consult with coastal village-dwellers given that few would be aware of this.

Regionalism

Many biological resources are common to most PICs. It may be necessary therefore for several countries to be consulted, to provide prior informed consent (PIC), and to decide upon mutually agreed terms (MAT) for access and benefit sharing. Regional co-operation is a well-established mode of operation in the Pacific. For example, a scheme for benefit sharing of a regional resource already exists for the Pacific’s tuna fishery. Parties should bear in mind that States have ‘sovereign rights’ (but not ‘sovereignty’) over the exploration and exploitation of living resources in their exclusive economic zones (EEZs).

Deep seabed genetic resources

Deep sea environments represent a significant reservoir of biodiversity on earth, with a multitude of unique ecosystems and species found nowhere else. Many believe that the genetic resources needed to

¹ ‘Owned’ may be too strong a word, the concept of ‘stewardship’ being a more appropriate description of the group’s relationship to the land.

combat incurable diseases or produce new foods for future generations lie at the bottom of the sea. Yet, man's impact on deep and little known waters, primarily through fishing, has already caused severe damage and many species may be lost before they are even discovered. Recent developments in deep sea mining technology for manganese nodules and other mineral resources heightens this concern.

Most deep sea environments are located outside the limits of national jurisdiction and therefore fall outside the jurisdictional scope of the CBD. Parties addressed deep seabed genetic resources beyond national jurisdiction in decision VIII/21. The waters of the Pacific islands region are unique, however, in that most deep sea habitats fall within the national jurisdiction of PICs. Absent in the Pacific are the broad, shallow shelves that are characteristic of most countries' continental margins, and of other major island archipelagos in Southeast Asia and the Caribbean. Instead, it is not uncommon to find depths of 3,000 metres within two kilometres of shore.

In developing options and tools for access and benefit sharing in the IR, issues unique to the Pacific region, such as land and marine tenure systems; the regional scope of genetic resource location and the little known deep seabed ecosystems will need to be considered.

Traditional knowledge and genetic resources

Intellectual property rights (IPR) laws, particularly the patent, have been deemed unsuitable for protecting traditional knowledge relating to biodiversity in the Pacific region for the following reasons:

- They seek to privatise ownership;
- They can be used to cast the ownership net over as many life-forms as possible;
- They give a restrictive interpretation of invention and knowledge;
- They are designed to be held by individuals and corporations rather than communities; and
- They are expensive to apply for and to maintain.

A model law for the protection of traditional ecological knowledge, innovations and practices has been developed for the Pacific islands region. This model law provides a *sui generis* system for the protection of traditional knowledge that is associated with

- Living things, their constituent parts, their life cycles, behaviour and functions, their effects on and interactions with other living things (including humans) and with their physical environment;
- The physical environment including water, soils, corals, weather, solar and lunar effects, processes and cycles;
- The obtaining and utilising of living or non-living things for the purpose of maintaining, facilitating or improving human life.

The model law encompasses not only knowledge, but also products (i.e., innovations) and practices based on that knowledge; and it distinguishes between commercial and non-commercial use. The model law requires the prior informed consent (PIC) of the 'owners'² of traditional knowledge, innovations and practices. One of the stated objectives of the law is to ensure the equitable sharing of benefits derived from the use of such knowledge, innovations and practices, and can and should be implemented in conjunction with arrangements for access to genetic resources and benefit sharing.

The Scope of the IR is to include traditional knowledge, innovations and practices in accordance with Article 8(j) (decision VII/19 D, Annex), and the Working Group is required to consider relevant elements of existing regional instruments for inclusion in the IR (*id.*). Therefore, PICs believe it is

² The term "own", depending on the cultural context, can signify not only total control, but different forms of control such as trusteeship, custodianship, stewardship etc.

necessary to develop an IR that provides for the protection of traditional knowledge, innovations and practices and is complementary to the model law.

Capacity building

PICs would like to point to decision VII/19 F and its action plan for capacity building for access and benefit sharing as a guide to use in establishing a capacity building framework for the international ABS regime. Most PICs are in the very early stages of developing and implementing their national ABS regimes, so will need capacity building support at both the institutional and individual levels. Many of the needs and the activities to address them are outlined in detail in the above mentioned action plan.

But in addition to requiring support in developing and implementing national-level ABS regimes, including establishing systems to ensure PIC and negotiating MAT, PICs will need assistance with implementing a certificate of compliance regime and setting up monitoring, enforcement and dispute settlement mechanisms. Capacity building will need to consist of more than just financial support. Capacity building, like benefit sharing, can also consist of technology transfer and training as well as participation in joint research and development projects.

The IR will require co-ordination at the global level. This will include capacity-building efforts under this regime. Nevertheless, for capacity building to be most effective, it must be country driven. PICs are themselves best suited to identify what their needs and priorities are for capacity building. The nature of these needs and priorities will become more precise as the substance of the international ABS regime continues to be determined.
