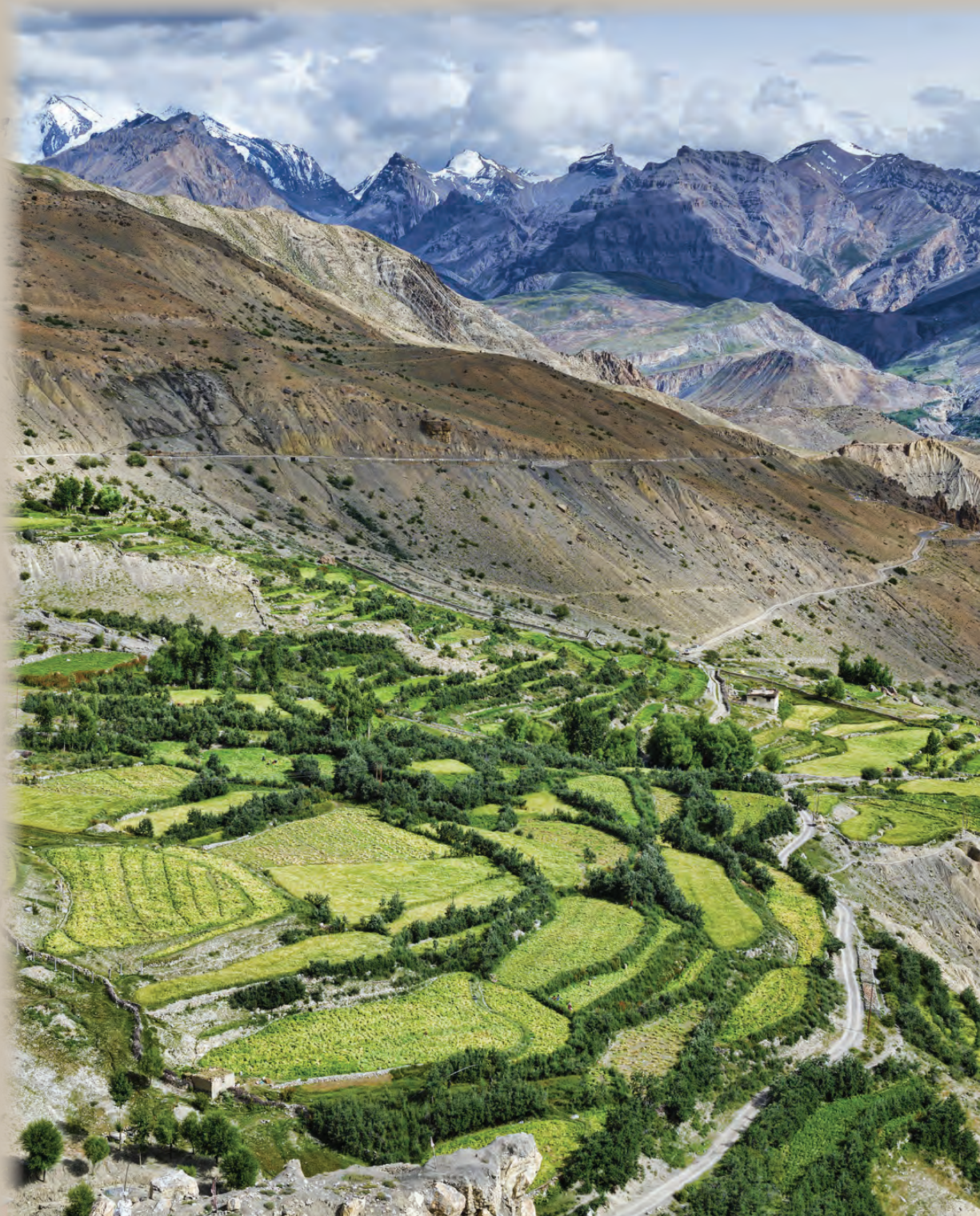




Development Dimensions of Intellectual Property in Nepal:

**Transfer of Technology, Access to Medicines,
Genetic Resources and Traditional Knowledge**



United Nations Conference on Trade and Development

**Development Dimensions of Intellectual
Property in Nepal**

**Transfer of Technology, Access to Medicines,
Genetic Resources and Traditional Knowledge**



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Note

The Development Dimensions of Intellectual Property in Nepal: Patents and Access to Medicines, Genetic Resources/Traditional Knowledge, and the Transfer of Technology

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Table of Contents

Table of Abbreviations	v
Executive Summary	6
1. Introduction: the Context of IP Policy Making and Development.8	
1.1 Socio-economic Framework for IP Policy in Nepal	8
1.2 International agreements and Nepal	10
1.3 Nepal's IP Framework	13
2. Patents and Transfer of Technology	15
2.1 Enabling the Use of Technological Information in IP Applications	15
2.2 Patent Examination: Balancing IP Rights and Technology in the Public Domain	19
2.3 IP for the Diffusion of Technology through Incremental Innovation.....	21
2.4 The Use and Abuse of IP rights: Remedies and Technology Transfer.....	23
3. Patents and Access to Medicines.....	27
3.1 Nepal's Access to Medicines Regime	27
3.2 Local Pharmaceutical Manufacturing	29
3.3 Transition Periods and TRIPS flexibilities.....	30
3.4 Enabling the Use of TRIPS flexibilities	32
4. Patents and Access to Genetic Resources and Benefit Sharing Arising from their Utilization.....	33
4.1 Nepal's ABS regime and the interface between IP and Biodiversity	33
4.2 Prevention of Bio-piracy and Misappropriation.....	35
1) <i>The Mandatory Disclosure Requirement</i>	35
2) <i>The Role of a Traditional Knowledge Digital Library and an IP Office</i> ..	37
3) <i>Other IP rights issues relevant to the defensive protection of GRs/TK</i>	38
4.3 Positive Protection: Options for <i>Sui Generis</i> Protection of TK.....	39
5. Policy Coordination, Priority Action areas and Institutional Reform	43
5.1 Capacity Building.....	43
5.2 IP Enforcement and Awareness	45
5.3 Prioritising action areas	46
Conclusion	48
Bibliography	49

