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WORKING GROUP ON ARTICLE 8(j) AND
RELATED PROVISIONS OF THE
CONVENTION ON BIOLOGICAL DIVERSITY
Fourth meeting
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Item 5 of the provisional agenda*

**COMPOSITE REPORT ON THE STATUS AND TRENDS REGARDING THE KNOWLEDGE,
INNOVATIONS AND PRACTICES OF INDIGENOUS AND LOCAL COMMUNITIES**

Regional report: Pacific

Note by the Executive Secretary

1. The Executive Secretary is circulating herewith, for the information of participants in the fourth meeting of the Ad Hoc Open-ended International Working Group on Article 8(j) and Related Provisions, the regional report for the Pacific region on the status and trends regarding the knowledge, innovations and practices of indigenous and local communities, which has been used as input for the Executive Summary of the second phase of the composite report on the same subject (UNEP/CBD/WG8J/4/4).
2. The report is being circulated in the form and language in which it was received by the Secretariat.

* UNEP/CBD/WG8J/4/INF/8

REPORT ON THREATS TO THE PRACTICE AND
TRANSMISSION OF TRADITIONAL KNOWLEDGE
REGIONAL REPORT: THE PACIFIC

Phase II of the Composite Report on the Status and Trends
Regarding the Knowledge, Innovation and Practices
Of Indigenous Peoples and Local Communities
Relevant to the Conservation and Sustainable Use of Biodiversity

Prepared for the Secretariat of the Convention on Biological Diversity

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2005

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Executive Summary

The Pacific region is characterised by unique and fragile ecosystems, geographically dispersed island states, and diverse peoples and cultures. This diversity is mirrored in divergent and complex knowledge systems that underpin management and inter-relationships with the national environment.

Local and indigenous knowledge is a key resource for empowering communities to sustain their local environments and cultural lives, and to combat marginalisation, poverty and impoverishment.

However Pacific Island communities are particularly vulnerable to certain environmental, economic and social circumstances that each impact upon the capacities of local and indigenous communities to maintain, preserve and apply traditional knowledge in relation to biological resources. These threats emanate locally, nationally, regionally and globally.

Demographically the trends of increased migration and urbanisation as a result of increasing numbers of people leaving local communities to work and live away from local communities are causing a loss of knowledge to pass on to upcoming generations, but also a loss of knowledge actively utilised in day to day management of local environments.

Though linguistic diversity is fundamental to the maintenance, preservation and application of traditional knowledge, it is not adequately reflected in school curricula and languages taught within schools.

Imported conservation techniques and efforts, though intended to protect local ecosystems, instead regiment management systems and tend to thwart the dynamism of local customary resource management in accordance with law and custom. On the other hand there is also a lack of enforcement, of fisheries for example in the EEZ of Pacific

Island countries and territories, that undermines sustainable use of the resource and impacts upon subsistence and local economies.

Exploitation of genetic material and traditional knowledge for commercial gain is not adequately protected in Pacific Island Countries and Territories. Protecting local communities from this pilfering of their traditional knowledge and biological resources requires policy and legislative reform to ensure equitable access and benefit sharing.

Climate change and natural disasters are having a significant impact upon local communities not only by the direct impact but also because efforts to mitigate against harm are becoming centralised away from communities. Capacity building at the local level would ensure traditional knowledge is integrated while ensuring communities are involved in the process.

Threats to the Pacific Region include:

Environmental factors:¹

- climate variability, climate change, global warming and sea-level rise;
- immediate natural hazards such as earthquakes, tsunamis, and volcanic events;
- fragile ecosystems and natural resource bases, and geographic isolation; and,
- increasing frequency and intensity of cyclones.

Economic factors:²

- limited land area and freshwater resources;
- limited local markets; high import dependencies;
- fluctuating world prices for commodities; and isolation, including large distances to world markets.

Social factors:

¹ http://www.dfat.gov.au/geo/sPacific/regional_orgs/pif33_communique.html

² Ibid

- population growth & distribution;
- human and food security;
- external influences, cultural dilution and loss of traditional knowledge and practices.³

³ http://www.dfat.gov.au/geo/sPacific/regional_orgs/pif33_communique.html

Introduction

Article 8(j) of the *Convention on Biodiversity* highlights the importance of protecting traditional and indigenous knowledge related to biological and genetic resources.

To this end each Party to the CBD has the obligation to develop legislation at national level ‘as far as possible and appropriate’ in order to:

- respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity;
- promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices;
- encourage the equitable sharing of the benefits arising from the utilisation of their knowledge, innovations and practices.

This Phase II Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities in the Pacific region will canvass a range of national and local obstacles in the Pacific that threaten the maintenance, preservation and application of traditional knowledge, innovations and practices at the local and national level (Decision VI/10, annex (i)). The Phase II report should be read in conjunction with the Phase I Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities (UNEP/CBD/WG8J/3/INF/9).

In many Pacific island countries and territories there are local communities who have long histories of interaction with the natural environment. Associated with many of these communities is a cumulative body of knowledge, know-how, practices and representations. These sophisticated sets of understandings, interpretations and meanings are part and parcel of a cultural complex that encompasses language, naming and classification systems, resource use practices, ritual, spirituality and worldview. This local and indigenous knowledge is a key resource for empowering communities to

combat marginalization, poverty and impoverishment. And for the emerging knowledge societies, the judicious management of knowledge generated within local communities and knowledge entering from outside is one of the major challenges posed by globalization, and an essential step towards translating commitments to respect cultural diversity into meaningful action on the ground.⁴

However there are significant threats to the maintenance, preservation and application of traditional knowledge within Pacific island communities due to a combination of factors including modernization, increasing urbanization, population growth, education, employment, conservation efforts, as well as natural resource exploitation which threaten the maintenance, preservation and application of traditional knowledge, innovation and practices of local communities. In turn this impinges upon the capacity of local communities to enjoy a symbiotic life with their local environments.

In 1999 the Secretariat of the Pacific Community at its Twenty-Ninth Meeting of the Committee of Representatives of Governments and Administrations (CRGA) warned that development impact on ecosystems upsets the precarious balance between resource utilisation (land, sea and people) and resource replenishment. This imbalance can be seen throughout the Pacific region through incidence of:

- increases in population pressure and urbanisation;
- unsustainable land-use practices due to intense farming systems/cash cropping, excessive harvesting of indigenous forests, and increased chemicals/pesticide use leading to environmental degradation;
- unsustainable harvesting of marine resources, both coastal and reef fisheries and tuna fisheries;
- incidence of non-communicable diseases (lifestyle diseases) such as diabetes, hypertension, obesity and heart disease, and of epidemiological diseases including HIV/AIDS and their costly social and economic impact;

⁴ <http://www.unesco.org/csi/B10/mime3.htm>

- increases in social problems/instability leading to unemployment, youth problems, increase in drug/alcohol abuse, social violence, domestic violence (particularly violence against women) and suicides;
- relatively low food production as well as dependence on costly imported low-nutrition foodstuffs leading to threatened food security, malnutrition and other nutrition and health problems;
- reduced foreign exchange earning capacity and increasing poverty;
- Language loss and homogenisation of cultural influences.⁵

There is vast diversity of social, political and economic circumstances across the Pacific region and for this reason it is important to look at the unique and complex circumstances of each society (e.g. most Polynesian and Micronesian nations – with strong chieftan traditions, monolingual societies, and the safety valve of emigration - do not face the so-called “ethnic” conflict of multi-lingual Melanesian societies).⁶

Many of the problems affecting the Pacific are global ones, not particular to the region, that have a bearing on the lives of indigenous peoples of the region and their capacity to live as self-determining peoples according to their laws and customs.⁷ “Indigenous peoples cannot survive, or exercise their fundamental human rights as distinct nations, societies and peoples, without the ability to conserve, revive, develop and teach the wisdom they have inherited from their ancestors.”⁸

The Final Declaration of the UNESCO Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands held in Noumea from 15-19 February 1999 described ‘traditional knowledge and expressions of indigenous cultures’ as the ways in which indigenous cultures are expressed and which

⁵ Guardianship of Island Resources versus Regional Development? Based on a presentation by **Dr Jimmie Rodgers** at the First Conference of the Pacific Community – “A close relationship between land, sea and people” at <http://www.spc.org.nc/AC/artguardian.htm>

⁶ N. Maclellan “Australia & The Pacific Update On Current Trends & Issues” Australian Council For Overseas Aid, August 2002.

⁷ <http://www.acfid.asn.au/pubs/papers/Pacificcurrenttrends.pdf>

⁸ E/CN.4/Sub.2/1993/28 at p. 4

are manifestations of worldviews of the indigenous peoples of the Pacific. That is, any knowledge or any expressions created, acquired and inspired (applied, inherent or abstract) for the physical and spiritual well-being of the indigenous peoples of the Pacific.⁹

It is important to note that for many indigenous peoples the term ‘traditional’ is problematic because it overlooks contemporary manifestations of culture. It is for this reason the term ‘traditional knowledge’ is not widely used in Aotearoa NZ. Rather, the preferred term is ‘Matauranga Maori’ [Maori Knowledge].¹⁰

The nature and use of traditional knowledge and expressions of indigenous culture are transmitted from one generation to the next to enhance, safeguard and perpetuate the identity, well-being and rights of the indigenous peoples of the Pacific. This knowledge and these expressions include and are not limited to:

- spirituality, spiritual knowledge, ethics and moral values;
- social institutions (kinship, political, traditional justice);
- dances, ceremonies and ritual performances and practices;
- games and sports;
- music;
- language;
- names, stories, traditions, songs in oral narratives;
- all sites of cultural significance and immovable cultural property and their associated knowledge;
- cultural environmental resources;
- traditional resource management including traditional conservation measures;
- all material objects and moveable cultural property;

⁹ UNESCO Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands, Noumea 15-19 February 1999 – Final Declaration at http://www.unesco.org/culture/copyright/folklore/html_eng/declaration.shtml

¹⁰ Aroha Te Pareake Mead “Emerging Issues In Maori Traditional Knowledge: Can These Be Addressed By United Nations Agencies?” Workshop on Indigenous Traditional Knowledge, 21-23 September 2005, Panama City, Panama at p. 7

- all traditional knowledge and expressions of indigenous cultures held in ex situ collections;
- indigenous peoples ancestral remains, human genetic materials;
- scientific, agricultural, technical and ecological knowledge, and the skills required to implement this knowledge (including that pertaining to resource use practices and systems of classification);
- the delineated forms, parts and details of visual compositions (designs); and,
- permanently documented aspects of traditional indigenous cultures in all forms (including scientific and ethnographic research reports, papers and books, photographs and digital images, films and sound recordings).¹¹

It is apparent from this list of traditional knowledge and indigenous cultural expressions that threats to ‘traditional knowledge’ encompass the full gamut of social, political, economic and cultural life of Pacific Island peoples.

A. IDENTIFICATION OF NATIONAL PROCESSES THAT MAY THREATEN THE MAINTENANCE, PRESERVATION AND APPLICATION OF TRADITIONAL KNOWLEDGE

At the 2002 *Workshop on Traditional Knowledge, Traditional Resource Management and Biodiversity: Issues, Practices, and Policies* held in Samoa participants expressed concern regarding national education, health, agriculture and fisheries policies which fail to recognize and integrate traditional knowledge effectively into national curricula, health programs and extension policies.¹² Similarly it was noted that in many cases religious proselytizing has denigrated and undermined traditional knowledge.

¹¹ Ibid

¹² Extension describes a continual and changing process in rural areas. Although farmers already have a lot of knowledge about their environment and their farming system, extension can bring them other knowledge and information which they do not have. For example, knowledge about the cause of the damage to a particular crop, the general principles of pest control, or the ways in which manure and compost are broken down to provide plant nutrients are all areas of knowledge that the agent can usefully bring to farmers – at <http://www.fao.org/docrep/T0060E/T0060E03.htm>

The workshop discussed the range of issues linking traditional knowledge with the use and conservation of biological and genetic resources, including: the role of traditional tenure over land, sea and their resources; the role of traditional knowledge and practices in the management and conservation of biological resources; and the roles of customary law in regulating uses of biological resources and protecting traditional knowledge.

Emphasis was placed on:

- (a) strategies for building bridges between local and national systems of biological resource governance;
- (b) strategies for integrating conservation priorities and action into local resource governance and management structures and practices; and,
- (c) practical examples of the integration of traditional resource management practices for the conservation and sustainable use of biological resources at the community level.¹³

1. DEMOGRAPHIC FACTORS

Demographically, the Pacific Islands are comprised of more than 25,000 islands and islets of 25 nations and territories spread over the western and central Pacific Ocean. Although the Pacific Islands are scattered across millions of square kilometres, their total land area is just 1,261,456 sq km (487,051 sq mi)—slightly larger than South Africa, slightly smaller than Peru, and four-fifths the size of Alaska.¹⁴

MELANESIA

Fiji

New Caledonia

Papua New Guinea

Solomon Islands

Vanuatu

MICRONESIA

Federate States of Micronesia

Guam

Kiribati

Marshall Islands

Nauru

POLYNESIA

American Samoa

Cook Islands

French Polynesia

Niue

Samoa

¹³ http://www.gbf.ch/desc_workshop_old.asp?no=26&app=&lg=EN&now=2

¹⁴ http://encarta.msn.com/encyclopedia_761595628/Pacific_Islands.html#s8

Northern Marianna Islands

Palau

Tokelau

Tonga

Tuvalu

Wallis & Futuna

New Zealand

Hawaii

Easter Island

Economically, most of the island countries are poor, with purchasing power parities ranging from as low as \$1.5 million (Tokelau) to \$11.4 billion (Papua New Guinea). In contrast, the purchasing power parity of New Zealand is \$85 billion and that of Australia \$570 billion (CIA 2004). Per capita GDP in the Pacific Islands is very low in most countries, with the exception of Guam, French Polynesia (autonomous territory of France) and New Caledonia (self-governing territory of France) that have buoyant economies for a range of reasons. The economy of Guam and French Polynesia have been bolstered by the USA and France respectively. A significant proportion of French Polynesia's GDP (29%) is direct revenue from France. Guam's economy is bolstered by USA military spending that is gradually being phased out. New Caledonia reaps the economic benefits of significant nickel deposits.

Small, low island states¹⁵

The small Pacific Island countries have an economic basis reliant on out-migration and returning remittances, foreign bilateral and multilateral aid, small tourism revenue and some cash crop or mineral exports (cf. Odgen 1994).

The small, coral islands, especially the atoll states (Cook Islands, Kiribati, Tuvalu, Federated States of Micronesia, the Marshall Islands, Niue, Nauru) have very limited land resources yet they are spread over vast areas of the ocean. Sixty thousand Marshall

¹⁵ <http://www.unescap.org/mced2000/Pacific/SoE-Pacific.htm#ove>

Islanders live on 181 km² of coral islets giving each person only 0.3 hectares of land. Their population is expected to double in only 17 years and their urban areas are growing at 8.2%. Including every sandy islet above mean high water, the people in these countries average 0.8 hectares of land per person. On the other hand ‘sea people’ in these small island states have economic control over 41.4 km² of ocean.¹⁶

These islands are amongst the most vulnerable places on earth and subject to the adverse impacts of climate change and sea level rise. Some of the islands of Tuvalu, Tonga, the Federated States of Micronesia, the Marshall Islands, the Maldives and the Cook Islands may submerge entirely. Coastal erosion is already a serious problem in many of these islands and at least two low-lying islands have already eroded below sea level.

The implications for communities that may submerge as a result of rising sea levels is environmental genocide and raises questions for which there are as yet no answers. This vexed issue was explored in a paper by Mrs. Françoise Hampson, member of the United Nations Working on Indigenous Populations entitled *The Human Rights Situation Of Indigenous Peoples In States And Territories Threatened With Extinction For Environmental Reasons*.¹⁷ For example, it would appear that the extinction of a State, without there being a successor is unprecedented.¹⁸ 8. The disappearance of States for environmental reasons will give rise to a variety of legal questions, not all of which relate specifically to human rights. The first difficulty is when does a State count as having disappeared: at the point when the population can only survive by leaving, even if parts of the territory remain above water, or only when the entire territory is submerged?

Micronesia

The tiny islands and atolls of Micronesia are scattered widely across a large area north of Melanesia and east of Asia. Micronesia has four main island groups. The Caroline Islands lie north of the equator from New Guinea and belong mostly to the Federated States of

¹⁶ www.unescap.org/mced2000/Pacific/SoE-Pacific.htm - 45k

¹⁷ E/CN.4/Sub.2/AC.4/2004/CRP.1, 13 July 2004

¹⁸ The past fifteen years have focused an unusual degree of attention on the problem: Koskenniemi, *State Succession: Codification Tested Against the Facts*, Nijhoff, 2000

Micronesia, a self-governing country in free association with the United States. A small portion of the Carolines belongs to Palau, also a self-governing country in free association with the United States. To the north of the Carolines are the Mariana Islands, which make up the Commonwealth of the Northern Mariana Islands, a self-governing U.S. country, and Guam, an unincorporated U.S. territory. To the east of the Marianas are the Marshall Islands, an island group and republic in free association with the United States. Southeast of the Marshalls is the independent nation of Kiribati, which straddles the equator. The tiny nation of Nauru, a single island west of Kiribati, is also counted as part of Micronesia. Micronesia's islands are so small that their land area totals just 3240 sq km (1250 sq mi). Even among the smaller islands of Oceania—that is, Oceania excluding New Guinea, New Zealand, and Hawaii—Micronesia makes up just 3.6 percent of the total land mass.¹⁹

Palau

The population of Palau is 20,303 (as at July 2005) .²⁰ The ethnicity is: Palauan (Micronesian with Malayan and Melanesian admixtures) 69.9%, Carolinian 1.4%, other Micronesian 1.1%, Filipino 15.3%, Chinese 4.9%, other Asian 2.4%, white 1.9%, other or unspecified 3.2% (2000 census)

Palau is faced with rapid modernization. The small national population is now only 20,000, but of this, only 13,000 people are Palauan in origin. The remaining 7,000 people are foreign workers or residents. This combination of peoples provides Palau with valuable insights to other cultures and ways of life, but it does “make the preservation of our traditional past an active challenge.”²¹

In terms of land, Palau's population of 20,000 people live on only 10 islands. The majority of those people live in Koror. The largest island is Babeldaob, to the north. Babeldaob comprises 80% of Palau's land mass, and is the second largest island in Micronesia, following Guam. Babeldaob's size and wealth of resources make it a critical

¹⁹ www.unescap.org/mced2000/Pacific/SoE-Pacific.htm - 45k

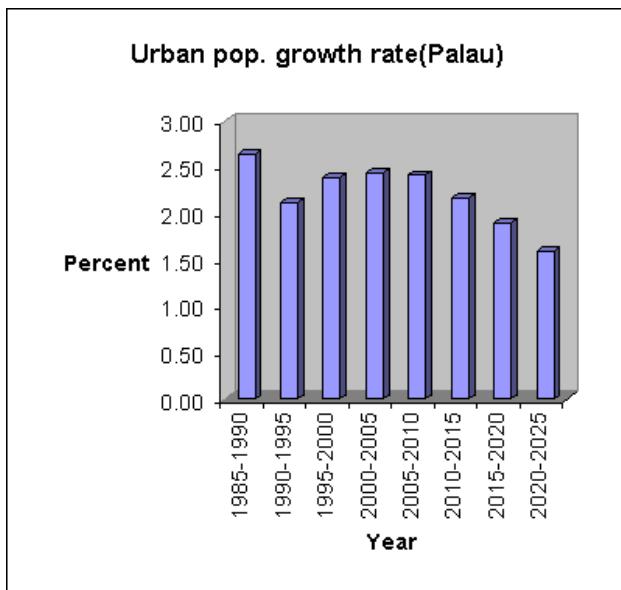
²⁰ CIA Fact book at <http://www.cia.gov/cia/publications/factbook/rankorder/2119rank.html>

²¹ <http://www.palau-pcs.org/>

target in terms of ‘development’ and conservation objectives that may threaten traditional knowledge of local custodians.²²

The economy consists primarily of tourism, subsistence agriculture, and fishing. The government is the major employer of the formal work force, relying heavily on financial assistance from the US. The population enjoys a per capita income twice that of the Philippines and much of Micronesia.

