Methodology for the Development of National Intellectual Property Strategies
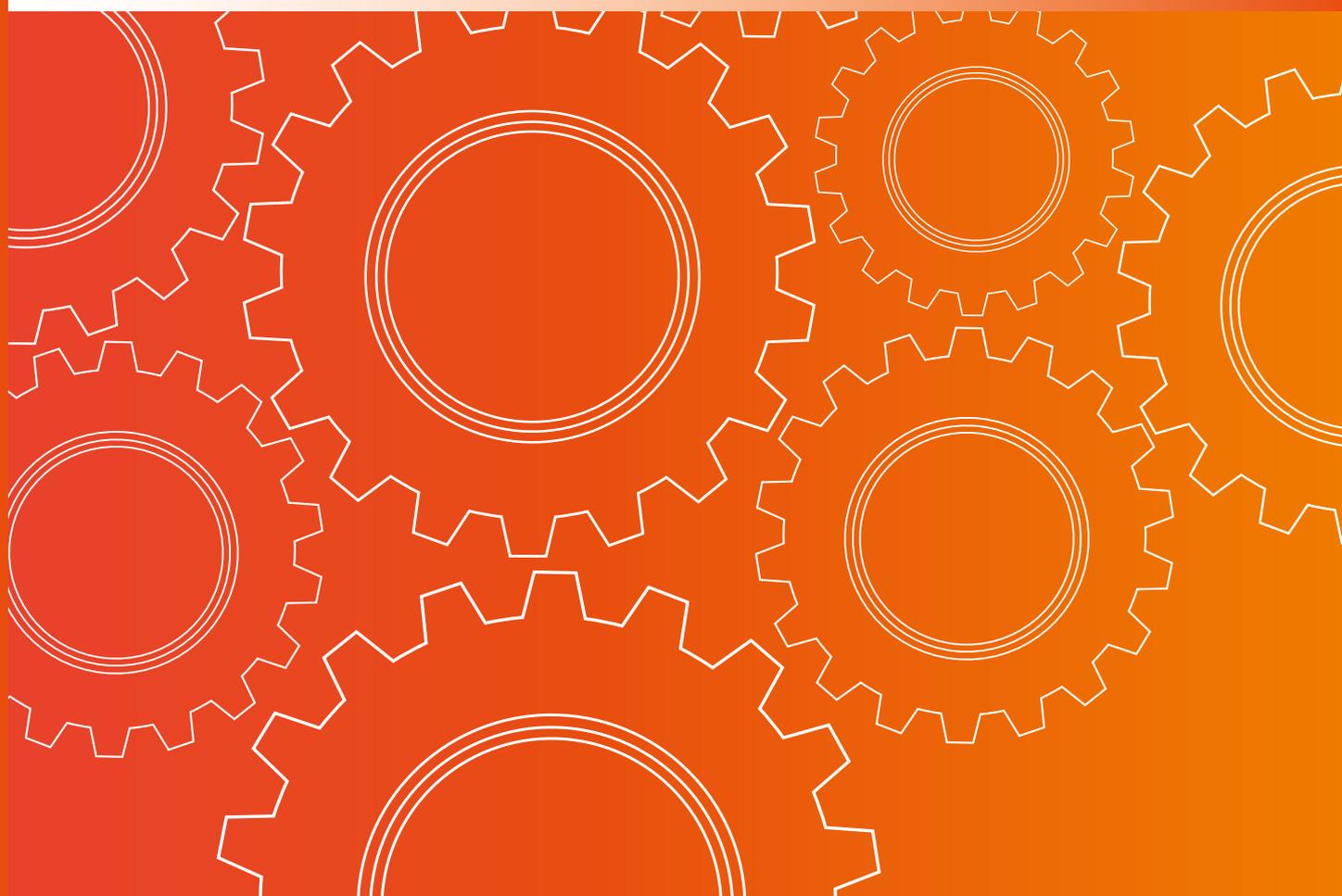
Tool 2: Baseline Survey Questionnaire

2014

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Methodology for the Development of National Intellectual Property Strategies

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Assessing the Current Status of the National Intellectual Property System and its Links with National Development Priorities

PURPOSE OF THE QUESTIONNAIRE

The questionnaire is aimed at those directly involved in the operation and use of the national intellectual property (IP) system – those who can provide important information about IP laws, administration, enforcement, the relationship between other policies and national objectives, and the creation and / or utilization of IP.

Respondents may include government officials dealing with the enactment of IP laws or the processing of applications for IP rights ; they may also include IP dispute lawyers, enforcement officials, business support organizations, inventors working in the public or private sectors, or businesspeople who are using IP in some way. Additionally, they may include professionals working in the private sector, in the government sector, or in organizations involved in the development of innovative businesses and commerce.

The questionnaire should be used when conducting interviews with stakeholders and other respondents ; it could also be used to facilitate discussions and further investigate any additional issues that may arise during the course of the interviews.

The information elicited during the interviews will provide the basis for an analysis of the national development priorities on which the national IP strategy will be built. The findings may be analysed with a view to identifying strengths and weaknesses, opportunities and threats (SWOT) in relation to IP development and IP asset management. Once such an analysis has been carried out, it will be possible to identify which key cluster areas are relevant in the context of developing an IP system for the country. In addition, the process will help to identify the key stakeholders who will be required to participate in the development and implementation of the strategy.

The questionnaire is intended to act as a prompt for the identification of IP issues, and to provide information about these issues; it is deliberately designed in such a way that it should not result in eliciting answers of the "yes / no" variety from respondents. The questions are grouped in clusters that relate to different sectors in society and the economy.

If the interviewer believes a question in one cluster is relevant to another cluster, then they should feel free to ask that question and record the answer. Each cluster begins with a section which aims to identify the individual or organization representative who is taking part in the interview; this section also aims to ascertain this individual / representative's role and responsibilities within the organization.

All questions should be answered in a way that reflects the IP interface with the different clusters. In other words, the answers to the questions should help the interviewer to understand the current IP situation in a given cluster; the answers should also help to identify the IP system's current strengths, weaknesses, potential and needs, with a view to informing the IP strategy development process. Questions relating to specific sectoral policies and other open-ended questions should therefore be examined from an IP angle in the context of the IP component and interface.

