

INTELLECTUAL PROPERTY, GENETIC RESOURCES & ASSOCIATED TRADITIONAL KNOWLEDGE : INDIGENOUS AND LOCAL COMMUNITY PERSPECTIVE

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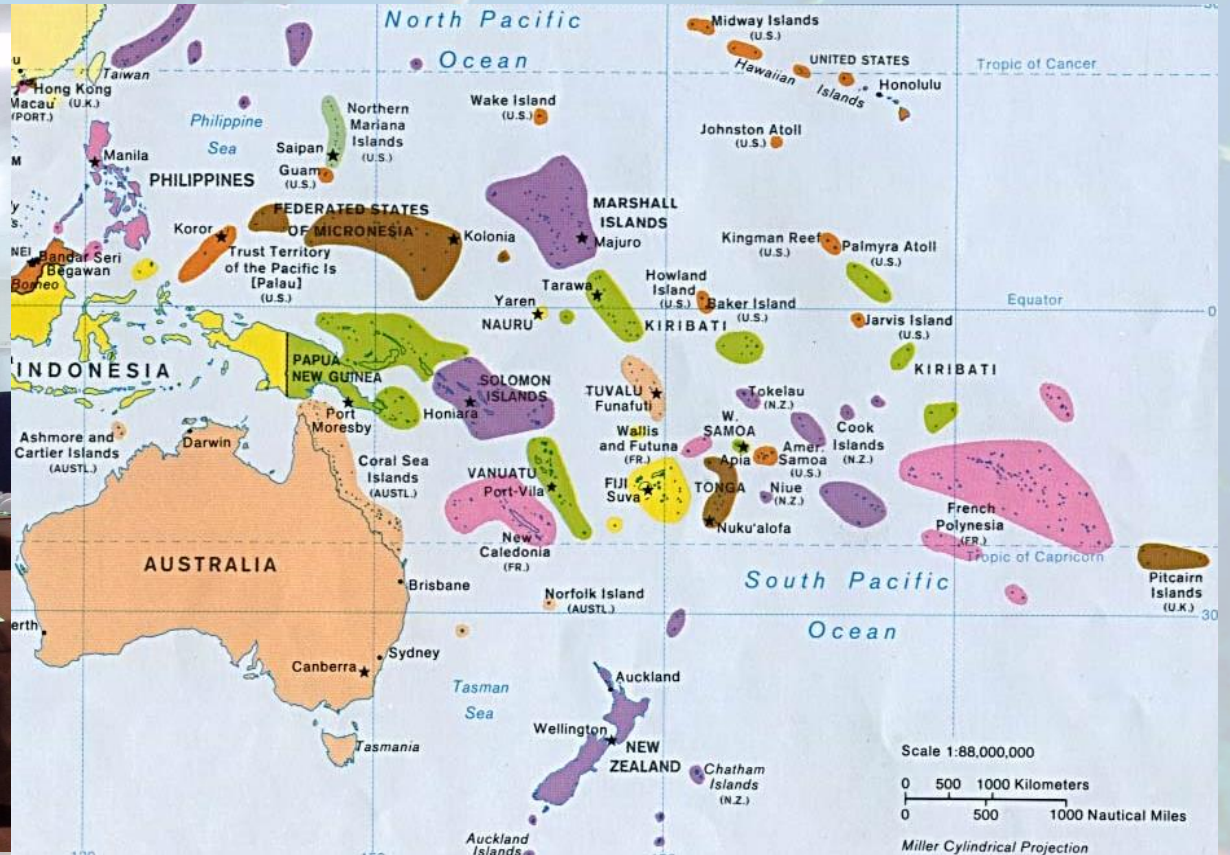
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The Perspective and Concerns of the Indigenous in the South Pacific in particular the I-taukei (Fiji) Samoan (Samoa) and Solomon Islander (SI)



