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(Moreno, 2006)

ProBenefit

– Implementing the Convention on Biological
Diversity in the Ecuadorian Amazon

By: Moa Cortobius Fredriksson

Supervisor: Björn Hassler

Abstract

Legislation on benefit sharing dates back to 1992 and the commandment of the UN Convention on Biological Diversity, hence implementation still has few cases to fall back on (CBD, 1992). The case study of the project ProBenefit presented by the thesis highlights how lack of deliberation can undermine a democratic process. The objective of the thesis is that ProBenefit's attempt to implement the standards of the CBD on access and benefit sharing will highlight not only problems met by this specific project, but difficulties that generally meet democratic processes in contexts of high inequality. To define if the project ProBenefit succeeded in carrying out a deliberative process the project will be analyzed by the criteria: access to information, representation, legitimacy and involvement.

The population in the project area of ProBenefit had a long history of social marginalization, which made it hard for foreign projects to gain legitimacy. The lack of independent organizations and the late establishment of the project, which resulted in time shortage, made it impossible to prevent the distrust of the local population. The failure of the project coordinators to ensure active participation of all stakeholders resulted in a late and low involvement of the local participants. The absence of independent organization also made democratic legitimacy of the process questionable. Even if ProBenefit had a vision of democratic deliberation the project was unable to break down the prevailing unequal power distribution which resulted in an unsustainable process and failure. The conclusion of the thesis is that the attainment of deliberation foremost depends on how a project deals with the existing distribution of power and how it succeeds in involving all stakeholders.

Keywords: Implementation of the CBD, Deliberative democracy, Power distribution, Indigenous participation, Genetic resources, Ecuadorian Amazon region, ProBenefit.

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1. Introduction

During the UN top meeting in Rio de Janeiro, Brazil, in 1992 the Convention on Biological diversity (CBD) was ratified. Its main objective is to conserve biological diversity through a sustainable use. The convention established the sovereign right of each nation over its biological and genetic resources and demanded a fair and equitable sharing of the benefits gained from the exploitation of them. The CBD also determined fundamental principles for a process to access genetic resources, as for example the obligation of all agreements to obtain a Prior Informed Consent (PIC). The convention pointed out the value of the indigenous populations as maintainers of the biological diversity (CBD, 1992). By stressing the necessity to protect the rights of the indigenous populations in order to conserve the biological diversity the CBD established a new legislative fundament. From that paragraph has since then the work continued to develop and specify guidelines determining how to implement the vague formulation of the convention (Svensson, 2009-01-21). Agreements based on the guidelines of the CBD are still few and guiding cases are scarce. Thus as a response to the need for more experience the German governmental and private company financed project ProBenefit was initiated in the Ecuadorian Amazon region in June 2003 (Local coordinator 1).

1.1 Summarizing the Puzzle

The Prior Informed Consent (PIC) established by the CBD must be obtained through a democratic process where all stakeholders should be able to participate on equal terms (CBD, 1992). A process where all stakeholders can deliberate freely is however complicated to achieve in reality as imbalanced power stands limit the stakeholders in their deliberation (Dryzek, 2000; Young, 1999). The aim of ProBenefit was to carry out a process so democratic that it could stand as a landmark for similar projects in the future. Knowledge about socioeconomic conditions that could become impediments to the process existed among the project coordinators. The case study will however show how the project failed as it was not able to provide the fundamental requisites necessary to create an environment where true deliberation could take place.

1.2 Objectives

The case study presented by the thesis highlights how lack of deliberation can undermine a democratic process. The objective of the thesis is that ProBenefit's attempt to implement the standards of the CBD on access and benefit sharing will highlight not only problems met by

this specific project, but difficulties that generally meet democratic processes in contexts of high inequality.

1.3 Research Questions

- Which were the major obstacles for deliberation during the project ProBenefit?
- What kind of implications do these obstacles have to the implementation of the CBD?

2. Field Study, Literature and Interviews

During the spring of 2008 a field study was carried out in Ecuador to provide the thesis with first hand information on the proceedings of the project ProBenefit and the experiences and opinions of the different stakeholders. The field study was carried out mainly through qualitative interviews face to face, but also by telephone and e-mail contact. The literature used for the thesis includes official documents from the web page of ProBenefit, and related articles and studies. International and national legislation and personal correspondence between different stakeholders involved in the project have also been analyzed. Below the individuals interviewed, methods used and the application of the information will be presented in more detail. Last an analysis of the methods used in the field study will be outlined.

2.1 The Interviews

The persons contributing to the thesis through interviews are mainly local stakeholders such as participants in the training course and the pre-workshop, and other local collaboration parties. Instructors from the training course have also given their opinions and thoughts on ProBenefit through interviews. A total of 11 people were interviewed in Ecuador between 14th of April and 15th of June 2008, of which five were women. The majority of the interviews were made face-to-face using a qualitative method. At the same time as the interviews were recorded with a tape recorder were notes taken to facilitate the transcription. Translator was not used as it was not needed. A small part of the interviews were made by e-mail as an arranged meeting was not possible. The same questions were however posed to all individuals irrespectively of the way in which the interview was carried out.

The questions posed were to some extent intended to obtain information on the proceedings of the project ProBenefit, but primarily to understand the personal experiences and opinions of the different stakeholders. Thus the questions were both on the general course of events and on the analysis and opinions of the interviewed (for complete list of interview questions see Appendix 9.3). By using the contact information collected by ProBenefit from the training course and the pre-workshop attempts were made to give all persons involved the opportunity to participate (see list in ProBenefit, 2006). Since the list was about two years old most e-mail addresses and several mobile telephone numbers were not accurate. Consequently, only a part

of the participants were interviewed. Attempts to obtain the opinions of the Ibn coordinating group were made, but without success. Hence the official documents presented on the official website of the project will stand as the general position of the Ibn coordinators.

The persons interviewed have been divided into four groups which hereafter will be used to represent the source of information. This has been done to protect the identity of the individuals contributing with information, but at the same time to make it possible for the reader to get a concept of where the information originates. The different relations of the persons interviewed to the project ProBenefit have defined the groups and the number in parenthesis represents the number of persons included in each category. The terms used to refer to the groups are:

- Delegate – Community delegates who participated in the training course of ProBenefit (4 persons)
- Instructor – Instructors on the training course of ProBenefit (2 persons)
- Pre-workshop – Person who participated in the pre-workshop held by ProBenefit (3 persons)
- Local coordinator – Person who functioned as a local coordinator during the project ProBenefit (2 persons)

To show if several individuals concur in their information each interview have been given a number which also will be written in the source each time that interview is used, for example (Delegate 2; 4; Local coordinator 2). This shows that from the group of local delegates has person number two and four agreed with the second local coordinator that was interviewed. Thus in this example three persons have given the same information.

2.2 Measure Democracy

The method chosen to access first hand information was qualitative interviews. The strongest reason for using the qualitative method was the knowledge of Spanish as not being the first language of the majority of the persons interviewed. Since some also lacked formal education and therefore only were able to spell their own names or read with great effort questionnaires of any kind were most unsuitable for the interviews made with the local participants. The opportunity to make face-to-face interviews also had the benefit of possible reformulation and

adaptation of the questions in case of communication problems. In some cases where the person to be interviewed lived far away the questions were sent by e-mail to be answered in writing. The persons interviewed by e-mail were however all of higher formal education and urban living, which made it possible to assume they would not be hindered by this medium of communication. The use of a qualitative method also gave the interviewed the possibility to more freely express their opinions and thoughts on the occurred events, whereas a questionnaire gives little possibility for personal reflections.

The questions posed were mostly about the personal experiences from the deliberative process carried out by ProBenefit of the interviewed (for the complete list of questions see Appendix 9.3). Therefore, the answers also reflect the experienced democracy of each person – did that person experience the information as neutral? Or did he/she experience the methodology as participative? This kind of personal reflection on a situation always implies subjectivity; it is however hard to make an objective analysis of the level of democracy without involving the experience of the participants as assisting the training course was not an option. To get an as complete picture of the course of events as possibly each interview has been compared with the others to find general patterns. Weight has not been given to single details. Efforts to give all stakeholders an opportunity to present their point of view have been made, but unfortunately the Ibn coordinating group has decided not to respond. Therefore, the documents on the website of ProBenefit have been used as their voice.

The possibility to encounter secondary sources where the process and/or the experiences and opinions of the local population have been documented is very limited. The existing documents are almost exclusively written by either one of the stakeholders, i.e. the Ibn coordination group, FONAKIN or the “working group”, and they generally describe limited parts of the process. Most of the documents composed by the local stakeholders are not available over the Internet or in databases, but have to be assembled in the project area. Thus the lack of variety of secondary sources has been one of the major obstacles, which always leaves more room for speculations. A smaller number of sources also give any single source more weight, thus to avoid bias secondary sources all information has been compared to the other documents and interviews to find common facts. Dates that could be subjective or tendentious have consciously been avoided.

Since this thesis presents a case study and not a random sample survey a statistic analysis of the results can not be made. This means that the conclusions drawn from this case study can not be directly applied to other deliberative process in Ecuador or elsewhere. The aspiration is however to find a few strong relations that can be assumed to have a general bearing and therefore also be of interest to other similar cases trying to implement the CBD in situations where the power balance is highly unequal.

2.3 Definitions and Delimitations

The thesis is limited to a case study of the project ProBenefit. As a part of previous case studies will the consultation process on oil concession rights in the Napo-Galleras area however be described in general terms. The consultation process will be used to explain a great part of the mistrust of the local stakeholders, but the two processes will not be compared. As the oil consultation had directly affected the local stakeholders of ProBenefit is it probable that it had a general negative affect on the legitimacy of foreign institutions and particularly on consultation processes. Thus the oil consultation process will be given certain prominence amongst the case studies as it both explains specific aspects of the socioeconomic context of ProBenefit and at the same time give important indications on fundamental prerequisites of a democratic process in the Napo-Galleras area.

The thesis will describe an attempted implementation of the guidelines on access and benefit sharing (ABS) to obtain a prior informed consent (PIC). The ethical discussion about the pros and cons of legitimizing economic exploitation through this kind of democratic processes, if traditional knowledge and/or genetic resources should be patented and used as merchandise and/or how that affects the indigenous population and the conservation of the biological diversity will however be left to others. It is indeed an extremely important debate and as often are those who will be the most affected also those who have the least possibility of making their voice heard. To maintain the focus of the thesis it has however been necessary to forsake that kind of discussion. Thus the issue will be mentioned briefly in some parts of the thesis, but not analyzed further.

When this thesis initiated early in the year of 2008 the Ecuadorian constitution from the year of 1998 was still in force. Since then a new constitution has been developed and through general elections it gained force in September of 2008 (El País, 2009-01-28). Even if the legislation concerning access to genetic resources and traditional knowledge has been

changed have this so far in no way influenced the project ProBenefit. Hence all reference to the Ecuadorian constitution in this document concerns the Ecuadorian constitution from the year of 1998.

In the document the spelling “Kichwa” instead of “Quechua” will be used when referring to the population of this indigenous nationality and their language. This has consciously been chosen since Kichwa is the local spelling of the name, as for example in the name of the local collaboration party FONAKIN – Federación de Organizaciones de la Nacionalidad Kichwa de Napo – Federation of Organizations of the Kichwa Nationality of Napo (for spelling example see ProBenefit, 2007).

