

IMPLEMENTATION STRATEGY NOTE

‘Protection of Indigenous Knowledge of Biodiversity in India’ is a two-year project funded by the International Development Research Centre (IDRC) and implemented by Gene Campaign. This document introduces the project as well as illustrates how the project will be implemented. This will be the guiding “process-document” for all those involved with the project implementation. This will help in coordinating the efforts of various people involved in the project implementation and enhance synergy.

PROJECT SUMMARY

Indigenous knowledge (IK) developed about biodiversity, is the mainstay of the food and livelihood security of rural and tribal people and the key to self reliant, sustainable growth and development. This IK, developed by generations of rural and tribal communities, is under serious threat today from the callous neglect visible in national and international policy, which is also leading to increasing (and unchecked) instances of biopiracy. The central problem is that while knowledge created in laboratories is acknowledged as the property of the innovator that created in fields and forests is not recognised as the property of its creators. This situation is inequitable and unjust and must change. The goal of this research project is to try to work towards that change by developing a system that would in effect protect the IK of bioresources in the interest of the local communities.

However, before we move on to design a regime for the protection of IK of biodiversity, we need to:

- ♣ take stock of the existing information of the nature and use of IK as well as informal (customary) mechanisms that *adivasi* and farming communities employ to protect biodiversity and associated IK; and
- ♣ analyse existing domestic laws and international agreements that tend to protect IK of biodiversity in order to evaluate what they offer and whether or not they need improvements.

This exercise is imperative not only for designing a suitable regime, but also to gain foresight on the effectiveness of the regime when implemented. Broadly speaking this project aims to undertake this initial exercise before attempting to develop a framework for a *sui generis* legislation to protect IK of biodiversity.

The Project has three **OBJECTIVES**:

- A. To review existing documentation of IK of biodiversity in South Asia and customary laws and practices in India, in order to assess what protection is offered to IK of biodiversity.
- B. To identify and examine existing international instruments and legal mechanisms in India, for the protection of IK of biodiversity.
- C. To subsequently identify potential mechanisms for protection of IK of biodiversity at national and local levels, including IPR tools and *sui generis* legislation.

RESEARCH AGENDA

EXISTING DOCUMENTATION IN SOUTH ASIA

Documented works on IK of biodiversity in South Asia will be reviewed and analyzed to see what features they contain that could afford protection to IK. This analysis will focus on structure and methodology as well as format and goals of the documentation, to evaluate the strengths and weaknesses of each approach and its contributions/effectiveness in protecting IK of biodiversity.

The existing customary laws and practices in India will be compiled to see in what ways they offer protection to IK of biodiversity and what the scope and effectiveness of this protection is. Examples of customary laws and practices will be worked up and presented in the form of case studies.

Some of the research questions that would be looked at are:

- What kinds of IK have been documented with respect to biodiversity?
- How accurate/ comprehensive/ detailed is this documentation?
- What are the methodologies used for documenting IK? Field surveys, secondary sources, etc.
- How comprehensive and sound are these methodologies for eliciting relevant information?
- What are the strengths and weaknesses of existing work and what could be suggested for improving documentation efforts in future?
- What, if any, is the potential of these documentation exercises in offering protection to IK?

INTERNATIONAL INSTRUMENTS AND INITIATIVES

International instruments and efforts & initiatives with a bearing on the IK of biodiversity will be examined and analysed from the perspective of protection offered to IK – to assess what they contain that could be of use to protect the IK of biodiversity. The international instruments and efforts that would be analysed are:

- ♣ The Convention on Biological Diversity (CBD)
- ♣ The Bonn Guidelines of CBD/ COP 6
- ♣ The FAO International Treaty on Plant Genetic Resources (ITPGR)
- ♣ The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights TRIPS (including discussions in the TRIPS Council)
- ♣ The ongoing exercise conducted by the World Intellectual Property Organisation (WIPO)
- ♣ The Organisation of African Unity (OAU) Model Law
- ♣ Efforts made by the Crucible Group, Canada
- ♣ Other efforts like the Convention of Farmers and Breeders, presented by Gene Campaign.

The research project will endeavour to answer the following research questions:

- What clues do the existing international instruments and efforts offer for protecting IK in India?

- Would the implementation of such international instruments in India have an overall positive or negative impact, at the national level and the community level?
- Are the provisions contained in these instruments adequate to protect the interests of the rural and *adivasi* communities in India?
- What are the other initiatives required at the international level, to protect the interests of rural and *adivasi* communities in India and the developing world?