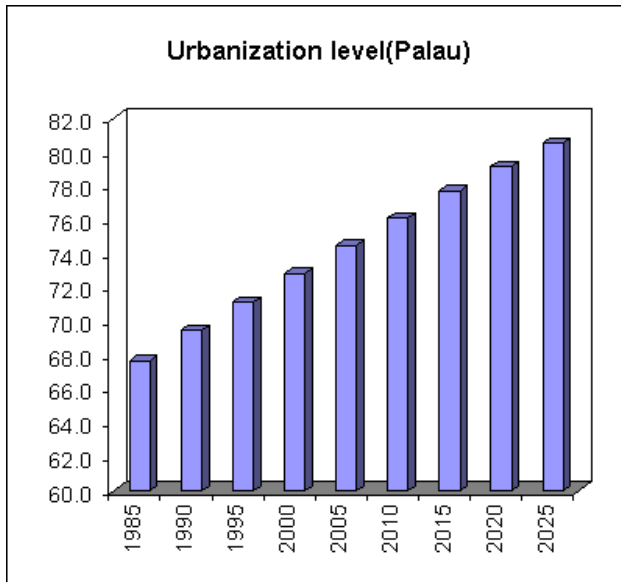
The UNDP has reported that “urbanization has separated most Palauans from a daily relationship with their environmental heritage”²³ and there is “increasing pressures on the environment as a result of rapid population growth and new infrastructure and commercial development.” Further, the UNDP reports there is “inadequate knowledge about nature’s ‘tolerance levels’.”²⁴



²² http://www.Pacificscience.org/results_x.asp?name=p

²³ http://www.undp.org/fj/un/reports/palau_shd/chapter05.PDF

²⁴ Ibid



Melanesian countries²⁵

Melanesia stretches in a 5600-km (3500-mi) arc off the northern and eastern coast of Australia. From northwest to southeast, Melanesia includes New Guinea, lying just north of Australia; the Bismarck Archipelago, belonging to Papua New Guinea; smaller archipelagos of Papua New Guinea; the Solomon Islands, some of which belong to Papua New Guinea but most of which are part of the Solomon Islands; the many islands of the nation Vanuatu; the islands of New Caledonia and Dependencies, a French territory; and the Fiji Islands (an island nation commonly known as Fiji).

The high islands of the Western Pacific (Papua New Guinea, Solomon Islands, New Caledonia, Vanuatu, and Fiji) are rich in mineral and forestry resources, and have the largest human population.

In Papua New Guinea, the Solomon Islands and Vanuatu, about 85% of the people live in rural environments and have a subsistence economy. About 80% of Papua New Guinea's work force and 90% of Solomon Islanders are farmers. These three countries are almost entirely Melanesian culture with a total of 4.9 million people. Despite their rich natural resource base, they have a low ranking on the United Nations Human Development

²⁵ <http://www.unescap.org/mced2000/Pacific/SoE-Pacific.htm#ove>

Index. The Human Development Index (HDI) measures rank along three dimensions of human development: longevity, knowledge, and a decent standard of living. The statistics it combines are life expectancy, educational attainment (adult literacy and combined primary, secondary and tertiary enrolment) and per capita GDP.

According to the UNDP index the main environmental problems for the high islands, as a result of unsustainable exploitation are land degradation, unsustainable deforestation, water pollution from mining, invasion of exotic species, local depletion of coastal fisheries, and (with the exception of Fiji and New Caledonia) rapid population growth. The cities of Melanesia are among the fastest growing in the world and face serious issues of unemployment, poverty, sanitation and housing. Droughts, fires, volcanic eruptions and earthquakes are major environmental disasters for these islands. The implications for traditional knowledge is the extent to which local communities are able to manage environmental problems in accordance to their traditional knowledge and build capacity on this basis.

Vanuatu

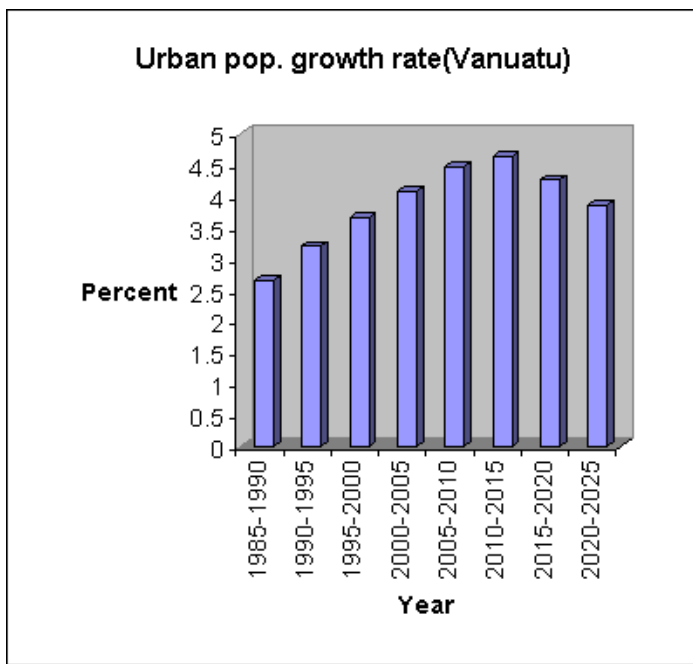
The population of Vanuatu is 0.2 million (as at 2004) predominately Melanesian and approximately 79% of the population today lives in rural areas following a predominantly subsistence and traditional lifestyle, however urbanisation is increasing.

On most larger islands communities are concentrated on the coastal lowlands with the rugged mountainous interiors relatively little used and inaccessible. The increasing human population places increasing pressures on the resources available therefore food gardens must be expanded, additional wild foods harvested, and fishing efforts increased.

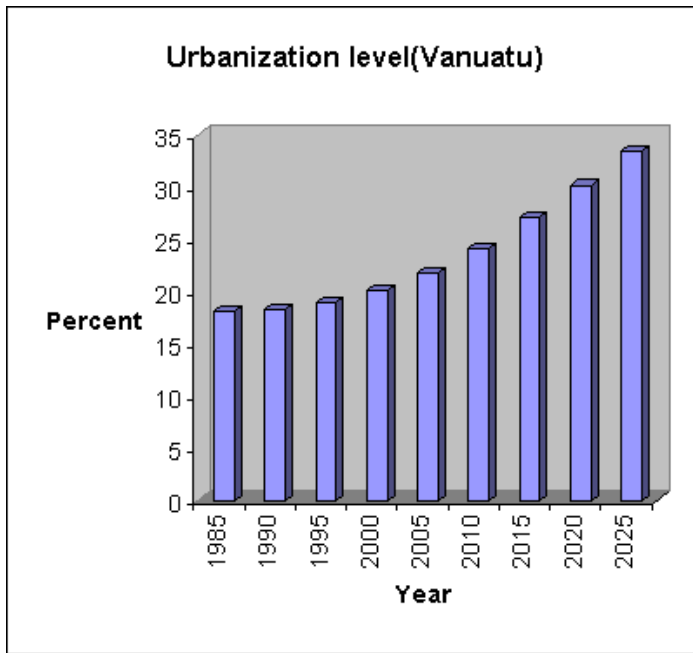
Vanuatu was accorded UN Least Developed Country status in 1995 and with a per-capita GDP of US\$ 1,231 in 2001 is the third poorest country among the 15 Pacific island countries. Adult literacy is estimated at only 33.5%, with life expectancy at birth of 66 years. The Human Poverty Index (HPI) ranks Vanuatu number 13 of 15 Pacific Island

Countries and 140 on the UNDP Global Human Development Index (HDI) in 1999 (1998 data). Approximately 80% of the population lives in the rural areas and continues rely on subsistence activities. National economic growth has been uneven. The slow growth of GDP during the second half of the 1980s subsequently picked up from 1989 onwards. However, by the end of 1990s growth had declined considerably. Real economic growth in 2001 is estimated to be negative -0.5%. External grant aid forms a substantial part of foreign exchange receipts, representing 32 and 21 percent of current account receipts and GDP, respectively.²⁶

According to the UNDP the main environmental problems for the high islands are; land degradation, unsustainable deforestation, water pollution from mining, invasion of exotic species, local depletion of coastal fisheries, and (with the exception of Fiji and New Caledonia), rapid population growth. The cities of Melanesia are among the fastest growing in the world. These countries face serious urban issues of unemployment, poverty, sanitation and housing. Droughts, fires, volcanic eruptions and earthquakes are major environmental disasters for these islands.



²⁶ <http://www.undp.org.fj/Templates/Vanuatu.htm>



In Vanuatu changes in village institutions and perceptions of authority structures pose a significant threat. Traditional resource management systems maintained biodiversity over thousands of years however the authority of these management systems is threatened by:

- the spread of global values and expectations;
- internal migration; and,
- conflicting authority structures emerging through government, church and education systems.

It is suggested that today there is confusion between respect for *kastom*, respect for Chiefs, respect for government, respect for Church, respect for western values. This is accompanied by a subtle changes in the primacy of the community or extended family instead of the individual or immediate family. While these issues remain in transition they are a threat to effective biodiversity management.²⁷

Both demographic and environmental changes have culminated in the following threats to biodiversity management:²⁸

²⁷ http://www.biodiversity.com.vu/vans_biod.htm

²⁸ http://www.biodiversity.com.vu/threats_to_bio.htm

1. Increased pressure on natural resources as a result of increases in the human population
2. Shortage of water during extended dry seasons. Reduced water flows in creeks and rivers
3. Disrespect for local community leaders and their resource management decisions
4. Depletion of marine resources through uncontrolled use of newer fishing methods
5. Expansion of commercial agricultural activities including coconut and cattle plantations and pepper gardens and resultant conversion of forest and garden land
6. Impacts of introduced species, namely;
 - a. Fresh water species- Gampusia sp., poecilia sp. Tilapia (Oreochromis sp.), Aquatic plant (Salvinia sp)
 - b. Terrestrial species- African snails, Elephant grass (Panicum purpureum), Agriculture Rope (Glycine) and Cordia allidora, Indian Mynah Bird (Acridothera tristis)
7. Impacts of logging on wildlife and natural ecosystems, including forest ecosystems
8. New techniques for harvesting flying fox and birds
9. Clearing of bush for subsistence and commercial agriculture
10. Destruction of mangroves.
11. Impacts of volcanic ash on natural vegetation associated wild life. E.g Ambrym Island
12. Impacts of soil erosion. E.g. Paama Island
13. Failure to respect size limits, closed seasons and traditional tabus set to ensure resource use is sustainable.
14. Over-exploitation of commercial resources due to the need for cash income
15. Over-exploitation of commercial resources due to the need for cash income.
16. Environmental impacts of infrastructure and development activities.

Polynesia

Polynesia, lying in the central and southern Pacific, encompasses a vast triangle stretching east from Melanesia and Micronesia. Polynesia is larger than both Melanesia and Micronesia combined. The south-western tip of Polynesia is the nation of New Zealand, lying southeast of Australia and far south of the Tropic of Capricorn. The south-eastern tip is Easter Island, part of Chile lying just south of the tropic of Capricorn three-fourths of the distance from Australia to South America. The triangle's north-western tip is Hawaii, straddling the Tropic of Cancer halfway between North America and Asia. These three tips, however, are outliers: Most of Polynesia is clustered just east of Melanesia south of the equator. From north to south, the Polynesian islands immediately east of Melanesia form the nation of Tuvalu; Wallis and Futuna, a French territory north of Fiji; and the nation of Tonga. Farther east, from north to south, are Tokelau, a territory of New Zealand; the independent nation of Samoa (formerly Western Samoa); American Samoa, a U.S. territory; Niue, a self-governing island in free association with New Zealand; and the Cook Islands, a self-governing island group also in free association with New Zealand. Still farther east lie the five archipelagos of the French territory French Polynesia: the Austral Islands, the Society Islands (with well-known Tahiti and Bora-Bora), the Tuamotu Archilepago (including the Gambier Islands), and the Marquesas Islands. Beyond French Polynesia is Pitcairn Island, a dependency of the United Kingdom.

The mid-sized islands of Polynesia (Tonga, Samoa, French Polynesia) and Micronesia (Palau, Federated States of Micronesia) and high island territories of the United States (Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) have limited land resources, minimal or no commercial forests, and no commercial mineral deposits. The people of Polynesia and Micronesia are predominantly agrarian and rural. Their cultures are almost entirely Polynesian or Micronesian.

French Polynesia is a territory of France, while Guam, the Northern Mariana Islands and American Samoa are territories of the United States. These islands enjoy a high standard of living from subsidies, and have few tradable natural resources and virtually no

manufacturing sector.

The main threats to indigenous and local communities' continuing cultural traditions stem from environmental problems such as: a growing scarcity of land, loss of the remaining native forest areas with associated loss in biodiversity, decline of coastal fishery resources, coral reef degradation, invasion of exotic species, and pollution of ground water and coastal areas by agricultural chemicals and sewage.

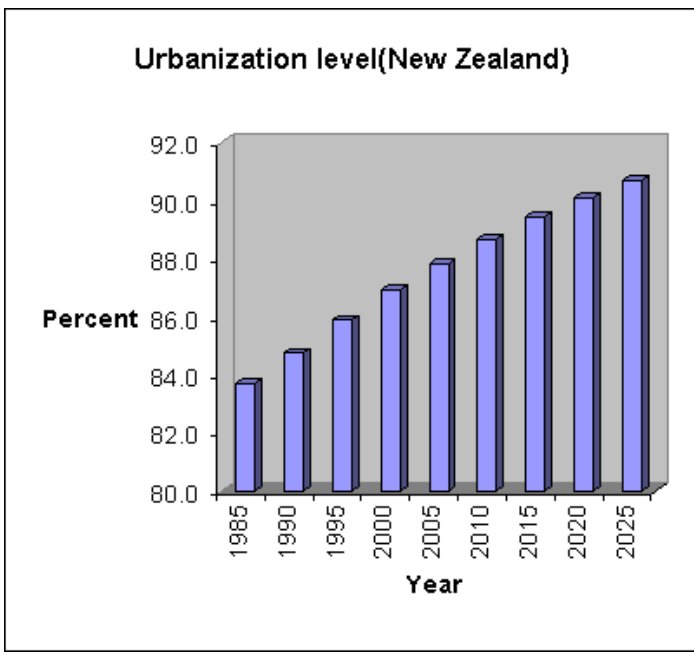
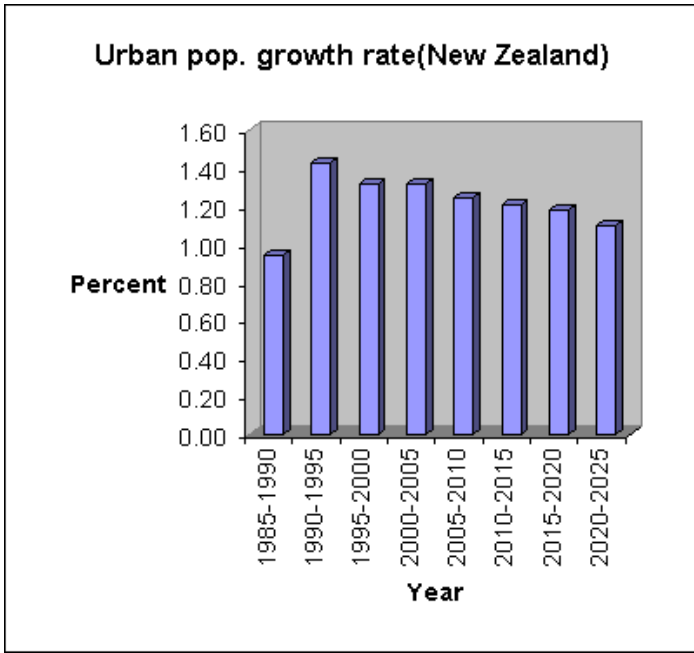
New Zealand

According to Statistics New Zealand, in 2001 1 in 7 people in New Zealand identified themselves as Maori. The Maori population currently constitutes 585,900 people or 15% of the total New Zealand population.

Features of Maori demographics include:

- The median age of people of Maori ethnicity is 22 years.
- 3 in 8 people of Maori ethnicity are aged under 15 years.
- The majority of the Maori population is urban and lives in the North Island.
- It is also regionalised in that there are pockets of rural areas where Maori people constitute between 29% to 47% of the total regional population.²⁹

²⁹ Aroha Te Pareake Mead "Emerging Issues In Maori Traditional Knowledge: Can These Be Addressed By United Nations Agencies?" Workshop on Indigenous Traditional Knowledge, 21-23 September 2005, Panama City, Panama.