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CLUSTERS AND INDICATORS

SEVEN CLUSTERS

1. **IP administration and management**

2. **Generation of IP by universities, research organi-zations, business, industry, SMEs and individuals**

3. **Commercialization of IP and technology transfer by universities, research organizations, business, industry, SMEs and individuals**

4. **Copyright and copyright industries**

5. **Plant breeders' rights (plant variety protection)**

6. **Enforcement of IP rights**

7. **IP and public policy**

CONTENTS

CLUSTER 1
IP ADMINISTRATION AND MANAGEMENT

Name:

Organization:

Responsibility:

Contact details:

Part A: Current status

1. Legal status of the national IP office

a. Please describe the current legal status of the national IP office. Is it a small unit, a department, a semi-autonomous entity, or an autonomous entity?
b. To which government department and to which government minister is the national IP office answerable to?
c. Which international bodies or systems is the national IP office affiliated to?

2. Autonomy of the national IP office

a. Please explain the current governance of the national IP office. Does it have a board? Who appoints the board? What is the composition of the board?
b. How is the performance of the national IP office audited, and are the audit findings published?
c. How is the national IP office funded? Does it retain an operating surplus? What is the current income and surplus position?

3. Key functions of the national IP office

a. Which types of industrial property rights does the national IP office grant and administer?
b. Does the national IP office have any judicial functions?
c. What role does the office play in the development of domestic and international IP policy?
d. Which institution holds responsibility for copyright and related rights?

e. Which institution holds responsibility for plant breeders' rights?
f. Which institution holds responsibility for policies on traditional knowledge (TK) and genetic resources?

4. Staffing of the national IP office and human resources development plan

a. Is the national IP office able to recruit staff according to its needs?
b. How many staff does the office currently have in each organizational section? Is this number sufficient to meet current and predicted grant applications demand? How many technically trained
staff are currently employed by the office?
In which particular functions/areas are they qualifed to practice?
c. Which functions/roles prove the most difficult to fill when it comes to recruiting suitably qualified staff?
d. What training programs are available to staff to increase their knowledge of IP?
e. Does the office have a staffing plan in place?

5. Formal and substantive examination

a. What type of examination does the national IP office undertake for patents and trademarks?
b. How does the examination system ensure proper disclosure and a fair basis for granting rights?
c. How does the national IP office examine applications for novelty and – in the case of patents – for inventive step?
d. What information sources or databases does the national IP office use when carrying out this work?
e. What opportunities are provided for registering opposition to the granting of rights? Who has the authority to act on behalf of the owners of IP rights?

6. Automation and modernization of the national IP office

a. Which functions of the national IP office have already been automated, and for which functions are automation plans currently in place? (e.g., automated information systems to facilitate the search, examination or registration of patents, trademarks.)

b. How does the national IP office publish IP applications patent specifications, trademarks and registered designs? How does it notify the public when trade marks or patents have been granted?

c. How is the IP rights register made available to the public?

d. Is it possible for applicants to carry out electronic transactions with the national IP office? If yes, please explain how this works.

e. What presence does the national IP office have across the country's administrative regions? How does this compare with other governmental or non-governmental regional bodies' level of presence across the country's administrative areas?

7. Communication issues

a. What communication mechanism (email, fax, letter by post, Skype, telephone, other) is employed when consulting with users of the IP system?

b. What communication mechanism (radio publicity, TV publicity, print media publicity, consumer surveys, other) is used when consulting the public on the impact of IP rights?

8. IP applications and grants

a. What are the latest statistics on IP applications and grants, and what conclusions do you draw from these statistics? How does the ratio of applications from nationals and non-nationals compare, and how do you interpret this difference?

b. From which social/economic sectors (e.g., agriculture, energy, manufacturing, ICT) are the biggest numbers of IP applications received?

c. To what extent do businesses that were founded in the country seek IP protection abroad?

d. What is the current rate of pending IP applications?

e. On average, how long does it take for the national IP office to grant/refuse an application for an IP right after the initial application has been submitted (e.g., by type of application/IP right)? How could this process be improved and what additional resources would be required?

f. How much does the procedure of applying for an IP right cost (by type of IP right) and what is the annual maintenance cost once the IP right has been granted/registered?

g. Do you believe that the cost of these procedures is a barrier to IP creation?

9. National laws on IP

a. Please identify which laws provide IP protection for the following? Please indicate when these laws were enacted.
   i. Patent
   ii. Trademark
   iii. Copyright
   iv. Industrial design
   v. Trade secret
   vi. Integrated circuit
   vii. Geographical indication, appellation of origin
   viii. Traditional knowledge
   ix. Traditional cultural expressions/folklore
   x. Utility model
   xi. Plant breeders' rights (plant variety protection)

b. Which of the above laws may require revision, and why?

c. Which new IP laws do you believe should be enacted, and why?

10. IP tribunal

a. Does the country have an IP tribunal? If yes,
   i. What is the legal status of this tribunal?
   ii. What is the staffing level of the tribunal? How is the tribunal financed? Are the staffing levels and financial resources adequate?
   iii. Who is responsible for appointing the members of the tribunal?
   iv. What is the composition of the tribunal?

b. If the country does not have an IP tribunal,
    i.   How can an IP right be opposed or cancelled?
    ii. How are decisions made by the national IP office challenged or subjected to review?

c. If IP rights are not used for a period of time, what actions can be taken against the right holder?

d. What exemptions and restrictions are applied to IP rights?

e. What is the relationship between IP and competition law?

11.   Compliance with TRIPS

a. Are the IP laws listed in section 8 above compliant with TRIPS?

b. In which areas are they not compliant?

c. Does the government intend to make them compliant? And if not, why not?

12.   Use of flexibilities in TRIPS

a. In what way does IP affect access to medicines, and how is this issue dealt with?

b. Who holds responsibility for dealing with matters relating to the impact of IP on health issues?

c. In what way does IP affect access to medical devices and technology?

d. Does the country have policies and regulations in place which are designed to exploit TRIPS flexibilities, (e.g., policies and regulations such as compulsory licensing and parallel importation)? If yes, who is responsible for implementing these regulations and policies? If no, are there plans to put such policies and regulations in place?

e. How are partnerships between health authorities and IP right holders encouraged and managed?

13.   Compliance with international agreements, treaties and protocols

a. Which international agreements, treaties and protocols is the country currently party to?

b. Which international agreements, treaties and protocols is the country currently not party to?

c. Which international agreements, treaties and protocols does the country plan to be party to within the next five years?

