

**South Pacific Regional Environment Programme (SPREP)
 Foundation for International Environmental Law and Development (FIELD)
 World Wide Fund for Nature (WWF) - South Pacific**

**Implementation of the Convention on Biological Diversity (CBD)
 in the Pacific Islands Region
 Workshop
 30 March- 3April 1998, Nadi, Fiji**

WORKSHOP REPORT

Monday 30 March 1998

OPENING SESSION

1. The Regional Workshop "Implementation of the Convention on Biological Diversity (CBD) in the Pacific Islands-Region" was held in Nadi, Fiji from the 30 March - 3 April 1998. Participants included :
 - twenty two government representatives from the eleven Pacific Island CBD Parties,
 - six government representatives from the three Pacific Island countries not party to the CBD (Palau, Tonga, Tuvalu)
 - eight participants from six Inter-Governmental Organizations (IGOs)
 - ten participants from eight Non Government Organizations (NGOs)

The Workshop was organized by SPREP in partnership with FIELD and WWF. Government representatives included participants from national conservation/environment agencies and from national planning or foreign affairs agencies. The Workshop Organizers believed that this combination of government representation was key to working on CBD implementation. A full list of participants is given in Annex 1.

Opening Prayer

2. An opening prayer was given by Mr. Kosimiti Latu (Commonwealth Secretariat) to welcome participants to the workshop.

Official Opening

3. The Workshop was officially opened by the Honourable Vilisoni Cacgimaivei, Minister of Local Government, Housing and Environment (Annex 2). In his opening remarks the Minister emphasized that with eleven Pacific Island Parties the CBD forms a critical legally binding agreement for the conservation and sustainable use of biological diversity in the Pacific Islands region. He briefly outlined Fiji's progress with implementing the CBD noting that the assistance provided from the Global Environment Facility (GEF) through the United Nations Development Programme (UNDP) has resulted in Fiji completing its first national report to the Convention and support for the preparation of a National Biodiversity Strategy and Action Plan. Minister Cacgimaivei noted that the meeting provided an excellent opportunity for Pacific Island Parties to the CBD to prepare for the forthcoming Fourth Meeting of the Conference of the Parties (COP4) and to recommend priorities for regional support to national implementation of the CBD. The Honourable Minister thanked the workshop organizers and wished participants a successful and productive meeting.

Welcome from Workshop Organizers

4. Welcoming Remarks were then expressed by the Workshop Organizers, Mr. Joe Reti on behalf of SPREP, Ms. Ruth Mackenzie on behalf of FIELD, and Mr. Cedric Schuster on behalf of WWF (Annex 2).

Election of Chairperson

5. Mr. Epeli Nasome, Director of the Environment (Fiji) was unanimously elected as Plenary Chairperson for the Workshop.

PLENARY SESSION I

6. The Chairperson opened the Plenary by welcoming all the participants and pledging his full commitment to achieve a successful meeting with agreed outputs by Friday. He invited SPREP to outline the Workshop's Objectives, Outputs and meeting arrangements.
7. SPREP introduced the Workshop Facilitator Team; Ms. Sue Miller (SPREP), Ms Ruth Mackenzie (FIELD), Ms. Ruth Khalastchi (FIELD), Mr. Cedric Schuster (WWF), Mr. Bernard Moutou (SPREP) and Mr. Clark Peteru (SPREP Consultant). The documentation for the meeting, including workshop papers and information papers, was also outlined.
8. The Objectives and Outputs for the meeting were:

Objective 1

To build capacity for implementation of the Convention on Biological Diversity (CBD) in the Pacific Islands region by providing an overview of the Convention and its obligations and focusing on current key legal and institutional issues of:

- relationship between the CBD and other regional/international agreements and institutions and the coordination of existing national legal and institutional arrangements relevant to the CBD,
- biosafety and the development of a protocol,
- regulating access to genetic resources and benefit sharing, and
- intellectual property rights.

Output 1: Regional Information Package on these key issues (to be completed after the workshop).

Objective 2

To identify priority areas, issues and actions needed for regional support to Pacific Island Parties in their implementation of the Convention.

Output 2: Recommendations and key issues.

Objective 3

To assist Pacific Island Parties to prepare for the Fourth Conference of the Parties to the Convention on Biological Diversity.

Output 3: COP4 Actions and associated recommendations

Objective 4

To provide an introduction to the CBD for Pacific Island non-Parties and opportunity to assist them in their consideration of joining this Convention.

Objective 5

To provide a forum for Pacific Island countries, including non government organizations, to share experiences and information in the implementation of the Convention.

9. It was noted that Output 2 and 3 could be amalgamated into a Participants' Statement. SPREP emphasized the importance of participants' input and participation during the workshop and the structure of Plenary and Working Group Sessions to achieve these objectives and outputs. In addition two Pacific Island Committees would be established to finalize drafting of outputs from the meeting: one focused on recommendations for regional support and one on needed COP 4 actions. It was also emphasized that this meeting was part of a larger project initiative between SPREP and FIELD and should be seen as the start of a process and network to support CBD implementation in the region. Finally, there were further opportunities for participants to form issue-based groups to progress work further on areas of key concern.
10. The Workshop adopted the draft Agenda, without amendment (Annex 3).

