CHAPTER 6

Implementing the Nagoya Protocol in Pacific Island Countries

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Introduction

The Pacific island region is comprised of a vast expanse of more than 38 million square kilometres, a mere two per cent of which is land that is divided among approximately 30,000 islands. Within this region of island nations there is a diverse array of societies and cultures, as well as a variety of legal systems; fourteen independent countries and eight dependent territories governed by the United States, France, New Zealand, or the United Kingdom, are located here. Samoa was the first Pacific island country to gain independence in 1962; the most recent was the Republic of Palau in 1994. The Pacific island region is often considered as three sub-regions; Melanesia, Micronesia and Polynesia. Geographically, Melanesia (Papua New Guinea, Solomon Islands, Vanuatu, Fiji and New Caledonia) is characterized by large islands with substantial forest and mineral resources. Micronesia, a name meaning “small islands,” comprises countries and territories (Kiribati, Republic of the Marshall Islands, Federated States of Micronesia, or FSM, Palau, Guam, Commonwealth of the Northern Mariana Islands and Nauru) with comparatively tiny areas of land and vast marine resources. Some Polynesian countries, such as Cook Islands, French Polynesia, Niue, Tokelau and Tuvalu, have similarly small land resources compared to those in Micronesia, whereas others, such as Samoa and Tonga, possess substantial terrestrial and marine resources, although the land areas are not on the scale of the Melanesian nations.

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For the purposes of this chapter the 14 independent Pacific island countries are: Cook Islands, Federated States of Micronesia (FSM), Fiji, Kiribati, Republic of the Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. The 8 dependent Pacific island territories are: American Samoa, French Polynesia, Guam, New Caledonia, Commonwealth of the Northern Mariana Islands, Pitcairn Islands, Tokelau, and Wallis and Futuna Islands.
Even though the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* (the Nagoya Protocol)*2* is a relatively new innovation in law, the matters that are its subject have been known to Pacific peoples for millennia. “The exchange of seeds, plants, animals and microbial cultures for a wide range of uses, including production of food, medicines, fibres etc … between partners communicating or negotiating in mutual trust has been a practice of humankind since time immemorial.”*3* Traditionally, knowledge was frequently exchanged along with genetic material. Indeed in many instances it may be difficult to distinguish between the two.

While both the knowledge and the material were highly valued, where the exchanges were upon equitable terms, negotiated and agreed via customary norms and processes, all parties benefitted.*4* In the Pacific as elsewhere, however, exchanges of genetic material and associated knowledge during the colonial period accelerated greatly in a manner that overwhelmingly benefitted the appropriators and not the providers. The inequity of colonial-era misappropriations of genetic material and associated knowledge is among the central reasons for modern disparities of wealth among nations.

ABS negotiations and the Nagoya Protocol are situated at a crossroads not only of conflicting interpretations and attitudes regarding historical events, experiences and trends, but also of clashing cultural concepts including knowledge systems, and … dire asymmetries of political power, legal recognition and a widening economic gap between haves and have-nots. It is therefore not at all surprising that the negotiations were long and difficult. It is also not surprising that the Nagoya Protocol is seen as a work in progress rather than the final word on the issue of ABS. Which paths will it take? That is the question now.*5*

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*2* *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, 29 October 2010, UN Doc. UNEP/CBD/COP/DEC/X/1, not in force.