14.   IP registration professionals (attorneys and agents)

a. How many IP professionals/attorneys are currently practicing in the country?

b. How does this number equate with demand for these professionals' services?

c. How are IP professionals trained? What qualifications must they have in order to be allowed to practice?

d. How are their professions regulated?

e. What role does the national IP office have in the training, qualification and regulatory process?

f. If the national IP office does not hold responsibility for the training, qualification and regulatory process, which government department holds responsibility for this area?

g. If the IP professionals/attorneys are self-regulating (e.g., through an association of IP professionals/attorneys), to whom are the regulators of those associations accountable?

h. What type of professional development is required in order for the professionals to be fully registred?

Part B: problems, challenges, priorities and strategic issues

1. Problems and challenges

a. What are the main shortcomings in IP laws and regulations that affect the ability of IP stakeholders to use the IP system effectively?

b. What other major problems or challenges are a result of these shortcomings?

c. Are resources in the national IP office sufficient to deal with these problems/challenges?

d. What reforms do you believe would be necessary in order to improve the identified shortcomings?

2. Priorities

a. What are the priorities of the national IP office in terms of developing the IP system over the next five to ten years?

b. Who are the main partners and stakeholders involved in addressing these priorities?

c. What IP development programs, if any, are currently being undertaken, and in partnership with which institutions or organizations?

3. Strategic issues

a. Which organizations/institutions need to be consulted during the process of identifying the main components of an IP strategy?

b. Name the principle organizations that should be involved in managing the implementation of the strategy?

c. What mechanisms are used for consultations with other government departments on the development of IP-related policy? In your view, what actions, if any, would need to be taken in order to improve this collaboration (e.g., regular meetings)?

d. Which government institutions/organizations need to provide resources in order to help implement the strategy?

e. Which international organizations could be approached to provide support to assist the development and implementation of the strategy?

f. How well have previous programs, if any, with international partners (e.g., the World Bank, USAID, or the European Union) been implemented?

g. What mechanisms are used for securing agreement on and for carrying out assessments on the outcomes of international development programs (e.g., stakeholder meetings, focus group discussions, consultations with beneficiaries)?

CLUSTER 2 :
GENERATION OF IP BY UNIVERSITIES, RESEARCH ORGANIZATIONS, BUSINESSES, INDUSTRIES, SMEs AND INDIVIDUALS

Name :

Organization :

Responsibility :

Contact details :

Part A: Current Status

1. Science technology and innovation (STI) policy

a. What is the government's national development plan with regard to science, technology and innovation ? Who holds responsibilty for this area, and what progress is being made ? Where may information on this national development plan be found ?

b. Has an innovation survey been carried out ? If yes, in what way is this survey informing national policy ?

c. Which sectors are key to the national economy ? Provide data on the sectors / industries that account for the largest contributions to gross domestic product (GDP).

d. Which types of businesses does the government focus on (i.e., large-scale enterprises, small and medium-sized enterprises, micro-enterprises) ?

e. What is the government's policy with regard to encouraging innovation and the creation of domestic IP ? Does it focus on specific clusters (e.g., manufacturing, agriculture, energy, tourism) ? Which government department / agency adminisers this policy ?

2. Promoting innovation and patenting in industry

a. How is technology transfer from universities and research institutions facilitated by the government ? What rules does the government apply in relation to the execution of such transfers ?

b. What financial support does the government offer to businesses by way of grants, loans, or tax credits to support innovation and the creation of IP assets, and to offset the cost of filing and maintaining applications and / or legal costs for IP protection ? Do SMEs receive any particular concessions ?

c. In what way are support schemes publicised and marketed ?

d. What advisory services about the creation and use of IP are provided by the government ? Does the country have any national information centers or other governmental / non-governmental institutions that provide businesses with information on IP creation, use, commercialization and / or enforcement ? How efficient are these services ?

e. What training programs in the area of innovation and IP matters does the government provide to businesses ?

f. What methods does the government use to faciliate cooperation between various stakeholders in the creation and exploitation of IP ?

g. What tax concessions are offered to businesses in relation to IP matters ?

h. What mechanisms have been put in place to provide support to the country's administrative regions with regard to the creation and exploitation of IP ?

3.   Institutional IP policies

a.   What IP policies do universities and research institutions have in place with regard to inventions created within those institutions?

b.   Who owns the inventions that are created in universities and research institutions – inventions that arise from research funded by the government?

c.   Who owns the inventions that are created in universities and research institutions – inventions that arise from research funded by the private sector?

d.   Who owns the inventions that are created in universities and research institutions – inventions that arise from research undertaken in collaboration with foreign research institutions?

e.   How is commercialisation of IP facilitated by universities and research institutions (e.g., through the technology transfer office, university-based company, incubation units etc)?

f.   What support exists for spin-off companies (start-up capital, releasing staff to work in the company, incubation units)?

g.   How do businesses cooperate with research institutions (contract research, joint research)?

h.   How is information about research opportunities publicised (university newsletter, annual report, policy briefs)?

i.   How are the results of research publicised (workshops, conferences, seminars)?

j.   Is there a policy on benefit-sharing?

k.   How are potential commercialisation partners brought together with researchers (university exhibitions, special university sponsored commercialization forums, advertising through media)?

l.   How is information about IP (IP laws, IP mechanisms, costs) disseminated (academic journals, websites, other)? Is it easy to secure assistance/support from the relevant institutions (i.e., national IP office)?

4.   Funding of research and development (R&D)

a.   How are the R&D activities in universities and research institutions currently funded?

b.   What percentage of GDP is allocated to R&D activities by the government?

c.   What percentage of GDP is allocated to R&D activities by the private sector?

d.   What percentage contribution of donor funding is allocated to research activities in universities and research organizations?

e.   Who determines the research agenda in universities and research organizations? Is this determined by the government or by donors?

5.   Human resources for innovation

a.   How are researchers and others trained in IP? What are the links between their work and IP (e.g., undertaking research that can lead to IP, undertaking demand-driven research, identifying research projects based on research needs assessments?

b.   How many technically trained/scientifically trained people are there currently in the economy? Is this an upward trend or a downward trend?

c.   What is the relationship between the supply of such people and the demand in the economy? (i.e., does the number of trained persons meet, exceed or fall short of the demand in the jobs market?)

d.   Is the country having problems meeting demand for human resources in key specific areas (e.g., ICT, BPO, oil exploration) where economic growth is planned?

e.   What level of education and training qualifications/skills exist in the country? Is brain drain a problem? If yes, what do you see as the main reasons for this

6.   National innovation system

a.   Does the country have a national innovation system?

b.   What mechanisms exist to facilitate consultation and discussions between business, universities and government institutions and departments?

c.   What are the national technological development objectives?

d.   What industry-sector specific policies are in place?

e.   How are the issues of economic policy and technology policy discussed between universities, government and industry?

