

# Darwin Initiative for the Survival of Species

## Half Year Report (due 31 October each year)

<b>Project Ref. No.</b>	15/028
<b>Project Title</b>	Community Resource Management Planning in the Maichin River Valley
<b>Country(ies)</b>	Chile
<b>UK Organisation</b>	ESRC Centre for Economic and Social Aspects of Genomics (CESAGen), Lancaster University
<b>Collaborator(s)</b>	Sociedad de Desarrollo, Promocion y Difusion Cultural Mapuche Ad Kimun Limitada
<b>Report date</b>	30-10-06
<b>Report No. (HYR 1/2/3/4)</b>	HYR1
<b>Project website</b>	

### **1. Outline progress over the last 6 months (April – September) against the agreed baseline timetable for the project (if your project has started less than 6 months ago, please report on the period since start up).**

The project was initiated on the 1<sup>st</sup> of June 2006 and the first quarter of the project was dedicated to start up activities. These activities included:

- a) Finalising the financial management and reporting system;
- b) Coordinating with communities and local authorities;
- b) Identifying and establishing a project office;
- c) Equipment purchases;
- d) Recruiting local and international staff;
- e) Initiating training workshops in the communities;

During June the UK project leader visited the project partner and communities to initiate start up activities. We were successful in establishing the financial management system, oversight mechanisms, a project account and agreed reporting schedule. We also held a one day meeting with community leaders to discuss the project and visited two communities for further discussion. Potential office premises in Curarrehue were identified and agreement reached on the details of equipment purchases and potential trainers for work in the communities.

Discussions were held with the local Mayor and cooperation with the project was agreed. Meetings were also held with the local head of the National Forestry Corporation (CONAF) in Pucon and with the new Regional Director of CONAF. Support and cooperation with the project was agreed. The support of the new Regional Director of CONAF is particularly important for the future development of the project.

During the course of the visit meetings were also held with another Darwin funded project “Capacity Building for Temperate Rainforest Biodiversity Conservation in Chile” that is operating in the same area and encompasses the Maichin River Valley. We look forward to further cooperation with this project in strengthening project outputs.

In Lancaster, adverts for a Research Associate to work in Chile were agreed in early July with a deadline of August. A number of queries were received and four applicants have been selected for interview. However, the further implementation of the project has been constrained by issues relating to a collaboration agreement required by Lancaster University to implement the project with the Mapuche partner organisation.

**2. Give details of any notable problems or unexpected developments that the project has encountered over the last 6 months. Explain what impact these could have on the project and whether the changes will affect the budget and timetable of project activities.**

Three significant issues have confronted the project in the start up phase. These problems have previously been reported to the Darwin Secretariat.

1. The first of these relates to the project partner the All the Lands Council (Consejo de Todas las Tierras). In the course of a meeting with Aukin Huillcaman, one of the leaders of the All the Lands Council, in June the project leader was informed that he was not in agreement with the project. No clear reason was given for this position and this appears to reflect internal divisions between those engaged in political activities relating to Mapuche rights and those interested in practical projects to address Mapuche community needs. In response, as previously reported, a letter of support was requested from the biodiversity project team at the All the Lands Council. That letter has now been placed on file with the Darwin Secretariat.

Furthermore, one of the key issues addressed during the start up phase was financial administration and putting checks and balances in place. As previously reported, the All the Lands Council is legally registered as the Sociedad Normugen. However, in view of the dispute between those pursuing a political trajectory and those concerned with practical activities relating to biodiversity it was decided that it would be prudent to establish a new legal entity to avoid risks to the project. The biodiversity project team have now established the “Sociedad de Desarrollo, Promocion y Difusion Cultural Mapuche Ad Kimun Limitada” (Society for the Development, Promotion and Difussion of Mapuche Culture Ad Kimun Limited) as a non-profit legal entity. The registration document has been deposited with the Darwin Secretariat. A project bank account has been established and a financial administrator has also been appointed.