Pacific Island CBD implementation issues

11. All workshop participants were requested to make summary presentations on issues relevant to implementation of the CBD in their country. Participants gave an overview of their country's biodiversity; governmental institutional infrastructure, including the relationship between national and local government; national legislation relevant to biodiversity conservation; and provided information on policies, programmes and other activities that have been or are intended to be taken to implement the CBD. Non Parties to the CBD (Palau, Tonga, Tuvalu) also updated the meeting on their progress in assessing the merits of joining the Convention. Palau noted that they were seriously considering acceding to the CBD. Participants' reports emphasized the growing number of threats to biodiversity in their respective countries.
12. Participants also reported on progress with developing national biodiversity strategies and action plans, and whether or not they had received GEF funding to prepare their first national reports. Few participants had attended the COP meetings, and many experienced difficulties in receiving funding to attend CBD-related international meetings. NGOs and IGOs present also gave presentations related to their involvement in CBD implementation in PICs. All participants highlighted some of their concerns and key obstacles to effective CBD implementation, which included:
- lack of effective coordination among government departments,
 - lack of understanding of some of the core issues such as intellectual property rights,
 - lack of access to information; and
 - insufficient sharing of information in the region.
- Other issues that were highlighted included the need for capacity building, funding and scientific and legal drafting assistance. Presentations also focused on country and NGO key priorities and needs, including the need :
- to increase understanding of key issues and how to implement the CBD at national level,
 - for capacity building,
 - to review existing laws and training of legal drafters,

- to collect baseline data,
- to increase public awareness,
- for mechanisms to protect genetic resources and traditional knowledge, and
- to have worked together prior to COP4 to develop as far as possible common positions and negotiating strategies.

Some presentations were also delivered during subsequent Plenary Updates, however, for the sake of brevity they have all been summarized together in this agenda item.

Opening Statement of the Secretariat to the Convention on Biological Diversity

13. Mr. Claude-Georges Ducret of the CBD Secretariat gave an opening statement and provided an overview of the objectives and institutions of the Convention (Annex 2). He highlighted some of the issues of relevance to the Pacific region which are on COP4's agenda, and noted that the international CBD process was moving into a new phase which focused much more on national implementation. Mr. Ducret also reported on some of the discussions at the Asian Regional meeting. This regional meeting had considered the implementation of the CBD at the national level and had discussed ways and means to develop regional cooperation, including through better use of existing instruments, increasing information exchange through a clearing house mechanism and increasing South-South cooperation and use of local expertise.

WORKING GROUP SESSION I - CBD Overview

14. Workshop Facilitators gave an overview of the CBD which emphasized the objectives and scope of the Convention. In particular it was noted that the CBD breaks new ground by taking a comprehensive, ecosystem approach to the conservation and sustainable use of biological diversity, and by explicitly coupling biodiversity conservation with the right to control access to genetic resources and share benefits deriving from their utilization. It was further emphasized that the CBD represents a framework that adopts a country-driven approach and allows for further development of its provisions through decisions taken at meetings of the Parties and through further elaboration of annexes and protocols. It was noted that the CBD places few precise binding obligations on Parties, but rather provides goals and guidelines. Key provisions were outlined including those relating to; national strategies and plans, identification and monitoring of biodiversity, conservation and sustainable use, and *ex situ* conservation. Benefits were also noted including benefit sharing, technology transfer and financial resources. Institutional arrangements were briefly introduced including; COPs. SBSTTA, Secretariat role, Convention Trust Funds, Open-ended Ad hoc working Group on Biosafety and the Financial Mechanism. Finally, the importance of national implementation through addressing the cross-sectoral inputs from government agencies and NGOs needed to achieve the goals of the CBD in countries party to the convention was emphasized.

15. After a brief discussion participants formed smaller working groups to look at key priorities for regional support to national implementation of the CBD and the key constraints or common concerns they had in implementing its provisions.

16. Participants then formed two committees (Pacific Island Committee I and II) whose mandates were to draft results of Working Group Sessions into issues, priorities and recommendations firstly for regional support of CBD implementation in Pacific Island Countries (PIC I) and secondly for issues and recommended actions to be taken by Pacific Island delegations at COP4 (PIC II). PIC I and PIC II then met briefly to organize their work for the week. The compiled results of the smaller working groups were given to PIC I and PIC II to develop recommendations for consideration by Plenary.

Tuesday 31 March 1998

PLENARY UPDATE

17. A brief Plenary Update was held to continue presentations and update delegates on workshop arrangements.

WORKING GROUP SESSION II- COP4 draft Brief

18. Workshop Facilitators gave a brief presentation on the upcoming COP 4 meeting, based on the draft SPREP COP4 briefing paper. Three key points relating to the COP 4 meeting for PICs were noted:

- that recognition of the CBD's noting of the '*special needs and considerations of least developed countries and small island States*' needs to be fully realized in the work programmes and operations of the Convention,
- the need to find ways and means to increase effective PIC participation in the international meetings and processes of the Convention and the associated need for adequate in-region preparation for these, and
- to ensure that decisions made at COPs for GEF Enabling Activities (e.g. under biosafety, NBSAPs, CHM) and other forms of support (e.g. from the CBD Secretariat, NGOs and SPREP etc.) are effectively accessed by PICs and result in improved national implementation of the convention.