7. Technology and IP information services

a. Are IP databases available and accessible?
b. If yes, do businesses make use of these IP data-bases? If not, why not?
c. Are IP filings digitized and available online?
d. To what extent do universities and research institutions use technology and patent informa tion systems for research and development?
e. To what extent do businesses and SMEs use technology and patent information systems for innovation and the acquisition of technology?
f. Does the government have a policy in place that is designed to encourage businesses and SMEs to use patents which are in the public domain?

8. IP education and training

a. In what way does IP affect the education system and methods of teaching?
b. Are teachers and lecturers aware of IP-related issues such as patents, copyrights, industrial design etc.?
c. Which educational institutions provide education and training on IP? What types of courses are provided?
d. At what stage are students provided with IP education? Is this provided at school? At university?
e. How is responsibility for IP matters dealt with at individual educational institutions?
f. How are researchers trained in IP and its use?
g. What education is provided to businesspeople, government officials, designers and students in relation to the principles of IP and the impact of IP on society and business?
h. To what extent is this education followed by specific job-focused training for individuals?
i. What educational courses in IP law are available at university, and to what academic level are these provided?
j. Which research programs are focused on investigating the economic and legal impact of IP?
k. How many IP faculties are there in the country's universities?
l. How many IP professionals have been trained either in the country or abroad?

9. IP awareness and outreach programs

a. What is the general level of IP awareness in the country?
b. Does the level of IP awareness differ from sector to sector, (e.g., universities, business, research institutions, government departments, local government)?
c. Has an evaluation exercise of IP awareness throughout the country been undertaken?
d. Is there a strategy in place for enhancing IP awareness?
e. What is the general attitude of citizens towards IP?
f. What are the perceived disadvantages and advantages of IP from the citizens' point of view?
g. Are citizens consulted on the development of IP policy or other IP-related economic/social/cultural policies? If yes, how?
h. Does the current level of IP education and awareness meet the country's needs? If not, what actions would be necessary in order to improve the current situation?

Part B: Problems, Challenges, Priorities and Strategic Issues

1.   Problems and challenges

a. What are the main barriers that businesses face when innovating / seeking to innovate (e.g., skills shortages, access to finance, onerous and timeconsuming business regulations, IP rights' registration, maintenance and enforcement costs)?

b. What are the major problems and challenges created by the current IP situation in terms of creativity and innovation by universities, research organizations, industry, SMEs and individuals?

c. Are sufficient resources (financial, human and infrastractural) in place to deal with these problems / challenges?

d. In your view, what key reforms are needed at this point (e.g., regulatory, legal, policy, institutional framework, human, technical, financial resources)?

2.   Priorities

a. What are the priorities in terms of developing the IP system (with regard to innovation and creativity) over the next five to ten years?

b. Who are the main partners and stakeholders who will be involved in meeting these priorities?

3.   Strategic issues

a. Which bodies should be consulted during the process of identifying the main components of an IP strategy?

b. Which key stakeholders should be involved, in order to manage the implementation of the strategy?

c. How should government and business work together to develop and implement the strategy?

CLUSTER 3:
COMMERCIALIZATION OF IP AND TECHNOLOGY TRANSFER BY UNIVERSITIES, RESEARCH ORGANIZATIONS, BUSINESSES, INDUSTRIES, SMEs AND INDIVIDUALS

Name:

Organization:

Responsibility:

Contact details:

Part A: Current Status

1. Technology transfer offices (TTOs)

b. Do the country's universities and research institutions have technology transfer offices (TTOs)?
c. If yes, how are these TTOs resourced, staffed and operated?
d. If not, how is commercialization from universities and research organizations facilitated?

2. Valuation of IP assets

a. Are mechanisms in place for assessing the value of IP assets? If yes, how are these used?
b. Does the country have experts on IP valuation?
c. Are policies in place to promote IP valuation?
d. Are industries encouraged to carry out regular valuations of their IP assets?

3. Financing the commercialization of IP assets

a. Financial products: What systems of financial support are available from banks or other investment agencies? What criteria are used in the making of investment decisions? To what extent does IP play a part in the decision-making process?
b. Collateral: Are objects of IP regarded as assets against which finance can be raised? What types of IP are regarded as financial collateral?
c. Business plans: Do any financial institutions in the country recognise business plans based on IP assets? If yes, can you name these institutions?
d. Financial reporting: Are IP assets taken into account in the financial reporting of publicly owned companies?
e. Privatization: Are IP assets taken into account in the privatization of publicly owned companies?
f. Monetization or securitization: Are policies in place to promote monetization or securitization (i.e., where an IP holder sells to an investor a current royalty or revenue stream – one that is derived from or is based on its IP – for a cash price that is deemed reasonable by both parties)?
g. Venture capital: Are venture capital mechanisms available? If yes, to what extent are these mechanisms used?
h. Joint venture or merger: What approach is adopted by investors who are seeking joint ventures or mergers in relation to the ownership of IP in the businesses that the investors are seeking to get involved in?
i. Government financial institutions: Do innovation-based businesses benefit from credit support programs provided by national development banks?

4.   Licensing of IP assets

a. What systems are in place for facilitating technology licensing between different stakeholders?

b. Does the country have in place professional service providers with relevant licensing-related expertise?

c. Does the country have a government agency with the capacity to provide various supports in relation to licensing?

d. Are you aware of any success stories of licensing agreements between universities and local industries?

5.   Business (technology) incubation

a. Does the country have a policy on business (technology) incubation?

b.   Do universities and research organizations in the country have business incubation programs/centers?

c. If yes, how are they funded and what is their success rate?

6.   Product and prototype development facility

a. Does the country have the requisite infrastructure or facilities in place to support researchers and inventors with product or prototype development?

b. If yes, how do such facilities operate, and how are they funded?

7.   Science and technology parks

a. Does the country have a policy on the develop ment of science and technology parks?

b. Do the country's universities and research organizations have science and technology parks in place?

c. If yes, how are these science and technology parks funded, and what is their success rate?

8.   Technology transfer policy

a. Has the country carried out a technology needs assessment?

b. Does the country have a policy on technology transfer?

c. Does the country have the requisite infrastructure to promote the utilization of patents in the public domain?

9.   Foreign markets for IP

a. To what extent are the country's exporting firms reliant on IP?

b. How do these exporting firms manage their IP in foreign markets?