3. Previous Case Studies

As mentioned previously, the specific research on the implementation of the CBD still has only a limited number of cases to fall back on. On the official website of the CBD a few reviews of bioprospecting in general and 23 case studies are accessible (CBD, 2009-01-29). The different case studies range geographically from Kerala in India, to Fiji and Mexico, to Surinam and Cameroon. The two case studies made in Cameroon show a need to emphasize the importance of capacity building within the provider country (UNEP, 1998). In the reports from the Novartis-UZACHI Biolead Project in Oaxaca, Mexico, and the BNC program in Verata, Fiji, the same conclusions are highlighted. The projects all show that it is not the so hoped for economic incomes that are the greatest benefits derived from the bioprospecting agreements, but rather different non-monetary benefits (Baruffol, 2003; Aalberberg et al., 1997).

As the participating communities many times lack the knowledge necessary to negotiate the role of local NGO's as facilitators and assistants was stressed as essential in the case study from Oaxaca in Mexico (Baruffol, 2003). During the project executed in Verata, on Fiji, impartial and independent lawyers were engaged to assist the communities in their formulation of the contracts with the other stakeholders (Aalberberg et al., 1997). According to the case study from Oaxaca a crucial component was the openness showed by the participating communities towards the project, especially in comparison with the reluctance of other communities in the same area which had been "burnt" by of prior negative experiences of exploitation (Baruffol, 2003). To complete a successful bioprospecting project two requirements were specified in a case study from Surinam; 1) careful adaptation of the project to the specific conditions of the communities and the country involved; and 2) active participation of all stakeholders (Guérin-McManus et al., 1998). The active participation of the local communities throughout the whole process was stressed as one of the central reasons to the success of the project executed in Verata, Fiji (Aalberberg et al., 1997).

According to the CBD the providers of a genetic resource must be informed about and in agreement on the compensation they will receive and the way in which the resource will be used (Glowka, 1998). It has however been shown to be a difficult task to decide whom to inform, in which way and to what extent. Cultural and language barriers can also complicate

the process (Chasek et al., 1999) and differences between the project managers and the local population in their perception of nature and people could create an obstacle to mutual understanding (WWF, 1997). A failure to identify all stakeholders at an early stage of the process can put the implementation at risk since the project will not be properly established (Chasek et al., 1999). According to an internal review made by the environmental organization World Wildlife Fund (WWF) enough time is often not spent to recognize and involve the different stakeholders that should participate in a project. In projects where the local involvement was not facilitated from the start it was many times not incorporated later either (WWF, 1997).

3.1 Consultation in Oilfield 20 and 29

In Ecuador the constitution of 1998 established the right of the affected population to be consulted through a democratic process before the commencement of exploitation of crude oil. The first opportunity to implement the regulation was a consultation process carried out in the end of 2003 (Garcia et al., 2007). The consultation covered the most populated areas in the Ecuadorian Amazon, including the project area of ProBenefit (Morris, 2004). Even if the consultation process was on the access to the oil concession rights instead of the genetic resources it has several similar difficulties as the previously presented case studies. It also came to affect the local stakeholders of ProBenefit both directly and indirectly.

The process was criticized on several fundamental elements, both during and after its realization. The limited time was seen as one of the main problems, many of the communities felt that the time was too short to make a well analyzed and thought through decision. The majority of the information was presented only in Spanish and the first language in the rural communities is Kichwa an assimilation problem was also expressed (Morris, 2004). According to participants the information presented to the communities was incomplete and bias, giving more importance to the positive aspects of the exploitation. It was also seen as a big weakness that not all of sectors of the society were included in the process, as for example the urban indigenous and the non-indigenous population (Garcia et al, 2007). Of the total population living in the two oilfields only 11 per cent participated in the consultation process (Morris, 2004). The consultation process was also strongly criticized as several communities were not informed about their possibility to reject the exploitation or demand a moratorium (Morris, 2004); thus the process was many times more informative than consultative (Garcia et al, 2007). The consultation was perceived as little transparent as the participation of

external observers was restricted by UPS and communities in opposition felt neglected. To conclude was a manipulation of the final votes in favor of the oil exploitation reported by the opposition (Morris, 2004).

3.2 Conclusions and Relevance of Previous Case Studies

Many of the conclusions made by previous case studies highlight central obstacles met by the project ProBenefit. The most important conclusion that can be drawn from the case studies presented above are:

- Important to carefully adapt the project to the socioeconomic surroundings.
- Active participation of all stakeholders essential.
- Reluctance of the local society to participate openly if it has previous negative experiences.
- Problems with defining the stakeholders are common.
- Failure to recognize and involve all stakeholders at an early stage of the process is often not corrected later, putting the implementation of the whole project at stake since it is not properly established.
- Important to involve local NGOs which can facilitate the process and assist the communities.

A careful adaptation of the project to the local socioeconomic conditions was essential as ProBenefit was carried out in a socially and economically weak area. The population's previous negative experiences showed to have an important part in the general attitude towards the project; consequently, early and active participation of the public would have been vital to create a concept of which considerations the socioeconomic conditions demanded of the project. ProBenefit had severe problems to become established in the project area as the Ibn coordinators initially failed to understand the necessity of gaining approval from a recognized local organization. As genetic resources and traditional knowledge are not limited to a certain area or community the issue of who to consider stakeholder is very complicated. Various indigenous organizations of national, regional and local presence were invited to participate, but the involvement was rejected as biopiracy by all organizations but those affiliated to FONAKIN (ProBenefit, 2006). As independent organizations may have been able to strengthen the participating communities, ensuring their involvement might have made it possible to overcome a part of the distrust of the local population.

4. Deliberative Democracy in Democratic Processes

According to the regulations of the CBD a Prior Informed Consent (PIC) by the tenants of the traditional knowledge and genetic resources must be obtained before any exploitation can be initiated. The PIC must be achieved through a democratic process where all parties can participate under equal conditions (CBD, 1992). To outline the fundamental requirements for a democratic process on equal conditions the theory of deliberative democracy has been chosen. First, a theoretical overview of deliberative democracy in relation to environmental issues will be presented, followed by a general background to basic principles of a deliberative process. Finally, new aspects that generally are not considered by deliberation theories will be aggregated in “Democratic processes and indigenous participation” to highlight some of the specific circumstances and difficulties met by the project ProBenefit.

4.1 Deliberative Democracy and the Environment

The only way to a democratic control of political decisions is the total access of the public to the information and their continuing participation in all debates – from early proposal throughout decisions and evaluation. These aspects are stressed both in the Ecuadorian constitution and the UN Convention on Biological Diversity (Constitución Ecuatoriana, 1998; CBD, 1992). Through public participation the common values and ideas of the society forms part of a decision making process and it prevents undemocratic decisions being made for fear of the politicians to later have to respond to public inquiries. With total access to information and the throughout involvement of all stakeholders it would be much harder for a government to ignore local environmental risks in favor of a general economic gain. Every negative aspect would be considered many times before accepted and it would be impossible for the government to declare it unaware of the priorities set by the people. The local population has the most extensive knowledge of their surroundings and would be directly affected by environmental degradation. Thus a decision made with a high level of public participation will give prominence to the environmental sustainability of all decisions. With a better informed population actively taking part in decision making processes the policies reached will be more environmentally friendly (de-Shalit, 2000).

4.2 Deliberative Processes

But how to involve the public? By which procedure would it be possible to ensure total access to information and extensive participation of all stakeholders? Gutmann and Thompson specifies four basic principles to achieve a deliberative process; 1) the process has to be *reason-giving* – decisions must be explained in a rational way, with reasons “that should be accepted by free and equal persons seeking fair terms of cooperation”(Gutmann et al., 2004:3), 2) the process has to be *accessible* – it must take place in public and all reasons must be understandable to those addressed, 3) the process must be *binding* – the discussion of a problem can not merely be theoretical, but it have to be realized at some point, 4) the process has to be *dynamic* – even if a decision is taken the process must be open to review in the future (Gutmann et al., 2004). A democratic process based on a group of delegates representing a bigger community the demand of the group to represent all stakeholders is essential (Montgomery, 2003).

The base of deliberative democracy is an extensive discussion amongst free and equal individuals, after which a joint solution is found, taking in the interests of all participants (Benhabib, 1994). The presumption of all persons as free and equal is however criticized by several deliberative theorists. Instead they emphasize that individuals always form a part of hierarchical structures based on for example ethnic and cultural heritage, social and economic status and gender. Thus a decision made through argumentation will always privilege groups with more power, as they will define the conditions of the process (Dryzek, 2000; Young, 1999). Thus Joshua Cohen stresses the need for a deliberative process to break down previous distribution of power to achieve equality. Only with an even power distribution the stakeholders will not be limited in their participation (Cohen, 1989) and the equal conditions dictated by the CBD will be achieved (CBD, 1992).

4.3 ProBenefit – Deliberation and Indigenous Participation

It is necessary to emphasize certain aspects of deliberative theory that have only been partially or vaguely defined above to get a better comprehension of the specific conditions dictating the basic requirements of a deliberative process in the project area of ProBenefit. Several of these elements were highlighted by the previous negative experiences of the population and are vital in the analysis of the public deliberation during the project ProBenefit. Many of these aspects are recognized by the International Indigenous Forum on Biodiversity (IIFB) and the United Nations Permanent Forum on Indigenous Issues (UNPFII) as fundamental for

processes to obtain a PIC (FIIB, 2001; UNPFII, 2005). Other case studies have also highlighted some of the following conditions.

The base of deliberative theory is the extensive discussion amongst free and equal individuals (Benhabib, 1994), but as for example Dryzek and Young points out are all individuals not always free and equal (Dryzek, 2000; Young, 1999). Indigenous nationalities are maybe one of the best examples of groups with a historically predefined cultural, economic, ethnic and social disadvantage – especially when dealing with western foreign companies. After a long history of oppression and social marginalization would it be difficult to consider them as free and equal stakeholders in a situation of negotiation. Thus a need for a deliberative process to break down the existing power distribution exists (Cohen, 1989) and the demand of an empowerment of the weaker stakeholder becomes essential in the creation of more equality. Through complete involvement of all stakeholders in all stages of a process the empowerment of weaker groups can take place and true deliberation can be achieved.

As stressed in the CBD active participation of the public in all stages is indispensable for a democratic process (CBD, 1992). Active participation is a way of ensuring total access to information by all stakeholders – not only to the issue at stake, but also to the proposal, the process and the implications of a future decision. If true deliberation shall take place all stakeholders must be involved in all stages of a process, otherwise total access to information and complete comprehension of the project can not be reached. Consequently true deliberation can not take place if the decision of the deliberative process is limited to an acceptance or a rejection of a predefined proposal. If the deliberative process is not open ended it implies that stakeholders have been denied access to fundamental steps of the process. When all stakeholders are given the possibility of formulating the problem and to devise the solution the passive position of weaker groups as accepters or rejecters of a predefined proposal will be changed to active participation empowering them. Thus working with marginalized groups it is of most importance to endeavor their free and active participation in all stages of the process so that empowerment can take place. If the empowerment does not occur the possibility for a complete deliberative process to take place is small and as a result any decision made through that process will be of little sustainability.