2. NATIONAL DEVELOPMENT POLICIES / PROGRAMMES

The term ‘development’ is problematic because it connotes a positive, beneficial meaning based on assumptions and indicators that for the most part exclude measures of cultural integrity. So-called ‘development’ is the “underlying causes of degradation, stealing, and

devastation of indigenous peoples, their communities, and natural resources.”³⁰

Furthermore, the impacts of development are glaring in terms of the “destructive nature of these destructive sources of ‘de-development’ as they continue to take away lands and usurp the resources that belong to indigenous peoples and local communities, and deny local communities the benefits of what is rightly theirs.”³¹

The United Nation Development Programme (UNDP) development indicators have been criticised because as statistical indicators they are crude measurements of development, being numerical summaries of basic conditions. The indicators do not measure the cultural health and integrity of peoples and therefore poorly reflect the diversity or multiple dimensions of people’s lives.³²

The same can be said for measures of sustainable development outlined in the 1987 Brundtland Report which explored the synergy between various areas and sectors that impact on the environmental management, and has been criticized for failing to address let alone embrace culture as a driving force in achieving sustainable development.³³

Similar criticisms have been echoed regarding the Millenium Development Goals that arose out of the Millenium Declaration of September 2000 that committed nation states to reduce poverty both in urban and rural areas, improve health and promote peace, human rights and environmental sustainability. “The MDG present eight quantifiable goals for ending extreme poverty by 2015. The MDGs cannot be understood without the Millennium Declaration, which recognizes and reaffirms human rights treaties. In that

³⁰ Written comments of [Fiu Elisara](#) O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005.

³¹ [Ibid](#)

³² “The State of Human Development in the Pacific – Measuring Human Development” at http://www.undp.org.fj/documents/Pacific%20Human%20Development%20Report%201999-Overview_files/phdr99_ch2.pdf

³³ Kasisi & Jacobs “Strategies and action plans to conserve biological diversity: a cultural and scientific challenge” in [SPC Traditional Marine Resource Management and Knowledge Information Bulletin #13](#) at p.15

sense, a State cannot achieve the MDGs while disregarding human rights principles, including the principle of non-discrimination.”³⁴

Indigenous peoples, as distinct peoples, hold their own concepts of development, based on their own values, aspirations, needs and priorities, and that these concepts are often different from other parts of the national population. Their value systems, which are based on a close relationship with natural resources (for both subsistence and spiritual needs), are such that indigenous peoples play a crucial role in the stewardship of natural resources and biodiversity. Indigenous peoples are also the repositories of extremely rich, varied and locally rooted knowledge systems. Indigenous technology, land and resource management, governance and political and justice systems, medicine, crops, art and music are an important contribution to the world heritage. This rich cultural diversity is extremely valuable in a world threatened by the homogenisation of cultural value systems. As recognised in the World Summit on Sustainable Development Declaration, this wealth of knowledge and practices gives indigenous peoples a vital role in sustainable development.

The lack of economic statistics on indigenous populations is related to a fundamental lack of recognition of the informal economy in many countries. Due to inadequate reporting the contribution of indigenous economies to development is often not recognised (UN doc. E/c.19/2004/2). Subsequently, indigenous economies are not valued but rather their livelihoods are sidelined or often threatened in the development process. This has been the experience of indigenous peoples especially where national development strategies are closely tied to private sector investments in natural resources and extractive industries. Such conflicts are also related to the inadequate recognition of the cultural importance of the lands and territories that are inhabited by indigenous peoples.³⁵

At the launch of the 2004 UNDP Human Development Report 2004 Mr. Ole Henrik Magga Chairperson of the United Nations Permanent Forum on Indigenous Issues

³⁴ DRAFT Inter-Agency Support Group on Indigenous Issues (IASG) Position paper on the Millennium Development Goals

³⁵ Ibid

reiterated concerns raised by indigenous peoples at the Permanent Forum for Indigenous Peoples that “development practices... do not take into account the particular characteristics of indigenous communities as groups, with their distinct cultural identities and often their own systems of representation, thus significantly undermining meaningful ways of participation in the assessment, preparation, execution and evaluation of development programmes of their concern”.³⁶

The Permanent Forum has also emphasized that indigenous peoples are not stone-aged peoples frozen in time but are dynamic living cultures seeking their place in the modern world. Nor are they against development but for too long indigenous peoples have been victims of development and now they demand to be participants who benefit from development - just like everyone else. There is a need to “increase the understanding of the link between environment, development and cultural diversity.”³⁷

In consideration of the lack of international legal protection and promotion of the diversity of cultural expressions, the General Conference of UNESCO convened from October 3 to October 21 and approved (148 votes for, two against, four abstentions) the *Convention on the Protection and Promotion of the Diversity of Cultural Expression*. The Convention is an international instrument that will enter into force three months after its ratification by 30 States. The Convention is an important instrument for ensuring the rights of indigenous peoples to create and disseminate in a fair environment their cultural goods and services, as well as their traditional expressions. The Convention provides a framework for Member states to formulate policies in favour of the plurality of cultural expressions. It aims at ensuring that indigenous peoples can continue to benefit from their traditional knowledge and culture, while also adopting external cultural elements.³⁸

Globalisation / Free Trade

³⁶ E/2003/43, paragraph 28 at http://www.un.org/esa/socdev/unpfii/documents/Mr_Magga_%20BelgiumJuly2004.htm

³⁷ E/2003/43, paragraph 56, at http://www.un.org/esa/socdev/unpfii/documents/Mr_Magga_%20BelgiumJuly2004.htm

³⁸ International Workshop On Traditional Knowledge, Panama City, 21-23 September 2005 – PFII/2005/WS.TK/10

As the impact of globalization on the world's cultures increases, the evidence is that both cultural and biological diversity may diminish. It is argued that these processes affect both indigenous and industrial societies and that the two are in fact interdependent, so that what happens in one is reflected in the other.³⁹ It is important to secure the rights of indigenous people to control their lands and resources thereby ensuring the maintenance of their "capacity to effectively monitor and control access to and transfer of genetic resources and traditional technologies while enhancing biological diversity" and at the same time reexamine the perceptions and values of people living in the industrialized world.⁴⁰

The pressure to develop and join the cash economy under the banner of globalisation is being felt in rural Vanuatu, an area of the world that had been close to self-sufficient for thousands of years. People living off the land are expected to compete on even terms with the industrialised nations of the world as governed by the World Trade Organisation (WTO). These factors increase the pressure on the limited resources and fragile environment of small tropical islands as well as putting further pressure on the traditional systems of management that have served so well for so long.⁴¹

Due to population growth, the growing need to generate monetary income is leading to increased planting of permanent commercial crops, and increased commercial fishing and production of timber at the expense of diverse traditional agricultural systems. This conversion of natural systems to human production systems is a significant threat to traditional knowledge and biodiversity in Vanuatu.⁴²

At the World Commission on Culture in 1995 it was agreed that:

³⁹ Gonzalo T. Oviedo C, Aimée Gonzales and Luisa Maffi *Importance of Traditional Ecological Knowledge and Ways to Protect It* citing McNeely (1997) and Posey (1996) at http://r0.unctad.org/trade_env/docs/wwf.doc

⁴⁰ Sophia Twarog And Promila Kapoor, Eds. *Protecting And Promoting Traditional Knowledge: Systems, National Experiences And International Dimensions* United Nations Conference On Trade And Development New York And Geneva, 2004 - Unctad/Ditc/Ted/10

⁴¹ F. Hickey "Traditional Marine Resource Management in Vanuatu: World Views in Transformation; Sacred & Profane" in Traditional Marine Resource Management in Vanuatu at p. 135

⁴² Environment Vanuatu website – "Vanuatu's Biodiversity" at

Development divorced from its human or cultural context is growth without a soul. Economic development in its full flowering is part of a people's culture.⁴³

However, the inexorable forces of globalisation have pushed many Pacific islands countries into a corner. International agreements are opening up Pacific island economies to free trade in goods and services by lowering or eliminating tariffs and other regulations. They must respond or suffer crippling economic consequences.

PICTA is the Pacific Islands Countries Trade Agreement. Member countries agree to progressively drop import taxes and other trade barriers on goods from each other.⁴⁴ Unrestricted trade in alcohol and tobacco is currently being considered under PICTA.

Officially PICTA's purpose is, according to the Pacific Forum Secretariat, to "hopefully encourage specialisation and greater efficiency² in Forum islands countries economies and increase the flow of goods between themselves. Since it should create a single market of more than 6,000,000 people, it should attract more investment from manufacturers not interested in markets of under 100,000, or even 10,000 people. Large Forum islands countries will cut tariffs on imports to zero by 2010. Smaller ones have until 2012, except in the case of products which qualify for protection as start-up industries until 2016.

So far, the debate among political leaders and trade negotiators is about impacts on local production, employment and government revenue versus the benefits of a wider choice of products and lower prices.⁴⁵

However it is disturbing that governments are exploring strategies to help companies make alcohol and tobacco more available in the Pacific at lower prices. This poses a threat to the health and social stability of Pacific communities.⁴⁶

⁴³ From the report of the World Commission on Culture and Development chaired by Perez de Cuellar (1995)

⁴⁴ <http://www.Pacificislands.cc/pm92001/pmdefault.php?urlarticleid=0024>

⁴⁵ http://www.ias.org.uk/publications/theglobe/05issue1/globe0501_p13html

⁴⁶ Ibid

"Adverse social impacts can also arise from "adjustment costs" associated with the removal of tariff barriers. The Pacific Forum has noted that:

in some cases inefficient businesses may find it difficult to compete with businesses in other Forum islands countries partners. Those involved in these businesses may have to look for other avenues of employment. They may suffer unemployment and/or a loss of income at least temporarily.....there may be a disruption to their way of life and this may place some burden on their communities to provide them with temporary support."

Increased importation of alcohol, together with advertising and other marketing by multinational companies, will lead to increased consumption. We do not even have statistics and costings for the alcohol and tobacco related harm already happening in the Pacific today, yet we are preparing to open up our markets and our people to greater exposure.⁴⁷

Free trade and globalisation is criticised by many people because of its focus on increasing markets and profits, with scant regard for the environment, health and social stability. Trade processes are often uneven and disadvantage small developing countries that face resource constraints and barriers to trade with developed countries, while struggling to ensure the survival of local industries. Developing countries are vulnerable to exploitation as cheap labour and the ‘dumping’ of surplus products from more industrialised countries. Dumping could be an issue as alcohol globalisation expands in the Pacific under PICTA and PACER. Cheap, left-over beers and spirits from more affluent countries could be lapped up by many Pacific Islanders in the same way they have lapped up cheap unhealthy mutton flaps from New Zealand.⁴⁸

The particular vulnerability of small island developing states (SIDS) in the context of trade issues is outlined in the *Mauritius Strategy* which is:

a Programme of Action for the Sustainable Development of Small Island Developing States remains the blueprint for small island developing States and the international community to address national and regional sustainable

⁴⁷ Ibid

⁴⁸ Ibid

development in small island developing States that takes into account the economic, social and environmental aspects that are the pillars of the holistic and integrated approach to sustainable development. The Programme of Action sets out basic principles as well as specific actions that are required at the national, regional and international levels to support sustainable development in small island developing States. Along with the Barbados Programme of Action, the Rio Principles, the full implementation of Agenda 21, the Johannesburg Plan of Implementation and the outcomes of other relevant major United Nations conferences and summits, including the Monterrey Consensus, all contribute to the sustainable development of small island developing States.⁴⁹

The Mauritius Strategy recognizes that “most small island developing States, as a result of their smallness, persistent structural disadvantages and vulnerabilities, face specific difficulties in integrating into the global economy.” The Strategy further recognizes “the importance of intensifying efforts to facilitate the full and effective participation” by small island developing States “in the deliberations and decision-making process of the World Trade Organization.”⁵⁰

5. EDUCATION, TRAINING AND EMPLOYMENT POLICIES / PROGRAMMES

Employment

Poverty of opportunity in the Pacific region is particularly evident in regard to employment. Many young people are frustrated by the large gap between the skills they have and those they need in order to secure a livelihood. Formal employment caters for too few people, and this fuels an exodus of skills and talents out of the region.⁵¹

All over the Pacific, small islands states are becoming depopulated as working-age people migrate to bigger job markets such as Australia and New Zealand in the South

⁴⁹ http://www.sidsnet.org/docshare/other/20050222171050_Mauritius_Strategy_latest_version.pdf

⁵⁰ <http://www.un.org/smallislands2005/>

⁵¹ UNDP Report 1999 – Good Governance and Human Development Chapter 6 at http://www.undp.org.fj/documents/Pacific%20Human%20Development%20Report%201999-Overview_files/phdr99_ch6.pdf

Pacific, and the United States in the North Pacific. There is also a migration from one small island state to fill the labour shortages in another small island state. This has resulted in a loss of valuable traditional knowledge in several key areas.⁵²

The unpredictable seasons brought about by climate change is one factor that has made difficult to carry on with traditional subsistence lifestyles. Traditionally, the islanders of the Pacific have preserved breadfruits and kumara in pits, and stored some dried fish and dried bananas for use during the hurricane season. However, the convenience of opening a can or defrosting frozen food has meant that the traditional preserving skills are becoming lost because of the reliance on imported western-style foodstuffs. The change from an active agrarian lifestyle to a more sedentary white-collar lifestyle, combined with abundant food, has resulted in general obesity in the population, and the lifestyle diseases that go with.⁵³

Guam: “We are reliant on our U.S. federal partners. We have only one National Marine Fisheries enforcement agent between us and our two neighbours; there is no patrol vessel, so the U.S. Coast Guard plane must fly from Hawaii. This makes enforcement very difficult.”⁵⁴

Fiji: “We rely on the Fiji Navy, which has only 3 vessels; the French and NZ Air Forces assist with aircraft surveillance of illegal fishing. Fiji is interested in claiming areas beyond the existing 200 nm EEZ, but has missed the first 10-year deadline due to a lack of resources. NZ shares a common border with Tonga and Fiji, and Fiji may look to New Zealand for assistance.”⁵⁵

⁵² <http://www.unesco.org/csi/smis/siv/inter-reg/climate2.htm>

⁵³ <http://www.unesco.org/csi/smis/siv/inter-reg/climate2.htm>

⁵⁴ http://www.spc.int/piocean/forum/New/plenary_discussions.htm

⁵⁵ http://www.spc.int/piocean/forum/New/plenary_discussions.htm

Cook Islands: “Development, mainly of tourism, is an environmental threat; septic systems, transport are a worry. We are working closely with other organisations like SPREP to look into these issues.”⁵⁶

Marshall Islands: “We have identified capacity gaps and trained people but the problem is retaining them in the islands. Our trained, highly educated personnel are attracted by better jobs and salaries overseas. We cannot compete with what the U.S. offers.”⁵⁷

Fiji: “We have the same difficulty in retaining technical people. This might be addressed in part through short attachments abroad (in New Zealand and Australia) for those who show commitment to the region.”⁵⁸

American Samoa: “Agree with...the need for enhanced education and training opportunities. We would like to entice the US government to have development projects in our local community that will train people locally so they do not leave. Another challenge is to get policy makers to champion what we are trying to do for the environment.”⁵⁹

Education

Generally speaking Indigenous peoples of the Pacific are, for the most part, virtually invisible in the formal education systems for the urban and rural non-indigenous population. What is more they are often treated with contempt and subjected to discrimination in history, geography, literature, art and social studies text and by their own teachers. Real intercultural education must be taught in educational systems nationwide, for only then will the human rights of indigenous peoples be fully realized.⁶⁰

⁵⁶ http://www.spc.int/piocean/forum/New/plenary_discussions.htm

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ R. Stavenhagen, UN Special Rapporteur in Indigenous Peoples- para 67 E/CN.4/2005/88 – 6 Jan 2005 – Report to 61st session of commission on Human Rights at <http://www.fspi.org.fj/Publications/Samoa%20Newsletter/2nd%20Workshopon%20Indigenous%20Peoples%20of%20Pacific%2026-28%20April,%202005.pdf>

The Pacific Plan (outlined below) asserts that education has an integral role in promoting and strengthening Pacific cultural identities, traditions and languages with a focus on regional cooperation and intergration. Indigenous peoples have expressed concern at the emphasis on *regional* integration for fear that it may jeopardize cultural and linguistic diversity.⁶¹

The link between language loss and traditional knowledge is discussed below under Section 2 - local obstacles – cultural factors.

Samoa

In Samoa the education systems are targeting ‘palagi⁶²-driven’ goals and objectives ever since Samoan countries came under the influence of colonial powers, with no priority at all to addressing traditional knowledge. Governments need to take a concerted effort to target Traditional Knowledge in education systems curricula if this is to make any difference at all. The problem now is that many of our governments are now integrated by many non-indigenous peoples and in many countries, controlled by those with roots linked to ‘foreigners’ who emigrated to our countries and have, over time, usurped the rights of indigenous peoples.⁶³

⁶¹ Aroha Te Pareake Mead “The Broader Pacific Plan, Tidying-Up the Region” (2005) at p.3

⁶² Palagi: somebody who is white or not a Samoan at http://encarta.msn.com/dictionary_561539158/palagi.html

⁶³ Written comments of **Fiu Elisara**, O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005

Vanuatu

In Vanuatu education has suffered because the education system, which was based on a western educational model, did not make allowance for, or respect of the country's culture and history. The current Education Master Plan (2000-2010) recognises these shortfalls, and consequently, there are now opportunities to incorporate traditional knowledge into national education.⁶⁴

In Vanuatu the education system takes children away from their native language and culture. In the words of Ralph Regenvanu, Director of Vanuatu's Cultural Centre, when it comes to the nation's education system. "School is one of the major factors that is breaking the transmission of culture".

At present children in Vanuatu receive primary education locally, but are taught in either English or French, with subject matter largely divorced from their daily lives. The 20 percent or so who pass an entrance exam can go on to secondary school, which, more often than not, can be on another island, hundreds of kilometres from home.

The *coup de grace* for traditional life looms when the parents also move to a town, like Port Vila, on the island of Efate, or Luganville, on Santo, in search of work to pay for the school fees (over 45,000 Vatu or US\$400 a year). But, even then while a university education may help a young person find a good job, "less than 2 percent go to university, so the majority get pushed out of the system."⁶⁵ The informal settlements that have sprung up around Vila house many families who gave up everything to pay for their children's education, and can no longer afford to return home.

The key to the new curriculum, already government policy for the first year of primary school in rural areas, is to teach in the vernacular language. "The best vehicle to gain

⁶⁴ Russell Nari "Incorporating Traditional Knowledge into Government – Case Study 1 - Merging Traditional Resource Management Approaches And Practices With The Formal Legal System In Vanuatu n Traditional Marine Resource Management Knowledge Number 17 — December 2004 Secretariat Of The Pacific Community at p. 16.

⁶⁵ "Education ou aliénation ?" at http://portal.unesco.org/en/ev.php-URL_ID=21208&URL_DO=DO_TOPIC&URL_SECTION=201.html

literacy is through your own language,” and, while the Cultural Centre has been pushing for this since the 80s the idea took off only when it got World Bank backing as the policy of international agencies, following a national survey.