10.   IP commercialization professionals (valuation, auditing, licensing and technology managers)

a. How many IP commercialization professionals are currently practicing in the country?

b. How does this number equate with demand for their services?

c. How are IP commercialization professionals trained and qualified?

d. How is their profession regulated?

e. What role does the national IP office play in the training, qualification and regulatory process relating to IP commercialization professionals?

f. If the national IP office is not responsible for the training, qualification and regulatory process, then which government department holds responsibility for this area?

g. If the IP commercialization professionals are self-regulating, to whom is the regulator accountable?

h. What professional development are commerciali-zation professionals required to undertake?

Part B: Problems, Challenges, Priorities and Strategic Issues

1.　Problems and challenges

a. What are the main barriers facing universities, research institutions, businesses, SMEs and individual inventors in relation to the commercialization of IP assets and technology transfer?

b. What are the major problems and challenges created as a result of the current situation?

c. Are sufficient resources in place to deal with these problems/challenges?

d. In your view, what key reforms are needed at this point (e.g., regulatory, legal, policy, institutional framework, human, technical, financial resources)?

2.　Priorities

a. What are the priorities in terms of developing the IP system (commercialization of IP) over the next five to ten years?

b. Who are the main partners involved in meeting these priorities?

3.　Strategic issues

a. Which bodies need to be consulted during the process of identifying the main components of an IP strategy with regard to IP commercialization?

b. What core mechanisms are required in order to manage the implementation of the strategy?

c. How should government and business work together to develop and implement the strategy?

CLUSTER 4 :
COPYRIGHT AND
COPYRIGHT INDUSTRIES

Name :

Organization :

Responsibility :

Contact details :

Part A : Current Status

1.   Legal status of the Copyright Office

   a.   Please explain the current legal status of the Copyright Office. Is it a small unit, a department, a semi-autonomous entity or an autonomous entity ?

   b.   To which government department and to which minister is the Copyright Office answerable to ?

2.   Autonomy of the Copyright Office

   a.   Please describe the current governance of the Copyright Office. Does it have a board ? Who appoints the board ? What is the composition of the board ?

   b.   How is the performance of the Copyright Office audited and how are the results published ?

   c.   How is the national Copyright Office funded ? Does it retain any operating surplus ? What is the current income and surplus position of the office ?

3.   Key functions of the Copyright Office

   a.   Are copyright works formally registered ?

   b.   Does the Copyright Office have any judicial powers ?

4.   Staffing of the Copyright Office and human resources development plan

   a.   Is the Copyright Office able to recruit staff according to its needs ?

   b.   What is the current number of staff, by organizational area ? Is this number of staff sufficient to meet current and predicted demand ? How many technically trained staff are currently employed, and in which functions ?

   c.   Which job functions / job categories present the most difficulties in terms of recruiting national IP office staff ?

   d.   What training programs are available to the national IP office staff, in order to increase their knowledge of IP ?

   e.   Does the Copyright Office have a staffing plan ?

5.   National cultural policy

   a.   Please name the national development goals and priorities that are relevant to the cultural sector ? Who is responsible for their implementation ?

   b.   What sector-specific policies are in place ?

   c.   If IP is believed to inhibit the development of the cultural sector, in what way does this manifest ?

6.   Economic impact of copyright and related industries

   a.   Has a study been undertaken in the country on the economic impact of copyright and related industries ?

7. Promoting the creative industry sector

a. Which forms of IP are used?
b. How effective are these forms considered to be?
c. What steps are taken to help the creative industry sector understand IP and its usage?
d. What types of support do creators of copyright works receive from the government (or any other institutions) for the production, marketing and distribution of their works

8. Collective management organizations (CMOs)

a. How is income from IP derived (e.g., through the sale of products and/or through collecting societies)?
b. What collecting societies exist in the country?
c. Who owns these societies and how are they operated?
d. How are royalties collected?
e. How are royalties distributed?

9. Traditional knowledge and folklore

a. What steps are taken by government bodies and related institutions to record and protect traditional knowledge (TK) and folklore?
b. What steps are taken by government bodies and related institutions to commercialise TK and folklore for the benefit of local people?
c. What policies does the government have in place to explore the further protection and commercialisation of TK and folklore?

10. IP and Information and Communication Technology (ICT)

a. How is IP used to develop the ICT sector?
b What is the relationship between IP and ICT standards (requirements in terms of specifications), and how does this affect the ICT sector?
c. How frequently are licensing agreements used in the ICT sector?
d. What financial or other types of support does the government provide to the sector in order to ensure that IP is used more efficiently?

e. Identify the main barriers to IP creation in the sector (e.g., lack of awareness of the value of IP, cost of registering/filing IP rights, enforcement and maintenance costs, skills shortages, lack of access to finance, bureacratic business regulations).
f. Does the country have a policy on exceptions to copyright for educational materials?

Part B: Problems, Challenges, Priorities and Strategic Issues

1. Problems and challenges

a. What are the major problems and challenges created as a result of the current (IP and ICT) situation?
b. Are suffficient resources (financial, human, infrastructural) available to deal with these problems and challenges?
c. In your view, what key reforms are needed at this stage (e.g., regulatory, legal, policy, institutional framework; human, technical, financial resources)?

2. Priorities

a. What are the priorities in terms of developing the IP system over the next five to ten years?
b. Who are the main partners involved in meeting these priorities?

3. Strategic issues

a. Which bodies need to be consulted in order to identify the main components of an IP strategy (with respect to IP and ICT)?
b. Which institutions and stakeholders need to be in place in order to manage the implementation of the strategy?
c. Which government institutions need to provide resources to help implement the strategy?

CLUSTER 5 :
PLANT VARIETY RIGHTS AND SEED INDUSTRIES

Name :

Organization :

Responsibility :

Contact details :

Part A : Current Status

1. Plant variety protection

a. Is protection provided for plant varieties by patents, or by a sui generis system (plant breeders' rights), or by any combination thereof ?

b.c.d. How are plant varieties protected by plant breeders' rights and/or other IP rights ?

e. Is protection provided for plant varieties (plant breeders' rights) of all plant genera and species ?

f. What is the policy of public research institutes with regard to the protection of plant varieties (plant breeders' rights) ?

g. Is the country a member of the International Union for the Protection of New Varieties of Plants (UPOV), or has it initiated the procedure to become a member of UPOV ?

2. Legal status of the Plant Breeders' Rights Office

a. Describe the current legal status of the Plant Breeders' Rights Office. Is it a unit, a department, a semi-autonomous entity, or an autonomous entity ?

b. To which government department and to which minister is the Plant Breeders' Rights Office answerable to ?

