

Where there is no lawyer: Meeting on fair research contracting Bellagio Centre, 23-25 October 2012

Contracting capacity of and issues
faced by icddr,b's South and
Southeast Asian partners

Jens Hinricher, LL.M., FRSPH
General Counsel, icddr,b, Dhaka, Bangladesh

Introduction

- icddr,b processes 300+ research agreements per annum
- Office of General Counsel, Research Administration, Finance offices
- Increasing number of regional (Iran to the Philippines) and national collaborations
- Hardly any legal expertise within collaborating institutions

Regional Survey

- Approached 35 collaborators
- Research institutions, universities, NGOs and government departments
- Iran, Pakistan, India, Nepal, Bhutan, Bangladesh, Malaysia and the Philippines
- Received 21 responses

Regional Survey – Responses received

1. Responsibility for reviewing, drafting and/or negotiating research related agreements and contracts lies with:
 - a dedicated legal department [3/21]
 - another department (e.g. Finance, Research & Development) [3/21]
 - the respective scientist/researcher [15/21]

Regional Survey – Responses received

2. The staff responsible for drafting, reviewing and/or negotiating research contracts are:
 - a) qualified lawyers [3/21]
BRAC (Bangladesh), Modern Herbal Group (Bangladesh),
IRRI (Philippines)
 - b) non-lawyers with some form of special training [0/21]
 - c) non-lawyers without any special training [18/21]

Regional Survey – Responses received

3. Particular legal/contractual issues that organizations have faced/that have arisen in the past when reviewing, drafting and/or negotiating research related agreements and contracts? How were they resolved?

Regional Survey – Responses received

a) Qualified lawyers involved [3/21]

Many major legal/contractual issues have arisen:

- IP, Patent and Publication Rights
- Choice of law
- Indemnification, Insurance

Resolved through:

- Negotiation
- Rejection of contracts offered

Regional Survey – Responses received

- b) Non-lawyers without special training involved [18/21]
 - No particular legal/contractual issues have arisen
 - Though contractual terms and conditions were often unclear or difficult to understand
 - Contracts signed based on mutual trust and/or long-term good relations

Summary

- No specialist legal expertise within the vast majority of collaborating institutions in South and Southeast Asia
- No legal/contractual issues detected by non-lawyer reviewers
- Contractual terms and conditions often unclear or not understood
- Specialist legal expertise detects numerous issues of concern requiring additional negotiation

Thank you!