Introduction

- Mr Chairman, I am honored and privileged with the invitation of the World Intellectual Property Organization to be part of Indigenous panel and to address the Intergovernmental Committee.
- The mandate and work of the committee is of vital importance to the indigenous in the Pacific. At this juncture, I extend my appreciation to the World Intellectual Property Organisation, for the many and great technical support given to the Pacific and its regional organizations through the Pacific Island Forum Secretariat and the Pacific Community in the area of IP, TK and GR .
- In December of 2015, a Practical Workshop on Intellectual Property, Traditional Knowledge, Cultural Expression and Genetic Resources was held in Samoa, supported by the WIPO; Heads of Intellectual Property divisions and representatives of the Indigenous from around 14 Pacific Island countries were fortunate enough to gather in Apia to discuss the issues surrounding the Pacific in terms of our TK, TCE and Genetic Resources.
- We are so thankful to the support of the Director of the Traditional Knowledge Division **Mr Wend Wendland** and WIPO Indigenous Fellow **Ms Hai-Yuean Tualima** for facilitating the workshop and their valuable presences and contributions in the practical workshop.
- I am presenting this paper through my work in the cultural industries in Fiji, Samoa and the Solomon Islands and through interactions with Indigenous in other Pacific Island countries.
- Mr Chairman, please allow me to address the floor on “ **The Perspective and Concerns of the Indigenous in the Pacific**”

Outline

- **Factual Background of the Pacific**
- **22 Pacific Island countries covered under the Model Laws**
- **The Real Deal**
- **Published and readily available materials on Fijian Traditional Medicine**
- **The Pacific Strategy through the Pacific Model Laws on TK, CE and Traditional Biological Knowledge, Innovation and Practices is not addressing the real issues.**
- **Common Arguments for Indigenous in most Pacific Island countries**
- **Objective and Justification of protecting TK associated with Genetic Resources- from the indigenous perspective**
- **The work of the IGC is important to the indigenous**
- **Way Forward- TK Holder focus**

Factual Background of the Pacific



- ▶ Pacific Island ecosystems make up one of the world's biodiversity hotspots. The western Pacific is recorded as having the highest marine biodiversity along with the most extensive coral reef system in the world;
- ▶ Majority of Pacific Islanders enact aspects of their traditional knowledge in their everyday living; Most Indigenous lives in remote islands where accessing basic living amenities is difficult, so they depend on traditional knowledge and natural resources for their general wellbeing.
- ▶ Contains one of the highest marine biodiversity along with the most extensive coral reef system in the world;
- ▶ In 1999, our leaders saw the need to protect our TK, CE and Biological Knowledge, thus 2 model laws were created:
 - ▶ Model Law on Traditional Knowledge (TK) & Traditional Expressions of Culture (TEC)
 - ▶ Model law on Traditional Biological Knowledge, Innovation and Practices (TBKIP)
- ▶ Pictures:- courtesy of Fiji Coral Reef Alliance, USP and mission site

An underwater scene featuring a vibrant coral reef with various types of coral in shades of green, yellow, and brown. Numerous small, colorful fish are swimming throughout the clear blue water. On the left side, there is a vertical red bar and a grey arrow pointing to the right.

22 Pacific Island Countries under the Pacific Community –[Model Laws]....

- Cook Islands
- Federated States of Micronesia
- Fiji
- French Polynesia
- Guam, Kiribati
- Marshall Islands
- Nauru
- New Caledonia
- Niue
- Northern Mariana Islands
- American Samoa
- Palau
- Papua New Guinea
- Pitcairn Islands
- Samoa
- Solomon Islands
- Tokelau
- Tonga
- Tuvalu
- Vanuatu,
- Wallis and Futuna

An underwater scene featuring a vibrant coral reef with various types of coral, including green and brown branching corals. Numerous small, colorful fish are swimming around the reef. In the background, a diver is visible, and the water is clear and blue. On the left side, there are decorative red lines and a grey arrow pointing right.

THE REAL DEAL!!!!


THREATS TO THE PACIFIC

Published and readily available material on Fijian Traditional Medicine

- One area that is vulnerable to bio-piracy is the indigenous knowledge behind Traditional Fijian medicine and this is due to non-availability of any form of protection and the publicly available materials on traditional Fijian medicine.
- In the 80s' a book was published on the secrets of Fijian medicine and recorded plant names in Fijian and English, with an accompanying list of diseases hoping that Fijian medicine will be able to be accessed by the future generation. The World Health Organisation, recorded current knowledge on medicinal plants from around the South Pacific, including Fiji in an attempt to bring 'information on their easy identification and use for the benefits of all other people living in other parts of the world.
- The latest publication was in 2009, encompassing all traditional Fijian medicine that is in existence together with its recipe, was publicly launched by the Fijian Institute of Fijian Language and Culture.
- There is no doubt, that there is lifesaving proof behind the use of traditional medicine. An Australian 11 year old boy, in April 2012, testified that he had contracted respiratory syncytial virus for 6 years and was being healed from asthma after being given traditional Fijian medicine whilst on holiday with his family in Fiji.