3. Autonomy of the Plant Breeders' Rights Office

a. Describe the current governance of the Plant Breeders' Rights Office. For example, does the Plant Breeders' Rights Office have a board ? Who appoints the board ? What is the composition of the board ?

b. How is the performance of the Plant Breeders' Rights Office audited and how are the findings published and used ?

c. How is the Plant Breeders' Rights Office funded ? Does it retain an operating surplus ? What is the current income and surplus position of the office ?

4. Key functions of the Plant Breeders'Rights Office

a. Does the Plant Breeders' Rights Office carry out any judicial functions ?

b. How does the Plant Breeders' Rights Office organize the examination of the application?

5. Staffing of the Plant Breeders' Rights Office and human resources development plan

a. Does the Plant Breeders' Rights Office utilize international cooperation for the examination of the application ?

b. Is the Plant Breeders' Rights Office in a position to recruit staff according to its needs ?

c. How many staff are currently employed in the Plant Breeders' Rights Office i.e., broken down by organizational area ? Is this number of staff sufficient to meet current and predicted demand ? How many technically trained staff are employed, and which functions do they carry out ?

d. Which job functions / job categories present the most difficulty in terms of recruiting Plant Breeders' Rights Office staff ?

e. What training programs are available to staff, in order to increase their knowledge of IP?

f. Does the Plant Breeders' Rights Office have a staffing plan?

6. Agricultural policy relevant for plant variety protection

a. What is the government's policy on the role of plant variety protection to encourage agricultural development?
Who is responsible for the implementation of this policy?

b. Are plant breeders' rights and/or other IP rights considered an objective/priority in the agricultural sector? Please specify crops/species.

c. Does the country have a seed policy?

7. Commercialization of plant varieties

a. In what way does the government work with agricultural ventures to improve the quality of, and market for, new plant varieties?

b. What types of support does the government provide to the agricultural sector in order to facilitate the use of plant breeders' rights and/or other IP rights?

c. Does the country have a policy of encouraging partnerships between breeders, research organizations and industry?

d. Are you aware of any success stories relating to the licensing and commercialization of new plant varieties?

8. Private sector

a. Does the country have a national breeders' association?

b. Does the country have a national seed trade association?

c. What are the main barriers to the development of new varieties of plants (e.g., lack of awareness of plant breeders' rights or other IP rights (e.g. trademarks), cost of registering, enforcement costs, maintenance fees, skills shortages, lack of access to finance, bureaucratic business regulations)?

Part B: Problems, Challenges, Priorities and Strategic Issues

1. Problems and challenges

d. What are the major problems and challenges created as a result of the current situation?

e. Are sufficient resources available to deal with these problems and challenges?

f. In your view, what key reforms are needed at this point (e.g., regulatory, legal, policy, institutional framework; human, technical, financial resources)?

2. Priorities

a. What are the priorities in terms of developing the plant variety protection system over the next five to ten years?

b. Who are the main partners involved in delivering these priorities?

3. Strategic issues

a. Which bodies should be consulted on the process of identifying the main components of a national IP strategy for plant variety protection?

b. Name the principal institutions that you believe should be involved in managing the implementation of the strategy?

c. Which government departments/organizations should provide resources to help implement the strategy?

d. What strategies does the country have in place to accommodate bilateral/regional/international cooperation arrangements?

CLUSTER 6:
ENFORCEMENT OF IP RIGHTS

Name:

Organization:

Responsibility:

Contact details:

Part A: Current Status

1. IP enforcement laws

    b.   Are IP enforcement laws in the country currently contained in various IP laws (e.g., patent enforcement clauses in patent law, trademark enforcement clauses in trademark law, and copyright enforcement clauses in copyright law)? If yes, please elaborate.

    c.   If consolidated into one piece of legislation, what are these pieces of legislation called (e.g., anticounterfeit law, anti-piracy law or enforcement law)?

2. Scope of IP enforcement laws

Irrespective of the format of the various IP enforcement laws in the country, please confirm whether they currently include the following judicial and administrative procedures/remedies:

    a.   Jurisdiction courts to handle cases of IP infringement;

    b.   IP right holders have standing, can be legally represented in court, have a mandatory obligation to appear in court in order to claim their civil rights;

    c.   Judicial authority to order relevant parties to produce evidence;

    d.   Means to identify and protect confidential information brought forward as evidence;

    e.   Remedies (e.g., injunctions and any compensation for damages that may be ordered);

    f.   Authority to order the infringer to inform the IP right holder of the identity of third persons involved in the infringement;

    g.   Indemnification of defendants wrongly enjoined;

    h.   Provision governing the length of proceedings;

    i.   Provision governing the cost of proceedings.

3. IP enforcement agency

    a.   In the country, does a single agency deal with the enforcement of IP laws? Or is this handled by several agencies?

    b.   If several agencies deal with this area, please name them. To which government departments are they affiliated? How is the coordination of enforcement of IP laws implemented in order to reduce any duplication of roles?

    c.   If a single agency only is involved in dealing with the enforcement of IP laws, what is the name of this agency? To which government department is it affiliated?

    d.   Which agency or institution deals with domestic counterfeiting and piracy – irrespective of whether goods are sold in shops, on the street, or in markets?

4. Border measures

    a.   What are the powers of customs officers to seize counterfeit or pirated goods?

    b.   What procedures are in place for dealing with seized goods?

    c.   What happens to goods that have been seized? Are they destroyed, or are they disposed of in some other way?

    d.   What is the role of the right holder in the process, and on whose authority can customs officers take action?

    e.   To what extent do customs officers have authority to act within the borders of the country? Is their authority limited to the immediate border area?

    f.   How many goods seizures take place in the country each year?

5. IP enforcement courts

    a.   Does the country have a specialized IP enforcement court?

    b.   Who has authority to order goods seizures and initiate a prosecution/legal proceedings?

c. Which court deals with prosecutions related to goods seizures?
   i. What are the applicable timescales for legal proceedings?
   ii. What limitations are applicable in terms of who can appear in court and who is required to appear?
   iii. What evidence must be supplied, and by whom?
d. What legal remedies are available?
   i. What protection against injunctions can be applied?
   ii. What levels of damages or costs may be applied?
   iii. What are the rules in relation to the imposition of fines?
e. What is the role of the right holder in cases where goods are seized within the borders of the country?
f. Which agency/institution in the country deals with computer crime or cyber crime?
   i. What procedures are in place for dealing with this type of crime?
   ii. Which court deals with such cases?
   iii. How many prosecutions for such crimes are there each year?
g. What level of coordination exists between agencies dealing with counterfeiting, piracy, and agencies dealing with cyber crime?