NATIONAL LEGISLATION OF INDIA

The study of existing legal mechanisms in India will include the provisions contained in the Constitution of India and national laws relating to the protection of and access to bioresources/biodiversity. The national legislation will be examined to identify their strengths and weakness and analyzed with the purpose of identifying those provisions that can be construed to protect IK. The relevant national laws of India having a bearing on the protection of IK¹ of biodiversity are:

- ♣ The Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV-FR Act)
- ♣ The Biological Diversity Act, 2002
- ♣ The Patent (Amendment) Act, 2002
- ♣ The Geographical Indications of Goods (Registration and Protection) Act, 1999
- ♣ The Wildlife Protection Act, 1972
- ♣ The Forest Act, 1927

The research questions that would be considered during the study include:

- What are the legal and non-legal mechanisms that exist in India that could be used to offer protection to IK and acknowledge its creators as owners of that knowledge?
- To what extent do the Constitutional provisions in India succeed in offering protection to the IK of biodiversity?
- What customary practices, conventions and social arrangements exist in Indian society that would enable the protection of IK in the interest of local communities?
- To what extent do existing national legislation offer protection to IK? Are there special provisions for protecting the IK of biodiversity?
- Are available provisions adequate to protect the IK of biodiversity in the interest of the communities?
- Are there essential conflicts between 'community' interests and 'national interests' in the various provisions?
- Do domestic practices and laws promote overall development or do they tend to allow exploitation?
- Is this development just and equitable and inclusive of rural and *adivasi* people?
- Do these laws promote a skewed form of development which could bring in national revenues but which fail to reach the local communities?
- Do existing laws and policies promote commercialization / offer support for export etc. but do not sufficiently protect the economic and social interests of the community?

¹ Many of the provisions in these legislation may apply to bioresources *per se* but since bioresources and the IK derived from them, are intricately inter-linked, there may be an indirect provision for the protection of IK through the protection of and regulating access to the bioresources.

- Do the laws and practices make local communities partners in developing the framework for commercialization of IK based products?
- Do the existing laws, practices, policies, enable/ support local communities to be favorably positioned to engage in commercialization and income generation themselves?
- What are the weaknesses, contradictions and ambiguities in existing policy, practices and legislation from the point of view of protecting the IK of biodiversity?
- What amendments would be needed to improve these policy, practices and legislation so that they can effectively protect the IK of biodiversity in the interests of local communities and acknowledge their ownership?
- What could be the likely strategies for getting such amendments through?
- Would there be a need to draft a *sui generis* legislation to provide a comprehensive and just system that would provide legal protection to IK in the interests of local communities?

PROJECT OUTPUTS

RESEARCH REPORTS

- A. A review of the existing documented works on the IK of biodiversity in South Asia, from the perspective of protection of IK and a review of customary laws and practices in India that are protective of IK related to biodiversity/bioresources.
- B. A review of the *existing* legal mechanisms in India and in different international instruments, available for the protection of IK of biodiversity.
- C. A report of the conclusions of the Multi-stakeholder Dialogue on identifying and evaluating *potential* mechanisms for the adequate protection of IK, at local and national levels and the actions recommended for the future.

BRIEFS FOR POLICY ADVOCACY

- A. Existing Indian legal framework for the protection of IK of biodiversity: How can it be strengthened?

(This paper will introduce the existing legal framework; examine its adequacy for protecting IK of biodiversity in India; highlight the lacunae; and recommend ways to rectify them)

- B. Modes of protecting IK by local communities and existing policy environment in India

(This paper will review the practices that local communities use to protect their IK; highlight their strengths and weaknesses; examine whether the present policy environment enables or curtails such practices and recommend measures for enhancing the protection of IK best suited for the local community of India)

- C. International instruments and efforts to protect IK and its implications for Indian communities

(This paper will examine the suitability of existing international instruments and efforts in protecting the interests of local communities in India and recommend actions needed to ensure protection of IK in their interest)

BRIEFING PAPERS FOR PUBLIC EDUCATION AND AWARENESS

Eight briefing papers on IK related issues, such as biopiracy, access and benefit-sharing mechanism, existing customary laws and practices etc. The aim of publishing these papers is predominantly public education and awareness generation.