Vanuatu boasts the highest concentration of languages per capita anywhere – around 106 for a population of about 200,000,” he explains. Over 80 languages are still very much alive, while about 17 are endangered and eight are extinct. Malakula alone has 34 languages for a population of 18,000. Many people speak three, even seven vernacular languages.

Before teaching materials can be developed, these vernacular languages have to be written down, and a standard spelling drawn up. So far, says Regenvanu, this has been done for 16 languages. “We have developed really basic materials – three books for each of the 16 languages: one on the alphabet, one on birds and one on fish.” It is envisaged that materials in at least 40 languages will eventually be available.⁶⁶ The question is what happens when an oral tradition becomes a written tradition, and whether the written word continues to reflect the changing dynamics of traditional knowledge.

Palau

In Palau in the pre-contact era, traditional education, especially education in specialized skills such as house construction, canoe building and healing, provided a means for acquiring land and “*udoud*” (money) to benefit of one’s clan.

However over time traditional education came to be supplemented and eventually supplanted by western education, and the value placed on education was transferred to the new system.⁶⁷

⁶⁶ “Education ou aliénation ?” at http://portal.unesco.org/en/ev.php-URL_ID=21208&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁶⁷ “Education Needs The Challenge of Shaping Human Resources for the Twenty-first Century” at http://www.undp.org.fj/un/reports/palau_shd/chapter09.PDF

Aotearoa (New Zealand)

In New Zealand the general education system needs to provide opportunities for kaupapa⁶⁸ Maori education as alternative learning institutions and to enhance kaupapa Maori⁶⁹ throughout mainstream education.

Although the ability to learn about matauranga Maori⁷⁰ throughout all levels of the education system has significantly strengthened over the past five years “the significant shift in empowering Maori with their own cultural knowledge is largely happening through Maori initiated, owned and managed tertiary providers”.⁷¹

In March 2004 the New Zealand Cabinet established a Ministerial Review Unit to review policies and programmes within the core public service to ensure they were based on need, not race. Government is moving to what it describes as a ‘needs-based’ policy framework that requires any and all policies to (i) demonstrate a need, (ii) provide evidence the need still exists, (iii) show that ethnicity is an indicator of need, and (iv) prove that the need requires government intervention.

In June 2005, the NZ government reviewed the Maori Knowledge & Development Research Output Class. It noted the “need to develop ethnic Maori researchers is not explained, and the Ministerial Review Unit consider that the development of Matauranga Maori does not require it to be exclusively for ethnic Maori researchers but that the output class should be open to all who can demonstrate the ability to effectively undertake research relevant to the output class.”⁷²

⁶⁸ Kapupapa defined as Plan, strategy, tactics, methods, fundamental principles at Glossary

⁶⁹ Maori-based education

⁷⁰ Matauranga Maori in a traditional context means the knowledge, comprehension or understanding of everything visible or invisible that exists across the universe. This meaning is related to the modern context as Maori research, science and technology principles and practices at http://www.waitangi-tribunal.govt.nz/doclibrary/wai262/matauranga_maori/Chapt02.pdf

⁷¹ Aroha Te Pareake Mead “Emerging Issues In Maori Traditional Knowledge: Can These Be Addressed By United Nations Agencies?” Workshop on Indigenous Traditional Knowledge, 21-23 September 2005, Panama City, Panama

⁷² Ibid

At the Workshop on Indigenous Traditional Knowledge, 21-23 September 2005, Panama City Aroha Te Pareake Mead, noted that “after years of struggling for the recognition of Maturanga Maori as a valid knowledge system, and the need for Maori to resume responsibility for the promotion, transmission, interpretation and utilisation of their own cultural knowledge, NZ government has unilaterally decided that development of Maturanga Maori does not require it to be exclusively for “ethnic Maori”. A return to the 1800’s time period of mono-cultural colonial rule.”⁷³

Further that “support for the transmission, promotion, interpretation and utilization of cultural knowledge tends to be subject to political whim. There is a high-risk factor and potential for instability when relying on government to develop programmes that are as fundamental to indigenous cultural wellbeing and development as Maturanga Maori or Traditional Knowledge. While one administration might be keen and enthusiastic to assist, the lifespan of any government programme is only as long as the political election cycle.”⁷⁴

Threats to Indigenous Education

In October 2004 UNESCO and the UNHCHR sponsored an expert seminar on this topic in Paris. It was attended by 60 persons including state representatives, indigenous educators, educational experts, UN staff and the UN Special Rapporteur on Education and Indigenous Peoples. Its conclusion findings and recommendations are reported in document E/CN.4/2005/88/Add.4 15 December 2004.

The Report identifies several major impediments to the full enjoyment of the human right to education by indigenous peoples. These include:

1. Lack of respect for cultural diversity and xenophobia;
2. Racial discrimination;

⁷³ Aroha Te Pareake Mead “Emerging Issues In Maori Traditional Knowledge: Can These Be Addressed By United Nations Agencies?” Workshop on Indigenous Traditional Knowledge, 21-23 September 2005, Panama City, Panama.

⁷⁴ Ibid

3. Economic and social disparities between Indigenous Peoples and nonindigenous peoples;
4. Natural physical obstacles – distance, lack of transport;
5. Nation state policies that are discriminatory;
6. Lack and program evaluation to identify and correct problems;
7. Bias against indigenous women and girls in educational services;
8. Ethnic and cultural biases in schools, materials, teachers and curricula;
9. Isolation of migratory Indigenous Peoples;
10. Failure to educate in Indigenous languages; and
11. Exclusion of Indigenous Peoples from the processes of creating and managing Indigenous schools and courses.

The Report recommended that states should undertake corrective measures including:

1. Institute special measures to address racism and bias in the educational system;
2. Involve Indigenous Peoples in educational design and development;
3. Include indigenous culture, history, values and traditions in educational programs;
4. Research and address special needs of Indigenous women and children,
5. Involve Indigenous educators in design and teaching; and
6. Evaluate bilingual and multicultural approaches to education.

The Special Rapporteur on Indigenous Peoples also filed a Report to the 61st Commission on Human Rights. E/CN.4/2005/88 6 January 2005. The rapporteur identified several impediments to Indigenous peoples rights to education and found that the goal of universal primary education for Indigenous peoples had not be achieved. He identified several impediments to achievement of the goal including:

1. geographical dispersion,
2. isolation and physical distance,
3. lack of financial resources,
4. substandard education,
5. lack of teachers and modern technologies,
6. poor sanitation,

7. child labor at home and in the market place,
8. discrimination in language and curricula,
9. discriminatory national policies,
10. sex and gender bias.

The Rapporteur found that education was being used to further assimilation and called for states to abandon this pedagogical model. He recommended several solutions including:

1. educate in mother tongue,
2. educate in the context of the local community,
3. develop bilingual and intercultural and educational programs,
4. adopt national legislation to provide for Indigenous education,
5. train and employ Indigenous educators,
6. create educational programs to meet specific needs of Indigenous children in penal institutions.

The important role of education for the retention of traditional knowledge must be emphasised particularly in maintaining linguistic diversity. “When a traditional language is lost, the associated concepts and traditional (environmental) knowledge may also be lost, leading to loss of biological diversity. Indeed loss of cultural diversity makes us all less than what we could be – it limits everyone’s potential.”⁷⁵

6. IDENTIFICATION OF ACTIVITIES, ACTIONS, POLICIES AND LEGISLATIVE AND ADMINISTRATIVE PROCEDURES THAT MAY DISCOURAGE THE RESPECT FOR, PRESERVATION AND MAINTENANCE OF TRADITIONAL BIO-DIVERSITY-RELATED KNOWLEDGE

Access & Benefit Sharing (ABS)

⁷⁵ UNDP Launch of the Human Development Report 2004 “Cultural Liberty in Today’s Diverse World” Mr. Ole Henrik Magga, Chairperson of the United Nations Permanent Forum on Indigenous Issues “Indigenous peoples and cultural diversity” at http://www.un.org/esa/socdev/unpfii/documents/Mr_Magga_%20BelgiumJuly2004.htm

Access and benefit sharing (ABS) simply means accessing genetic resources with the prior informed consent of resource owners and sharing the benefits, from the commercialisation of any products derived from it, fairly with all parties. The process of accessing resources for their genetic make-up is called bio-prospecting.⁷⁶

In the Pacific region there is a need to incorporate consideration of the special case of plant genetic resources for food and agriculture into development of national policies and legislation on access and benefit-sharing.⁷⁷

The Mauritius Strategy (outlined above) requested that states develop:

local capacities for protecting and developing the traditional knowledge of indigenous groups for the fair and equitable sharing of the benefits arising from the use of genetic resources, taking into account the Bonn Guideline on Access to Genetic Resources and Benefit -sharing as adopted at by the Conference of Parties to the Convention at its sixth meeting,⁷⁸

One of the central issues in the commercial exploitation of plant genetic resources and traditional knowledge is ‘free prior and informed consent’.

New Zealand has undertaken some key activities towards the development of a national ABS policy however there is a claim by a number of Maori tribes (iwi) to the Waitangi Tribunal in which they assert exclusive rights over both traditional knowledge and indigenous genetic resources under the Waitangi Treaty of 1840. This claim was presented to the tribunal in 1991 and is pending resolution.⁷⁹

Cook islands, Fiji, Marshall Islands, Niue, Solomon Islands, and Vanuatu lack ABS policies but have working groups and committees in place analysing existing legislation

⁷⁶ <http://www.wwfPacific.org.fj/abs/intro.htm>

⁷⁷ http://www.undp.org/bpsp/thematic_links/access.htm

⁷⁸ Mauritius Strategy

⁷⁹ S. Carrizosa, S. Brush, B. Wright & P. McGuire “Accessing Biodiversity and Sharing the Benefits: Lessons from Implementing the Convention on Biological Diversity” IUCN Environmental Policy and Law Paper No. 54, World Conservation Union, 2004 at p. 27

and proposing courses of action for the development of local policies. Palau is planning to start working on ABS policies between 2004 and 2005, depending on the availability of funding and technical capacity. Kiribati, Nauru, Tonga, and Tuvalu have received technical advice from the South Pacific Regional Environment Program, the Foundation for International Environmental Law and Development, and other local organisations, but these countries are not currently engaged in systematic development process of ABS policies.⁸⁰

Intellectual Property Legislative Reform

The protection of expressions of culture is vital to maintaining cultural identity and integrity. Without effective protection, traditional knowledge and culture are open to ‘pillage and erosion’. Further, most of the economic benefits derived will continue to be diverted to non-indigenous persons and institutions. The underlying issue is one of ownership.⁸¹

Intellectual Property rights are being asserted by external research partners much of which is beyond the scope of any clear policy or legal framework at national or regional levels. It is questionable whether Pacific states are fully aware of all that is happening within their boundaries in relation to intellectual property issues which places Pacific communities in an extremely vulnerable position. For example, “large-scale and for the most part external research projects are already making direct contact with communities to negotiate access to their cultural resources, and/or to sample their DNA without regulation and monitoring.”⁸²

As noted by eminent Maori scholar Aroha Te Pareake Mead:

there is a *terra nullius* perspective implicit in the *intellectual property* requirement to demonstrate human intervention or innovation (value-added) in that *intellectual*

⁸⁰ Ibid

⁸¹ http://www.unesco.or.id/apgest/events/chennai_meeting/traditional-knowledge.pdf

⁸² Aroha Te Pareake Mead, Co-Chair, Call of the Earth Llamado de la Tierra “The Pacific Plan: Culture, Trade & Intellectual Property Rights” June 8th Technical Workshop on the Pacific Plan, at the University Bure, University of the South Pacific [USP] Suva, Fiji, June 2005.

property rights laws do not acknowledge existent customary indigenous knowledge or indigenous ownership. Nor do they agree that indigenous knowledge and processes are scientific and technological. Nor do they accommodate a connection between indigenous peoples and their lands and heritage. In short, they do not regard existent indigenous knowledge as being an *intellectual property* and deserving of protection, rather they consider such knowledge as ‘common’ and define human intervention based on what non-indigenous peoples ‘add’ to what has existed for generations.⁸³

In the Pacific, ownership of traditional knowledge and expressions of culture is not based on individual rights, as postulated by the Western copyright and patent laws, but on a system of collective rights that are managed on a custodial basis according to customary laws. While IPR laws may offer limited support for community knowledge and innovations, in general they are inappropriate because:

- they seek to privatise ownership;
- they are destined to help individual and corporation rather than communities;
- they are expensive to apply for and to maintain; and,
- they give a restrictive interpretation of the invention.⁸⁴

However a number of the Pacific Island Countries and Territories (PICTs) have only rudimentary and in some cases outdated IPR legislation in any form, if that. Much of what they do have dates back to the colonial period.⁸⁵

In many PICTs, there is little, if any, legal and other expertise to deal with deal with detailed intellectual property issues, especially those relating to TK. A Regionally Focused Action Plan (FRAP), run by IP Australia, WIPO and the PIFS is assisting the 14 FICs to update their IPR legislation and administrative and enforcement capabilities.⁸⁶

⁸³ “Cultural And Intellectual Property Rights Of Indigenous Peoples Of The Pacific” Suva, Fiji 4 September 1996

⁸⁴ IUCN Document at <http://www.iucn.org/themes/law/pdffdocuments/EPLP54EN.pdf>. See also Pacific Concerns Resource Centre, Fiji.

⁸⁵ http://www.unesco.or.id/apgest/events/chennai_meeting/traditional-knowledge.pdf

At the Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands in 1999 the status of legal protection of traditional knowledge and cultural expressions in the Pacific Islands was reviewed in 20 national reports by representatives of Australia, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Marshall Islands, Northern Mariana Islands, Nauru, New Caledonia, Norfolk, New Zealand, Aotearoa, Palau, Papua New Guinea, Solomon Islands, Samoa, Tonga, Vanuatu and Wallis and Futuna.⁸⁷

The national reports reflected a highly varied situation. Certain States are particularly involved in the in-depth study of overall protection for "indigenous cultural and intellectual property", having noted that the system of intellectual property protection currently in force is ill adapted (Australia, New Zealand and Papua New Guinea). Some are committed to framing a specific system through the recasting of their national laws on copyright protection (Papua New Guinea, Tonga, Samoa). Still others are exploring the possibility of developing joint protection for copyright and traditional and popular culture (Palau, Vanuatu). Finally, a number of countries are taking steps to amend their national legislation, the legacy of the colonial era, in all laws governing intellectual property, in order to introduce, wherever possible, specific measures to protect traditional culture and folklore (Fiji, Federated States of Micronesia).

The autonomous territories pointed out that all legislation governing cultural activities and the protection of intellectual property, as published in the country exercising external sovereignty, applies to their territories. They observe that such legislation cannot easily be used to ensure effective protection of the traditional knowledge and folklore specific

⁸⁶ UNCTAD-Commonwealth Secretariat Workshop On Elements Of National Sui Generis Systems For The Preservation, Protection And Promotion Of Traditional Knowledge, Innovations And Practices And Options For An International Framework (Geneva, 4-6 February 2004) Notes By Dr Jim Gosselin, Multilateral Trade Policy Advisor Pacific Islands Forum Secretariat, Fiji at http://r0.unctad.org/trade_env/test1/meetings/tk2/TK%20Notes.pdf

⁸⁷ http://portal.unesco.org/culture/en/ev.php-URL_ID=14264&URL_DO=DO_TOPIC&URL_SECTION=201.html

to the indigenous peoples (American Samoa, Marshall Islands, French Polynesia, Wallis and Futuna, New Caledonia, Solomon Islands, Northern Mariana Islands).⁸⁸

The majority of Pacific countries and territories do not have appropriate legal tools to protect the expressions of indigenous cultures and their intellectual property.⁸⁹

The Pacific Plan (outlined below) stipulates that an institution be created to advocate for the protection of traditional knowledge and intellectual property rights the success of which will be measured by “the percentage increase in number of intellectual property rights, patents and trademarks (protecting traditional knowledge and practice) data to be provided by country IP offices).

New Zealand

In New Zealand “there is a clear distinction between what Maori consider cultural and intellectual property to be, and what intellectual property rights granted under law by government constitute.”⁹⁰

From a policy point of view the main difficulty is “isolating what might fall within the scope of current intellectual property laws and identifying those aspects of Maori cultural and intellectual property that fall outside, including for example, traditional knowledge (encompassing but not limited to cultural images, oral tradition, medicinal remedies and other traditional uses of native plants)”⁹¹ There is a need to further develop policies in this area, including where appropriate, the modification of existing intellectual property right systems to enable the protection of cultural and intellectual property, and scooping new and additional protection mechanisms, both legal and non-legal.⁹²

⁸⁸ http://portal.unesco.org/culture/en/ev.php-URL_ID=14264&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁸⁹ http://www.unesco.org/culture/copyright/folklore/html_eng/declaration.shtml

⁹⁰ “Detailed Thematic Report on Benefit Sharing - Intellectual property and traditional knowledge related to genetic resources” at <http://www.biodiv.org/doc/world/nz/nz-nr-abs-en.doc>

⁹¹ “Detailed Thematic Report on Benefit Sharing - Intellectual property and traditional knowledge related to genetic resources” at <http://www.biodiv.org/doc/world/nz/nz-nr-abs-en.doc>

⁹² *Ibid*

The customary Maori system contrasts sharply with the formal intellectual property system. The relationship between the two systems has at times been fraught and there will inevitably continue to be incidents with the systems will clash due to their inherent differences. Maori have raised concerns over the inadequate and inappropriate protection afforded to their traditional knowledge under the current intellectual property regime. These concerns are the subject of a claim of the Waitangi Tribunal – Wai 262. There is also a review of intellectual property legislation such as the Patent Act with the intention to provide better protection for traditional knowledge of Maori.⁹³

On 2 April 2002 the NZ Ministry of Economic Development released a discussion paper on reform of the Patents Act 1953. There have been consultations with Maori communities in recent years on issues relating to the reform of the Patents Act.⁹⁴

Some of the concerns raised range from concern as to the effectiveness of the existing regime to protect matters of importance to Maori, including traditional knowledge based inventions, through to broader issues concerning the appropriateness of granting patents for genetic material, particularly indigenous genetic material.⁹⁵

Where patents are granted for inventions involving traditional knowledge, such as customary use of genetic resources, then the patent may be invalid as the invention will not be novel. Opposition and revocation proceedings could be used to prevent a grant of, or revoke a patent of this nature if it has inadvertently been granted. The possibility of patents being granted in areas of traditional knowledge could be reduced if traditional knowledge was written down and published. This material could then form part of the “prior art” that is searched during examination of a patent application. Clearly, this latter option would require separate sui generis mechanisms for preventing others from making use of the published traditional knowledge.⁹⁶

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

There is nothing in the New Zealand system which would prevent continued traditional customary use of a particular resource should the resource feature in a new patent application. New Zealand is currently involved in a review of the Patents Act and we will be considering this issue as part of the review.⁹⁷

The Pacific Plan

The Pacific Plan arose out of the 2003 Pacific Islands Forum meeting in Auckland, New Zealand with a view to pooling scarce regional resources to strengthen national capabilities. Consequently, an Eminent Persons Group (EPG) consulted throughout the Pacific island countries and territories countries. The report from the EPG consultations was considered by governments at a special meeting in 2004 when they issued the Auckland Declaration outlining their common vision for the Pacific. As part of this, governments “called for the development of a Pacific Plan as a way forward to meet the needs and aspirations of Pacific people to help them face their challenges together.”⁹⁸

The primary goal of the Pacific Plan to “enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries through regionalism.”⁹⁹ The Plan identifies initiatives to support Pacific culture for immediate implementation in the first three years (2006-2008). The key initiatives are:

- The development of a strategy to maintain and strengthen Pacific cultural identity; and,
- The creation of an institution to advocate for and protect traditional knowledge and intellectual property rights.