6. IP enforcement officers (lawyers, judges and police)

a. What training do lawyers and judges receive with regard to dealing with IP-related matters?
b. To what extent do lawyers and judges specialize in IP cases?
c. What procedures are used to appoint judges who deal with IP cases?
d. What is the key differences between judges dealing with IP cases and those dealingwith competition cases?

7. Civil disputes

a. Which courts hear cases related to the challenging of decisions made by the national IP office?
b. Which types of cases are heard in the civil courts?
c. Which court(s) has/have jurisdiction when deciding between parties – irrespective of whether the parties are individuals or legal entities?
d. What qualifications must professionals have if they wish to act on behalf of clients in court?

e. What procedural rules apply in relation to the conduct of dispute proceedings?
   i. What requirements are placed on government agencies in terms of notifying the defendant(s) that legal action is being taken?
   ii. Which party carries the burden of proof, and what requirements are placed on that party to produce evidence?
   iii. What are the applicable timescales for legal proceedings?
   iv. What indemnity/indemnities must be provided to the court(s)?
f. What remedies/powers are available to the court(s)?
   i. What safeguards are available in terms of limiting the scope of injunctions?
   ii. What is the basis for awarding damages or costs?
   iii. What level of damages/costs are set by the court(s)?
   iv. Which agency or government institution is responsible for ordering the disclosure of third party involvement in infringement?
   v. What procedures apply in terms of handling the seizure of goods?
   vi. How are goods disposed of?
   vii. What rules, if any, apply in relation to the imposition of fines?
g. How frequently are cases adjourned, and for what types of reasons?
h. How frequently are temporary injunctions granted during cases?
i. How frequently are orders of disclosure made?
j. How is the issue of cross-examination handled by the court(s)?
k. How frequently are orders given for the seizure of goods at the country's borders?
l. To which authority can appeals be made in relation to judgments or orders of the court(s)?
m. What is involved in the process of making an appeal/dealing with an appeal?
n. How are counterfeiting and piracy cases dealt with by the courts?
o. In what way, if any, are the procedures and available remedies that apply in relation to goods seizures different from those that apply in relation to the conduct of other types of disputes?

8. Educating the public / consumers, and creating awareness

a. Is there a program in place for educating the public / consumers and creating awareness of the dangers / the impact of counterfeit and pirated goods?

b. If yes, how effective is this program?

c. Has a study been carried out on the impact of counterfeit and pirated goods / piracy on the economy of the country? If yes, what were the main findings of this study? If no, is there a plan to undertake such a study?

Part B: Problems, Challenges, Priorities and Strategic Issues

1. Problems and challenges

a. What are the major problems and challenges being created as a result of the current status?

b. Are sufficient resources available to deal with these problems and challenges?

c. What reforms do you believe are needed in order to improve the current situation of IP enforcement?

2. Priorities

a. What are the priorities in terms of developing the IP system (with respect to IP enforcement) over the next five to ten years?

b. Who are the main partners (stakeholders, government agencies) involved in meeting these priorities?

3. Strategic issues

a. Which agencies / institutions need to be consulted during the process of identifying the main components of a national IP strategy?

b. Which core institutions should manage the implementation of the strategy (with respect to IP enforcement)?

c. Which government institutions should provide resources to help implement the strategy?

CLUSTER 7 :
IP AND PUBLIC POLICY

Name :

Organization :

Responsibility :

Contact details :

Part A : Identification of Public Policies

1.   National development policy
   a.   Does the country have a long-term development blueprint (policy)
   b.   If yes, please provide the following details :
   •   Name of the policy
   •   Date it was launched
   •   Duration
   •   The institution reponsible for the implementation of the policy
   c.   What is the long-term vision of this policy ?
   d.   Does it have an economic pillar ? If yes, what long-term vision is encapsulated in this pillar ?
   e.   Does it have a social pillar ? If yes, what is its long-term vision is encapsulated in this pillar ?
   f.   Does it have a cultural pillar ? If yes, what long-term vision is encapsulated in this pillar ?

2.   Key economic and social sectors identified
Please list the key economic sectors identified in the country's national development policy. (Tick as appropriate)

1	Agriculture	☐
2	Culture	☐
3	Education	☐
4	Employment	☐
5	Energy	☐
6	Environment	☐
7	Health	☐
8	Housing	☐
9	ICT / BPO	☐
10	Industry / Manufacturing	☐
11	Mining	☐
12	Oil	☐
13	SMEs	☐
14	Tourism	☐
15	Trade	☐
16	Water and sanitation	☐
	Other sectors : 1------- 2------- 3------- 4------- 5-------	

3.   National policies for the identified sectors
   a.   Sectors with national policies
Please indicate which of the sectors identified below have national policies. (Tick as appropriate)

1	Agriculture	☐
2	Culture	☐
3	Education	☐
4	Employment	☐
5	Energy	☐
6	Environment	☐
7	Health	☐
8	Housing	☐
9	ICT / BPO	☐
10	Industry / Manufacturing	☐
11	Mining	☐
12	Oil	☐
13	SMEs	☐
14	Tourism	☐
15	Trade	☐
16	Water and sanitation	☐
	Other sectors : 1------- 2------- 3------- 4------- 5-------	

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b. Please list the sectors that have national policies:

1.---
2.---
3.---
4.---
5.---
7.---
8.---
9.---
10.---

Part B: Analysis of The Identified Public Policies

In the case of each of the identified public policies, please provide the following information:

a. Policy details:
   i.   Name:
   ii. Date it was launched:
   iii. Duration and
   iv. The institution reponsible for the implementa-tion of the policy

b. Strategic direction of the policy
   i.   Vision
   ii. Mission
   iii. Key objectives

c. Strategies designed to achieve the agreed objectives

Please list the strategies that have been identified in order to achieve the specific objectives, and describe how IP can be used to realise the strategies.

For example:
Agricultural policy objective: increase productivity

Strategy: develop new plant varieties with improved yield and resistance to pests and¬ diseases, which are adapted to the environment in which they will be grown.

IP-related strategy: raise awareness of plant variety protection as a means to encourage partnerships for breeding, dissemination and commercialization of new varieties (research, public and private sectors) .