2. The second issue that has been encountered relates to the appointment of a Research Associate from the UK to serve as the local project counterpart based in Chile. Applications have now been received however the process of appointment has taken longer than anticipated. Furthermore, the appointment process has been affected by the third issue relating to the collaboration agreement required by Lancaster University (see below). In light of this, as previously reported, we propose to allocate resources from the Research Associate post to the employment of local staff. This will strengthen the local benefits of the project and also enable us to catch up with the delays resulting from the third issue.

3. The main problem encountered concerns the intellectual property provisions of a collaboration agreement required by Lancaster University as a condition for transferring project funds to the project partner.

Our project is directly concerned with strengthening the capacity of Mapuche indigenous communities to engage in environmental management planning in relation to protected areas. However, work with indigenous communities also raises issues about traditional knowledge and access to genetic resources and benefit-sharing under the Convention on Biological Diversity. Both the project leader and the partner possess extensive experience in these debates. In order to avoid these contested issues at the project level, at the design stage it was decided that the project would not directly concern itself with access and benefit-sharing issues and intellectual property rights. Rather, we agreed to develop a research protocol in the course of the project that would provide a space for the discussion of these issues in direct

consultation with the communities. We also determined that any changes to the project would require the prior informed consent of the communities. In this way we intended to avoid the controversies about access to genetic resources and benefit sharing, intellectual property rights and traditional knowledge. At the same time we wished to provide a free space for discussion of these issues with the communities to see what might be learned. In the process our aim was to contribute to CBD discussions on Article 8(j) and Access and Benefit-Sharing.

In discussions with the Lancaster University Contracts Office it was established that in order for the project to proceed a formal collaboration agreement would be required between Lancaster University and the Chilean partner organisation. Specifically, given that the Mapuche partner organisation possesses very limited resources, a formal collaboration agreement was required as a basis for the transfer of university funds to the partner for project implementation. In the absence of such an agreement the project could not proceed.

However, the collaboration agreement proposed by Lancaster University Contracts Office also included provisions relating to the ownership of intellectual property rights and commercialisation that may arise from the project. This consisted of the creation of provisions under which the parties to the agreement would retain rights in relation to “background” or “know-how” but that intellectual property rights including commercialisation could be sought with respect to “results”. In response it was emphasised that the project was deliberately designed to be non-commercial in nature and to avoid intellectual property issues given the sensitivities involved in relation to biopiracy. Furthermore, it was explained that since the Mapuche communities with whom the project will be conducted are not party to the collaboration agreement any issues arising in connection with intellectual property would properly require a separate agreement and involve their prior informed consent. This is consistent with the CBD and professional best practice.

In putting forward this argument we also informally explained the background to the adoption of Condition 20 of the terms and conditions, the nature of international debates on traditional knowledge, biopiracy and human rights under the CBD, and international obligations and commitments under CESCO and related instruments to which the UK is a party. The primary concern in putting forward these issues was to explain the sensitivities involved and the need to take measures to ensure that, in so far as is possible, the rights of potentially vulnerable communities are respected. It was also noted that in research involving human subjects there is a professional ethical obligation to anticipate and take adequate measures to address potential harms that may arise.

In seeking to explain the issue attention was also drawn to the reputational harms that arise from allegations of “biopiracy”. On this basis it was reiterated that intellectual property issues arising from work with indigenous communities should properly be the subject of a separate agreement with the communities themselves including their prior informed consent.

However, it has proved to be extremely difficult and time consuming to address this issue in dealings with the University Contracts Office. Following protracted discussions with the University lawyers in July and early August, on the advice of the Dean, informal advice was sought from the Darwin Secretariat through Sarah Moon by telephone and in writing on the 16<sup>th</sup> of August. With the support of the Associate Director of CESAGen and the Dean we then entered into discussions with the head of the Enterprise and Commercialisation Division in charge of the Contracts Office in the hope of obtaining a solution. These discussions have stretched through September and into October. The Darwin Secretariat was informed of these issues in a formal letter when it became clear that project implementation was being increasingly delayed by these issues.