Table of Abbreviations

ABS	Access and benefit sharing
AIDS	Acquired immunodeficiency syndrome
ARIPO	African Regional Intellectual Property Organisation
API	Active Pharmaceutical Ingredient
CBD	Convention on Biological Diversity
CDIP	Committee on Development and Intellectual Property
DDIP	Development Dimensions of Intellectual Property
EPO	European Patent Office
GIs	Geographical Indications
GMP	Good Manufacturing Practices
GRs	Genetic Resources
GRs/TK	Genetic resources and associated traditional knowledge
HIV	Human immunodeficiency virus
ICTSD	International Centre for Trade and Sustainable Development.
IP	Intellectual Property
LDC	Least Developed Country
MoHP	Ministry of Health and Population
PIC	Prior informed consent
R&D	Research and Development
SMEs	Small and medium enterprises
TK	Traditional knowledge
TKDL	Traditional Knowledge Digital Library
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UPOV	International Convention for the Protection of New Varieties of Plants
USPTO	United States Patent and Trademark Office
WHA	World Health Assembly
WHO	World Health Organisation
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Executive Summary

The recommendations of this report have already been provided to the Government of Nepal. The objective of this report is not only to formalize those recommendations, but also to disseminate the approach, findings and recommendations that have wider applicability to other Least Developed Countries (LDCs).

UNCTAD originally developed this Report on the development dimension of intellectual property rights (DDIP) in response to a technical assistance request from Nepal. Part 1 of this Report outlines the major framework for intellectual property (IP) policy in Nepal. IP rights have differential impact on countries based on their respective levels of development, with LDCs being in a less advantageous position due to their limited absorptive capacity and technological base, among other limitations. In this context;

- The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) provides Nepal with transition periods for the implementation of the TRIPS Agreement until 2021 and for availability of pharmaceutical product patent and pharmaceutical test data protection until 2033. It also provides for inbuilt flexibilities for implementation, subject to the non-discrimination principles and the obligations under the Paris Convention and the Bern Convention.
- Further, the objectives of the various socio-economic policies of Nepal and related implementing acts and regulations, as well as institutions, may benefit from or conversely be influenced by IP rights. Striking an appropriate balance between the protection of IP and socio-economic objectives should be the key goal of IP legislation and implementation.

Considering its level of development, IP policy makers in Nepal needs to consider the importance of and the factors that facilitate indigenous learning activities and the adaptation of technologies, through incremental innovation in vital and promising sectors of the economy. Part 2 of the Report recommends a number of legislative, policy and practical steps to facilitate and enable the technological and innovation functions of IP protection. Part 3 of the Report examines the access to medicine regime of Nepal and recommends for Nepal to implement the transition period for the protection of pharmaceutical product patents and pharmaceutical test data that lasts until 2033. Part 4 of the Report analyses Nepal's access and benefit sharing regime, the interface between IP and biodiversity, and options for defensive and positive protection of genetic resources (GRs) and traditional knowledge (TK).

The recommendations of this Report on the framework for IP policy in Nepal and on each specific area examined have legislative and institutional dimensions that require capacity building, and, in some cases, additional studies to develop specific action plans for implementation. This Report serves as a good basis for identifying Nepal's priority needs for technical and financial cooperation.

Among the legislative reforms, the recommendation for the exclusion of pharmaceutical products from patentability and the protection of pharmaceutical test data can be prioritised, possibly without waiting for the full amendment of the 1965

Patent, Design and Trademark Act 2022 (Industrial Property Act). Other recommendations will require the IP Office to adopt and implement rules and procedures. Revisions to Nepal's Industrial Property Act should be made keeping in mind the ultimate objective of IP rights, in accordance with Article 7 of the TRIPS Agreement, to:

- *Ensure that IP laws contribute to innovation and technology transfer to vital sectors of the economy and facilitates indigenous learning and adaptation;*
- *Build mutual supportiveness of IP laws and laws and policies for the protection of GRs/TK, public health, others; and*
- *Ensure access to technological goods and services by the Nepalese public at large, including access to medicines and educational material by the use of TRIPS flexibilities.*

Finally, the IP system and IP policy will cover subject matter and laws/regulations that involve various Ministries. In the mid to long term, an effective institutional structure will need to exist in order to ensure effective coordination and policy coherence. Much of the analysis and recommendations of this Report are not limited to Nepal. LDCs and other developing countries face similar challenges in technology transfer, access to medicines, and the protection of GR and TK. Consequently, this Report may provide them with useful guidance.

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