⁹⁷ Ibid

⁹⁸ An Ongoing Strategy for the Future – Developed for Pacific People by Pacific People “The Pacific Plan for Strengthening Regional Cooperation and Integration” at <http://www.pacificplan.org/tiki-page.php?pageName=issues+papers>

⁹⁹ <http://pacificplan.org/tiki-page.php?pageName=PPDraft>

However, the consultation process has been contentious. Indigenous Pacific nations had been excluded from a recent Pacific Consultations initiative that would affect their territorial waters, development and food security.¹⁰⁰

At the Permanent Forum of Indigenous Peoples in May 2005, a representative of the Pacific Caucus said that a Pacific Plan drawn up by the Pacific Consultations Workshop should be placed in moratorium until more comprehensive and inclusive dialogue could be held to assure that it had the free, prior, and informed consent of the Pacific indigenous peoples.

The Pacific Plan has been criticized for reading like “a policy to make the Pacific safe and familiar for Australia and New Zealand [and the US] by formalizing ‘rules’ of regional integration. There is no real commitment to treasure the diversity of the Pacific or to honour Pacific cultures and traditions. Rather there is a blatant push to force globalisation on the Pacific and to do so under the name of good governance and democracy.”¹⁰¹

For example, the Pacific Plan aims to “maintain and strengthen Pacific cultural identity”. There is no single Pacific cultural identity. There are Pacific cultural identities – locally based, village, clan, tribal, national, rural, urban. Any strategy in cultural identity should be developed nationally with the full participation of local communities/villages or whatever social groupings are considered most appropriate.¹⁰²

Furthermore, as noted by a member of Call to the Earth Llamado de la Tierra, Kingi Gilbert, despite the linguistic diversity (over 1300 languages in daily use in the Pacific) there is not one Pacific language term used in the entire document. Linguistic diversity should be a more intrinsic component of regionalisation policy.¹⁰³

Pacific Regional NGO’s have called upon Pacific Forum leaders “not to compromise transparency but ensure deeper and more meaningful dialogue and participatory

¹⁰⁰ <http://www.unis.unvienna.org/unis/pressrels/2005/hr4840.html>

¹⁰¹ Aroha Te Pareake Mead “The Broader Pacific Plan, Tidying-Up the Region” (2005) at p. 1

¹⁰² Ibid

¹⁰³ Ibid

processes to take place by extending the time or adopting an implementation plan by at least two more years for adequate preparations to occur.”¹⁰⁴

Pacific Model Law

The South Pacific region has initiated and developed model legislative measures for the protection of traditional knowledge and cultural expressions, based upon respect for customary law and practice. This is known as Pacific Model Law.

The Pacific Model law arose out of the Working Group for Legal Experts on the Protection of Traditional Knowledge and Expressions of Culture which produced the *Draft Model Law for the Protection of Traditional Knowledge and Expressions of Culture*. It establishes a new range of statutory rights for traditional owners of traditional knowledge and expressions of culture. The approach taken in the Draft Model Law is to protect the rights of traditional owners in their traditional knowledge and expressions of culture and permit tradition-based creativity and innovation, including commercialisation thereof, subject to prior informed consent and benefit-sharing.

The *Model Law* establishes procedures whereby consent can be obtained for the non-customary use of traditional knowledge and expressions of culture, including derivative works. It is intended to complement and not undermine intellectual property rights.

The *Model Law* also recognises rights to traditional knowledge and expressions of culture and allows traditional owners to be compensated for the use of their traditional knowledge. It provides for the establishment of national institutions to create and maintain databases on owners as well as permitting the establishment of a national dispute resolution system.

The purpose of the Model law is to provide a starting point for Pacific Island countries wishing to enact legislation for the protection of traditional knowledge and expressions of culture. As such, countries are free to adopt or adapt the Draft Model Law as they see fit

¹⁰⁴ Civil society statement delivered to NZ Ministry of Foreign Affairs & Trade officials, 29 September 2005.

in accordance with national needs, the wishes of their traditional communities and their legal drafting traditions.

The Pacific Model Law was approved by the Heads of the 16 Independent countries in 2001 and it is incumbent upon each country to implement. Two countries have already drafted laws based on the Model Law to go to parliament. About 7 other states are taking steps and the rest are examining some amendments.¹⁰⁵

The obstacles to implementing the Model Law are:

- In many PICTs, there is a shortage of skilled legal draftspersons and many local lawyers, especially those working for the Government, are often very busy attending to a wide range of national legal requirements. Therefore, technical assistance will often be required; and
- In the case of the non-self-governing Territories of the Pacific which may not have the authority to enact TK legislation themselves, the views of the States having international responsibility for those Territories will be important considerations.¹⁰⁶

Community-based activities such as those proposed in the RIAP would be required prior to any legislation being drafted to ensure not only that it met fundamental objectives with respect to TK but also reflected the wishes of the owners of TK on the balance of rights and responsibilities between themselves and the implementing/administering institutions to be established under the laws to be enacted.¹⁰⁷

¹⁰⁵http://portal.unesco.org/culture/en/file_download.php/c22896c21962e972396b3e0141c14389DocICR19.5+E.pdf

¹⁰⁶ http://r0.unctad.org/trade_env/test1/meetings/tk2/TK%20Notes.pdf

¹⁰⁷ http://r0.unctad.org/trade_env/test1/meetings/tk2/TK%20Notes.pdf

Decolonisation

Issues of sovereignty and decolonization remain at the heart of struggles for social justice in many areas of the South Pacific. Civil society organizations in regions such as Te Ao Maohi (French Polynesia), West Papua, and Kanaky (New Caledonia) continue to focus their energy on achieving greater sovereignty for their peoples, access to basic human rights and resources. Article 73 of the United Nations (UN) Charter committed the international community to the recognition that the interests of the inhabitants of non-self-governing territories are paramount. This article proposed that the political, economic, social and educational advancement of the peoples of those territories, and the development of self-government are critical to fulfilling the UN's obligation to promoting international peace and security, and the well-being of the peoples of non-self-governing territories. Since the establishment of the UN Special Commission on Decolonisation in 1962, 80 former colonies have gained independence. The Committee's list of 16 non-self-governing territories to be decolonised includes the Pacific and Indian Ocean islands of Kanaky, Guam, American Samoa, Pitcairn and Tokelau, but currently fails to include territories such as West Papua, Ka Pae Aina/Hawai'i, Te Ao Maohi and Bougainville, all of which are seeking reinscription to the UN list.¹⁰⁸

Many nations around the world have been denied the right to sovereignty and self-determination, in the face of ongoing colonial presence, globalization and industrialization. Small island nations, having never extinguished their rights to self-determination, continue to fight along with indigenous communities the world over, for recognition of their independence.¹⁰⁹

The Pacific islands live with the legacies of more than a century of colonial rule. Colonialism has left its imprint in many areas of politics, culture and economy: growing cities, surrounded by peri-urban settlements; a proud nationalism and regionalism amongst the newly independent island states; an uneasy mix of customary and Parliamentary systems of government and administration; systems of education and government dominated by English and French as the major regional languages; a deep tradition of Christianity, with mainstream denominations largely run by local clergy but under challenge from new Pentacostal and Evangelical sects; disputes over borders which artificially divide or consolidate cultural and

¹⁰⁸ <http://www.Pacificpeoplespartnership.org/archives/000016.html>

¹⁰⁹ Ibid

ethnic groups; the radioactive effects of fifty years of nuclear testing by Britain, France and the United States; and much more.¹¹⁰

The right to self-determination of Pacific indigenous peoples will in some cases mean the creation of new UN member states, but it does not mean that this is what all indigenous peoples are seeking. For some, their right to self-determination means a re-negotiation of the system of governance to enable greater autonomy for them in political, economic, social and cultural decision-making. We must respect the different visions of indigenous peoples, acknowledge there are differences, identify the commonalities and work towards constructive agreements that do not predetermine how indigenous peoples throughout the world will realise their right to self-determination. The fundamental area of commonality, is the experience of colonisation and the wish therefore to de-colonise, but the journey of de-colonisation will be different according to the needs and aspirations of respective indigenous peoples and of how they view their future relationship with colonising governments.¹¹¹

¹¹⁰ <http://www.abc.net.au/ra/carvingout/issues/colonial.htm>

¹¹¹ Aroha Te Pareake Mead "Cultural And Intellectual Property Rights Of Indigenous Peoples Of The Pacific" Suva, Fiji 4 September 1996 at <http://www.ubcic.bc.ca/files/PDF/fiji.pdf>

B. IDENTIFICATION OF PROCESSES AT THE LOCAL COMMUNITY LEVEL THAT MAY THREATEN THE MAINTENANCE, PRESERVATION AND APPLICATION OF TRADITIONAL KNOWLEDGE.

The rate of erosion of local knowledge about biodiversity has never been so high. There are several local factors which explain this:

- changing family structures, from extended to nuclear families;
- consequential weakening of the links between the grand-parent generation, which holds much of this knowledge, and the grand-children generation;
- a diminished esteem for this knowledge in primary school curricula;
- the transition from a largely oral to a largely written or documented culture; and,
- the inability or unwillingness of many older healers and herbalists to share their knowledge or agree to its transcription, or to transcribe it themselves. This unwillingness arises in many cases because outsiders, such as ethnobiologists, have extracted local knowledge and have subsequently commercialized it or published it without any attribution, reciprocity, or associated benefit-sharing, and thus have offended local communities.

For many, if not all, indigenous people affected by the loss and erosion of TK, the fundamental problems remain land tenure and livelihood security. This is true especially in the context of market expansion, where intercultural connections are inevitable and happen mostly in asymmetric ways, at the expense of less aggressive cultures. Securing the traditional lands and resources of the affected people is the first priority in protecting cultures. This implies also helping them effectively in protecting those lands and resources from external threats and pressures.¹¹²

8. TERRITORIAL FACTORS AFFECTING COMMUNAL LANDS

Land

¹¹² Gonzalo T. Oviedo C, Aimée Gonzales and Luisa Maffi *Importance of Traditional Ecological Knowledge and Ways to Protect It*” citing McNeely (1997) and Posey (1996) at http://r0.unctad.org/trade_env/docs/wwf.doc at p. 98.

Land plays a central role in the life of indigenous Pacific Islanders, and this has imbued the issue with great political sensitivity. In the period leading up to the independence of Pacific nations land issues were an ongoing source of dispute. Upon independence most new governments indicated the resolution of these concerns would be accorded high priority. In practice this has not been the case – governments have delayed actions to address land issues despite the resultant, and ongoing, economic and social costs. Land matters, in many cases, have become even more pressing, yet the AsDB (1998) describes its Pacific members as having:

“limited Government commitment to security of land tenure for private agents” which typically leads to “difficulty in attracting foreign investment and ...[the ability] to achieve, or at least sustain, high growth”.¹¹³

Traditionally land plays three important roles:

- At the most basic level, land derives its centrality from its communal role as the source of subsistence activities.
- Secondly, ownership of land, and control of access to its use, can be a primary basis for power, authority, and status. The historical evolution of property rights shows that landowners have had an upper hand in shaping policies to favor their interest, a situation that is still prevalent in many developing countries (Binswanger, Deininger, and Feder 1995).
- Thirdly, land ownership plays a vital cultural role in Pacific society - representing life and sustenance, race, culture and identity.

Lack of secure access to land, puts future food security and the livelihoods of rural people at risk. However, the vicious cycle that links hunger and poverty to agriculture and land can be broken, in large measure, by ensuring that the rural poor gain secure access to land, water, credit, technology and training. Pro-poor policies and people-centred investments to gain and maintain access to land, water, forests and fisheries can improve the livelihood systems and widen the food security and employment options of the rural poor.¹¹⁴

In the Pacific, land disputes and the resultant tension arise from a basic misalignment of

¹¹³ [http://www.forumsec.org.fj/docs/FEMM/2001/femc03%20land%20issues%20\(final\).pdf](http://www.forumsec.org.fj/docs/FEMM/2001/femc03%20land%20issues%20(final).pdf)

¹¹⁴ <http://www.landcoalition.org/docs/cs01ata.htm>

the traditional view of land ownership and access and of modern economic demands on land. While land tenure in the Pacific Islands has always been able to accommodate change this has been a slow and evolutionary process, whereas the advent of the modern economy is seemingly placing demands for extremely fast changes in the Pacific's attitude to land access and ownership. The interface between traditional and modern systems, for example the tendency to 'freeze' customary ownership when creating a modern system of registration, may in itself prevent adjustments from taking place.¹¹⁵

Marine Tenure

Sea tenure is the partitioning of marine resources among and between local communities. There is a growing emphasis in regional conservation programs to work within the structure of local ownership and rules making, an established and respected system. However, sometimes government rules and delineation of resource ownership are in conflict with community allocations.¹¹⁶

Current laws in most Pacific Islands, including Fiji and Samoa, give national governments ownership of all resources below the high water mark. This conflicts with the traditional understanding that customary land ownership includes the adjacent waters: to the customary owners, the coastal areas are part of their heritage, and thus open to use in the same way as the land. It also creates impediments to managing marine biodiversity by local communities. There is an artificial delineation between the foreshore and seabed which does not recognise their interconnectedness in many government policies.

** See above discussion of NZ Foreshore and Seabed Act.

There is a need for increased efforts to align community and national interpretations of sea tenure and regulations.¹¹⁷ To enable Indigenous Pacific islanders to retain ownership over their marine resources in the face of international bioprospectors, national governments

¹¹⁵ [http://www.forumsec.org.fj/docs/FEMM/2001/femc03%20land%20issues%20\(final\).pdf](http://www.forumsec.org.fj/docs/FEMM/2001/femc03%20land%20issues%20(final).pdf)

¹¹⁶ <http://www.seaweb.org/programs/asiaPacific/FactSheets/Traditional.pdf>

¹¹⁷ Ibid

should recognize indigenous ownership over land and marine resources. Recognition allows indigenous communities the ability to negotiate benefits.¹¹⁸

At the Permanent Forum in May 2005 Pacific Indigenous organizations highlighted the link between loss of land and their extinction as a people, the importance of guarantees to the right of self-determination, and the need for preventive measures.¹¹⁹The Pacific Caucus said that it would include this issue on its agenda and would consider the document at its next proposed meeting in March 2006.

Palau

In Palau there is an overlapping jurisdiction over protected areas between National/State Laws and Indigenous Laws. Mangrove areas that are traditionally managed by Indigenous laws are now within the jurisdiction of State Laws including areas at the high water mark. Therefore, leases covering mangrove areas for development are awarded with no say about the use of these resources from the traditional leaders.¹²⁰

Oral histories are under constant challenge as the written word takes precedence in the court of law given the different emphasis placed upon the latter as evidence.¹²¹

Samoa

In Samoa the move by governments to centrally control the use and management of natural resources in customary lands through Acts of Parliament such as the *Taking of Lands Act* under the guise “...for public purposes...” is directly threatening traditional knowledge, amongst other important issues for indigenous peoples in Samoa. The move also by the government and ADB to change the customary land tenure system in Samoa to use as collaterals is one Samoans are greatly concerned about as this is promoted by the government under seemingly ‘acceptable and attractive’ development options such as small business lending for customary land holders readily accepted by customary land owners, yet the ultimate goal is quite dangerous for customary lands and ownership of it in the future.¹²²

¹¹⁸ Ibid

¹¹⁹ E/CN.4/Sub.2/2005/26 at para 89

¹²⁰ C. Kitalong “Republic of Palau Report on Indigenous Peoples and Protected Areas” submitted to Open Ended Ad-hoc Working Group on Protected Areas, United Nations Convention on Biodiversity at p.4.

¹²¹ Ibid at p.4

¹²² Written comments of [Fiu Elisara](#), O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005.

Tonga

Tonga exemplifies how Crown/state ownership has come to replace communal ownership but less able than the local communities to regulate the use of the marine resources, although there are cases where maritime areas adjoining villages have remained under communal control even after having become legal Crown or state property.¹²³

Cook Islands

Customary resource tenure gives villages, clans or communities the right of ownership to the land or coastal areas where they live or over which they have ancestral claims. These rights were granted before colonization and are still recognized in national legislation. They have almost universally ensured the sustainable harvesting of resources through strict traditional management regimes developed, and enforced, by the communities themselves. These include bans and restrictions (tapus) over areas or stocks that are in decline or threatened, imposed by community leaders and enforced by traditional fines. But, though customary resource tenure covers most of the islands' land area, it is not widely used to protect marine biodiversity.¹²⁴

9. CULTURAL FACTORS

It is well recognised in the Pacific region that traditional values and practices strengthen cohesion and identity, and that benefits include the sharing of resources and aid. Yet, despite this obvious benefit, “culture is often given a low priority. Many donors do not appreciate the central role that culture plays in development and economic and social wellbeing in the Pacific Island region, and governments have not integrated culture into national development policies.”¹²⁵ The cultural sector is characterised by a scarcity of financial resources and skilled human resources and a lack of political and donor support.

Intergenerational transmittal of Traditional Knowledge

There needs to be a formal and systematic way to integrate youths in this, and to deliberately have them ‘live traditional and community lives’ in order to have a hands-on learning,

¹²³ T. Malm, “The Tragedy of the Commoners: The Decline of the Customary Marine Tenure System of Tonga” in SPC Traditional Marine Resources Management and Knowledge Information Bulletin – December 2001.