In early October a meeting was chaired by the Dean with the parties involved with a view to finding a solution. At this meeting it was agreed that references to commercialisation of intellectual property in connection with condition 20 would be changed to “use”. Furthermore, it was agreed that reference would be made to the university research protocols in relation to ethics. It was understood by the project leader and the Associate Director of CESAGen that a clause would also be inserted to the effect that the rights of the communities would not be affected by the intellectual property provisions. However, in a subsequent meeting and communication we were informed that this would not be acceptable. In addition,

references to licensing intellectual property to third parties were inserted into the IP provisions as a condition of changing the term “commercialisation” to “use”.

In the course of these debates it became clear to the project leader that the University Contracts Office is approaching the collaboration agreement as a commercial contract. With the exception of references to condition 20 and the inclusion of reference to research protocols, this is a standard commercial IP model. The problem that this presents is that the only intellectual property (notably patentable subject matter) that could reasonably be expected to arise in the project would originate from work with the communities who are not party to the agreement. Under Article 8(j) and related provisions and subsequent developments under the CBD their approval and consent would properly be required i.e. under a separate agreement. Unfortunately, this view has not been accepted by the Lancaster University Contracts Office.

Given that the project is not concerned with access and benefit-sharing and was deliberately designed to avoid these issues this problem has come as a considerable surprise. In response to the lack of movement in dealings with the Contracts Office the project leader has contacted the Darwin Secretariat to request advice on whether, based on letters submitted by the partners, it may be possible to obtain an assurance that any intellectual property claims that might potentially arise under the project would receive close scrutiny in interpreting Condition 20. The project leader understands that a letter is being prepared by the Darwin Secretariat to assist in clarifying this issue and will be received in the near future.

In the course of these difficult discussions it has become clear that University policies on intellectual property are increasingly oriented towards potential commercialisation of research outcomes. This may well be desirable in some circumstances. However, in other circumstances the appearance of commercial intentions may have negative effects. This is particularly true where research involves vulnerable communities or populations. In these circumstances it is particularly important to ensure that appropriate measures are in place to anticipate potential harms.

We anticipate that based on the letter from the Darwin Secretariat we will be able to immediately proceed with implementing the project. In responding to the difficulties that have arisen in relation to University intellectual property policy we intend to turn this experience to constructive purposes. In particular, we intend to use the lessons learned as an input into debates on an ethical code of conduct in the upcoming work of the CBD Working Group on Article 8(j) and related provisions. In preparing this input we intend to informally consult with members of the UK delegation.

**Impacts:**

The main impact of the debate on intellectual property has been a delay in project implementation during the start up phase. Given that the start up phase encompassed the winter period in Chile (June to September) this is not critical. However, the need to find a solution and move forward is now urgent.

With respect to the project budget the main impact relates to the appointment of a Research Associate. As previously reported to the Darwin Secretariat, we will seek to overcome the delay by allocating resources from the Research Associate position to the employment of local project staff. The UK project leader will also now allocate additional time to fieldwork in Chile to address the delay.

Have any of these issues been discussed with the Darwin Secretariat and if so, have changes been made to the original agreement?	
Discussed with the DI Secretariat:	no/yes, in 8/06; 9/06; 10/06
Changes to the project schedule/workplan:	no/yes, in.....(month/yr)

**3. Are there any other issues you wish to raise relating to the project or to Darwin's management, monitoring, or financial procedures?**

If you were asked to provide a response to this year's annual report review with your next half year report, please attach your response to this document.

**Please note: Any planned modifications to your project schedule/workplan or budget should not be discussed in this report but raised with the Darwin Secretariat directly.**

Please send your **completed form by 31 October each year per email** to Stefanie Halfmann, Darwin Initiative M&E Programme, [stefanie.halfmann@ed.ac.uk](mailto:stefanie.halfmann@ed.ac.uk) . The report should be between 1-2 pages maximum. **Please state your project reference number in the header of your email message.**