The importance of PIC delegates at COP 4 organizing themselves so as to cover the discussions taking place in two concurrent working groups and the likely numerous contact groups was also noted and other logistics were briefly outlined. The opportunity to attend the Global Biodiversity Forum held immediately before the COP meeting was also mentioned. The types of decisions COP4 may take on key items such as CHM, biosafety, programmes of work (freshwaters, forests, agriculture, marine and coastal biodiversity) were introduced. Finally, it was stressed that the SPREP briefing paper was in draft form, and would be finalized once all COP papers were available from the CBD Secretariat and that input from workshop delegates would be extremely useful.

19. Participants then briefly discussed COP4 arrangements and the need to work together. SPREP was asked to ensure that the importance and use of the Barbados Programme of Action was reflected in the final COP4 briefing as a key framework for Small Island Developing States and as a lobbying tool.

WORKING GROUP SESSION III- National Coordination

20. Workshop Facilitators gave brief presentations on the issues of national and regional coordination of implementation of the CBD, and participation of NGOs and local communities. It was noted that many of the country reports given so far at the workshop had revealed that in each country a number of different government departments and agencies had responsibilities relevant to implementation of the Convention. The need for coordination at a number of levels to ensure integration of biodiversity considerations into other sectoral areas was also highlighted. Some possible areas for regional coordination were outlined including the importance of the SIDS Programme of Action adopted at the Barbados Conference of the Sustainable Development of Small Island Developing States in 1994. The importance of ensuring that PICs were represented on technical panels formed under the CBD to address specific issues was noted. WWF also emphasized the importance of the participation of NGOs in the implementation of the CBD at the national level.

21. The Working Group then divided into small groups to discuss these issues in more detail and to share information on national experiences to date. The small groups reported back their discussions, with recommendations, to PIC I and II. The key conclusions drawn from the small working groups were that :

- resource owners need to provide inputs into national policy, through “participatory” processes and that local communities should be involved from the beginning of the process – e.g. in project document formulation
- multi-agency/cross-sectoral approaches should be endorsed – e.g. through issue-based committees/subcommittees, including NGOs, organized through the national environment agency.
- cross-sectoral approaches should include the Foreign Affairs Ministry
- there was limited capacity within institutions/budgetary restraints.
- government/NGO co-ordination should be improved – e.g. through umbrella NGOs with formal government recognition
- the legal basis of sustainable development committees, including NGO representation, should be formalized at the national level.
- there was a need to ensure effective participation in COPs and related meetings.

The draft synthesized results of these smaller discussion groups were directed to PIC I and PIC II for drafting of issues, priorities and recommendations arising out of this session for the Workshop to consider in Plenary.

22. A lunchtime session was held for follow up on participants’ questions to the CBD Secretariat on the Convention.

PLENARY SESSION II

23. The CBD Secretariat addressed the workshop on a number of key issues:

- COP4 Bureau,
- biosafety,
- convention administration, budget and additional funding,
- focal point designation, and
- regional meetings

24. On biosafety it was noted that the COP4 would not deal with substantive issues as these were for negotiation within the Ad hoc Working Group. However, COP4 would decide on arrangements and budget considerations for Biosafety Working Group 5 and 6 and the ordinary or extraordinary COP to immediately follow BWSG 6 for adoption of the Protocol. Information on the staffing and funding of the CBD Secretariat and how the Secretariat may in future be organized into four divisions (Science and Technology, Implementation and Communication, Administration and Resource Mobilization, Biosafety) was also given. The role of Focal Points and associated issues for Parties to consider were also briefly mentioned. Finally, participants were updated on the recent Asian Regional Meeting in China. Questions from participants further clarified bureau representation, focal point arrangements, participation by PICs in the Asian Regional Group and rules on regional meetings.

WORKING GROUP SESSION IV - Biosafety

25. Workshop Organizers introduced the issue of biosafety. In essence 'biosafety' is about taking measures to ensure that any risks to the environment or to human health from living modified organisms (LMOs) are properly managed. COP2 established the Ad hoc Working Group on Biosafety to negotiate a protocol by the end of this year. It was noted that the term LMO is not specifically defined in the CBD and it generally refers to living organisms (whether plants, animals or microbes) whose genetic material has been altered in such a way that does not occur naturally through modern biotechnological processes. It was noted that modern biotechnology excludes traditional breeding and cross-fertilization techniques. To date there has been little experience with field testing making it difficult to know how LMOs will interact with different ecosystems. It was also noted that many similar issues associated with alien species arise when considering biosafety issues. The aim of the Protocol is to regulate the transboundary movement i.e. the transfer from one country to another of LMOs that might have an adverse effect on biological diversity. So far the Ad hoc Working Group on Biosafety has met four times and will meet twice more to finish its work, once in August and then a final meeting in February 1999. A draft protocol text (80 pages) which consolidates the proposals from governments now exists. While the general structure of the protocol is in place, there is still much to negotiate at the next two meetings. Parties have until 1 June 1998 to submit any further proposals.
26. The basis of the Protocol is likely to be the Advanced Informed Agreement (AIA) procedure - the idea is that a Party which might be receiving an LMO should be in a position to decide whether or not it will allow the transfer, based on information it would have received about the LMO. In other words, any transfer of LMOs will be subject to the prior and informed consent of the receiving Party. In practice AIA would work through a notification process so that any State (or a legal or natural person) wishing to transfer an LMO will need to notify the receiving country and provide certain information on the LMO. This means that a national competent authority would need to be designated to receive and process any notifications. Other core elements of the protocol are; risk assessment - the purpose of which is to identify the nature and characteristics of the LMO in order to determine what hazards, if any, are associated with the LMO and the likelihood of these hazards being realized; and risk management - having the means and infrastructure to regulate the risks associated with LMOs.
27. Contentious issues in protocol negotiations currently include the types of LMOs and the scope of the protocol. As a result of limited field testing there is little knowledge on the risks associated with LMOs. This is why some Parties are arguing that the Protocol should cover all LMOs. Others argue that coverage should be limited to LMOs known or suspected of posing specific risks. As regards the scope of the protocol, the CBD and subsequent COP decisions provide that the scope of application is the "safe transfer, handling and use" of LMOs. To date, the BSWG has focused principally on the "transboundary movement" of LMOs and it is unclear whether this will include the handling and use of the LMO once transferred. Other particularly contentious biosafety protocol issues are related to; funding, socioeconomic considerations, and liability.
28. Regional biosafety issues were then briefly outlined emphasizing that this was largely a new and emerging issue to be addressed by PICs and as such awareness raising and capacity building were likely to be of high priority. It was noted that to deal with trans-boundary issues of LMOs would in many respects necessarily involve the same agencies that deal with alien species e.g. Customs, Quarantine, Fisheries, Agriculture. A short briefing on the GEF/UNEP Biosafety Project was also given, highlighting the need for Pacific Island Parties to the CBD to ensure that they were involved in UNEP's regional training workshops on biosafety and to explore possible in-country initiatives in Component 1 of this initiative. Finally, SPREP outlined likely issues under COP4 Agenda Item 9 on Biosafety.
29. Four smaller groups were then formed to discuss and clarify:
- questions related to biosafety
 - issues and recommendations for regional support (PIC I)
 - possible COP4 actions (PIC II)
 - possible issues for the BSWG negotiations