¹²⁴ <http://www.ourplanet.com/imgversn/95/schuster.html>

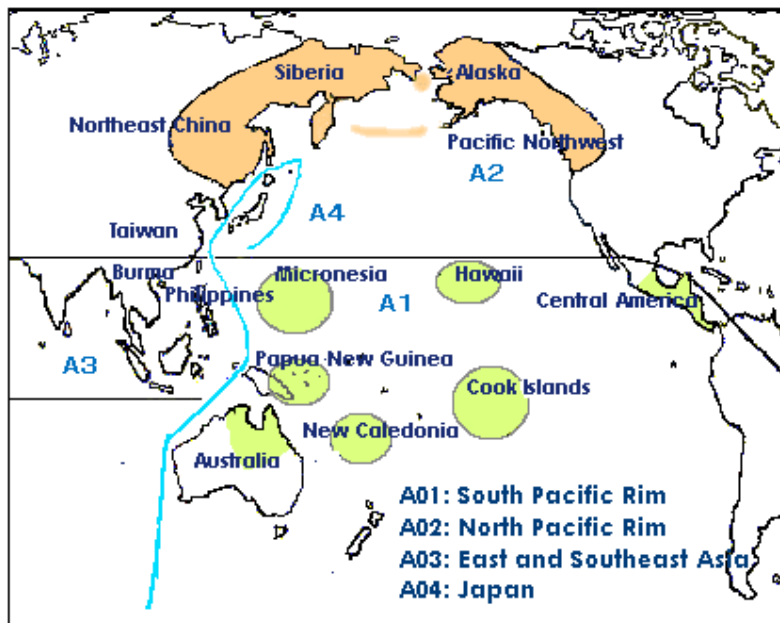
¹²⁵ http://www.spc.org.nc/Culture/activities_institution.htm

experience-building opportunity, and living environment to learn more about TEK. The problem is that more people these days obtain their ‘TEK’ from other environments far removed from real life situation in the village communities where genuine germinating of TEK is learnt, experienced, practised, and developed.¹²⁶

Linguistic Diversity

Language, knowledge, and the environment have been intimately related throughout human history.¹²⁷ The physical environment is an intrinsic part of traditional linguistic ecologies, in which no separation is felt to exist “between an external reality or environment on the one hand and the description of this reality or environment on the other.”¹²⁸ Languages are considered one of the major indicators of cultural diversity and traditional knowledge.¹²⁹

While languages are disappearing all over the world, world language distribution is extremely uneven in geographic terms. The densest clustering of vulnerable languages is in and along the Pacific rim (which includes the Pacific itself), the focus of this research project.



¹²⁶ Written comments of [Fiu Elisara](#), O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005.

¹²⁷ <http://www.terralingua.org/>

¹²⁸ D. Posey *Cultural and Spiritual Values of Biodiversity* United Nations Environment Programme, Nairobi 1999 at p.25.

¹²⁹ *Ibid* at p. 3.

- The Pacific is the region of greatest linguistic diversity on the planet. Approximately 2,000 languages are currently spoken in island Southeast Asia, Melanesia, Micronesia, and Polynesia.
- 19 percent of the world's languages are found in the Pacific.¹³⁰
- With few exceptions, however, the languages of the Pacific are spoken by very small numbers of speakers. A median sized language in this region is likely to have fewer than 6,000 speakers. Pacific languages are thus especially fragile and susceptible to being replaced by one of the world's major languages.
- At least 80% of the languages of the Pacific are either undocumented or underdocumented. If these languages die, it will be as if they never existed. This represents an enormous loss of accumulated wisdom and a catastrophic loss of information for linguists, anthropologists, archaeologists, folklorists, historians, psychologists, botanists, philosophers, writers, and others. The loss of a language is a loss to all humanity.
- There is a pressing need for action to document, and where possible, to assist in the conservation of these languages.
- Native speakers are best suited to undertake such work, but very few have either the necessary cross cultural training or financial resources to obtain such training.¹³¹

Over generations indigenous peoples have “accumulated a wealth of wisdom about their environments and its functions, management, and sustainable use. Local, minority, and indigenous languages are repositories and means of transmission of this knowledge and the related social behaviours, practices, and innovations.”¹³²

People who lose their linguistic and cultural identity may lose an essential element in a social process that commonly teaches respect for nature and understanding of the natural environment and its processes. Forcing this cultural and linguistic conversion on indigenous and other traditional peoples not only violates their human rights, but also undermines the health of the world's ecosystems and the goals of nature conservation.¹³³

¹³⁰ Ibid at p.22.

¹³¹ <http://www.ling.hawaii.edu/PELSP.html>

¹³² <http://www.terralingua.org/>

¹³³ Ibid

As more and more languages and cultural traditions are overwhelmed by more dominant ones and increasing homogenisation ensues, one of the two main motors of change and innovation - the observation of cross-linguistic and cross cultural difference – breaks down, or is seriously damaged. The end result is a global loss of diversity.”¹³⁴

In Vanuatu there are more than 100 languages in use in 80 different islands. “Although it is threatened, traditional culture remains active and traditions and practices continue to be passed orally from generation to generation.”¹³⁵“Each of the language groups represents a people with different oral histories, cosmologies, customs and traditions. Based on these differences, each of the linguistic groups represents a distinct cultural group within Vanuatu. With its relatively small population Vanuatu thus has the highest cultural diversity per capita in the world, and this often makes it difficult to generalise about the customs, including the various marine management traditions found throughout Vanuatu.”¹³⁶

In Papua New Guinea the total number of languages is 837 though 20 no longer in active use. There are 359 of the 817 languages that have orthography; 282 by S.I.L. and 77 by other organisations including churches. Perhaps about 400 will have orthographies by the year 3000. The small rural language community was, still and will be the basic social unit and the source of collective consciousness in the next millennium.¹³⁷

As outlined by The Endangered Languages Project each human language is an irreplaceable part of the heritage of the human race. We can define culture as the particular perception (worldview) of a language group (people) in regard to the natural, societal, and supernatural environments of which the group members are themselves a part, as well as that group's behavioral patterns, or strategies for adapting to elements of the natural environment. The definition can also extend to values and semantics, and even to the objects of material culture, all of which are generally linked directly to a people's world view. In this sense, culture can be seen as one system for comprehending the world. This "culture" is deeply imprinted on all

¹³⁴ ¹³⁴ D. Posey *Cultural and Spiritual Values of Biodiversity* United Nations Environment Programme, Nairobi 1999 at p.25.

¹³⁵ Russell Nari “Incorporating Traditional Knowledge into Government – Case Study 1 - Merging Traditional Resource Management Approaches And Practices With The Formal Legal System In Vanuatu n Traditional Marine Resource Management Knowledge Number 17 — December 2004 Secretariat Of The Pacific Community at p. 15.

¹³⁶ (Hickey at 118)

¹³⁷ <http://www.pngbuai.com/600technology/information/waigani/w97-keynote.html>

facets of language, and indeed on its smallest details, penetrating language's every pore. Language is deeply infused with culture. A culture cannot be demonstrated as a single, coherent unit without reference to its linguistic aspect. The languages of each particular group are therefore a form of world cultural heritage on the same level as castles, temples, and shrines, and the ongoing extinction of numerous languages-in the majority of cases, leaving no adequate records of them-is a permanent cultural loss for the human race.¹³⁸

Linguistic Diversity and traditional knowledge is threatened by education policies as outlined above in Part A "Education / Employment".

10. ECONOMIC FACTORS (INCLUDING THE RELATIONSHIP BETWEEN POVERTY AND ECOSYSTEM STRESS)

Pacific countries are economically vulnerable because they have small economies that are isolated from the main markets and are dependent on the export of primary produce. Further, Pacific countries lack the high-skill and capital requirements on the oceanic fisheries sector.

Historically, the colonial era saw the integration of key sectors of Pacific island economies into world markets and transport networks. The exploitation of natural resources was a central part of the relationship between the islands and their colonial powers, and remains so today. Island countries often became locked into one major source of resource exploitation under the colonial administration. The indenture of Indian labourers to work the sugar fields on native land in Fiji has left social, cultural and economic legacies, highlighted in the 1987 coups. Banabans and Nauruans have seen their islands mined for phosphate, leaving supplies of cash but a moonscape environment and loss of land to live on. The giant copper and gold mine at Panguna on Bougainville, commenced in the 1960s, provided 40 per cent of independent Papua New Guinea's annual export earnings. The mine's closure in 1989, and the decade long conflict which left more than 10,000 dead, had its roots in development decisions taken in the 1960s by the colonial administration.¹³⁹

In the last decade, however, the relatively poor economic performance of most of the countries, the political instability and ethnic tensions that have surfaced in some, increasing

¹³⁸ http://www.elpr.bun.kyoto-u.ac.jp/outline_e.htm

¹³⁹ <http://www.abc.net.au/ra/carvingout/issues/colonial.htm>

levels of youth unemployment, and emerging social problems have raised questions about the true extent of poverty and hardship in the Pacific.¹⁴⁰

The United Nations Development Programme (UNDP) Human Poverty Index indicates that nearly 43 percent of the population of Pacific Island countries are socio-economically disadvantaged. However as noted above in Section 1 poverty needs to be defined from an indigenous perspective. The UNDP development indicators are crude measurements of development, being numerical summaries of basic conditions. The indicators do not measure the cultural health and integrity of peoples and therefore poorly reflect the diversity or multiple dimensions of people's lives.¹⁴¹

Out of 162 countries listed with the UNDP Human Development Index in 2001, Papua New Guinea (ranked 122) is listed lower than Nicaragua, Botswana, Cambodia and Myanmar. Samoa is ranked beneath El Salvador and South Africa, Vanuatu beneath Vietnam, Indonesia and Honduras, while Solomon Islands is between Equatorial Guinea and Namibia.¹⁴² This issue of poverty is a growing concern in the region and there are enormous development challenges facing small island developing states that are different to larger developing nations. As in other countries, women and young people are more disadvantaged in development opportunities.

Many indigenous peoples of the Pacific region, particularly those peoples living as islanders, had previously been capable of maintaining subsistence living but are now compelled to trade their natural foods for cash income to purchase imported foods¹⁴³ with what tends to result in less emphasis on subsistence lifestyles and sustainable use of the natural environment.

Pacific Islanders are unable to regulate the cost of imported foods and are increasingly exposed to the negative outcomes arising from globalised economic trading.¹⁴⁴ The price of

¹⁴⁰ http://www.spc.org.nc/AC/art_stats_SummaryHard&Pov.htm

¹⁴¹ UNDP Human Development Report 1999 at http://www.undp.org/fj/documents/Pacific%20Human%20Development%20Report%201999-Overview_files/phdr99_ch2.pdf

¹⁴² N. MacLellan "Submission to Senate inquiry on Australia's relationship with Papua New Guinea and other Pacific Island countries" July 2002 at http://www.aph.gov.au/Senate/committee/FADT_CTTE/completed_inquiries/2002-04/png/submissions/sub30.doc

¹⁴³ Pacific Caucus on Indigenous Issues, 2nd Consultations Workshop, Brisbane 26-28 April 2005

¹⁴⁴ Ibid

goods in the Pacific region is controlled by trade organisations and trade agreements, such as (Pacific Agreement for Closer Economic Cooperation), Pacific Agreement on Closer Economic Relations (PACER), APAEU, APEC, and World Trade Organisation (WTO) mechanisms.

From a Samoan perspective “when it is a question of survival, local communities will naturally react according to their daily needs and to benefit quickly from whatever is available, even at the expense of the environment in a detrimental way. Any use by local communities are usually confined to manageable and sustainable use based on their immediate needs, and at a scale that is not justified to be labelled as ‘exploitation’. However, if local people shift their needs from local to that of selfish money-driven and income generating greed, supported by external agendas and inappropriate technology, this translates into communities being ‘pushed’ and ‘pressured’ to achieve greedy aspirations, no longer worthy of being linked to genuine local community needs.”¹⁴⁵

11. SOCIAL FACTORS (INCLUDING DEMOGRAPHIC, GENDER AND FAMILIAL FACTORS);

Most indigenous peoples in the Pacific Islands are still linked to their communal land, indigenous belief systems, spirituality and custom law.¹⁴⁶ There are common social principles that formed the basis of island culture throughout much of the 20th century:

- a) service to chief, family or clan;
- b) strong commitment to customary land ownership by descent groups;
- c) reciprocal responsibility between leaders and the community; and,
- d) the uniting force of Christianity.

Today, all these principles are under stress and challenge, as the region addresses the impact of globalisation and trade, aid, debt and investment policies from overseas countries.

Women and Children

¹⁴⁵ Written comments of [Fiu Elisara](#), O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005.

¹⁴⁶ <http://www.acfid.asn.au/pubs/papers/Pacificcurrenttrends.pdf>

In the Pacific, the issue of gender and development has been recognized at the highest level. The EPG report concluded that Pacific institutions and processes needed to be more gender sensitive and better acknowledge and encourage the participation of women in decision making at all levels, as well as work towards the reduction and elimination of domestic violence and the improvement of women's literacy and health. This was confirmed by the Leaders at their special meeting in Auckland in 2004.¹⁴⁷

There is a need to focus attention on women and children. Mothers are the first transmitters and keepers of knowledge. Children are those who receive TK and will have to use and develop it. It is fundamentally important to work with the school system. Increasingly, children from indigenous and traditional communities go to school, and almost certainly in a couple of decades the school will become a universal system for transmission of knowledge. However, this could happen at the cost of dismantling local languages, educational systems, and traditions. Working with the school system from the start is very important for managing cultural change in a way that benefits traditional communities. The school can and should be a vehicle for the transmission of TK together with other knowledge systems.¹⁴⁸

Indigenous women have maintained a close articulation to their own communities as mothers, wives, and sisters, educators, traditional medical practitioners, and custodians of traditional knowledge.¹⁴⁹

One of the general principles of the Programme of Work on Article 8(j) and Related Provisions includes the "Full and effective participation of women of indigenous and local communities in all activities of the programme of work". However "to integrate and strengthen gender mainstreaming as regards indigenous women's roles and the special concerns of indigenous women" is not a mandate of the CBD.¹⁵⁰

¹⁴⁷ "Gender and the Pacific Plan" at www.pacificplan.org

¹⁴⁸ Gonzalo T. Oviedo C, Aimée Gonzales and Luisa Maffi *Importance of Traditional Ecological Knowledge and Ways to Protect It* citing McNeely (1997) and Posey (1996) at http://r0.unctad.org/trade_env/docs/wwf.doc at p. 98

¹⁴⁹ Mililani Trask "Mainstreaming Indigenous Women's Issues Within the United Nations System and Beyond" at http://www.un.org/esa/socdev/unpfii/documents/Speech_Mainstreaming_Indigenous_Women.htm

¹⁵⁰ ANNEX II Responses received regarding the short-term objectives of the Task Force on Indigenous Women of the IANWGE at http://www.un.org/esa/socdev/unpfii/documents/Report_Task%20Force_%20on_IW_final.doc

There is an increasing awareness on the part of the international community that the Millennium Development Goals cannot be achieved without effectively addressing the problems and concerns of indigenous women. The Inter-agency Support Group on Indigenous Issues held its annual meeting in September 2004, at which a statement was made on the Millennium Development Goals and said:¹⁵¹

...as the 2005 review of the implementation of the MDGs nears, it appears from available evidence that indigenous and tribal peoples are lagging behind other parts of the population in the achievement of the goals in most, if not all, the countries in which they live, and indigenous and tribal women commonly face additional gender-based disadvantages and discrimination...

The Millennium Development Goals commit to achieve universal primary school education for all people but they need to include indigenous education and traditional knowledge with full participation of indigenous peoples.

At the 3rd Session of the Permanent Forum on Indigenous Peoples in May 2005 the Forum agreed to mainstream indigenous women's issues within the Forum across its six mandated areas, and within the larger United Nations system. The Main strategic objectives of the Third Session as expressed through the recommendations adopted by the Forum are as follows:

- Disaggregated data on indigenous women in order to address multidimensional issues such as poverty alleviation and other MDGs
- Increased participation of indigenous women in decision-making in national and international bodies
- Increased participation of indigenous women in the design and execution of programmes affecting indigenous communities;
- to highlight and address the specific needs of indigenous women in the areas of human rights, culture, education, health, socio-economic development, and environment, and to promote participatory, targeted interventions on the part of UN agencies and governments in each of these mandated areas

¹⁵¹ Victoria Tauli-Corpuz "Indigenous peoples and the Millennium Development Goals" - paper submitted to the 4th Session of the UN Permanent Forum on Indigenous Issues, New York, 16-27 May 2005, Agenda item 3 at http://www.tebtebba.org/tebtebba_files/ipr/mdg.html

- to give full expression and recognition to the rights of indigenous women to cultural, social, and economic self expression, and to identify gaps in existing policies and programs which promote gender equality
- to explicitly integrate the perspectives and concerns of indigenous women into the wider development frameworks set by the Beijing Platform for Action and the MDGs
- to sensitize and enrich development discourses by recognizing cultural diversity, alternative systems of knowledge and social organization not as obstacles to development, but rather as integral and essential elements of humanity's cultural heritage and long-term development

Migration

Not only are people migrating to urban areas but also to other countries. The chief export of Pacific Islands is human resources. "All over the Pacific, small islands states are becoming depopulated as working-age people migrate to bigger job markets such as Australia and New Zealand in the South Pacific, and the United States in the North Pacific. There is also a migration from one small island state to fill the labour shortages in another small island state. This has resulted in a loss of valuable traditional knowledge."¹⁵²

As a direct product of the education system with people's aspirations removed from developing local resources for their livelihood, many of our local communities move to urban centres 'thinking' that the development opportunities for them and their families are available there. Practice show the contrary and the move to urban centres indeed cause loss of traditional knowledge as people get taken in by the influence of introduced ways that dominate the social and economic lives of our societies in cities and towns of today as shown and promoted in mass media.¹⁵³

The aspirations of indigenous peoples shaped by our education systems and the plight of many of our local community citizens to migrate to urban areas and overseas for employment opportunities have directly affected traditional family structures and local hierarchies and thus change the way local issues are dealt with, as the environment with which these peoples who

¹⁵² <http://www.unesco.org/csi/smis/siv/inter-reg/climate2.htm>

¹⁵³ Written comments of [Fiu Elisara](#), O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005.

have migrated are not synonymous with the rich and genuine traditional breeding ground of TK, IP values, and local habits if done within the natural environment of the village communities.¹⁵⁴

Vanuatu

Changes in village institutions and perceptions of authority structures pose a threat to biodiversity in Vanuatu. Traditional resource management systems maintained biodiversity for thousands of years. The authority of these systems is threatened by the spread of global values and expectations, internal migration, urbanisation and conflicting authority structures emerging through government, church and education systems. There is a hiatus or confusion between respect for *kastam*, respect for chiefs, respect for government, respect for church, family vis a vis the individual or immediate family. While these issues remains in transition they are a threat to effective biodiversity management and represent unmanageable change.¹⁵⁵

5. CONSTRAINTS ON THE EXERCISE OF CUSTOMARY LAWS RELEVANT TO THE MANAGEMENT, CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY;

The property rights arrangements governing the ownership, access to and use of biodiversity as well as the associated traditional knowledge governing their management are an integral part of Pacific Island societies and cultures. Many traditional arrangements regarding the management of biodiversity give rise to issues of gender balance and equity. Subsistence farming remains a prominent feature of the relationship between Pacific Island peoples and the biodiversity contained in their natural environment.¹⁵⁶

Traditional resource management plays an important role in the conservation of biological diversity in the Pacific region, where over eighty percent of land and extensive marine areas are subject to traditional ownership rights. This is particularly the case with fragile marine ecosystems, such as coral reefs, which are subject to pressures from both local and commercial exploitation.¹⁵⁷ Likewise in this region, rights over both biological and genetic resources are subject to customary law rights. It can be seen therefore that under such

¹⁵⁴ *Ibid*

¹⁵⁵ Environment Vanuatu website – “Vanuatu’s Biodiversity”

¹⁵⁶ <http://www.spc.int/coastfish/Reports/ICFMAP/governance.htm>

¹⁵⁷ “UNU-IAS promotes the role of traditional practices to protect natural resources in Micronesia” at <http://www.ias.unu.edu/news/details.cfm/ArticleID/495/search/yes>

circumstances ABS issues must be governed with due respect for and compliance with customary law. Furthermore it is clear that the customary law is closely linked to traditional resource management.