To comply with the criteria of *accessibility* and *reason-giving* is it necessary for a democratic process with similar socioeconomic conditions as ProBenefit to meet with some basic

requirements (Gutmann et al., 2004). One essential aspect is complete, comprehensive and rational information. This implies for example a level of complexity adapted to the audience, but without losing important aspects of the information. Reason-giving also means reliable exponents with reliable information, presenting equally both benefits and risks. In areas where more than one language is spoken it also includes a need to use the correct language (in this case Kichwa or Spanish) and a constant work to compensate for the lack of scientific terminology of many indigenous languages. The possibility to make questions and get rational answers should be unimpeded.

The second important aspect is that more time and economic resources are needed when working in areas with low degree of completed education and/or high illiteracy. To ensure the access of all stakeholders to the information and to the democratic process considerable time is necessary. The process should give the public a possibility to receive the information and to analyze and evaluate it, both it independently and together as a community. Through this the public will have the possibility to comprehend the implications of the information – they gain access to the information. A decision made too fast and without extensive comprehension is very probable to be rejected later, as it will not represent the true consensus of the population (Wörrle, 2005). A democratic process where the public feels that a decision is forced to be taken before access has been gained and deliberation is completed will most likely be seen as dishonest, even if all other aspects are democratic.

A reason-giving process is managed through rational reasons that can be accepted by free and equal individuals. By the definition of Gutmann and Thomphson a rational reason must be objective and can not be based on any kind of religious belief (Gutmann et al., 2004). Many of the traditions related to the knowledge of medicinal plants are however mystical and have strong religious aspects. Would such arguments be accepted as rational in a negotiation on bioprospecting by a person who dose not share the same worldview? Are the same reasons rational to someone with higher education as to an illiterate person? Differences in views of the nature and the people were specified by the WWF as one of the reasons to collaboration problems between local stakeholders and project manager (WWF, 1997). This kind of cultural conflicts highlights the power differences between the local participants, who often have little influence over the proceedings of a project, and the foreign managers, who have more influence and therefore also more power to define what is suitable for a democratic process and what is not.

For a process like ProBenefit where elected delegates represent a bigger community the question of representation is of most democratic importance (Montgomery, 2003). Because of the wide and irregular distribution of genetic resources and traditional knowledge the representation in a PIC does not only depend on gender, ethnicity or economic status. Delegates from all geographical areas that possibly could be affected have to be present and various organizational levels are needed to supervise and coordinate the process. Since any decision could have far-reaching effects on other tenants of the same knowledge or genetic resources than those directly involved it is of most importance that great efforts are made to give all possible stakeholders a voice. It is therefore also essential that the process is public, so that all groups concerned can look after their interests (Gutmann et al., 2004).

4.4 Summing up Deliberative Democracy and Previous Case Studies

With the theory of deliberative democracy and previous case studies as a base four criteria has shown to be central to the achievement of deliberation in democratic processes with high inequality amongst the stakeholders. Thus ProBenefit will be analyzed by the criteria:

1. *Legitimacy* – By giving existing organizations and social structures influence and power legitimacy for the project and its objectives can be created. In order to create legitimacy the previous experiences of the population must be taken into account. Through involvement and empowerment of the local stakeholders mistrust can be prevented.
2. *Access to information* – The information presented in a deliberative democratic process must be complete, comprehensive and rational. A participative methodology, the correct language and reliable exponents are also essential. When working in areas with low level of completed education more time is needed for the public to gain access to the information. An expedited process is probable to result in an unsustainable decision and a general perception of the process as undemocratic.
3. *Accurate representation* – For projects like ProBenefit involving delegates representing a bigger public the composition of the participants is of most importance. As genetic resources and traditional knowledge is irregularly distributed the definition of the stakeholders is more complicated to limit, but therefore also of even more democratic significance.

4. *Involvement of all stakeholders* – Active participation by all stakeholders in all stages of a democratic process is vital to ensure total access to information, as stressed in the CBD. The process must also be open ended or all stakeholders have not been given access to all stages of the process. Individuals are not free from external factors that affect their deliberation. Therefore, the previous distribution of power has to be broken down to equalize the positions of the participants if deliberation is to be achieved. Through active participation of all stakeholders empowerment of weaker groups can take place and power is redistributed enabling equality.

5. Access and Sustainable Development

This chapter outlines a more general context to the project ProBenefit to show the complexity of exploitation of natural resources closely related to indigenous cultures. ProBenefit like all recent projects related to access to genetic resources was established on the legal framework set up by the UN Convention on Biological Diversity (CBD, 1992). Therefore, an overview of the convention and its background will be presented, followed by a description of the relation between genetic resources, traditional knowledge, tenure and management. Last, regional and national legislation regulating the access to genetic resources in Ecuador will be outlined.

5.1 The UN Convention on Biological Diversity

The Convention on Biological Diversity (CBD) was signed during the UN top meeting in Rio de Janeiro, Brazil, in 1992 and its main objective is to conserve the biological diversity. The conservation is intended to arise through a sustainable use and a fair and equitable sharing of the benefits gained from the exploitation of biological and genetic resources. The benefit sharing is based on appropriate access to the natural resources and may include a transfer of relevant technologies and adequate financing. The convention stipulates the sovereign rights of each nation over its biological and genetic resources.

The CBD established a legal framework regulating how a democratic process to access genetic resources should be carried out and stated fundamental principles that must be adhered to. The convention stipulates that all policies regulating the access to genetic resources must follow national legislation. All agreements giving access to genetic resources must arise from a prior informed consent (PIC) with the government of the country where the resources subsist. The conditions of the exploitation must be mutually favorable and should include ways of ensuring that the benefits derived from the exploitation are shared justly and equally, including for example opportunities of local participation in investigations. All countries ratifying the Convention on Biological Diversity must in the national legislation also stipulate a respect for and a determination to preserve indigenous and local knowledge, innovations and practices. The laws should incorporate their ways of life, with the intention of improving the sustainable use and protection of the biological diversity. It should also stimulate the use of these practices, innovations and knowledge – with a prior consent of the populations – and the contracting parties have the responsibility to defend and encourage the

conservation and sustainable use of the biological diversity through these cultural traditions (CBD, 1992).

Despite the regulations on PIC in the CBD there are proposals from other parts of the UN on a moratorium on all contracts with indigenous communities on natural medicine and traditional knowledge. The United Nations Permanent Forum on Indigenous Issues (UNPFII) wants all exploitation to stop until the communities are sufficiently prepared to supervise all investigations and to participate in them on equal terms (Daes, 1995).

5.2 The CBD - Governance through Sustainable Development

The CBD is founded on the paradigm of sustainable development – the use of biodiversity without long term deterioration, maintaining its ability to meet the needs of future generations. This implies economic exploitation, but at a rate no higher than the renewal capacity of the resource (Robinson, 1993). The question of whether it is possible to adapt nature to an economic system is complicated. That the world's biodiversity has a commercial value through the services it provides – raw material, energy, food, medicine, etc. – is undeniable, but both economists and scientists concur in the inability of the economic system to determine an exact price of something as complex (OECD, 1999).

Through bioprospecting the incomes gained from the exploitation of genetic resources will act to increase consciousness about the importance of biodiversity and to encourage its conservation (Adame et al., 2003). There has been a strong demand on benefit sharing in bioprospecting agreements since the costs for maintaining biodiversity has risen, meanwhile the profit made by the exploiting pharmaceutical companies has increased rapidly (Glowka, 1998). However, there have been concerns raised about the effects of commercializing the conservation of biodiversity (Chasek et al., 1999). As the values of the economic system are not fixed, but opportunistic by nature, they form an unpredictable foundation for a conservation strategy (Szymura, 2001). Traditional knowledge can give important indications to pharmaceutical companies of which plants that have a potential economic value in regions where biodiversity is high (Adame et al., 2000). There are several reasons to why traditional knowledge has become increasingly valuable to pharmaceutical and agro industries. One reason is the cultural erosion which many indigenous people experience today – through diminishing populations and loss of language the traditional knowledge is disappearing. The

global decrease in biodiversity has also augmented the value of the remaining resources and the knowledge about them (Brush, 1993).

There is no definite number of the quantity of species living on Earth at present, but the range mentioned is generally between several and a hundred million (Pimm et al., 1995). In article 2 of the CBD biological diversity is defined as “*the variability among living organisms [...] this includes diversity within species, between species and of ecosystems.*” In the same convention a biological resource is stipulated as “*genetic resources [...] or any other biotic component of ecosystems with actual or potential use or value for humanity.*” (CBD, 1992). A genetic resource is “*any material [...] containing functional units of heredity*” with an economic value (CBD, 1992). Since evolution is not bound to recent political borders the genetic resources are randomly distributed over territories belonging to different nations, regions, cultures and people. Thus there can also be different systems of property rights established controlling the same resource, which makes it very difficult to decide who has the right to claim the tenure (Chasek et al., 1999).

5.3 Intellectual Property Rights and TRIPS

Immaterial property rights (IPR) regulate the access and tenure of immaterial goods, i.e. the idea, information and knowledge that has been used to develop a product. IPR gives the owner the exclusive right to all benefits, not only from the product itself but also from the idea prior to it. This kind of legislation came as a consequence of the industrialization in the developed countries, and the first international UN treaty on intellectual property rights was comended in Paris 1884. Together with the Bern convention from 1979 it forms the foundation to all national immaterial property rights such as patents, trademarks and copyrights (Forum Syd, 2006). In 1995 an agreement on trade-related aspects of immaterial property rights (TRIPS) was commended as a part of the fundamental regulations of the World Trade Organization (WTO). While earlier legislation on immaterial property rights gave every nation internal authority, the TRIPS agreement was a way of harmonization through common international standards (WTO, 2008-03-24), limiting the possibility of diversity within and between different systems of property rights (Tansey, 1999).

Traditionally biological and genetic resources have been collectively owned and the information about them transmitted orally (Elliot, 2004). Still many communities in developing countries apply traditional systems to regulate the tenure of biodiversity (Khalil,

1995). At present many governments are trying to impose private and immaterial property rights, but since they are based upon principles of individualism and optimum profit (Chichilnisky, 1998) they often meet resistance. Property rights regarding medicinal plants are founded on mystical and religious believes, hence the implementation of market schemes many times means economic and cultural alienation (Khalil, 1995).

Biodiversity and genetic resources have traditionally been free to use as raw material (Hardon, 1989), whereas the products they are used for are protected by property law and therefore can generate profit. Since the majority of the genetic resources are located in developing countries the legal inequality between the raw material and the product result in accumulation of profit in developed countries, drawn from the resources of developing countries (Yusuf, 1994). During the negotiations of the CBD the developing countries rejected the first draft of the convention as it wanted to declare biodiversity as a common heritage with open access. Instead the CBD as it is stipulated today, with national sovereign rights over genetic resources, is viewed as a possibility for the developing countries to control their genetic resources and ensure a share of the gains (Kothari, 1997).

5.4 National and Regional Legislation

From the legal framework set up by the CBD both national and regional regulations on the access to genetic resources and traditional knowledge have been developed. In July of 1996 the regional organization Andean Pact constituted by Ecuador, Bolivia, Colombia and Peru (Comunidad Andina, 2008-06-05), decided on an agreement called CAN 391. The agreement stipulates principles for the protection and sustainable use of the common genetic resources. Yet every member country had the right to specify the regulations within its territory. The basic purpose of CAN 391 is similar to the CBD, with references to a just distribution of benefits, conservation and sustainable use of genetic resources. The CAN 391 recognizes the sovereign rights of each nation over its genetic resources in the same way as the CBD, but affirms the importance for the indigenous community to be able to make autonomous decisions over their knowledge, traditions and practices. The agreement also calls on the governments to establish the foundation for recognition and valuation of the genetic resources, especially concerning indigenous communities (CAN 391, 1996).