BOOKLETS

Major research findings will be published in English and Hindi in the form of booklets.

DISCUSSION PAPERS

These papers are aimed at promoting further discussion on issues related to the protection of IK of biodiversity.

A. Is a *sui generis* law needed to protect IK of biodiversity in India?

(Drawing from the understanding of the existing system vis-à-vis its suitability to protect IK, this paper will examine whether there is a need for a comprehensive sui generis law to protect IK of biodiversity)

B. South Asian Agenda for the Protection of IK

(This paper will endeavor to bring out what needs to be done at the local, national, regional and international levels for the protection of IK, from the South Asian perspective and flag issues for a South Asia level debate)

QUARTERLY ELECTRONIC NEWSLETTER

A quarterly e-newsletter will be published, which will carry news and views related to the protection of IK. It will also include the project progress and findings of the research study.

METHODOLOGY

The research and study approach will be participatory and inclusive of as many stakeholders as possible. The over all approach is one of consultation, dialogue and joint ownership. *Multi-stakeholder Dialogue* is a significant part of the methodology of this exercise. For this purpose a Multi-stakeholder Body (MSB) will be set up. The selection of stakeholders will be done through an informal consultative process so that the widest possible range of stakeholders is included. Care will be taken to include those that will contribute maximally to understanding and resolving the issues at hand.

Depending on the requirements of each research activity/question, one or more of the following methodologies would be adopted:

- Research, survey, review and analysis of literature
- Multi-stakeholder consultative process
- Expert consultations
- Interviews with select people/ communities
- Field studies/Case studies
- Networking with relevant organizations

IMPLEMENTATION STRATEGY

This section is divided into two parts. The first part will shed light on the human resource requirements and their roles and responsibilities. The second part will describe how and when various activities will be done.

PROJECT PERSONNEL

Human resource planning for the project implementation is a crucial part of the project implementation strategy. Keeping into account the requirements of the project and roles of various people, project personnel are divided into the following four groups:

1. Multi-stakeholder Body (MSB)
2. Project Advisory Committee (PAC)
3. South Asia Committee (SAC)
4. Expert Panel, and
5. Core Group

MULTI-STAKEHOLDER BODY (MSB)

As mentioned above, multi-stakeholder dialogue is central to this research project. The MSB would be set up to fulfill this requirement i.e. to get the views of all stakeholders through a process of dialogue. Membership of the MSB could be about 30 to 40, representing all stakeholders. The MSB will include representation from the following groups/institutions:

- Rural and indigenous communities
- Academics working in the field of tribal affairs, social sciences and biodiversity and associated IK
- Civil society organizations/NGOs active in this field
- Relevant government departments at national and state levels and policy makers (such representatives from Department of Indian Systems of Medicine; Ministry of Environment & Forest; Ministry of Commerce; Ministry of Agriculture etc.)
- National and state biodiversity development boards
- Legal/IPR experts
- Practitioners of IK and traditional healers
- Professional associations of Indian System of Medicine (ISM)
- Industry representatives
- Intergovernmental organisations
- Media

The MSB will provide important inputs to this research study through deliberation and debate as well as sharing relevant information, for instance providing leads. Draft research outputs will also be placed before them for their consideration and comments. Some part of the discussions with MSB members could take place electronically (email), and there may be individual interactions if needed, but the bulk of the interactions will take place face-to-face at the two MSB meetings convened for the purpose.

PROJECT ADVISORY COMMITTEE (PAC)

The PAC will consist of experts in fields associated with the project. The intention is to involve high level, experienced and influential people (prime movers) who will guide this research project and give advice and suggestions from time to time. There will be around 8-10 members from India and abroad that will constitute the PAC.

SOUTH ASIA COMMITTEE (SAC)

SAC will constitute of at least one representative each from Bangladesh, Bhutan, Nepal, Pakistan and Sri Lanka. They will be requested to provide leads for documentation work on IK in their respective countries. Apart from it, they will also be requested to disseminate project findings in their countries.

EXPERT PANEL

The Expert Panel will consist of IPR and legal experts, professionals and academics, who are well conversant with the issue. The Expert Panel will have 6-8 members who can be approached as and when required for consultation. At least two Expert Panel meeting will be organized in Delhi. The first meeting would endeavour to frame the outline and start the process of achieving Objective B, and the second to deliberate upon the draft that emerges from the first MSB meeting. Additional meetings of the Expert Panel with the project Core Team (*see below*) could also take place along side the project events – Project Launch Meeting, MSB meetings. Individual consultations will be sought with one or more members of the Expert Panel as and when need arise.