Results of these smaller discussion groups were directed to PIC I and PIC II for drafting of issues, priorities and recommendations arising out of this session for the Workshop to consider in Plenary.

Wednesday 1 April 1998

PLENARY UPDATE

30. The Workshop welcomed Edgar Cocker (Forum Secretariat), Tom Osborn (SPC-Agriculture) and, Lopeti Senituli (PCRC) to the meeting. Country and NGO presentations were completed and arrangements for the week updated, including the day's agenda.

WORKING GROUP SESSION V Access & Benefit Sharing

31. Workshop Organizers introduced the meeting to the key international aspects of Access to Genetic Resources and Benefit Sharing. One of the CBD's objectives is to promote the sharing of benefits derived from products developed using genetic resources with the country that has provided those resources. Bioprospecting, or the search for genetic resources (i.e. samples of plants or animals), which might potentially be used to develop medicines and other products has long been practiced in many parts of the world, including in the Pacific Islands region. The CBD is the first international agreement to specifically acknowledge that a country has sovereignty over its genetic resources and as a result a right to control access to those resources and derive benefits from them. The CBD specifically links controlling access with a right to share in the benefits that might be derived from the use of those resources. The CBD also gives some guidance on what these benefits might include. However, it is up to the parties to a bioprospecting agreement to negotiate terms within the framework of any relevant national laws or regulation. Benefits can include fees to collect genetic resources, technology transfer (e.g. screening), royalties from product sale etc.

32. According to the CBD access should be based on PIC (Prior Informed Consent) of the country providing genetic resources. It is generally accepted that PIC should be extended to resource owners and local and indigenous communities responsible for conserving the resources in question. Participants were directed to information papers which provide examples of access regimes in the Philippines Executive Order (national) and Andean Pact (regional). In practice countries have sought to control access to genetic resources in various ways such as through:

- contractual bioprospecting arrangements
- adopting new laws
- adapting existing laws
- a combination of the above

It was noted that the advantage of legislative action is that the government can set the standards within which bioprospecting arrangements could then be negotiated. It is important to note that the CBD's provisions on access to genetic resources do not apply to:

- *ex situ* genetic resources (e.g. collections, seed banks, gene banks) collected before the Convention came into force
- human genetic resources
- genetic resources beyond the limits of national jurisdiction (EEZs) i.e. the high seas

It was finally noted that access issues are linked with traditional knowledge associated with these resources. Often the knowledge associated with the resources is just as important to bioprospectors when they are searching for potentially economically valuable resources. These issues would be raised in the next Working Group Session on Intellectual Property Rights (IPR).

33. A number of key regional considerations for access and benefit sharing were then outlined, including the importance of controlling access so as not to lose opportunities for revenue through bioprospecting and through the possible commercialization of any products that might be developed from these initiatives. Furthermore, it was important to link these revenue generating activities to support environmental protection. It was noted that there will be a variety of options for PICs to develop access regimes and they will need to consider the rights of local resource owners, and differing approaches needed to be taken for biological resources that are found in more than one country and those that are only found in one country.

34. Fiji's Department of Environment briefly outlined their progress with bioprospecting provisions within the draft Sustainable Development Bill. Fiji has formed a committee of agencies relevant to the use of biodiversity (Department of Environment, Ministry of Fijian Affairs, Ministry of Agriculture, Fisheries & Forests, National Trust for Fiji, Native Land Trust Board, Museum of Fiji and Ministry of Education) to address bioprospecting. The proposed process in Fiji for bioprospecting is consistent with the CBD's provisions and is based on an open consultative process.