The Ecuadorian constitution guarantees that all national decisions affecting the environment should be in agreement with the opinion and criteria of the citizens ensuring their

participation. Appropriate information must always be available. The constitution also declares the conservation of the genetic resources as a public interest (Constitución Ecuatoriana, 1998). The collective rights stipulated in the Ecuadorian constitution based on the UN Convention 169 on Indigenous and Tribal People gives the right to be consulted an even stronger emphasis when the exploitation of a natural resource affects the indigenous community (OIT, 1989; Constitución Ecuatoriana, 1998). The government recognizes the ancestral rights of the indigenous community over their knowledge and tradition, but also their right to have the genetic resources they need for these practices available. Even so the genetic resources are specified as the exclusive property of the state of Ecuador (Ley de la Biodiversidad, 1996).

5.5 Summing up Access and Sustainable Development

The fundamental commandment on access to genetic resources is the UN Convention on Biological Diversity from 1992. According to the convention will the protection of the natural resources arise through sustainable use and benefit sharing. The convention establishes the sovereign rights of each nation over its genetic resources. Fundamental principles are specified in the CBD for access to these resources, e.g. must a prior informed consent (PIC) be achieved before the commencement of any exploitation and arrangements for benefit sharing must be specified. Through the CBD the traditional lifestyle of the indigenous nationalities is also protected and highlighted as an important mean of biodiversity conservation (CBD, 1992). The distribution of genetic resources is irregular and has no concern for recent political borders; therefore tenure is often very difficult to define (Chasek et al., 1999). The modern regulations on intellectual property rights (IPR), i.e. the idea or knowledge from which a product is derived, are based on individualism (Chichilnisky, 1998) whereas most traditional systems are collective (Elliot, 2004). As the modern IPR systems are imposed on indigenous nationalities economic and cultural alienation many times occur (Khalil, 1995).

The cultural erosion of many indigenous cultures and the increasing loss of biodiversity have augmented the value of traditional knowledge for pharmaceutical industries (Brush, 1993) since it can give valuable indications to plants with potential economic value (Adame et al., 2000). The regulations on a prior informed consent in the CBD are attempts to ensure the involvement of all stakeholders and the sharing of benefits with the tenant/s of the traditional knowledge (CBD, 1992). There are however proposals from other parts of the UN on a

moratorium on all contracts with indigenous communities on the access to their knowledge and genetic resources until they are sufficiently prepared to participate and supervise them on equal terms (Daes, 1995).

On a regional level the access to genetic resources in Ecuador is regulated through the agreement CAN 391 of the Andean Pact. The agreement has the same basic principles as the CBD but emphasizes the possibility of the indigenous community to make autonomous decisions over their knowledge and traditions (CAN 391, 1996). The Ecuadorian constitution guarantees the involvement of the public in any decision related to the environment and the collective rights give the consultation an even stronger emphasis when the indigenous nationalities are affected (Constitución Ecuatoriana, 1998). The genetic resources are however the exclusive property of the state of Ecuador (Ley de la Biodiversidad, 1996).

6. National Settings

After this more general review of the current situation on access to genetic resources and traditional knowledge, the history and present socioeconomic situation in Ecuador and the Napo province will be reviewed briefly. To give a more comprehensive background to the project ProBenefit general conditions such as national economy and education levels will be examined. Previous experiences and effects of the exploitation of natural resources in the area will also be presented. The ambition is to outline aspects that in different ways may have affected the possibility of the public to deliberate during the project ProBenefit.

6.1 Ecuador and the Napo province

Since the independence of Ecuador the economy has been focused on export of primary products such as rubber, coffee, bananas and lately crude oil. Because of Ecuador's dependence on the global prices on primary products the fluctuation on the world market has created an instable economy (Bengtsson, 2002). The Ecuadorian population living below the poverty line in the year of 2006 was determined to 38, 3 per cent (CIA, 2008-10-24).

Image 1: Map of Ecuador and South America.



Source: Exploring Ecuador, 2009-06-01.

The Napo province is located in the center of the Amazon region and the provincial capital is Tena. The abundance of biodiversity in the Ecuadorian Amazon is estimated to be between five and ten million species, of which only about one and a half million has been discovered so far (Ley de la Biodiversidad, 1996). The population of the province was in the year of 2000 estimated to about 79 000 persons, of which 74 per cent is rural. The province contains about 500 villages of which the big majority is inhabited by indigenous population of the Kichwa nationality. Of the rural population 95 per cent was estimated to not have the basic needs satisfied, i.e. access to school, hospital, water and electricity. The level of illiteracy among adults was one of the highest in the country. This makes Napo one of the economically poorest provinces in the country (SIISE, 2000).

As a part of the Ecuadorian Amazon region the Napo province has historically had a problematic relation to the central government. Since the region is rich in natural resources such as crude oil, gold and biodiversity it has for a long time been the site of large scale exploitation. This has however not produced big changes towards a better standard of living for the local population. As will be described below the benefits of the exploitation has stayed in the hands of a minority of the population (Hidrobo, 1992) at the same time as the Amazon region and its inhabitants have suffered from severe environmental degradation (Schultz, 2007; Öst, 2001).

6.2 Exploitation and Devastation

When the first oil deposits were found in Ecuador during the mid 20th century it radically changes the economy – from an export based to 60 per cent on agriculture, to an export income derived to 60 per cent of from the exploitation of crude oil (Hanratty, 1991). Although the exploitation of oil has led to an increase in the Ecuadorian GNP it has not necessarily meant more money for the regular citizen. As 25 per cent of the population controlled 70 per cent of the incomes from the oil, were the other 75 per cent left to share 30 per cent of the gains (Hidrobo, 1992). Because of the oil exploitation the environment has suffered severe damages. Apart from the devastation of tropical forest to give place to machinery and roads, chemicals that are used in the separation process have leaked out to the surroundings of the oil fields. Especially the northern parts of the Ecuadorian Amazon have severely contaminated rivers and soil. With the expansion of the oil exploitation follow the construction of infrastructure, thus new areas are opened up to colonization and more forest cut down (Öst, 2001).

In several parts of Ecuador's Amazon region the oil exploitation has had impacts on territories inhabited by the indigenous population. To obstruct resistance the oil companies have been known to use the method "divide and conquer", i.e. by giving some communities generous gifts internal conflicts are created, thus resistance and unity are shattered (Schultz, 1997). Through the Ecuadorian constitution of 1998 the right of the population to be consulted before the commencement of oil prospecting became established. The aspiration of the public was to have more influence over the exploitation and to be able to prevent violations of the regulations protecting the environment and the civil rights. As the previous case studies of the oil consultation process showed was this however not the immediate effect.

7. ProBenefit - Indigenous Participation in Exploitation of Traditional Knowledge and Genetic Resources

In this chapter the case study of the project ProBenefit will be presented. At first, the objectives of the project and the stakeholders will be introduced, followed by a description of the general progress of the deliberative process (for a more detailed chronology see Appendix 9.1).

7.1 Objectives of the Project

The project ProBenefit came as a response to international petitions of projects investigating the practical implementation of the concepts of prior informed consent (PIC) and benefit sharing as defined in the CBD (Local coordinator 1). The project consisted of two phases where the first was to define a model for consultation and the second to make ethnobotanic and pharmaceutical investigations on local plants (ProBenefit et al, 2006). The project was programmed from June 2003 to November 2007 (Möller, 2007) and financed by the German Ministry of Education and Science, together with the pharmaceutical company Dr. Wilmar Schwabe S. L., interested in potential bioprospecting (ProBenefit, 2008-03-09). The area chosen for the project was the Sumaco Biosphere Reserve in the Napo province (FONAKIN et al, 2005a) because of its high biodiversity. Since the reserve was a German government financed project contacts were easily established (Local coordinator 1).

Image 2: Map of the project area.



Source: ProBenefit, 2005.

The aim of the project was to realize a democratic process, complying with the principles of the CBD that defines how to distribute the benefits derived from exploitation of traditional knowledge and genetic resources in a fair and equitable way. Through the project the local community, national and international NGO:s and the governmental institutions would collaborate to find new and sustainable ways of exploiting natural resources in the Ecuadorian Amazon, joining different scientific disciplines in the execution of the project. According to ProBenefit extensive collaboration amongst all stakeholders would make a participative, integrated and transparent process possible (ProBenefit, 2004). The aspiration was to find a general model for the execution of democratic processes and through pharmaceutical bioprospecting discover plants with active substances for production of new medicines. Through a benefit sharing plan the gains from the commercialization could serve as a future income for the communities, making it possible for them to preserve their knowledge and biological resources (ProBenefit, 2004).

7.2 The Stakeholders

The German group was formed by:

- *Institute for Biodiversity (Ibn)* – coordinators of the democratic process and initiators of the project.
- *Institute of International Public and European Law, University of Goettingen* – responsible for the legal requisites of the project.
- *Future Technologies Consulting of the VDI Technology Center* - in charge of documentation, media contacts and PR in Germany.
- *The Department of Plant Ecology of the Albrecht-von-Haller-Institute for Plant Sciences, University of Goettingen* – responsible for investigation and documentation of species with possible pharmaceutical value.
- *Dr. Willmar Schwabe* – the pharmaceutical company interested in an agreement on exploitation of the ancestral knowledge and genetic resources (ProBenefit, 2004).

The project was initially intended to be a trial model for democratic processes, without the involvement of a pharmaceutical company, but for the German government to sponsor the project a private counterpart was required. Hence the coordinating organization Ibn made contact with different companies, but none of the major pharmaceutical producers were interested, stating the unremunerative outcome that most of this type of project has. Eventually a contract was settled with the medium sized company Schwabe, centered in herbal medicine products (Local coordinator 1).

At first, the Ibn project coordinators tried to promote the project in Ecuador from Germany by e-mail and telephone, but without results. Arriving in Ecuador, about two years after commencement of the project, attempts of making direct contact with communities in the Sumaco area were made, but rejected by the population as a presumed biopiracy since the project lacked authorization from a superior indigenous organization. Contact was made with CONAIE, the national umbrella organizations for all indigenous nationalities, but the proposition of collaboration was rejected anew accusing the project of enabling biopiracy. By advice approach was made towards FONAKIN (Federation of Organizations of the Kichwa Nationality of Napo)¹ (Local coordinator 1; 2) and finally in May 2005 a contract was signed between the project ProBenefit and FONAKIN (FONAKIN et al, 2005a). FONAKIN was

¹ Fedreación de Organizaciones de la Nacionalidad Kichwa de Napo. Translation from Spanish by the author.

chosen as a local collaborator since it is the indigenous organization in the province with most communities affiliated (Local coordinator 2). It was agreed on an active role of the organization in the project (FONAKIN et al, 2005a). The responsibility of FONAKIN was to coordinate the communities and based organizations, and by giving its approval the organization legitimated the initial phase of the project ProBenefit (Local coordinator 2).