CORE TEAM

The Core Team for the purpose of project implementation would constitute of the following:

- ♣ Project Leader
- ♣ Project Researcher
- ♣ Research Assistant
- ♣ Project Manager
- ♣ Assistant Project Manager

Project Leader

Dr. Suman Sahai, Convenor, Gene Campaign will be the Project Leader. She will guide the Project Researchers and the Project Manager in their endeavours.

Project Researcher

One senior level researcher – Project Researcher – will be hired who will work under the close guidance of the Project Leader and the Expert Panel. The Researcher will be from law background with some experience in working on IK and IPR issues.

The Project Researcher will coordinate the ‘contents’ aspect of the project and his/her responsibilities will include:

- Framing the research design under the guidance of the Project Leader
- Interacting with stakeholders
- Research for the three Research Reports A, B and C
- Writing up reports A, B and C under the guidance of the Project Leader

S/he will specifically carry out the following activities:

- Coordination with the Expert Panel, the PAC and the members of the MSB
- Obtaining requisite inputs from the Expert Panel, the MSB, and the PAC
- Obtaining comments on their draft research reports from the members of Expert Panel, the PAC and the MSB and suitably incorporate them into the draft reports.
- Presenting research results before the MSB in an intelligible manner
- Take responsibility for bringing out reviews, research reports, and other publications in consultation with the Project Leader
- Preparing the proceedings of the project events

Mr. Ujjwal Kumar will be the Project Researcher. He is a lawyer by training and is working as Policy Analyst at Gene Campaign. His field of work includes trade and IPRs, farmers’ rights, indigenous knowledge and regulatory aspects of agricultural biotechnology.

Research Assistant

One Research Assistant will be appointed to assist the Project Researcher. This work will be assigned to *Mr. Piyush Mohapatra*, who has a background in Life Sciences and Law as well as practical experience of Patent law. He is working with Gene Campaign as legal researcher on issues pertaining to IPRs and rights of farmers and communities, including protection of IK.

Project Manager

One senior Project Manager will be appointed for the project, who will be responsible for managing (‘process’ aspect) the project under close guidance of the Project Researchers and Project Leader. *Mr. Rakesh Bhardwaj*, Project Manager, Gene Campaign will be assigned this task. He has over 10 years of experience as a manager.

The Project Manager will be responsible for:

- Managing all the project activities, such as organising events, MSB Meetings, Project Launch Seminar etc.
- Preparing and designing agenda for project meetings under the guidance of Project Leader and with consultation with Project Researchers
- Writing Quarterly Project Progress Report
- Maintaining project information and records, as well as correspond and liaison with people involved in the project implementation
- Coordinating between the Project Leader, Project Researchers, the Expert Panel, the MSB and the PAC
- Updating website and managing e-discussions
- Ensuring logistical requirements for project implementation
- Helping the Finance Officer of Gene Campaign on managing finance for the project
- Ensuring timely publication and dissemination of publications, reports and proceedings

Assistant Project Manager

One person will assist the Project Manager in his endeavours. *Ms. Reema Mathur*, Assistant Manager, Gene Campaign will do this task. She is an MBA and has over four years of experience in handling/assisting projects.

PROJECT ACTIVITIES & HOW WILL THEY BE IMPLEMENTED?

	Activities	How will they be implemented?
1	Setting up Core Team	The Project Leader, Project Researcher, Assistant Researcher, Project Manager and Assistant Manager are already available in house with Gene Campaign and are well versed with this research project.
2	Setting up of the Project Advisory Committee (PAC)	A roaster of possible names will be prepared. They will be sent a formal invitation along with this Implementation Strategy Note. Once they accept the invitation they will become members of the PAC for the purpose of this project.
3	Setting up of the South Asia Committee (SAC)	A roaster of possible names will be prepared. They will be sent a formal invitation along with document. If they agree to represent their respective countries, they will become the members of the SAC.
4	Setting up of the Expert Panel	A roaster of possible names will be prepared. They will be sent a formal invitation along with this Implementation Strategy Note. Once they accept the invitation they will become members of Expert Panel. Terms and conditions will be finalised with each member of the Panel.
5	Setting up of the Multi-stakeholder	A roaster of probable candidates for participating in the MSB will be prepared. They will be sent a formal invitation along