35. Mr. Bill Aalsbersberg (USP) followed this presentation by giving background on specific Fijian bioprospecting or 'bio-partnership' initiatives. This has concentrated on developing access agreements with agencies e.g. in joint proposals between USA universities, USP, private companies, Biodiversity Support Programme (BSP), Biodiversity Conservation Network (BCN) and others. The BSP's BCN project has focused on enterprise development as an incentive for conservation and sustainable development. Bioprospecting or bio-partnership initiatives could be one of these enterprises and a USP/Fijian community initiative is currently being funded by BCN. At the time of project development it became clear for the need for national policy in Fiji. Partnerships can be a way to generate more benefits, including revenue or enterprise development, and documentation of biodiversity and monitoring through participatory techniques by the local community for improved resource

management. Key points were transparency (information available to Fiji Government agencies, NGOs etc.), and development of expert groups to access input on proposed contracts. The USP contract has a sub agreement with the community for benefit sharing. He stated that the contract includes provisions such as: samples are licensed to be studied for one year and full information disclosure within material transfer agreements (MTAs). He noted that MTAs can be useful as you can put things into them that are not in law and they are contractually binding. MTAs need to be supported by a permitting system so that samples cannot easily be taken out of the country. For the USP contract the governing law is English Law, with international tribunals for dispute resolution (at the cost of the company). He concluded that the region needs to develop these access/benefit sharing policies and laws and will likely need to access outside expertise to assist this. He supported a regional agreement on benefit sharing for those resources that are found in more than one country. Mr. Aalbersbeg finally noted that SPREP's proposed Biodiversity Trust Fund may be able to assist benefit sharing from regional arrangements.

36. In discussing this issue the Workshop heard a report from a participant on an example of an American drug company that markets kava pills. The 50 capsule box sells at \$7.50 US, and he was interested to know the profit breakdown (producer, purchaser, company) and if there were any benefits coming back to the Pacific Islands region. Discussion noted that kava is being widely developed and marketed by non Pacific island countries e.g in Germany, Australia and USA. Bill Aalbersberg also reported on Forum Secretariat kava meeting in 1997 to address these issues however, noting that these uses of kava were prior to the CBD entering into. It was strongly noted that we need to learn from these examples and protect our resources. PNG noted that there is a range of bioprospecting approaches, not those that just include traditional use of species and that royalty distribution is a key issue. Royalties are generally less than 1-5% of sales and depend on whether traditional knowledge was used and the compound(s) themselves. PNG also noted that a national workshop on IPR and access regimes had recently been held. The Workshop discussed the key issue of need for regional policy and guidelines on benefit sharing. The Workshop also noted that it is still important to discuss *ex situ* collections as these collections were done without consent and we need to seek repatriation of ownership of these *ex situ* resources.

37. Four smaller groups were then formed to discuss:

- the need to regulate access to genetic resources and benefit sharing, and if so, what sort of approaches and elements might work
- issues and recommendations for regional support (PIC I)
- issues and recommendations for COP4 action (PIC II)

The draft synthesized results of these smaller discussion groups were directed to PIC I and PIC II for drafting of issues, priorities and recommendations arising out of this session for the Workshop to consider in Plenary. In reporting back it was noted that kava is currently being grown in both Australia (Brisbane) and Mexico. USP also informed the Workshop of its assistance to countries in training on legal drafting (currently 22 participants).

WORKING GROUP SESSION VI - Intellectual Property Rights

38. Workshop Organizers presented a brief introduction to Intellectual Property Rights relevant to the CBD. It was noted that IPRs are a legal mechanism to protect use or applications of ideas and information, and allow the holders of the right to stop others from using or copying those ideas and information. The different types of IPRs include:

- patents
- plant breeders rights
- trademarks
- trade secrets
- copyrights
- geographical indication

39. Kosimiti Latu (Commonwealth Secretariat) outlined the relevance of the General Agreement on Tariffs and Trade (GATT), the Agreement on Trade Related Intellectual Property Rights (TRIPs) and the World Trade Organization (WTO) to CBD/IPR issues. He first introduced aspects of the history of the TRIPs agreement, which was concluded at the end of the Uruguay Round of GATT. The presentation highlighted importance of TRIPs with regards to IPRs as it is seen as the dominant international forum determining IPR. Article 27 of the TRIPs agreement was also highlighted with regard to country obligations to make available patents and plant variety protection.

40. SPC Agriculture then updated the Workshop on the current Regional Working Group on IPRs focusing on plant issues. It was noted that plant breeding research in the region is mostly done by the national agencies rather than the private sector as is seen in developed countries. The concern on the ownership of regional tissue culture samples was noted as these materials have moved freely around the laboratories around the region. The results of the 1997 Regional IPR Workshop were also outlined. This meeting discussed bioprospecting, the need for wider participation by countries and agencies, report production, germplasm, development of policies for contractual agreement, kava councils; and assistance to the region on IPR work with countries in the region

41. Workshop Organizers then presented case studies of IPR issues in the region with a special focus on kava of which extracts are being patented and sold overseas, and the mamala plant from Samoa which was taken out of the country by an American ethnobotanist. Prostratin, a chemical found in mamala has now been patented with no clear technology transfer and benefit sharing mechanisms, even though these potential uses were identified on the basis of the knowledge of Samoan traditional healers. Key conclusions on IPR from this experience were:

- that current IPR laws rewards inventors and protecting inventions,
- current IPR laws are not suitable for rewarding PIC inventors nor protect PIC inventions; but protect applicants from the north, and
- suitable IPR laws should be designed to protect PICs' inventions and inventors.