7.3 Starting Up

In December 2004, before signing the contract with FONAKIN, the Ibn coordinators held a pre-workshop with leaders from different indigenous organizations. The aim of the workshop was to inform and put up guidelines for the indigenous participation in a hypothetical training course and consultation process (ProBenefit, 2004). During the workshop issues as whom to consult – the indigenous organizations, the community leaders, the owners of the knowledge or the landowners – and how to avoid division between the different organizations, were discussed (Pre-workshop 1). The group of participating leaders was not representative since it did not consist of delegates chosen by the communities, but rather individuals personally known by some of the Ibn coordinators (Local coordinator 1; Pre-workshop 1). Hence the group had no authority to make decisions, but only recommendations for the work of ProBenefit (ProBenefit, 2004).

In May of 2005 the evaluation of the pre-workshop, together with an analysis of the fundamental economic, social and juridical principles of the project was published on the official website of ProBenefit. The evaluation states that “*[a]greements negotiated only with the directors [of FONAKIN] without the participation of the bases are not sustainable and rejection by the communities is highly probable*”² (Wörrle, 2005:8). Even so the agreement between FONAKIN and ProBenefit was negotiated only with the president of the organization, without any efforts on behalf of the Ibn project coordinators to make sure that it had been properly ratified by the communities. The president of FONAKIN and the project was strongly criticized for signing the contract without the permission of the base communities and organizations. This resulted in a weak support of the project in the communities that later were supposed to participate in the process (Delegate 4; Pre-workshop 1; Local coordinator 1). In December of 2005 a meeting was carried out to inform the communities and the organizations about the project and to decide the conditions for their participation (FONAKIN et al, 2005c).

²

Translation from Spanish by the author.

7.4 The Training Course

As the starting point of the democratic process a training course was organized by ProBenefit to inform a group of delegates from the local communities and organizations in the project area. The group would then be responsible for disseminating the information acquired to their bases (Local coordinator 1). They would also design an indigenous proposal for possible negotiation with Schwabe. The consultation would then follow the information process, but only if the three stakeholders, i.e. the government, the company and the indigenous organizations, in consensus agreed on furtherance (FONAKIN et al, 2005b).

Initially the Ibn project coordinators wanted to constitute the working group of only people with knowledge of traditional plant medicine, e.g. shamans, pajuyos, yachacs or traditional midwives. Since these people are mainly of age and most lack formal education FONAKIN was concerned about their possibility of assimilating the information and to protect the general interests of the indigenous community. Instead the organization insisted on sending more prepared delegates (Local coordinator 2). Therefore it was decided that each organization or community could send one delegate, who: belonged to the Amazonian Kichwa nationality, was bilingual (Spanish and Kichwa), had finished at least primary school, and complied with at least two of the three following criteria: 1) had experience in development or community projects, 2) had experience as a leader in a local organization, or at a higher level, and 3) was affiliated to plant medicine (FONAKIN et al, 2005b). The evaluation of the training course shows however that only 10 out of 23 participants complied with these requisites, i.e. less than 50 per cent, and that three of the delegates did not comply with any of the criteria (ProBenefit et al, 2006).

As shown in table 6.1 were 23 organizations invited to participate in the training course. Together they represented different organizational levels (local, regional and national), geographical regions and interests (FONAKIN et al, 2005b). The 16 organizations that ultimately chose to participate were nevertheless all affiliated to FONAKIN (marked with * in the table). Thus the attendance lacked the presence of organizations of a higher organizational level than provincial, and delegates from other provinces or regions were absent (ProBenefit et al, 2006).

Table 6.1: Invited vs. Participating organizations during the training course.

Invited	Participants	Delegates
FONAKIN: directors	FONAKIN: director*	1

	FONAKIN: volunteer*	1
	Others*	2
<i>Organizations of 2nd grade</i>		
OCKIL	OCKIL*	2
UNCOKIC	UNCOKIC*	2
Unión Guacamayos	Unión Guacamayos*	1
Cooperativa Rucullacta	Cooperativa Rucullacta*	2
UNKISPU	UNKISPU*	1
UCKAR	UCKAR*	2
ASONAKIPA	ASONAKIPA*	1
ATIAM / COPUKI	ATIAM / COPUKI*	1
UCKIT	UCKIT*	1
	UCKIN*	2
UCKIRIN	UCKIRIN*	1
via Hollin-Loreto	via Hollin-Loreto*	1
<i>Other federations Kichwas in the Napo province</i>		
FENAKIN		
<i>Associations of Sages</i>		
AMUPAKIN	AMUPAKIN*	2
ASHIN	ASHIN*	1
ANIN	Consejo de sabios Mondayacu*	1
<i>Others</i>		
DIPEIB		
DP Salud Indígena		
<i>Federations Kichwas in neighboring provinces</i>		
OPIP		
FOKISE		
FCUNAE		
<i>Regional and national federations</i>		
CONFENIAE		
CONAIE		
Total: 23	Total: 16	Total: 25
Affiliated to FONAKIN: 15	Affiliated to FONAKIN: 16	Female: 10
Not affiliated to FONAKIN: 8	Not affiliated to FONAKIN: 0	Male: 15

Note: *Affiliated to FONAKIN. Source: ProBenefit et al., 2006.

The training course was divided into six modules with various topics as shown below in table 6.2. The modules were spread out between the 2nd of March and the 13th of May of 2006, each of them extending over three to four days (ProBenefit et al., 2006).

Table 6.2: Curriculum of the training course.

Module	Lectures	Date
Module 1	<i>Basic botany, Presentation of the company Schwabe</i>	2 nd – 5 th of March
Module 2	<i>Introduction and development of new plant medicines</i>	16 th – 19 th of March
Module 3	<i>Experiences of bioprospecting, Legislation & protection</i>	30 th of March – 2 nd of April
Module 4	<i>Commercializing medicinal plants – opportunities & risks</i>	20 th – 23 rd of April
Module 5	<i>Negotiation and conflict settlement, Control methods</i>	4 th – 7 th of May
Module 6	<i>Equitable benefit sharing, Contracts</i>	11 th – 13 th of May

Note: For a more detailed curriculum see Appendix 9.2. Source: ProBenefit et al., 2006.

To cover the variety of issues a number of experts were invited to expose, most of them were of Ecuadorian nationality (ProBenefit et al, 2006). The general program and what topics to include in the training course were decided by the Ibn project coordinators (Pre-workshop 1), but every exponent decided upon the methodology of his/her lecture (Instructors 1; 2). All the participants were provided food and accommodation (ProBenefit et al, 2006). The general methodology of the training was participative and the lectures were mixed with exercises and discussions in smaller groups. At the end of each module the delegates were given a homework or question to analyze until the next encounter (ProBenefit et al, 2006). The Ibn coordinators intended all representatives to continuously pass on the information to their organization/community after every module, thus also return with new inputs from other interested (Local coordinator 1; Delegate 1). During the three months of training course the German coordinators from the Ibn participated in the first and the last module of the course (Delegates 1; 2; Instructor 1; Local coordinator 1). A German woman resident close to the Ecuadorian capital Quito was appointed national coordinator. She was responsible for keeping the contact with local communities, organizations, exponents and the Ibn (Local coordinator 1).

7.5 Continuing ProBenefit

After the three months of training course the working group was supposed to be formed and ready to independently continue the work in Ecuador, if furtherance was decided by the communities and organizations (Local coordinator 1). The issue was raised during a general

assembly of FONAKIN in late May of 2006. The assembly decided that no further work could be done within the project if an extensive information campaign were not carried out first, only thereafter could a contract with the company Schwabe maybe be elaborated (Grupo de Trabajo, 2007a). The resolutions were sent by e-mail to the Ibn coordinators of ProBenefit in Germany (Local coordinator 1).

After the training course the coordinators from Ibn left Ecuador and the national coordinator returned her home in the capital Quito. As no one of the coordinators were present to encourage and support the working group in its continuous work the process came to a halt. Uncertainty about how to continue and unfamiliarity with the Internet as a medium of communication also contributed to the inability of the group to proceed. As a result the Ibn coordinators in Germany were waiting for the working group to take the next step, at the same time as the working group was waiting for someone to take the command and show them how to proceed. On the return to Ecuador by a Ph.D. student who had participated in the training course as an observer the working group reunited in December in 2006 and was able to design a proposal for the information campaign dictated by the FONAKIN assembly (Local coordinator 1). In the proposal the working group asked for 14 months to visit and inform the 300 communities of FONAKIN about the project. The group would be divided into three teams, with three to four persons each, exposing in two communities per week. An office would be set up in Tena for meetings and coordination and as a public information center about collective and immaterial rights and traditional knowledge (Grupo de Trabajo, 2007b). The proposal was sent to Germany by e-mail at the end of the year 2006 (Möller, 2007).

On the 12th of January of 2007 the working group was called to a meeting with the local coordinator who was coming down to Tena from Quito. With her she had a proposal from the Ibn coordinators on how to proceed with ProBenefit (Grupo de Trabajo, 2007c). In the proposal it was suggested that a draft of the contract with Schwabe should be developed, which would make it possible to initiate the consultation phase as soon as possible. This was greatly needed since the time disposed for the project was running out (Grupo de Trabajo, 2007a). The proposal of the Ibn was understood as a response to the proposition made two weeks earlier by the working group. Thus the impression the proposition left amongst the local stakeholders was of Ibn intendings to force the communities into a consultation process, without first carrying out the information campaign. As a response a statement was written by the working group declaring it impossible to continue under other circumstances than dictated

in their proposal and that further education on relevant subjects was greatly needed (Grupo de Trabajo, 2007a).

As a consequence of the strong rejection a midterm evaluation of the project was carried out in Tena in March of 2007 by the Ibn coordinators. Only then was it realized that the working group proposal had not yet been read by Ibn at the time of their meeting with the national coordinator. The suggestion on a draft contract had been in intent of the Ibn coordinating group to progress in a process they perceived as paralyzed (Local coordinator 1). With this new information the working group stated their position through a final letter expressing their satisfaction with the project ProBenefit and how they gladly would continue with the project, but only under the conditions expressed by the FONAKIN assembly (Grupo de Trabajo, 2007c). At the time of the midterm evaluation only eight months of the project time remained, thus to realize a 14 months long information campaign before initiating the consultation process was impossible. Consequently, the project ProBenefit was closed to further collaboration after the midterm evaluation in of March 2007 (Local coordinator 1).

8. Conclusions and Experiences of the Stakeholders

In this chapter the opinions and experiences of the different stakeholders during the project ProBenefit will be depicted. The evaluations and analyses to the outcome of the project and the major obstacles experienced by the participants will conclude the chapter.

8.1 Experiences and Opinions

Before assisting the training course few of the community delegates knew that they would be informed about traditional knowledge and genetic resources. Even fewer knew they were to prepare themselves for a potential consultation process (Delegates 1; 2; 3). One delegate thought they came to receive information about medicinal plants or how to prepare natural medicines, but the majority knew nothing about what to expect (Delegate 4). The same seems to have been case for the participants of the pre-workshop. Hence none of the local stakeholders had the possibility of preparing themselves (Pre-workshop 2; 3).