An underwater scene featuring a vibrant coral reef with various types of coral in shades of green, yellow, and brown. Numerous small, colorful fish are swimming throughout the clear blue water. On the left side, there is a red vertical bar with several thin, curved red lines extending from it. A dark grey arrow-shaped graphic points to the right, partially overlapping the coral.

Misappropriation IS THE
ISSUE??????

The background of the slide is an underwater scene featuring a vibrant coral reef. The coral is primarily yellow and green, with some brown and red patches. Numerous small, colorful fish are swimming around the reef. On the left side, there is a vertical red bar and a grey arrow pointing to the right.

The Pacific Strategy through the Pacific Model Laws on TK, CE and Traditional Biological Knowledge, Innovation and Practices is not addressing the real issues.

- ▶ **Cannot fully protect TK from being exploited in another jurisdiction.;**
- ▶ **Have no extra-territorial applications.**

The background of the slide is an underwater scene with various colorful fish swimming in clear blue water. In the foreground, there are green and brown coral reefs. On the left side, there is a vertical red bar with a grey arrow pointing right, and several thin red lines that curve downwards.

Common Arguments for Indigenous in most Pacific Island Countries

1

- The ownership of the customary knowledge behind the genetic resources lies with the indigenous people, it was discovered and passed down by their forefathers, indigenous people should have the right to maintain, control, protect and develop the knowledge including any intellectual property arising out it;

2

- The misappropriation of Traditional knowledge by rich international companies calls for an international protection;

3

- Any commercialization of traditional knowledge must also benefit the local community and in particular the TK holders.

Justifications of protecting TK associated with Genetic Resources through an International legal instrument- indigenous perspective

The Indigenous in the Pacific is counting on the work of the IGC.

- The rights of Indigenous people to maintain, control, protect and develop their TK, CE, genetic resources, medicines, knowledge of the properties of fauna and flora are basic human rights under existing International law [UNDRIP Article 31 [1]]
- Traditional knowledge is our livelihood.
- Will provide International protection of Traditional Knowledge holders rights- preventing bio-piracy
- Protection will contribute to national economy and community developments through benefit sharing
- Multimillion pharmaceutical corporations save millions in using known traditional plants with medicinal properties; traditional medicines are used as inputs in biomedical research as drugs in themselves or as the sources of chemical substances forming the basis of new pharmaceuticals. It is only fair that traditional knowledge providing country must also benefit from such discovery.
- Will Permit tradition-based creativity and innovation including commercialisation
- Will ease the issue of unequal bargaining power between undeveloped countries and rich corporations



The work of the IGC is important to the indigenous people in the Pacific

- **We are rich in genetic resources and traditional knowledge which can be of assistance to the World;**
- **Most Indigenous in the Pacific have no problem with their genetic resources and traditional knowledge being further developed in partnership;**
- **Most Island countries do not have the capacity, facility and expertise to develop TK and genetic resources further, thus is relying on overseas corporation for assistance through an Agreement;**
- **In the absence of an Agreement, Island countries, has no other alternative, but to watch and see their TK and genetic resources being utilized by international companies for their own gain;**
- **The indigenous only hope is the international instrument, which will allow international regulation of the use of TK and GR.**

Cont..

- Understanding the economic, scientific, commercial value and the assistance the traditional knowledge associated with genetic resources can offer to the world;
- Understanding the role of the Patent system to promote innovation and protects the rights of the Patent Holder;
- The issue is whether traditional knowledge associated with genetic resources should qualify for protection under the traditional Patent qualifications of novelty and inventive steps and Patent registration system?

WAY FORWARD- TK Holder Focus

- Text must be traditional knowledge holder focus;
- The proposed definition for the word “misappropriation” , for example, must not focus on the ‘prior informed consent of the competent authority’ within the providing country, however, it must be focus on prior informed consent of the traditional knowledge holder.
- The intention of the legal instrument must first and foremost protecting the interest of the traditional knowledge holders and genetic resource owners. At the same time allow access by outsiders through benefit sharing.

An underwater scene featuring a vibrant coral reef with various types of coral, including green and yellow branching corals. Numerous small, colorful fish are swimming around the reef. The water is clear and blue. A diver is visible in the background, swimming near the surface. On the left side, there is a red vertical bar with several thin, curved red lines extending from it. A dark grey arrow-shaped graphic points to the right, partially overlapping the coral reef.

THANK YOU