For example, customary laws may govern who is permitted to fish in what season and in what areas; some stipulate what sort of fish may be caught; others relate to what kind of fishing gear may be used; and still others govern onshore activities such as processing, net making, and marketing.¹⁵⁸

Despite the central importance of customary law in the management, conservation and sustainable use of biological diversity, the incorporation of customary values and practices, and the accommodation of traditional authorities into constitutions is regarded as the most difficult and complex in terms of law reform but is the most necessary. They are issues that have fundamental influence on the organisation of traditional communities and the behaviour of family units and individuals and remain difficult and complex for respective small island States.¹⁵⁹

Today, traditional management systems are increasingly threatened by modern management practices, population pressures, or environmental changes which disrupt social patterns and usurp local control.¹⁶⁰ Traditional authority and customary laws may be undermined where permits for access to and exploitation of resources are granted at the national or provincial levels, leading to increasing conflicts between national legislation and customary rights and practices.¹⁶¹ The rapid process of modernisation in combination with urbanisation and rapid population growth have resulted in a breakdown of traditional marine tenure systems and an over-exploitation of marine organisms.¹⁶²

In the Pacific resource management approaches based purely on scientific information have had limited success over the last 50 years. Modern management needs to develop in

¹⁵⁸ <http://www.fao.org/sd/EPdirect/EPRe0044.htm>

¹⁵⁹ <http://www.iccnw.org/conferencesmeetings/reportsdeclarations/asiaoceaniareports/2004/WellingtonJudgeSlaDeSpeech13April04.pdf> as at 13 September 2005

¹⁶⁰ *Ibid*

¹⁶¹ http://www.gbf.ch/desc_workshop_old.asp?no=26&app=&lg=EN&now=2

¹⁶² T. Malm, "The Tragedy of the Commons: The Decline of the Customary Marine Tenure System of Tonga" in SPC Traditional Marine Resources Management and Knowledge Information Bulletin – December 2001 at p. 3

partnership with Indigenous peoples and traditional practices. The cost of obtaining scientific information, in all but a few highly commercialised systems, is beyond the capacity of many islands. As a result resource managers in the Region advocate precautionary management approaches that are more robust where comprehensive scientific understanding and intensive monitoring are difficult. This includes an enhanced role for communities and customary resource owners in the development and application of local management arrangements for local resources.¹⁶³

Traditional resource management is based upon three pillars:

- Traditional land and marine tenure;
- Traditional knowledge (TK); and,
- Customary law which regulates the use of resources within the area of traditional tenure based upon tradition knowledge.

Traditional authority and customary laws may be undermined where permits for access to and exploitation of resources are granted at the national or provincial levels, leading to increasing conflicts between national legislation and customary rights and practices.

It is often the case that many government regulations apply conventional Western management concepts and models that fail to properly take into account customary practices or traditional knowledge. These ‘Western’ based regulations serve to greatly weaken local authorities. Further, the introduction of new fishing techniques and commercial fishing attitudes have destabilised traditional management and resulted in a reduced respect for traditional Chiefs and Elders, especially among the youth. Moreover, communities often lack adequate scientific information on which to base management decisions.

Quotas and bans will only work if originated from the local communities themselves, and usually geared to sustainable use of natural resources, and the communities themselves have been traditionally empowered to manage their own processes well. This can be further improved by a revival process where our community leaders continue to value what systems, practices, and management processes that have been working for our communities for

¹⁶³ http://www.dfat.gov.au/geo/sPacific/regional_orgs/pif33_communique.html

generations and not use the shift in mindset through years of colonial manipulation to turn their back on these powerful traditional management systems.¹⁶⁴

The interface between customary and national law was at the heart of the workshop on “*The Role of Customary Law and Practice in Regulating Access to Genetic Resources, Traditional Knowledge and Benefit Sharing*”, held in Koror, Republic of Palau, on May 25-27, 2004. The workshop was organized by UNU-IAS and the Office of Environmental Response and Coordination of Palau, with the support of UNEP and SPREP. It brought together representatives from the Micronesian region including participants from Palau, Kosrae, Kiribati, Chuuk, Yap, Pohnpei and the Marshall Islands. Participants articulated strong positions on the importance and strength of traditional knowledge and customary law. In their words: “You cannot have your own unique cultural identity without having your traditional knowledge intact”.¹⁶⁵

The following causes of loss of traditional knowledge were identified:

- Structural change (in government and family structures)
- Changing social values
- Environmental degradation
- Lack of transmission from generation to generation
- The oral nature of traditional knowledge

Based on this analysis, the participants (including tribal chiefs, government and non-governmental representatives from the State of Palau and delegates from other Micronesian States) endorsed, among others, the following recommendations:

- Formalise information sharing between Pacific Islands
- Establish National Advisory Panels and National Action Plans
- Empower traditional leaders, securing their active participation in drafting of legislation to ensure that customary laws are retained and integrated into national laws
- Promote community involvement through consultations and recognition of local chiefs
- Strengthen existing laws that already support customary law
- Integrate traditional values and customary law in educational system

¹⁶⁴ Written comments of [Fiu Elisara](#), O Le Siosiomaga Society Inc (Samoa) - in response to consultation questions for Phase II report, 8 September 2005.

¹⁶⁵ <http://www.ias.unu.edu/news/details.cfm/ArticleID/495/search/yes>

Proposals for codification of customary law have been opposed amongst communities of Pacific island states where traditional tenure is linked to the ability to narrate genealogies. Disclosure is seen as akin to giving away ownership, and communities frequently display reluctance to codification and sharing of this information for fear this will compromise rights.¹⁶⁶ (see ‘Pacific Model Law’ above) Codification of customary law may limit its ability to change and respond to changing circumstances in consideration of the temporal quality of traditional knowledge.

Guam

In Guam obstacles exist with respect to customary management of marine resources in particular sea turtle that are protected. Yet the harvesting, the preparation and the eating of the sea turtles is part of local traditional culture. Local community representatives have questioned why sea turtles are protected:

“I am a community representative. I represent the fishermen. We have collaboration and we educate our fishermen. We have meetings. But we can't afford to have NGOs - NGOs cost money. We have to protect sea turtles. The harvesting, the preparation and the eating of the sea turtles is part of our culture. We need to address why we protect sea turtles. Is it so that tourists can see them, or so I can eat? Why are we setting up MPAs? Why do we protect resources? This is about partnerships; but for whom?? Why do we do these things? Our priority is to put the community first.”¹⁶⁷

New Zealand

The customary use of New Zealand's biological resources by Maori remains an important part of sustaining relationships with indigenous biodiversity and maintaining cultural integrity, values and traditional knowledge.

The development of national policy on customary use of native species by Maori has been constrained by poor public understanding of customary use issues, a lack of

¹⁶⁶ http://www.ias.unu.edu/binaries2/Tobin_PIC_Customary_Law.doc

¹⁶⁷ http://www.spc.int/piocean/forum/New/plenary_discussions.htm#Capacity_Building_and_Resource_Needs_in

recognition of mātāuranga Māori (Māori knowledge), and inadequate ecological knowledge of native species. Conflicts and tradeoffs between user groups (for example, commercial and recreational) may need to be addressed in resolving some customary use issues.¹⁶⁸

The term "customary use" embraces traditional Māori use, practices and knowledge, and refers to contemporary uses of biological resources by Māori founded on this body of lore. However, Māori have a spectrum of interests in biological resources - from protection to customary and commercial use or development - and there is a strong link between customary use issues and issues relating to commercial use of genetic resources.

While acknowledging the positive outcomes for Māori as a result of the treaty claims in the Waitangi Tribunal, "treaty claims and court action are often the only resort that the Māori have for gaining recognition and protection of their cultural and legal rights" over customary use of biological resources. Despite some success the process is very slow and "many Māori are beginning to lose faith in the Waitangi tribunal process." Furthermore, funding for the tribunal hearings is scarce.

The extent to which Māori customs and law can be effective within New Zealand's current legal system depends on incorporation of protective provisions into relevant legislation. This in turn depends on the will of Parliament to include such provisions in new legislation. The Māori have consistently argued for inclusion of provisions respecting their treaty rights in both domestic law and international trade agreements entered into by the Government of New Zealand.¹⁶⁹

¹⁶⁸ <http://www.biodiv.org/doc/world/nz/nz-nr-abs-en.doc>

¹⁶⁹ Maui Solomon

For example, the scope for the New Zealand government to limit the exercise of customary law is apparent with the passage of the recent legislation, the *Foreshore & Seabed Act* (2004). The legislation extinguishes the possibility of establishing Maori customary titles over the foreshore and seabed and also fails to provide a guaranteed right of redress. Without customary title to the land, it can be illegal to gather seafood or shellfish.¹⁷⁰ The

For Maori the traditional and contemporary rights and responsibilities which attach to the foreshore and seabed, address:

- the management of food and other resources, for example, to ensure the survival of taonga (treasures) for future generations; and
- the control of access, not only to food and other resources but also to wahi tapu (sacred place) and other sacred sites.¹⁷¹

An important aspect of the exercise of these rights and responsibilities is that the culture is not static, but is constantly required to adapt and develop. The following concepts, for example, can change over time:

¹⁷⁰ Written comments of Mr Kingi Gilbert (Maori), member of Call of the Earth - in response to consultation questions for Phase II report, 8 September 2005.

¹⁷¹ <http://www.hrc.co.nz/hrc/worddocs/f%20&%20s%20Foreshore%20and%20Seabed%20Bill%20submission24%20Final%20version%2012%20July%20Submission.doc>

Rangatiratanga:¹⁷² applying use rights including to fish, to take sea-weed, gather sea birds, use sand and stones, and to travel. This also includes granting others the right to use the foreshore and seabed for development or sustainable living; and,

Manaakitanga:¹⁷³ enhancing mana¹⁷⁴ through hospitality and generosity, through sharing the bounty of the papamoana with other people as iwi¹⁷⁵ or hapu¹⁷⁶ see fit.

The United Nations CERD Committee considered the *Foreshore & Seabed Act* (2004) through its early warning / urgent action procedure and found:

Bearing in mind the complexity of the issues involved, the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention.¹⁷⁷

Furthermore, the Committee requested:

the State party to monitor closely the implementation of the Foreshore and Seabed Act, its impact on the Maori population and the developing state of race relations in New Zealand, and to take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.¹⁷⁸

The New Zealand government in March 2005 said it has “no plans to modify the Foreshore and Seabed Act, but that the Government was "ready to be flexible around discussions with various groups as the committee has asked for".¹⁷⁹

¹⁷² Rights of autonomous self-regulation, the authority of Maori to make decisions and control resources

¹⁷³ Hospitality, especially shown to visitors

¹⁷⁴ Authority, control, influence, prestige or power.

¹⁷⁵ Focal economic and political unit of the traditional Māori descent and kinship based hierarchy

¹⁷⁶ A subtribe or kin group that is linked by a common ancestor

¹⁷⁷ Decision 1 (66): New Zealand CERD/C/DEC/NZL/1

¹⁷⁸ Decision 1 (66): New Zealand CERD/C/DEC/NZL/1

¹⁷⁹ http://www.nzherald.co.nz/category/story.cfm?c_id=87&objectid=10115146

Palau

By tradition, Palau's natural resources were under the protection of the chief of the local municipality. Today the chiefly authority, although still much in evidence, has weakened. Nearly all birds and the Dugong are protected by local, State and/or national laws.¹⁸⁰

Contemporary responsibility for environmental preservation is divided amongst many different agencies and individuals: clan leaders, chiefs, state governments, and at the national level - the Ministry of Resources and Development, the Ministry of Community and Cultural Affairs, the police, the EQPB, the Ministry of Health and a host of other agencies. Foreign residents come with their own conservation ethics and practices which may or may not be compatible with Palau's ecosystems. According to the UNDP "Palauans themselves are losing their ethic of respect, replacing it with ethic of individualism. All too often the justification for over-harvest is, 'If I don't take it, someone else will'. A catch forgone is no longer a catch for tomorrow but a catch for others.'¹⁸¹

Palau benefits from some landmark legislation such as the 1994 *Marine Protection Act*, but the impact of this and other environmental legislation is hampered by ineffectual enforcement. Under the Constitution, states own land and near-shore sea resources (to twelve nautical miles from shore) and have the authority to pass protective legislation. States, however, do not have enforcement authority either for their own or for national legislation.

Enforcement authority instead rests with a potpourri of national government agencies including the police, the Bureau of Natural Resources, the Ministry of Health, and the Environmental Quality Protection Board. All of these enforcement agencies are headquartered in Koror and all suffer from shortage of staff and transport. For a conviction to take place under one of Palau's national environmental laws, one of these agencies must hear of an alleged violation, identify a perpetrator, collect evidence admissible in court, and obtain a conviction. Even assuming that this improbable sequence of events can be achieved, allowable punishment is often too little to be worth the effort.¹⁸²

¹⁸⁰ Biodiversity Clearing House Mechanism – Palau

¹⁸¹ http://www.undp.org.fj/un/reports/palau_shd/chapter05.PDF

¹⁸² Ibid

While additional protections are required, of greater urgency is the need for public education and awareness about existing marine laws and development of effective enforcement mechanisms.

There are fewer than 200 dugongs (sea cows) left in Palau; their protection is an urgent national priority; but conviction of killing a dugong merits a fine of only \$50. Traditional leaders face even greater difficulties in enforcing their customary authority over conservation. Their authorities are protected under the Constitution yet are not incorporated into regulatory legislation. They must rely on their moral authority to enforce their powers.¹⁸³

Revival of traditional conservation ethics will require household and community action to reinforce the inter-related ethics of respect and conservation as well as policy action to streamline the patchwork of environmental authorities, to strengthen enforcement, and to grant legal recognition to chiefly conservation authority.¹⁸⁴

Melanesia

In Melanesia traditional marine resource management continues to be practiced by communities and contributes extensively to the conservation of local resources and the spiritual, cultural and economic well-being of villagers. The role of customary owners is recognised within the constitutions of Melanesian countries, some of which give primary recognition to customary law. Yet this deep-rooted knowledge is now threatened.

Many government regulations apply conventional western management concepts and models to conservation. By failing to properly take into account customary practices or traditional knowledge, these regulations serve to greatly weaken local authorities. The introduction of new fishing techniques and commercial fishing attitudes have destabilised traditional management and resulted in a reduced respect for traditional chiefs and elders, especially

¹⁸³ Ibid
¹⁸⁴ Ibid

among the youth. Moreover, communities often lack adequate scientific information on which to base management decisions.¹⁸⁵

There is a need to harmonise traditional and modern practices (as emphasised in government laws).¹⁸⁶

In Vanuatu traditional resource management practices continue to be used though they are threatened by development. Taboo sites and periodic taboos continue to be important, although concerns are continually raised regarding the decline in respect for taboo sites. Customary taboos have also declined due to the acceptance of Christianity and European mores. Differences in perceptions between traditional and western cultures about resources have led to considerable disagreement and confusion about marine management.¹⁸⁷

The key underlying values of traditional resource management contain some elements of the western principle of ‘sustainable development’. These values (livelihood, equity, responsibility and cooperation) are anchored by the four main pillars of society’s existence:

- security of tenure;
- inheritance and use rights;
- site based focus and affinity with the land; and,
- decision-making processes and decision-makers.

However, these traditional values have been challenged by a lack of clear resource management and development policy directions at the national level, western education and colonialism.¹⁸⁸

The general thinking among observers of the fisheries situation in Vanuatu is that the customary management of subsistence fisheries works better than the previous strategy consisting of well-intentioned but under-resourced central management efforts from the Fisheries Department.

¹⁸⁵ Caillaud, Boengkih, Evans-Llidge, Genolagani, Havemann, Henao, Kwa, Llewellyn, Ridep-Morris, Rose, Nari, Skelton, South, Sulu, Tawake, Tobin, Tuivanuavou, Wilkinson “Tabus or not Taboos” in SPC Traditional Marine Resource Management and Knowledge Information Bulletin #17 December 2004 at p. 14.

¹⁸⁶ <http://www.spc.org.nc/coastfish/news/Trad/17/Tabus-Caillaud.pdf>

¹⁸⁷ <http://www.spc.org.nc/coastfish/news/Trad/17/Tabus-Caillaud.pdf>

¹⁸⁸ Russell Nari “Incorporating Traditional Knowledge into Government – Case Study 1 - Merging Traditional Resource Management Approaches And Practices With The Formal Legal System In Vanuatu n Traditional Marine Resource Management Knowledge Number 17 — December 2004 Secretariat Of The Pacific Community at p. 15.

Traditional approaches to coral reef conservation in Vanuatu have been supplemented by a range of measures introduced by government and NGOs, particularly marine protected areas. The stated management objectives for most of the areas is to “protect marine resources”.¹⁸⁹

The problem with the MPAs is that the idea of simply reviving and supporting traditional practices relating to resource management seems to be sometimes overlooked, and instead inappropriate models from industrialised countries are imported and supported by overseas donor agencies more comfortable and familiar with these models.