The general perception of the community delegates was of the training course as participative and interesting. All the interviewed stated they had learnt many important things, to some extent about plants and traditional medicine, but mostly about national and international legislation and how to protect their knowledge. Even if all presentations during the training course were held in Spanish it does not seem to have existed many linguistic problems, considering that the first language of all the community representatives was the indigenous language Kichwa. According to the interviews the delegates helped each other with translation when needed (All Delegates; Local coordinator 1). The participation during the training course was high and all interviewed appreciated the work in smaller groups (All Delegates; Local coordinator 1). The possibilities of asking questions were good, but some representatives felt that not all queries were answered. Instead it was said by the Ibn coordinators that the answer would come later, but it never did (Delegate 1). The exponents were perceived as very knowledgeable and experienced, and it was seen as positive that almost all of them were Ecuadorians (All Delegates). During the training course the information was generally on a level comprehensive to all participants (Delegates 1; 2; 4; Local coordinator 1) and the participative model facilitated the possibility of the participants to assist each other when needed (All Delegates; Local coordinator 1).

The information presented during the training course was stated as balanced and neutral (All Delegates), but at the same time many community delegates felt that facts were concealed on purpose by the Ibn coordinators (Delegates 1; 2; 4). Almost all local stakeholders interviewed said they had experienced hidden economic interests on behalf of the Ibn coordinators and the company Schwabe (All Delegates; Pre-workshop 1; 2; Local coordinator 1; 2). The majority of the local stakeholders expressed a fear of their knowledge being robbed or of being deceived in some way (All Delegates; Pre-workshop 1; 2; Local coordinator 1; 2). Almost all of them referred to how the communities had been treated by the oil companies and the procedure of the oil consultation in 2003 (Delegates 1; 2; 4; Pre-workshop 1; 2; Local coordinators 1; 2). Even if only a part of them had been involved in the oil consultation process, they all had shared the experiences of somebody else that assisted (All Delegates; All Pre-workshop; All Local coordinators). From the beginning of their involvement the community delegates held a general distrust towards the project (All Delegates). As a result the participants organized themselves during the training course deciding which information to reveal and which to keep secret (Delegates 1; 2; 3).

All local stakeholders expressed strong negative opinions about the oil consultation process and the exploitation of the oil companies (except one who said to completely lack knowledge) (All Delegates; Pre-workshop 1; 2; All Local coordinators). Several also stated that these bad experiences had made them more cautious and suspicious dealing with foreign companies in general, and with consultation processes like ProBenefit in specific. They considered that it had made it harder for the companies to fool them (Delegates 1; 2; 4; Pre-workshop 1; 2; Local coordinator 2). The straight out rejection by CONAIE also shows a strong opposition towards the project on the national level based on prior experiences (Local coordinator 1). It is however noteworthy that even with all this suspiciousness towards the project the training course was held as democratic on the direct question (Delegate 1).

8.2 The Stakeholders Evaluating ProBenefit

The project ProBenefit was originally designed to be a trial project on how to realize an information and consultation process based on the guide lines of the CBD without involving an economic interest. ProBenefit was later forced to include the private financing partner Schwabe to get economic support from the German government. According to one of the local coordinators who participated in the training course and had close contact with the Ibn coordinators the double nature of the project complicated the process. When the objective

became divided the project could not focus only on the process, but it also had to give something back to the company investing money in it (Local coordinator 1). Consequently, the final goal of the project became predefined as an acceptance of investigations made by Schwabe in the area. The acceptance should however be obtained through a democratic process free of coercion towards the communities.

The community representatives named the unwillingness of the Ibn coordinators to meet with their demands as the primary reason to the break down of the process. They felt that the short time available would have forced them to start the consultation process before they were properly prepared. With the oil consultation in mind the local stakeholders saw the time shortage as a way to avoid giving the communities enough time to analyze and make a thought through decision (All Delegates; Local coordinator 1). The majority of the community representatives had the impression of the Ibn coordinators to as very knowledgeable about the socioeconomic situation of the area (Delegates 1; 2; 4). However, both one of the local coordinators and one of the instructors who both had a close relation to the Ibn coordinators were of the opposite opinion. To them the lack of knowledge and experience of Ibn on how to work in the local area was one of the main causes to the failure. As the Ibn coordinators did not understand the importance of being at the place to promote the project they attempted to coordinate the process over telephone and e-mail. This made the process very slow and with long laps of no progress (Local coordinator 1; Instructor 1). The insufficient comprehension of how to work within the existing local social structures was one of the central reasons to why it took so long for the project to become established, hence also to why the time became so limited in the end (Local coordinator 1). One of the instructors with long working experience in the area stated that it is crucial for projects to have a close collaboration with the local host organization – which ProBenefit greatly lacked (Instructor 1).

At a closing meeting held in Quito on the 23rd of October 2007 the final evaluation of ProBenefit made by the Ibn coordinators was presented. In their analysis they pointed out several factors they considered central for the outcome of the project. Amongst these there were; the lack of experience and knowledge on behalf of the Ecuadorian government on the implementation of access and benefit sharing standards and the problematic definition of the owner and holder of the tenure rights of genetic resources and traditional knowledge (ProBenefit, 2007). The collaboration with FONAKIN and the communities was described as of little confidence. The organization and its affiliated communities were said to be locked in

a position of distrust originating in the expropriation, the denial of civil rights and the constant marginalization these nationalities had been victims of for many years.

According to the Ibn coordinators the communities also lacked the education needed to sustain and fulfill an agreement, which made any attempt to for a private company to invest in a process to obtain a PIC very economically uncertain. Like the Ecuadorian government the communities lacked experience and knowledge, but this kind of education could not be the duty of the private investor to provide since it would not be economically profitable (ProBenefit, 2007). One of their final conclusions was that the communities which had participated in the project were not yet able to provide the structures and experiences necessary to participate in the construction of the project, e.g. the design of methodology or work methods. Instead they were to only participate “politically” through consultation, voting and negotiation. Since the communities rejected political participation without also having an influence over the process the project could not continue (ProBenefit, 2007).

8.3 Summing Up ProBenefit

The project ProBenefit was initiated in the year of 2003 by the NGO named Ibn and co-financed by the German government and the medium sized pharmaceutical company Schwabe. The objective was to realize a democratic process to find out if it was possible to start exploitation of the traditional knowledge and genetic resources in the Napo-Galleras area, in Ecuador, following the access and benefit sharing standards of the CBD (ProBenefit, 2004). The Ibn coordinators were initially attempting to establish the project over telephone and e-mail. As they were not able to spend long periods of time in Ecuador to promote the project, the process was delayed and the relation to the local stakeholder FONAKIN was weak (Local coordinator 1; Instructor 1). The agreement between ProBenefit and FONAKIN was negotiated without the approval of the affiliated organizations and communities (Delegate 4; Pre-workshop 1; Local coordinator 1). Many different organizations were invited to participate in the project, but in the end only communities and organizations affiliated to FONAKIN chose to participate (ProBenefit et al., 2006). All the delegates were in accordance of the methodology to be participative (All Delegates; Local coordinator 1).

The level of information assimilated by the delegates during the training course was high and the information presented was experienced as neutral. The use of mostly Ecuadorian experts was also positively received by the community delegates (All Delegates; Local Coordinator

1). Even if the general view of the training course was positive the confidence towards the project was low amongst the local stakeholders. There was a strong feeling of hidden economic interests and information withheld by the project. The majority referred to previous negative experiences as an important reason to the cautiousness (Delegate 1; 2; 4; Pre-workshop 1; 2; Local coordinator 2; ProBenefit, 2007). Before any consultation could be carried out the delegates demanded fourteen months to realize an information campaign amongst the communities. This was rejected by the Ibn coordinators because of time shortage, after which the collaboration was closed (Delegate 1; 2; Pre-workshop 1; Local coordinator 1).

The local stakeholders name the unwillingness of ProBenefit to dispose the resources necessary for them to deliberate as the major obstacle to the process. By the majority it was seen intents of conscious manipulation (Delegates 1; 2; 4; Local coordinator 1; 2; Pre-workshop 1; 2). The attempts to run the project by remote control with the resulting delays, time shortage, and lack of close relation to local stakeholders were also held as central causes to the failure of the project (Local coordinator 1; Instructor 1). In the final evaluation of ProBenefit by the Ibn coordinators the major difficulties highlighted were; the lack of experience and knowledge amongst the Ecuadorian stakeholders and the irresponsibility and mistrust towards the project by the communities and FONAKIN (ProBenefit, 2007).

9. ProBenefit and the Implementation of the CBD

The analysis of the case study of ProBenefit outlines the central shortcomings of the democratic process as consequences of the project's failure to acknowledge and counterbalance the inequalities in power distribution. It also highlights what impacts this failure had on the deliberation of the local population involved. Finally a summary will be made, followed by a general discussion of the possible implications of the results of the project ProBenefit on the execution of the CBD in the Napo-Galleras area. Before entering the analysis a quick review of the four criteria of deliberative democracy most relevant to the project ProBenefit and its specific socioeconomic conditions will be reviewed.

9.1 The Four Criteria of Deliberative Democracy

Legitimacy – By giving existing organizations and social structures influence and power legitimacy for the project and its objectives can be created. In order to create legitimacy the previous experiences of the population must be taken into account. Through involvement and empowerment of the local stakeholders mistrust can be prevented.

Access to information – The information presented in a deliberative democratic process must be complete, comprehensive and rational. A participative methodology, the correct language and reliable exponents are also essential. When working in areas with low level of completed education more time is needed for the public to gain access to the information. An expedited process is probable to result in an unsustainable decision and a general perception of the process as undemocratic.

Accurate representation – For projects like ProBenefit involving delegates representing a bigger public the composition of the participants is of most importance. As genetic resources and traditional knowledge is irregularly distributed the definition of the stakeholders is more complicated to limit, but therefore also of even more democratic significance.

Involvement of all stakeholders – Active participation by all stakeholders in all stages of a democratic process is vital to ensure total access to information, as stressed in the CBD. The process must also be open ended or all stakeholders have not been given access to all stages of the process. Individuals are not free from external factors that affect their deliberation.

Therefore, the previous distribution of power has to be broken down to equalize the positions of the participants if deliberation is to be achieved. Through active participation of all stakeholders empowerment of weaker groups can take place and power is redistributed enabling equality.

9.2 ProBenefit and the Empowerment of the Local Society

Even if ProBenefit only realized the initial phase, i.e. the training course, it must be analyzed in the light of the fundamental aim of the project – to conclude a consultation process on the acceptance or rejection to a contract establishing the access of the private company Schwabe to certain genetic resources and traditional knowledge in the Napo-Galleras area. By saying this the intention is however not to assert that the aim of ProBenefit was to force or manipulate the communities into accepting the agreement, but rather to highlight that there was 1) a private economic interest involved and 2) that the process was not open ended. The reason these two aspects are emphasized this early on is because they were essential to the distribution of power during the project ProBenefit. Therefore, they were also central to how the process was carried out and especially to how it was perceived by the local stakeholders.

9.2.1 Creating Legitimacy by Counterbalance the Past

In the Ecuadorian Amazon the indigenous groups have a long history of being put aside in favor of foreign interests (Shultz, 1997; Öst, 2001). Prior experiences of power distribution have shown the private economic interests as more important than the local population – giving much power to the companies and almost none to the public. Through the struggles of the indigenous movements the right to be consulted about exploitation in their territories was incorporated to the constitution of 1998. The first attempt to implement the legislation manifested however the same power distribution as before and instead of empowering the local society it left them with a foul taste of deception (Garcia et al, 2007; Maldonado, 2006; Morris, 2004). From the negative example set by the oil consultation the Ibn coordinators of ProBenefit could have drawn several conclusions, but foremost it should have been possible to predict the negative attitude of the local population towards consultation processes. The case study made on the bioprospecting agreement in Oaxaca, Mexico, highlights that the community involved had not been “burnt” by previous negative experiences as essential for its open-minded participation (Baruffol, 2003).