Discussion revolved around the need for a regional approach to addressing the IPR issues, linkages to regimes needed for access and benefit sharing, and the importance of the WTO agreement to the national sovereignty issue of the CBD.

42. Four smaller groups were then formed to discuss:

- examples of biodiversity related IPR use in Pacific Island countries
- forms of customary control over traditional knowledge and use of genetic resources
- issues and recommendations for COP4 action (PIC II) and regional support (PIC I)

The draft synthesized results of these smaller discussion groups were directed to PIC I and PIC II for drafting of issues, priorities and recommendations arising out of this session for the Workshop to consider in Plenary.

Thursday 2 April 1998

PLENARY UPDATE

43. A brief Plenary Update was held to update delegates on workshop arrangements. In addition, new difficulties with COP4 logistics were outlined for accommodation arrangements. After hearing Participants' views, Claude-George Ducret agreed to follow this matter up urgently with the CBD Secretariat.

WORKING GROUP SESSION VII Article 8j Traditional Knowledge

44. Presentations were made on Article 8(j) by Workshop Organizers, Adi Litia Qionobaravi (Fijian Affairs Board), and Victor Kaisiepo (PCRC). Article 8(j) of the Convention was introduced and in particular outcomes of the Workshop on Traditional Knowledge held in Madrid, Spain in November 1997. COP4 will likely establish a work plan for Article 8j based on reviewed options and recommendations from the Madrid Workshop. It will be important for PIC delegations at COP4 to input their priorities to such as work plan and to support the establishment an open-ended intersessional working group that allows for the representation of indigenous peoples and local communities' views on Article 8(j) and other relevant Articles. With regard to intellectual property rights, it was noted that although there was some scope to work within the present system, there was a sense that Pacific Island countries should be developing an alternative body of IPR laws more suited to indigenous people and their knowledge. Various *sui generis* models have been suggested. The importance of networking with NGOs and indigenous peoples' organizations on these issues was emphasized, and the links to the protection of traditional knowledge. The need for Pacific Island representation on any body which might be established under the Convention to address Article 8(j) was stressed.

45. Following this presentation there was some discussion of the importance of Pacific Island representation in the negotiations for the revision of the FAO International Undertaking on Plant Genetic Resources. Until now, this has not been possible. A participant from the Marshall Islands noted that he had approached FAO for funding to attend these meetings, and that FAO had indicated that it would attempt to address this for future meetings. In the meantime the FAO had indicated that concerned countries might submit position papers expressing their views.

45. Adi Litia Qionobaravi (Fijian Affairs Board) outlined the areas of concern relating to Article 8(j) which had been identified by the Pacific caucus at the Madrid meeting. These were:

- how to develop the required national IPR-related legislation according to the TRIPs Agreement;
- the need for guidelines for the development of the required IPR law in conjunction with biodiversity/plant resource protection/access legislation;
- how to recognize and protect the collective ownership of biological resources, folklore and knowledge related to the sustainable use of biological diversity under existing customary regimes, and the continuing customary uses of biological resources;
- the relationship to implementation of Article 8(j) and related articles of the CBD and other international instruments and initiatives in the area of the protection and maintenance of biodiversity and traditional knowledge relating to biodiversity; and

- the need to develop a mechanism to facilitate the control of patent applications and the confirmation of prior informed consent of local and indigenous communities to the use of their knowledge and/or resources at the regional, multilateral and inter-jurisdictional level, to address continuing biopiracy activities in the region.

Adi Litia Qionobaravi then described the ways in which Article 8(j) is being addressed in Fiji. Discussion set the question of Article 8(j) in its broader context, highlighting the preparation within the United Nations (UN) of the Draft Declaration on the Rights of Indigenous Peoples. General discussion supported the need for an open-ended working group on Article 8(j) under the CBD.

46. The Workshop established a small group to formulate outputs of the session for PIC I and PIC II to consider.

WORKING GROUP SESSION VIII - National Biodiversity Strategies and Action Programmes (NBSAPs) (Art. 6) & National Reporting (Art. 26)

47. The objectives of this Working Group Session were to clarify the processes and answer any questions regarding NBSAPs and National Reports to the Convention. A key output of the session was also to obtain an up to date picture of where countries were with NBSAPs and National Reports including their achievements, constraints and next steps. Finally, the session looked at any issues and recommendations for regional support (PIC I) and COP4 action (PIC II).

48. The background, development and opportunities available for the preparation of NBSAPs and for the preparation of National Reports to the CBD was outlined. Decision II/66 of COP2 requested GEF to make financial resources available to developing country parties to assist implementation of Article 6. This was linked by Decision II/7 to national reporting. Subsequently under the GEF Enabling Activities financial resources were made available through the implementing agencies (UNDP, UNEP, World Bank) of up to \$300,000USD per developing country Party for Article 6 and preparation of the first National Reports (Article 26). Article 6 focuses on developing, or adapting existing, national strategies, plans or programmes for the conservation and sustainable use of biodiversity. It also promotes the integration of the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies. It was suggested that in the Pacific Island context the existing National Environment Management Strategies (NEMS) or their equivalents should be seen as a key basis for NBSAP development. However, newer issues such as access and benefit sharing, intellectual property rights, biosafety and others should be reflected, as appropriate, in these strategies. In addition, countries were strongly urged to use the draft Action Strategy for Nature Conservation in the Pacific Islands Region (1999-2001) as this provides a key framework and actions developed through region-wide government and NGO input. It was emphasized that the key challenge for PICs was really Article 6b which promotes integrating biodiversity conservation and sustainable use issues into national planning and related cross-sectoral initiatives. Under National Reporting it was outlined that the form and interval of these reports was decided in Decision II/17 of COP2 and that these reports were due to the CBD Secretariat on 1 January 1998. To date Fiji, Vanuatu and Marshall Islands have submitted national reports.