Part C: Examples of Linking Strategies With IP

Agricultural policy
Examples of strategies based on agricultural policy which can be driven by IP:
   i.   Increase productivity through mechanization and irrigation;
   ii. Introduce new plant varieties;
   iii. Promote geographical indications and certification marks;
   iv. Promote R&D;
   v.   Add value to agricultural products;
   vi. Promote access to external markets (e.g., through branding, trademarks, geographical indication and certification marks).

Health policy
Examples of strategies based on health policy that can be driven by IP:
   i.   Increase access to affordable health care;
   ii. Develop herbal / natural health products;
   iii. Promote research and development (R&D);
   iv. Increase access to essential drugs;
   v.   Promote local manufacturing of drugs.

Industrial policy
Examples of strategies based on industrial policy that can be driven by IP:
   i.   Promote added value;
   ii.   Improve quality of products;
   iii. Enhance access to technology;
   iv.   Increase productivity;
   v.   Increase the competitiveness of local industries;
   vi.   Promote innovation in business and industry;
   vii. Support the development of technology;
   viii. Promote appropriate technology.

Cultural policy
Examples of strategies based on cultural policy that can be driven by IP:
   i.   Promote local artists and creators;
   ii. Protect indigenous knowledge and cultural heritage;
   iii. Develop the creative and cultural industries.

Environmental policy

Examples of strategies based on environmental policy that can be driven by IP:

i. Promote green technology;
ii. Promote waste-to-energy programs;
iii. Enhance access to cleaner technologies;
iv. Develop and implement a climate change response strategy.

Trade policy

Examples of strategies based on trade policy that can be driven by IP:

i. Comply with TRIPS and other international trade agreements;
ii. Promote branding to facilitate access to regional and international markets;
iii. Promote geographical indication and certification marks.

ICT policy

Examples of strategies based on ICT policy that can be driven by IP:

i. Establish an ICT business park;
ii. Promote business processing and outsourcing (BPO);
iii. Promote software development business;
iv. Establish ICT incubation services.

Education policy

Examples of strategies based on education policy that can be driven by IP:

i. Promote access to teaching materials;
ii. Develop distance and virtual learning;
iii. Promote elearning;
iv. Develop teaching and demonstration equipment;
v. Promote a culture of innovation and creativity;
vi. Provide incentives for the preparation of teaching materials;
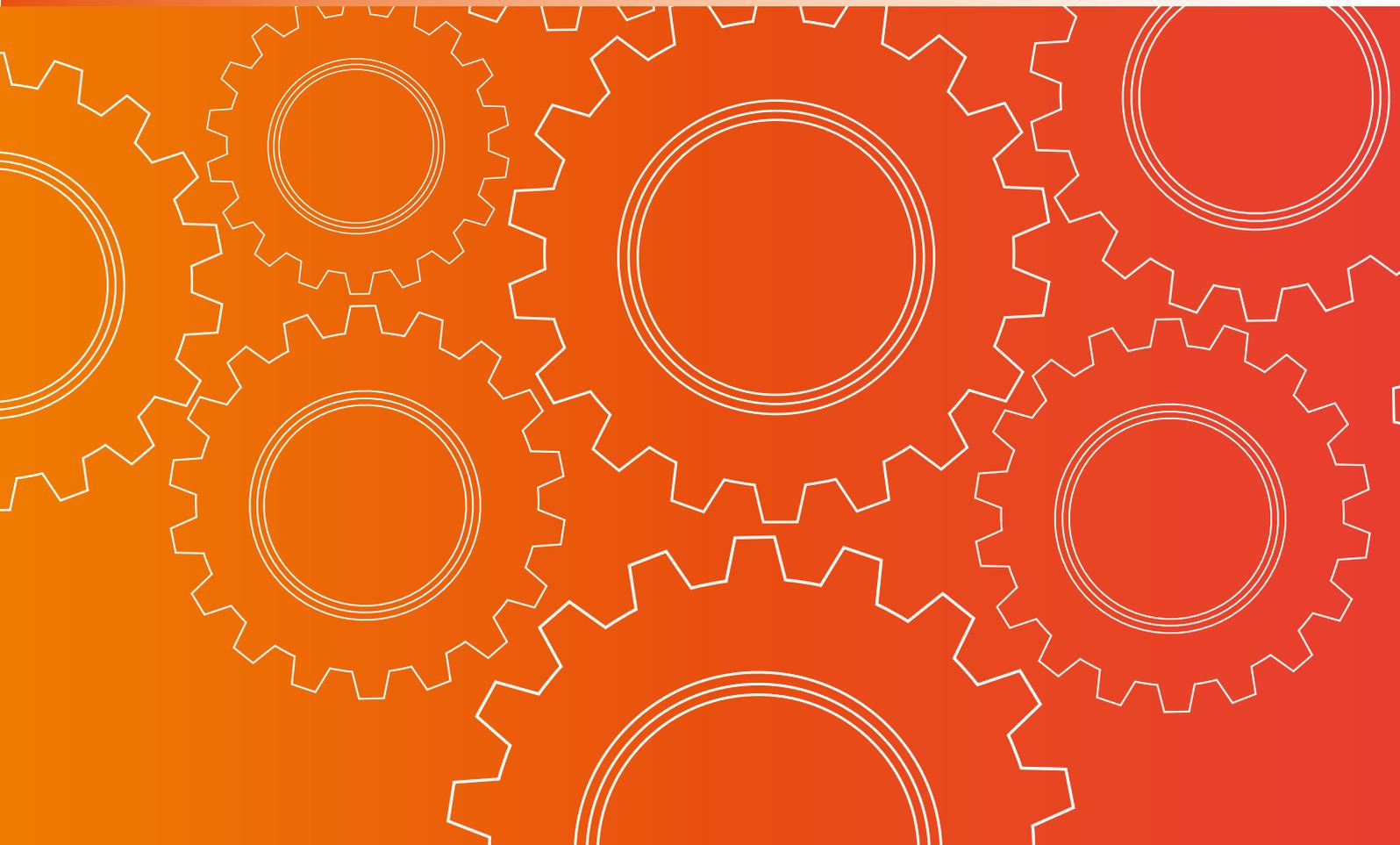vii. Promote local manufacturing of laboratory equipment.

Housing policy

Examples of strategies based on housing policy that can be driven by IP:

i. Develop affordable building materials;
ii. Develop appropriate building technologies;
iii. Develop new building materials.

Water and sanitation policy

Examples of strategies based on water and sanitation policy that can be driven by IP:

i. Develop affordable and cheap water purification technologies;
ii. Promote water harvesting technology;
iii. Promote wastewater management technologies;
iv. Promote waste recycling.

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