ProBenefit initially went directly to the communities offering them to participate, but since the project lacked the approval of FONAKIN the invitation was immediately rejected as a biopiracy. The project ProBenefit was not legitimate since it was not sanctioned by a higher institution. In the pre-study executed by ProBenefit the importance of an acceptance of the project by the communities and to not only negotiate with the directors of FONAKIN was highlighted. Without the approval of the communities any agreement would be highly unsustainable (Wörrle, 2005). Even with the understanding of the importance of legitimizing the project the agreement with FONAKIN was established almost exclusively with the president, and without any attempts to ensure an introduction amongst the communities. This procedure received strong critique afterwards and created internal conflicts even before the commencement of the project, clearly undermining its credibility. From the establishment of the project ProBenefit the presence of the Ibn project coordinators was low. Instead they tried to run the project by e-mail and telephone which made the relation to FONAKIN weak and created big communication problems and confusion (Möller, 2007).

It is not surprising that the long history of marginalization and the disappointment of the oil consultation process created a hostile environment for foreign projects in general and consultation processes in specific. If ProBenefit had not involved a private interest is it probable that there would not have been such a strong preoccupation by the communities for theft of their knowledge and genetic resources. Together with the negative history of marginalization it increased the suspiciousness of the local population towards the project, thus they became more reluctant to participate and legitimacy harder to gain. If the Ibn coordinating group had taken the history of the local participants into account from the very start of the project is it probable that some of the suspiciousness could have been overbuilt through different procedures. As they failed to recognize the importance of the past experiences the negative prejudices were confirmed and the distrust reinforced. The incapability of the Ibn coordinators to create a substantial relation to the local stakeholders made it impossible to legitimize the project, which deepened the distrust and made the local stakeholders reluctant to participate. ProBenefit did not only lose an allied greatly needed to carry out the project as it failed to establish a close and confidential relation with FONAKIN – it also lost the possibility of achieving deliberation.

9.2.2 Democratic Representation

The delegates participating in the training course were elected by the community/organization it represented. There were almost as many females present as males and the delegates were of varying age. In comparison with the oil consultation process were the local partakers in ProBenefit more representative as they were directly elected by the participating communities. The Ibn coordinators invited 23 organizations of different levels and interests, but only 15 choose to participate. All those 15 were local organizations affiliated with FONAKIN (ProBenefit, 2006). This meant that communities and organizations from neighboring areas were not represented, even if they also might be the tenants of the same genetic resource and/or knowledge. Because of the irregular distribution of genetic resources and traditional knowledge it would also have been of great importance to involve organizations of regional, national and even international range to make sure that all potential stakeholders had access to information and the possibility get involved.

To overcome the distrust and to empower the communities participating in the projects of Oaxaca and Verata independent organizations or individuals were invited to assist them with impartial information and capacity building. This gave the communities more independence and a stronger position towards the project and its private stakeholder; hence it overbuilt a part of their reluctance to participate (Baruffol, 2003; Aalbersberg et al., 1997). No such independent organization existed however during ProBenefit, and since the regional and national indigenous organizations rejected the participation FONAKIN and the communities were “left to themselves” (ProBenefit, 2006). Apart from the democratic quandary of carrying out a process with the possibility of making far-reaching decisions over individuals who are not represented, is it probable that the absence of unity and support from other organizations augmented the feeling of vulnerability amongst the local stakeholders. As a measure to make the project more legitimate and to strengthen and empower the local stakeholders, the presence of the majority of the stakeholders should have been ensured. Through the assistance of other organizations a part of the distrust would probably have been prevented.

9.2.3 Access to Information

The aspect of complete access to information as stressed by Gutmann and Thompson and the CBD has shown to be crucial for deliberative participation of the public (Gutmann et al., 2004; CBD, 1992). During the oil consultation process it became clear that information meant power, or rather that lack of information also meant lack of power. As parts of the public did

not know about the possible negative aspects of oil exploitation or had not been informed about the possibility of asking for a moratorium, the task to make a thought through decision or to reject the exploitation became very hard (Morris, 2004). In comparison with the consultation on the oil concession rights ProBenefit was perceived as a lot more transparent and neutral by the participants. During the project ProBenefit most of the information presented was understandable to the delegates and only minor language problems existed, which were resolved by the participative model used. Problems with differences in worldview affecting the argumentation were not mentioned in the interviews of the community delegates. On the other hand was the group participating in the training course limited and the majority had some kind of formal education.

Originally the idea of the Ibn coordinators was for only persons knowledgeable in traditional medicine, e.g. shamans or traditional midwives to participate in the training course. Since they are the holders of the knowledge they would also ultimately be the center figures in the exploration phase. From fear of them not being able to look after the interests of the general indigenous community FONAKIN decided to impose certain basic criteria for the delegates. It is therefore hard to say how the transmission of information to the population in the communities would have worked, and especially how the tenants of the traditional knowledge would have perceived the situation, being those who eventually were to cooperate with the company Schwabe. Thus, it does not seem as the information presented during the project ProBenefit was biased or false in any way, but the question remains if the information was accessible to the local stakeholders.

Access to information does not only imply to have the information accessible, i.e. not hidden, but also to have enough time to understand, analyze and evaluate the information. This gives access to the implication of the information, which is needed to make a decision based on it. Without the proper time to access the information is it difficult or even impossible to deliberate on equal conditions. The consultation process on the oil concession rights was experienced as hasted by the participating communities – not giving them enough time to deliberate and form a thought through decision. During that process the training course was concentrated to six days in succession (Garcia et al., 2007; Morris, 2004) whereas the community delegates participating in ProBenefit received continuous training during more than two months. This probably helped them to better understand and analyze the information

received, but even so the time does not seem to have been extensive enough (ProBenefit et al., 2006).

The question of bioprospecting was unknown to almost all local stakeholders, thus a complete process of capacity building was required in order for the communities to get in-depth comprehension of the complex issue. After the training course a petition for more time to process the information was made by the “working group”. They did not consider themselves ready to start a consultation process before having more time to deliberate together with the communities (Grupo de Trabajo, 2007b). The petition was however turned down by the Ibn coordinators, since the time asked for did not exist in the budget of the project (Grupo de Trabajo, 2007c). The unwillingness by the project to collaborate was experienced as an obstruction to the deliberation of the communities. Because of the late establishment of the project and bad communication slowing down the progress of the process the time became too short to allow ProBenefit to give the “working group” the time they asked for. Consequently, the time available was not sufficient and access to the information was not gained by the local stakeholders.

9.2.4 Involving All Stakeholders

The ideas of deliberation and total access to information are intended as ways of giving the local society the possibility of influence decisions affecting it – to empower it (CBD, 1992; de-Shalit, 2000). Both Avner de-Shalit and the UN Permanent Forum on Indigenous Issues point out the involvement of all stakeholders during the whole process as essential; from early proposal, throughout decision and evaluation (de-Shalit, 2000; UNPFII, 2005). An active and free participation would guarantee all stakeholders access to the information and influence over the process, hence also an equal distribution of power. Benhabib defines the achievement of reaching a joint solution by taking in all interests as the fundament of a decision reached through deliberation (Benhabib, 1994). Consequently, a decision can not be made through deliberation if its limits are defined before all stakeholders are involved. Neither can the extensive involvement stressed by the CBD be exercised if one of the stakeholders was excluded from any part of the process (CBD, 1992).

The project ProBenefit was initially not designed to include a private company, but in order to receive economic support from the German government it was forced to do so. As a consequence great confusion on the purpose of the project arose. Even if the Ibn coordinators

were not trying to force the communities into an agreement the participation of Schwabe did imply a commitment to execute a process concluding in a predefined decision – acceptance or rejection to collaboration with Schwabe – after which the next predefined phase would commence. Consequently, the private company Schwabe had more access and procedural power over the process than the communities as they lacked influence on one of the fundamental elements of the project – the definition of the solution. With such an ambitious democracy vision as ProBenefit's is it interesting that the local stakeholders were the last to be involved and consequently the stakeholder with the least influence and power. Interesting is also that a prerequisite established by the German government in order to finance ProBenefit was a signed contract with a private company, at the same time as the contact with a local stakeholder was not even mentioned. Thus, even if it was not a conscious decision to exclude the local stakeholders from the definition of the decision was that the direct result of involving them almost two years after the official initiation of the project.

The fundament of deliberative democracy is the rational argumentation between free and equal individuals to find a common solution (Benhabib, 1994). Young and Dryzek stress however that all individuals form part of existing social hierarchies. Thus participants in a democratic process will always be affected in their deliberation by ethnic or cultural heritage and by social and economic status as well as gender. This creates a situation where the weaker stakeholder has a disadvantage as the conditions of the process will be dictated by the strongest (Dryzek, 2000; Young, 1999). The case of ProBenefit was no exception. The group of community delegates was exclusively of the indigenous nationality Kichwa and even if the majority spoke good Spanish and had some kind of former education the Kichwa language was their mother tongue. It is also very probable that the majority of the rural, indigenous participants were of a low economic standard. Their social status in comparison with the urban, university educated, mestizo or white representatives of the project was lower³.

The structural disadvantages of late involvement, low economic, cultural, ethnical and social status limited the local stakeholders in their possibility of influencing the process and to deliberate. They were from the start of their involvement predefined to have a position of less power. During the project's final evaluation the Ibn coordinators concluded that the participation of the communities was merely political – limited to an acceptance or rejection

³

Except one of the instructors who was of indigenous nationality.

of the proposal made by ProBenefit – and not procedural – participating in the designing of the project and the proposal (ProBenefit, 2007). This left the communities to continue in the position of passive receivers of already designed projects, instead as empowered active participants defining their own future. The inequalities in power made it hard for the communities to deliberate, thus the political participation was rejected by the local stakeholders because of the absence of procedural participation (ProBenefit, 2007). Thus the empowerment of weaker groups can not only be warranted with ethic arguments about the just right of the population to participate on equal terms in the definition of their own future, but as the case of ProBenefit shows the empowerment of the local stakeholders is necessary for a sustainable democratic process.

9.2.5 Summing Up

The project ProBenefit was in general perceived as transparent, neutral and democratic. Yet, from the information presented previously the conclusion can be drawn that a democratic process dose not only depend on internal factors such as neutral information, good instructors or correct language, but foremost on how it copes with the existing distribution of power. Of course a democratic methodology is necessary for deliberation to take place, but as shown by ProBenefit will that not be enough without the empowerment of the weaker stakeholders. Hence the fundamental obstacle to deliberation during the project ProBenefit was the failure to recognize and reduce the imbalanced power distribution among the stakeholders.

Reviewing the four criteria the conclusion becomes that the project ProBenefit not succeeded in completing either of them.

- The short time frame of the project did not make it possible for the public to gain access to the information, even if the information presented was neutral and complete.
- The Ibn coordinators failed to gain legitimacy as they failed to incorporate all possible stakeholders, were unable to create a strong relation to the local organizations and neglected the importance giving real power and influence to the local stakeholders.
- The incapacity of involving all stakeholders equally restrained the participation of the local stakeholders that had a structural disadvantage. Without complete involvement of all stakeholders was it impossible to create deliberation
- The failure to include all possible stakeholders weakened the position of the local stakeholders and made the process democratically questionable.