49. UNDP (Suva office) Sustainable Development Adviser then outlined UNDP's involvement in supporting countries to access resources for NBSAPs. It was noted that the PNG was covered by its own UNDP office and the UNDP Samoa Office covered four other Pacific Island countries. To date UNDP Suva Office has supported NBSAP projects for Marshall Islands and Fiji. Furthermore, Kiribati's proposal had just been approved and FSM's proposal was in development. These were nationally executed projects and the basic provisions of approval (GEF Council), payments, reporting and support available from UNDP was outlined. It was noted that the experience gained in the Marshalls had been shared to assist Fiji's NBSAP proposal and that this information sharing was very useful. Supporting work on Article 6b was also of great interest and priority in the region to achieve the linkages in national planning. WWF's programme to support CBD implementation in Pacific Island countries was also introduced. This has focused on supporting NBSAP work in Fiji and Samoa, however, WWF was also interested in working with other countries in the region.

50. Each Pacific Island Party then outlined how far they had progressed with NBSAPs, key achievements, issues and next steps. A summary table of this information is provided below:

Pacific Island Party	NBSAP progress	Supporting Agency	Comments
Marshall Islands	strategy in development, national report completed	UNDP (Suva)	<ul style="list-style-type: none"> • emphasized process of information gathering and consultation at the community level, followed by workshops to develop elements of NBSAPs and consultations to finalize this strategy
Fiji	strategy in development, national report completed	UNDP (Suva)	<ul style="list-style-type: none"> • four phases of work; establishment, stocktaking using technical groups, consultative workshops, national workshops with final NBSAP approval by government. • NGOs involved

Vanuatu	strategy in development, national report completed, 2 year time frame	UNEP	<ul style="list-style-type: none"> establishment has increased staff capacity including a trainee in the programme for capacity building, reviews of existing information have also provided an opportunity for information repatriation NGOs involved provincial workshops to develop their strategies will be followed by a national workshop and then further consultation to finalize strategy limited resources has resulted in approaches to other donors building in fund raising for strategy implementation during strategy development approach is supporting traditional practices as a key part of the strategy
Cook Islands	draft proposal	UNDP (Samoa)	<ul style="list-style-type: none"> proposal format difficult to meet in-country needs
Kiribati	proposal just approved	UNDP (Suva)	
FSM	draft proposal for completion		
Solomon Islands	proposal completed and taskforce established, workplan	UNEP	<ul style="list-style-type: none"> concern at over strategising and focus needs to be for implementation using a consultative process currently working on sectoral reports
Nauru	proposal to be developed	UNDP (Suva)	
Niue	proposal developed awaiting approval	UNDP (Samoa)	
PNG	reviewing of formulated draft proposal	World Bank	<ul style="list-style-type: none"> acknowledge large amount of strategising carried out in this area over the last 20 years NBSAP process moving forward contingent on other institutional changes the NBSAP is expected to be completed in 1998
Samoa	draft proposal developed, currently finalizing national report	UNDP (Samoa)	<ul style="list-style-type: none"> working on national report even though funding has not come through yet using existing NEMS and policy committees

51. Non Parties and IGOs/NGOs were also invited to comment on this issue. Tonga, Tuvalu and Palau noted that they had been through a NEMS process and had they also had a number of other related initiatives. These non Party delegates all indicated firm interest in following up CBD membership. The following NGOs indicated that they were directly involved in PIC NBSAPs: WAINIMATE (Fiji), USP (Fiji), PIANGO members in some countries, and ECOWOMAN (Fiji).

52. In discussions the Workshop identified the following priority issues and items for follow up:

- the need to encourage Pacific Island Parties to quickly move ahead the NBSAP proposal process through the relevant implementing agency (UNDP, UNEP, World Bank)
- concern at more strategising and need to ensure that there are resources to implement strategies
- the need to share information, and requested countries, and for UNDP, SPREP, WWF to assist with sharing NBSAP information and National Reports, and noting that the CBD Secretariat Web Site has those national reports which countries have made publicly available
- noted the importance of multi government agency and ngo involvement in NBSAP process, however, it was also noted that significant capacity problems exist as the NBSAPs adds to existing full workloads of government and ngo officers
- the need to emphasize local expertise and broad based expertise (scientific, social, economic, sectoral etc.)
- noted the importance of participatory and consultative process in NBSAP development
- the need for all NBSAP development pay particular attention to addressing CBD Article 6b
- noted that information and processes for national reports need to be useful at national level to assist CBD implementation in the Parties, the planned key uses of information in National Reports should be carefully considered, designed and agreed in deciding on the form and interval of any future reports

Additional Agenda Item - Accessing GEF Finds for the Clearing House Mechanism (CHM) of the Convention on Biological Diversity

53. UNDP (Suva Office) briefed delegates on the newly announced opportunity for support for CHM establishment. The principal objective of the CHM is to facilitate global access and exchange of information regarding biodiversity conservation, sustainable use and benefit sharing of biological resources. Key points noted in the GEF CHM funding were:

- CHM proposals can be submitted in conjunction with a GEF enabling Activity proposal or as a module of already existing NBASAP programmes
- countries need to nominate a CHM focal Point and need to complete a Technology Evaluation Form to be sent to the CBD Secretariat
- support includes provision of hardware, software, training and access to Internet

In discussions it was also noted that UNDP (Suva Office) also has a programme of support for Internet access for those countries who presently have no access (Nauru, Tokelau, Tuvalu). It was also confirmed that Non Parties to the CBD were not eligible for this support.