	Body (MSB)	with this Implementation Strategy Note. Once they accept the invitation they will be listed as members of the MSB for the purpose of this project.
6	Project Launch Meeting	<p>Once the Core Team, PAC, SAC, Expert Panel and the MSB are finalised, a two-day Launch Meeting will be convened in New Delhi in the first week of June 2004.</p> <p>Those involved with project implementation will be invited. An agenda of the meeting will be prepared in advance. Among other things it will include:</p> <ul style="list-style-type: none"> ♣ Introduction of the project (context, rationale, objectives, methodology) ♣ Technical sessions on (1) documentation of IK; (2) customary laws and practices for the protection of IK; and (3) existing national and international law/policy/initiatives for the protection of IK ♣ Finalisation of implementation strategy and allocation of roles and responsibilities <p>A comprehensive report of the Launch Meeting will be prepared and disseminated.</p>
7	Research Report A (Objective A)	<p>Research Report A will be outcome of research done under Objective A. Researcher will be responsible for writing research report. Apart from using her/his own knowledge and contacts, s/he will seek help from the Expert Panel, MSB, PAC to obtain research inputs. Members of SAC will be requested to provide information on the documentation of IK in their respective countries. Few field visits/case studies and personal interviews will be carried out for better understanding on traditional usage and customs. Some research components could also be outsourced.</p> <p>The draft Research Report A, when ready, will be sent for comments to MSB, PAC and the Expert Panel and any suggestions will be taken into account. The Research Report A will also be presented and discussed in the First MSB Meeting.</p>
8	Research Report B (Objective B)	<p>Research Report B will result from research done under Objective B. The research for this part will start with expert consultation through the First Expert Panel Meeting. Relevant provisions of the Indian Constitution and other national laws as well as international agreements (as mentioned above) will be marked. Then these provisions will be carefully examined in order to ascertain the scope of protecting IK of biodiversity.</p> <p>Apart from national laws and agreements, other international efforts or initiatives, for instance, that being undertaken by</p>

		<p>WIPO will be examined. Their merits and drawbacks will be highlighted.</p> <p>The Researcher will do the writing of Research Report B under the close guidance of the Project Leader and with consultation with the members of Expert Panel. Individual consultations will be undertaken, apart from Expert Panel meetings, as and when the need arises. At least seven such consultations are anticipated. For the purpose of expert consultation, the Researcher will formulate specific queries in clear-cut language.</p> <p>Once the first draft of the Research Report B is ready, it will be sent to the Expert Panel, PAC and MSB for their comments. Comments that are received will be incorporated.</p> <p>The revised draft of the Research Report B will then be discussed comprehensively in the First MSB Meeting. Suggestions and comments will be recorded. After this the Second Expert Panel Meeting will revisit the second draft of the Research Report B and make changes, if any, taking into account the deliberations of the First MSB Meeting. This will finalise the Research Report B. Differing views, if any, will be reflected in the report.</p>
9	Research Report C (Objective C)	<p>For the purpose of Research Report C, the Second MSB Meeting will be called at New Delhi. The MSB will identify the potential mechanisms for protecting IK taking into account research findings in Research Report A and B, and after evaluating the existing legal provisions and customary practices.</p> <p>Deliberations of the Second MSB Meeting will be recorded in detail, based on which the draft Research Report C will be prepared. This report will be evaluated by the Expert Panel to analyse the feasibility of identified potential mechanisms. The draft Report will also be sent for comments from PAC. After incorporating the obtained information/analysis/comments, Research Report C will be finalised. The report will contain dissents, if any. It will also contain a set of recommended actions at local, national, regional and international level.</p>
10	Publications	<p>Three Briefs for Policy Advocacy, two Discussion Papers will be prepared by the Core Team on the basis of Research Reports A, B and C.</p> <p>Similarly, two booklets (one in English and one in Hindi) containing major research findings of the Research Reports A, B and C will be prepared by the Core Team.</p>

		<p>The Core Team will also write eight Briefing Papers on various issues involved with the protection of IK. At least one briefing paper will be written in each of the 8 quarters.</p> <p>A quarterly e-newsletter will also be prepared and will be mailed electronically to the Gene Campaign's mailing list and other list serves.</p>

*Please also refer to the **quarter-activity-responsibility chart**, which is **annexed** to this document.*