The incapacity of the project ProBenefit to redistribute the power resulted in the procedural problems specified below in Table 7.1, which reinforced the prevailing hierarchy and made it impossible to provide the conditions necessary for the population to deliberate.

Table 7.1: The structural problems of ProBenefit and their consequences.

Structural problem	Consequence
Late establishment in the project area.	Time shortage.
Failure to recognize the importance of active participation by all stakeholders throughout the whole process.	<ol style="list-style-type: none"> 1. Predefined proposal. 2. Late and low involvement of the local stakeholders.
Coordination by remote control and low presence of responsible coordinators.	<ol style="list-style-type: none"> 1. Communication problems. 2. Haltering progress of the project.
Absence of independent participants and organizations not affiliated to FONAKIN.	<ol style="list-style-type: none"> 1. No impartial assistance to fortify the communities. 2. Process not representative.
Incapability to prevent the negative attitude held by the local population originating in previous negative experiences.	<ol style="list-style-type: none"> 1. Failure to create legitimacy. 2. Any flaw of the project immediately interpreted as intentional manipulation.

9.3 ProBenefit – Implementing the CBD

The CBD can be used as a tool to empower those with little power, or as a cover to justify exploitation on terms dictated by those with a lot of power – that is the contradiction of sustainable development. Today there is no existing moratorium on the establishment of agreements with indigenous communities on the access to their resources until they are fully prepared to participate on equal terms, as proposed by the UN Permanent Forum for Indigenous Issues (UNPFII, 2005). Therefore it becomes even more important to learn from examples like ProBenefit about what basic principles that need to be met in order for an as deliberative process as possible to be carried out – a process that empowers the community with experiences about how to define and participate in the processes of creating the society wanted by its citizens.

One of the major complications with the implementation of the CBD-regulations on genetic resources is that it is built on inequality. It is probable that it will continue to be a private

company promoting a decision making process to find out if it is viable to access the traditional knowledge and genetic resources of an indigenous community, and not the other way around. It is also probable that most indigenous communities still will have a lower power stand in comparison with a private company in the immediate future. Therefore is it also likely that many of the processes to establish an agreement will be met by hesitation, or even be rejected as ProBenefit. Judging by this case study it depends on how big the inequality is and how the project is able to level the power distribution.

It is a complicated task to try to implement the regulations established by the CBD, much time and a sincere wish to involve all stakeholders is needed. Working with already marginalized groups is it even more important to with all means empower them so that they as much as possible can take on the task of managing the project.

- Extensive time is necessary in order for all stakeholders to gain complete access to all information before the next step of the process can be taken. If not is it probable that deliberation will not take place and therefore the project will be rejected later since dose not represent the consensus of the public.
- Provide real influence through involvement and access to all stages of the process. Instead of being passive receivers of projects designed by others, the community should participate in the definition of the progress.
- A close relation and well functioning communication between all stakeholders is necessary, otherwise is it probable that stakeholders will be limited in their participation since the exchange of information will be obstructed.
- The presence of neutral and independent organizations or individuals will give the local participants a more reliable and complete vision of the project. These organization/individuals can also assist the communities in defending their interests in the more complex aspects of the process. This will give the local stakeholders a stronger and more independent position where they will be able to deliberate more freely.

9.4 Closing the case ProBenefit

Many non-governmental organizations come to “undeveloped” countries to carry out projects they have designed after their interpretation of what is needed in that specific place. Sometimes they are a success and some times they are not, often the important thing in the

end is not so much the result but whether the project has been concluded. Even if the Ibn coordinators of ProBenefit were not trying to manipulate the communities into accepting the agreement with Schwabe it can not be denied that they had a personal responsibility for the late establishment of contact with FONAKIN and their low presence during the whole process. In the final evaluation the Ibn coordinators blame the communities for not being able to commit to their responsibilities, but can their way of managing the project be called responsible?

Following the project ProBenefit in its struggle to overcome the obstacles for deliberation, many times constructed or reinforced by the project itself, has highlighted many of the general problems met working situations with unequal distribution of power. The next time an organization comes to the Napo-Galleras area will the population hopefully be better prepared to participate actively, but probably will they also be more dissociating and reluctant to involve themselves.

10. References

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10.2 Interviews

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11. Appendix

11.1 Chronology ProBenefit

11.2 Summary Curriculum of the Training Course

11.3 Interview Questions

11.3.1 Community Delegates and Pre-Workshop Participants

11.3.2 Instructors

11.3.3 Ibn Project Coordinators

11.4 List of Abbreviations

11.1 Chronology ProBenefit

2003		
➤ Project initiated		June
2004		
➤ Pre-workshop with indigenous leaders		12 th – 15 th of December
2005		
➤ Signing contract with FONAKIN		5 th of May
➤ Information meeting with bases of FONAKIN		3 rd of December
2006		
➤ Training Course		2 nd of March – 13 th of May
	○ Module 1 <i>Botany and the company Schwabe</i>	2 nd – 5 th of March
	○ Module 2 <i>Development of new plant medicines</i>	16 th – 19 th of March
	○ Module 3 <i>Bioprospecting, legislation, protection</i>	30 th of March – 2 nd of April
	○ Module 4 <i>Commercializing medicinal plants</i>	20 th – 23 rd of April
	○ Module 5 <i>Negotiation and conflict settlement</i>	4 th – 7 th of May
	○ Module 6 <i>Equitable benefit sharing, contracts</i>	11 th – 13 th of May
	➤ Decisions in FONAKIN general assembly	25 th – 27 th of May
	➤ Elaboration of proposition for information campaign	13 th of December
	○ Sent to Ibn	28 th of December
2007		
➤ Meeting with national coordinator on proposal of Ibn		12 th of January
➤ Statement on proposal from Ibn by the working group		23 rd of January
➤ Midterm evaluation		21 st of March
➤ Clarification letter from the working group		28 th of March
➤ Evaluation meeting		23 rd of October
➤ End of project ProBenefit		November

11.2 Summary of the Curriculum of the Training Course

Module 1		2 nd – 5 th of March 2006
<i>Days</i>	<i>Topics</i>	
1	Inauguration and introduction	
2,5	Basic concepts of western botany	
0,5	Presentation of the company Schwabe	

Module 2		16 th – 19 th of March 2006
<i>Days</i>	<i>Topics</i>	
4	Introduction and development of new plant medicines	

Module 3		30 th of March – 2 nd of April 2006
<i>Days</i>	<i>Topics</i>	
1	Bioprospecting – earlier experiences	
1	National and international legal frames for access to genetic resources and traditional knowledge	
0,5	Intellectual property rights	
0,5	Intellectual property rights and traditional knowledge	
0,5	Methods for protection of traditional knowledge	

Module 4		20 th – 23 rd of April 2006
<i>Days</i>	<i>Topics</i>	
2	Commercialization of medicinal plants and sustainable development	
1	Opportunities	
1	Risks	
1	Methods for moderation and techniques for presentation (1 st)	

Module 5		4 th – 7 th of May 2006
<i>Days</i>	<i>Topics</i>	
2,5	Negotiation and conflict management CONAIE proposal for biodiversity law	
0,5	Parliamentary proceedings	
1	Methods for moderation and techniques for presentation (2 nd)	

Module 6		11 th – 13 th of May 2006
<i>Days</i>	<i>Topics</i>	
0,5	Equal distribution of benefits	
1	Contracts	
1	Evaluation and finalization	

Source: ProBenefit et al., 2006.

11.3 Interview Questions

11.3.1 Community Delegates and Pre-Workshop Participants

Questions posed to both community delegates participating in the training course and the participants in the pre-workshop:

1. Name and age?
2. Level of completed education?
3. First language?
4. Occupation?
5. Knowledge about natural medicine?
6. Which organization did you represent?
7. Why did you decide to participate in the training course/pre-workshop?
8. What information did you receive before entering the training course/pre-workshop?
9. What is your experience of ProBenefit's training course/pre-workshop?
 - a. The different topics?
 - b. The level of complexity of the topics?
 - c. The possibilities of participate and ask questions?
 - d. The knowledge of the instructors?
 - e. The Ibn coordinators of ProBenefit?
10. Did you perceive the information as neutral – explaining both the negative and the positive aspects?
11. Did you have any knowledge about the exploitation of genetic resources and traditional knowledge before the initiation of the training course/pre-workshop?
12. Did you have any predefined opinion about the project before participating in the training course/pre-workshop?
 - a. Yes → Which and why?
13. Did you have experiences of other consultation processes then ProBenefit?
 - a. Yes → How do you feel those experiences have influenced your participation during the project ProBenefit?
14. Which are the differences between ProBenefit and the other consultation processes in which you have participated?

Question posed only to the community delegates:

1. Did you understand that you should inform your community/organization after each module?
 - a. Did you inform your community/organization?
 - i. No → Why not?
 - ii. Yes → How?

Questions posed only to the participants of the pre-workshop:

1. How did you come in contact with the project ProBenefit?
2. Were the suggestions made by the pre-workshop adhered to?

11.3.2 Instructors

1. What knowledge did you have about the Gran Sumaco area and its social conditions before participating in the project ProBenefit?
2. How did you first come in contact with the project ProBenefit?
3. Did you experience any kind of obstacles or problems during the process? Of what kind?
4. What attitude had the local organizations and representatives towards the process in your experience?
5. How did you experience the participation of the local representatives during the training course/module?
6. How did you experience the comprehension of the information presented during the training course by the local representatives?
7. Could you influence the planning of the course?
 - a. Yes → In what way?
8. Did you decide the methodology of the topic you presented?
 - a. No → Who decided?
9. How did the cooperation with the Ibn project coordinators work?
10. Were you aware of the consultation process on the oil concession rights carried out in the Napo province during the last months of 2003?
 - a. Yes → Do you think the oil consultation was considered in by the Ibn coordinators of the project ProBenefit?
 - i. Yes → In what way?

11.3.3 Ibn Project Coordinators

1. What knowledge did you have of the area and its social conditions before ProBenefit?
2. Please describe the process of ProBenefit.
3. Do you feel that ProBenefit took the oil consultation process in concern?
 - a. In what way?
 - b. If not – why?
4. Did you experience any problems or obstacles before, during or after the process? Of what kind?
5. Why was this kind of process chosen for the transmission of information to the local community?
6. What attitude did you feel the local community had towards the process?
7. How did the cooperation with the FONAKIN work out?
8. In what did ProBenefit end?
9. Which were the conclusions made from the project?
10. Do you feel that ProBenefit fulfilled the expectations that existed in terms of democracy? Why?

11.4 List of Abbreviations

ABS	Access and Benefit Sharing
CAN	Comunidad Andina
CBD	Convention on Biological Diversity
CONAIE	Confederación de Nacionalidades Indígenas del Ecuador
FONAKIN	Federación de Organizaciones de la Nacionalidad Kichwa de Napo
Ibn	Institute for Biodiversity
IIFB	International Indigenous Forum on Biodiversity
IPR	Immaterial Property Rights
NGO	Non-Governmental Organisation
PIC	Prior Informed Consent
TRIPS	Trade Related Aspects of Immaterial Property Rights
UN	United Nations
UNPFII	United Nations Permanent Forum on Indigenous Issues
UPS	Universidad Politécnica Salesiana
WTO	World Trade Organization
WWF	World Wildlife Fund