As a result Chiefs face new challenges in the maintenance of respect for their leadership and for the taboos used to protect the resources. These challenges are greater in areas where internal community disputes remain unresolved. In summary they are most often related to:

- a. land disputes – relating to massive depopulation and migration of peoples to the coastal settlements or missions many generations ago means actual territory borders are not always apparent today;
- b. also when it comes to leasing land, conflicts arise from the gap between customary law and western law, namely one individual signs the lease (and get benefits) from land customarily held by an extended family or larger group;
- c. Leadership Disputes – relating to missionaries changing the chiefly lines many generations ago that are now being challenged in many areas wishing to reinstate their ancient chiefly line; as well as the translocation of many different *nasara*'s (clan based settlements) into composite coastal villages during the missionisation process often manifests in internal rivalries over chieftanship
- d. Religious and Other Divisions – many communities are divided amongst different Christian faiths, particularly with the recent advent of numerous new faiths, many of which openly scorn *kastam*; some communities are also internally divided due to different political affiliations; some communities also have internal divisions relating to predominantly

¹⁸⁹ Naviti and Aston “Information on Fisheries Management in the Republic of Vanuatu (2002) at <http://www.fao.org/fi/fcp/en/VUT/body.htm>

Anglophone or Francophone alliances as vestiges of the condominium colonial rule by France or England

- e. Independence disputes – when the land and reefs were given back to customary owners at Independence some families took this to heart and interpreted this to mean that the Chief no longer could make any management decisions regarding their land or reefs including the placement of taboos, as was done in the past; in fact there is an additional article also enacted at Independence that states “the rules of custom shall form the basis of ownership and use of land...”; this would still legally keep the chiefs in the management loop in areas where there was still *kastam*.

The peri-urban areas of Vanuatu face perhaps the most serious challenges for maintaining respect for resource management related taboos in that they are generally more exposed to the cash economy and western education; two additional factors cited in undermining this respect. The Fisheries Department has thus seen a dramatic increase in the number of requests for assistance from chiefs in enforcing their taboos in the last 5-6 years. There is a need to back up the rulings of the chiefs with respect to conservation taboos.

12. LACK OF CAPACITY TO MANAGE CONTEMPORARY THREATS TO BIOLOGICAL DIVERSITY RESULTING FROM DEVELOPMENT, OVER-USE AND SOCIO-ECONOMIC PRESSURES GENERATED FROM OUTSIDE THE COMMUNITY

There is serious environmental degradation everywhere in the Pacific region. The oceans and its resources are under severe stress. Climate change, sea level rise and global warming, threaten communities and their livelihood. Climate related disasters occur, across the region, with alarming frequency and growing intensity.¹⁹⁰

Pacific Islanders recognise that resource management and planning for their future must address the fact that their natural environment has been substantially modified by agricultural

¹⁹⁰<http://www.iccnw.org/conferencesmeetings/reportsdeclarations/asiaoceaniareports/2004/WellingtonJudgeSla deSpeech13April04.pdf>

and onshore construction projects, overexploitation of reef areas, increased siltation in bays and estuaries, and the other impacts of growing resident and tourist populations.¹⁹¹

Further implementation of the Barbados Programme of Action, emphasizes that small island developing States, or SIDS “are located among the most vulnerable regions in the world in relation to the intensity and frequency of natural and environmental disasters and their increasing impact, and face disproportionately high economic, social and environmental consequence.”¹⁹²

The capacity of Pacific Island Countries and Territories to use economic, scientific and traditional knowledge to monitor, assess and predict environmental, social and economic risks and effects of climate change need strengthening. This is critical for developing and implementing viable and sustainable national programmes on cost effective adaptation and greenhouse gas reduction measures.¹⁹³

Climate Change

The unpredictable seasons brought about by climate change is one factor that has made difficult to carry on with traditional subsistence lifestyles. In some areas the frequency and intensity of tropical storms (cyclones) has increased. Droughts and floods have increased in length and intensity. Droughts have also increased the incidence of wild fires in some regions.

The adverse effects of climate change and sea level rise present significant risks to the sustainable development of Pacific Island Countries and Territories (PICTs’) and the long term effects of climate change may threaten the very existence of some of them. Clearly this represents one of the greatest threats to the maintenance, preservation and application of traditional knowledge, innovations and practices. This was identified in the the *Mauritius Strategy for the Further Implementation of the Barbados Programme of Action for Sustainable Development of Small Island Developing States*.¹⁹⁴

PICTs’ experience a high level of risk from the effects of extreme weather and climate

¹⁹¹ http://www.iapad.org/publications/ppgis/incorporating_itk_with_gis_for_mrm_in_the_Pacific.pdf

¹⁹² “UN Conference on Small Islands Concludes in Mauritius:Renewed Commitment on the Part of the International Community, Said Secretary General Kofi Annan” at <http://www.un.org/smallislands2005/>

¹⁹³ Pacific Islands Framework for Action on Climate Change 2006-2015

¹⁹⁴ http://www.sprep.org/ws/documents/16SMPapers/Eng/WP_7_2_1_Att_1_CCC_Taito_Mone.pdf

variability. Climate models suggest the tropical Pacific region will continue to warm. This warming has the potential to alter and indeed increase such risks, through changing the frequency and/or intensity of extreme weather or climate variability phenomena or through accelerated sea-level rise. The impacts of these climate events will exacerbate already stressed marine, freshwater and terrestrial environments.¹⁹⁵

The small, coral islands, especially the atoll states (Cook Islands, Kiribati, Tuvalu, Federated States of Micronesia, the Marshall Islands, Niue, Nauru, and the Republic of Maldives in the Indian Ocean) are the most vulnerable places on Earth to the adverse impacts of climate change and sea level rise. Some of the islands of Tuvalu, Tonga, the Federated States of Micronesia, the Marshall Islands, the Maldives and the Cook Islands may submerge entirely. Coastal erosion is already a serious problem in many of these islands and at least two low-lying islands have already eroded below sea level.

The 22 island nations and territories, scattered over the largest body of ocean on the planet, are estimated to host over 4,000 fish species, 70 coral genera, 30 mangrove species, and an array of reptiles, marine mammals and sea birds. But fisheries are over-harvested, and dynamiting and other illegal fishing practices are widely used. Pollution from land-based activities damages the marine environment, as do sea-level rise, nuclear testing and dumping, sand mining and dredging, tourism, and national development projects like road construction along the coasts. Cyclones and damage to corals through bleaching are also increasing.¹⁹⁶

Rising seas have forced 100 people on a Pacific island to move to higher ground in what may be the first example of a village formally displaced because of modern global warming, a UN report said.¹⁹⁷ Inhabitants in the Lateu settlement on Tegua island in Vanuatu started dismantling their wooden homes in August and moved about 600 metres inland with coconut palms on the coast already standing in water.¹⁹⁸

"They could no longer live on the coast," Taito Nakalevu, a climate change expert at the

¹⁹⁵ Ibid

¹⁹⁶ C. Schuster "Tradition Matters" in Our Planet 9.5 at <http://www.ourplanet.com/imgversn/95/schuster.html>

¹⁹⁷ REGION: Rising Seas Force Islanders To Move Inland, Says UN
Tuesday: December 6, 2005

¹⁹⁸ Alister Doyle "Pacific Islanders Move to Escape Global Warming" Mon Dec 5, 2005 at http://today.reuters.com/news/newsArticle.aspx?type=scienceNews&storyID=2005-12-05T212416Z_01_HAR577036_RTRUKOC_0_US-ENVIRONMENT-CLIMATE-ISLAND.xml

Secretariat of the Pacific Regional Environment Programme (SPREP), said during a 189-nation conference in Montreal on ways to fight climate change.

The Lateu settlement is one of the first to be formally moved out of harm's way as a result of climate change.¹⁹⁹ One of the Carteret atolls of Papua New Guinea was evacuated last week due to rising sea levels, with more evacuations expected in surrounding atolls.²⁰⁰ Two uninhabited Kiribati islands, Tebua Tarawa and Abanuea, disappeared underwater in 1999.

The scientific panel that advises the United Nations projects that seas could rise by almost a metre by 2100 because of melting icecaps and warming linked to a build-up of heat-trapping gases emitted by burning fossil fuels in power plants, factories and automobiles.

Reducing the risks associated with the impacts of extreme weather and climate variability is a fundamental developmental challenge faced by PICTs'. This must be urgently addressed in order to maintain biodiversity and culture as well as contributing to improving livelihoods, economic wellbeing and health.²⁰¹

Coral bleaching also represents a threat. When sea temperatures rise above 30 degrees Celsius coral dies and large areas of coral bleaching have been detected in various Pacific coral reefs which are biodiversity rich and breeding grounds. The result is a loss of habitat for associated species and thus, loss of important food supply and source of revenue.²⁰²

Fisheries

Policy and legislation underpinning fisheries presents an obstacle to customary use and management of fisheries by local communities. There needs to be "greater recognition and support of small-scale fisheries and fishing communities". If governments continue to favour large-scale, industrial-style fishing, millions of small-scale fishers and their communities are at risk.²⁰³

¹⁹⁹ Ibid

²⁰⁰ J. Vidal "Going, going....PNG atolls sinking fast" SMH 26 Nov 2005 at p.15

²⁰¹ http://www.unesco.org/culture/copyright/folklore/html_eng/declaration.shtml

²⁰² <http://www.fao.org/sd/EPdirect/EPan0015.htm>

²⁰³ <http://www.fao.org/sd/EPdirect/EPre0044.htm> as at 14 September 2005

Small Island Developing States have the responsibility for a significant portion of the world's oceans but have limited means to manage adequately their marine resources. Exploitation by huge commercial fishing fleets from Japan, South Korea, Taiwan, and the United States under licensing agreements is often unchecked and inshore and reef fisheries are not properly managed. Such nations have often ignored maritime boundaries and taken ocean resources claimed by the small nations of Oceania. Many nations also use indiscriminate fishing tools that kill large numbers of other animals. Drift nets, for example, can measure several kilometres long, and catch not just tuna but marine mammals such as dolphins. The fragile coral reefs that abound in the South Pacific are another marine resource increasingly threatened: tourists and tour guides often approach the reefs too closely, and pollutants such as fertilizer chemicals create runoff that damages reefs.²⁰⁴

It has been argued the offshore is one area where the concept of governance needs some clarification in relation to fisheries management. "Fisheries governance" is generally taken to apply to the relationship between those in authority over a fishery and those who participate in a fishery or otherwise use a resource. But how exactly should governance principles apply to the international and trans-boundary relationships that are so important in certain aspects of highly migratory fisheries management? Just what do "local property rights" and "community management regimes" mean in this context?²⁰⁵

There needs to be more rigorous enforcement of offshore commercial fishing interests operating within the EEZ of Pacific Island Countries to ensure local and indigenous communities marine resources are not over-exploited.

Federated States of Micronesia:

Enforcement of our EEZ is a difficulty. We have an arrangement with Palau and the Marshall Islands to share enforcement assets to police illegal fishing activity.²⁰⁶

It has been acknowledged that while national laws are important in protecting the Pacific Island peoples from unfair exploitation of their traditional knowledge, there will still be a

²⁰⁴ http://encarta.msn.com/encyclopedia_761595628_6/Pacific_Islands.html

²⁰⁵ <http://www.spc.int/coastfish/Reports/ICFMAP/governance.htm> as at 15 September 2005

²⁰⁶ http://www.spc.int/piocean/forum/New/plenary_discussions.htm#Capacity_Building_and_Resource_Needs_in

need for extra-territorial protection. The SPC and the Forum Secretariat will be examining existing and future possibilities on the extra-territorial application of the Pacific Model Law.²⁰⁷

Closed Areas

There has been some criticism of the extent to which Pacific island governments enforce fisheries treaties with countries that have major commercial fishing interests such as the United States and Japan. In New Zealand the closed areas are defined as:

Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu.

This same criticism applies to the miscellaneous requirement under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America that:

23. The vessel shall be operated in such a way that the activities of traditional and locally based fishermen and fishing vessels are not disrupted or in any other way adversely affected.

13. THE IMPACT OF HIV-AIDS ON THE MAINTENANCE OF TRADITIONAL KNOWLEDGE SYSTEMS (AND OTHER HEALTH CONSIDERATIONS)

HIV-AIDS in Papua New Guinea has now reached epidemic proportions, with one per cent of PNG's adults - that's 60,000 people - infected with the virus. Considering that PNG is one of the countries with the highest biological, cultural and linguistic diversity, this statistic of HIV-AIDS affecting 1 in every 100 people has devastating implications for the status and well-being of TK

²⁰⁷ http://r0.unctad.org/trade_env/test1/meetings/tk2/TK%20Notes.pdf

In the face of news that HIV/AIDS is now a leading cause of death worldwide for people aged 15–49 years, Robert Siy of the Asian Development Bank (ADB) stated, “There is a window of opportunity for the Pacific to be the first region in the world to be effective in stopping the spread of HIV/AIDS.”

Mr Siy made the statement before signing an agreement on HIV/AIDS with the Secretariat of the Pacific Community (SPC). Under the agreement, the ADB will contribute US\$8 million over five years to regional, national and community-based activities to control the spread of HIV/AIDS. The funding will help implement the Pacific Regional Strategy to Fight HIV/AIDS, which was initiated by SPC.²⁰⁸

Other threats to the health of Pacific Islander people relate to the change from an active agrarian lifestyle to a more sedentary white-collar lifestyle, combined with abundant food, that has resulted in general obesity in the population, and the lifestyle diseases that go with.²⁰⁹ The main causal factor associated with drastic health transformation is the abandonment of the traditional diet coupled with a more sedentary lifestyle and widespread consumption of tobacco.²¹⁰

C. CONCLUSIONS / RECOMMENDATIONS

There are numerous internal and external threats to traditional knowledge which arise as a result of national and international economic pressures and development policies.

Both short- and long-term measures are required that adopt a more holistic approach to the protection of traditional knowledge and innovation systems. In particular, there is a need to promote national participatory processes to develop a consensus on the key issues, challenges, and potential mechanisms, in order to establish a national position on measures and priorities.

²⁰⁸ **This article from the Pacific Islands PINA news service REGION: ADB, SPC Sign Agreement To Further Fight Against HIV/AIDS, Thursday: December 1, 2005**

²⁰⁹ <http://www.unesco.org/csi/smis/siv/inter-reg/climate2.htm>

²¹⁰ Randy Thaman “Threats to Pacific Island biodiversity and biodiversity conservation in the Pacific Islands” Pacific Islands Biogeography, University of the South Pacific, Fiji at p.58 at <http://devnet.anu.edu.au/online%20versions%20pdfs/58/0758Thaman.pdf>

National legislation and policy measures should be developed and implemented in Pacific Island Countries and Territories that enhance, safeguard and perpetuate the identity, well-being and rights of indigenous peoples of the Pacific

National education, health, agriculture and fisheries policies fail to recognize and integrate traditional knowledge effectively into national curriculums, health programs and extension policies (agriculture education).

Sustainable Development / Coconservation

- Foster local community capacity building and self-sufficiency with respect to conservation obligations and efforts. Government regulations should take into account customary practices and traditional knowledge in collaboration with conventional Western management concepts and models.
- There is a need for public education and awareness about existing marine laws and development of effective enforcement mechanisms.
- Revival of traditional conservation efforts will require policy action to strengthen enforcement and legal recognition of Chiefly conservation authority.
- Provide adequate scientific information on which to base management decisions and harmonise traditional and modern management practices.
- Develop strategies for integrating conservation priorities and action into local resource governance and management structures and practices
- Development to adopt precautionary principle including precaution against loss of traditional knowledge that may ensue from development.
- Develop strategies to build bridges between local and national systems of biological resource governance

Education / Linguistic Diversity

- Governments need to take concerted efforts to target Traditional Knowledge in education systems curricula to ensure TK is prioritised and adopt national legislation to provide for Indigenous education, educate in mother tongue, ensure gender equity in access to education.
- Integrate traditional values and customary law in educational systems, including teaching in local dialects

- Linguistic diversity to be actively promoted and encouraged by translating information, particularly public education, in local dialects.

Access and Benefit Sharing / Intellectual Property

- Local policies for access and benefit sharing to foster local capacities for protecting and developing the traditional knowledge of indigenous groups for the fair and equitable sharing of benefits arising from the use of genetic resources shall be developed as a matter of priority
- Develop legal mechanisms for the control of commercial and scientific use of traditional knowledge in particular ongoing work to prepare model legislation for the Pacific region.
- The Regionally Focussed Action Plan tasked with updating intellectual property legislation shall ensure legislation is developed and/or reformed to provide effective protection of traditional knowledge specific to indigenous peoples.
- Establish national and local registers to prevent continuing loss of knowledge while ensuring protection of community rights once information has been placed in registers beyond their immediate control. The value of documenting traditional knowledge to ensure its future availability for the benefit of local and indigenous communities must be weighed against the potential cultural impacts of seeking to document what has previously been an oral tradition. Establishing processes for the documentation of traditional knowledge must therefore seek to ensure maximum protection for such knowledge, through strict conditions of access which ensure continued control by communities over access to and use of their knowledge.

Regionalisation

- With regard to the Pacific Plan Pacific Forum leaders shall ensure deeper and more meaningful dialogue and participatory processes to take place by extending the time of adopting an implementation plan by at least two more years for adequate preparations to occur.
- The Pacific Plan shall reflect the diversity of peoples in the region.

Pacific Model Law

- Governments to develop legislation beginning with broad-based community consultation that reflects the Pacific Model Law as matter of priority

Customary Laws

- Empower traditional leaders, securing their active participation in drafting of legislation to ensure that customary laws are retained and integrated into national laws

- Strengthen existing laws that already support customary law
- Promote community involvement through consultations and recognition of local chiefs
- Empower traditional leaders, securing their active participation in drafting of legislation to ensure that customary laws are retained and integrated into national laws
- The incorporation of customary values and practices and accommodation of traditional authorities into constitutions is paramount albeit difficult and complex in terms of law reform
- Ensure that the protection of traditional knowledge conforms with and is supportive of customary law and practice relating to the access to, use of and control over traditional knowledge

Land / Marine Tenure

- Recognising the link between loss of land and the extinction of Indigenous peoples as ‘peoples’ governments should enable Indigenous Pacific Islanders to retain ownership over their land and marine resources, national governments should recognise and enable indigenous ownership over land and marine resources.
- Legislate/regulate to secure and acknowledge customary land and marine tenure.

Gender Equity

- Identify gaps in existing policies and programs which promote gender equality

Climate Change

- Strengthen the capacity of Pacific Island Countries and Territories at the local level to use economic, scientific and traditional knowledge to monitor, assess and predict environmental, social and economic risks and effects of climate change.

Data Collection

- Pacific Island Countries and Territories shall ensure data collection identifies Indigenous peoples and measures impacts upon indigenous peoples of the Pacific i.e. economic statistics in recognition of informal economy of indigenous communities. In particular, disaggregated data on indigenous women in order to address multidimensional issues such as poverty alleviation.