54. Delegates also briefly discussed other opportunities under the GEF including; medium sized projects. Support is available for up to \$750,000USD (\$1,000,000USD maximum) for governments, NGOs and institutions. The process can be simply initiated through preparation of a one page concept proposal which requires endorsement from the country GEF Focal Point. Several proposals from the region were already been supported under this programme including projects on; traditional medicine and a alternative energy project. Summary information of the GEF Medium Sized Projects was provided and further information is available from the GEF Secretariat.

WORKING GROUP SESSION IX

55. Participants broke up into two working groups to prepare texts for the Workshop's 'Nadi Statement' based on the outputs of previous working group sessions. These two groups were; Pacific Island Committee I (PIC I) which focused on issues, priorities and recommendations for regional support to national implementation of the CBD, and Pacific Island Committee II (PIC II) which focused on issues, recommendations and actions needed for COP4.

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PLENARY UPDATE

56. The CBD Secretariat informed the session on recent updated information with regard to the organizational arrangements set up for COP4. Copies of relevant details were made available to participants. The CBD Secretariat offered to take back completed registration forms for COP4. However, he reminded the participants that these forms were not meant to be a substitute for the requested credentials. He also reminded the participants that such credentials are only required from party representatives. On the specific question of the possibility of availability of advance funding from the Secretariat of CBD to assist the delegates from PICs to attend COP4, no specific response was made.

57. PCRC reported on a recent development on a Food and Agricultural Organization (FAO) initiative on transfer of germplasm samples. It was noted that there had been recent attempts to obtain protection for plant variety resources obtained from the CGIAR system and there will be a meeting in June 1998 to address this issue and for PICs to participate.

WORKING GROUP SESSION X

58. Following brief presentations on some remaining items of priority to PICs the Workshop broke into smaller groups for discussions on:

- work programmes under the CBD on marine and coastal biodiversity and forest biodiversity
- approaches to implementation of the CBD in national law in the region
- biodiversity in EEZs and high seas
- CGIAR and patenting issues

The groups on biodiversity in the EEZ and high seas, and the group on CGIAR and patenting issues reported back to the session with draft recommendations for inclusion of text in the Nadi Statement. The other groups reported back for the general information for the meeting.

CLOSING PLENARY SESSION

59. **Workshop Report**

Workshop Organizers presented the draft Workshop Report for the meeting to consider. After some amendments and clarifications the Workshop Report was officially adopted and the Workshop Organizers entrusted to complete the remaining sessions from the Closing Plenary. Vanuatu and PNG delegations thanked the Secretariat for the report and called on SPREP and its workshop partners to organize regular CBD meetings in the region, with at least one regional meeting being

organized before each COP. PNG further added that regional trade issues be discussed at such future meetings in relation to provisions of the CBD.

60. Participants' Nadi Statement

The draft Participants' Statement from the workshop was presented containing recommendations drafted by PIC I (regional support) and PIC II (COP 4 action) based on the results of the Working Group Sessions. It was noted that this combined outputs for Objective 2 and 3 of the Workshop. After some discussion, amendment and clarification the 'Nadi Statement' (Annex 4) was adopted by the Workshop.

61. Workshop Evaluation

Participants evaluated the workshop programme, structure, content, arrangements and outcomes using a form to assist Workshop Organizers plan any future initiatives.

62. Closing Statements

Participants thanked Workshop Organizers for a successful and productive meeting and recommended that such workshops were needed on a regular basis to assist PICs implement the CBD and to prepare for key meetings such as COPs. It was suggested that future meetings should include a focus on the implications for trade of implementing certain CBD provisions. NGO delegates especially appreciated the open, participatory style of the Workshop. Participants noted that all Workshop objectives had been achieved and they were pleased with the outcomes. Participants also thanked the Chairperson for his able leadership during the Workshop and the Government of Fiji for hosting the Workshop.

63. Workshop Organizers (SPREP, FIELD and WWF) also gave brief closing statements which outlined the process for finalizing the CBD information package (Objective 1) and further noted the key outcomes and mechanisms for follow up from the Workshop in the Organizers' work programmes, including the joint SPREP/FIELD project. They thanked participants for their hard work during the sessions, the Chairperson for his able leadership during the week's sessions and the Government of Fiji for hosting the meeting. Workshop Organizers acknowledged the support of donors which made the Workshop possible including the; United Kingdom (UK) Department of the Environment, Transport and the Regions Darwin Initiative; UK Department for International Development (DFID), Government of Australia, WWF, South Pacific Biodiversity Conservation Programme, and the Conservation, Food and Health Foundation (USA)

64. The meeting was officially closed by the Chairperson at 6pm Friday 3 April 1998.