



ProBenefit

Some Conclusions and Lessons

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Challenges of the process

- *Consulta previa* requires the coordination and representation of numerous ethnic, community and organizational indigenous levels with overlapping authorities and competencies.
- Considerable time and resource constraints for identifying and gathering stakeholders and generating a dialogue.
- The national Ecuadorian and regional (CAN 391) legal framework provides minimum requirements but few rules for implementation.
- Design, negotiation and implementation of a PIC process and ABS agreement left to companies and indigenous organizations.
- High transaction costs in the face of high reputational risks and uncertain outcomes.



Challenges of the process

- For companies: Process unattractive - and hardly feasible for medium-sized enterprises:
 - A long, drawn-out process with shaky agreements and uncertain outcomes.
 - Reputational risks (e.g., "biopiracy" accusations).

- For *indigenas*: Process risky
 - Pervading distrust.
 - Suspicions of manipulation.
 - Fear of corrosive effect of ABS topic for the indigenous movement.



Challenges of the process

- Weak structure and know-how basis of indigenous organizations: Lack of stable staff basis, ABS expertise, management skills and strategy development.
 - *Indigenas* find it hard to even specify hopeful benefits of ABS and PIC requirements.
 - Decision-making slow, often intransparent, precarious.
 - Organization lacking the structure and stability to develop bargaining positions, pursue and keep up compromises and to promote long-term processes.



Lessons from ProBenefit case

- A transparent, bottom-up, participative approach remains the preferable approach to ABS.
 - But: The transaction costs are prohibitive unless all interested parties invest substantially in their own institutional capacity.
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- **Governments:**
 - Engage in trust-building exercises with indigenous communities.
 - Establish more precise guidelines for ABS and PIC procedures to lower entry barriers, allow for learning exercises and make the process more calculable for interested parties.



Lessons from ProBenefit case

- **Indigenous organizations**
 - Strengthen the stability, transparency and accountability of organization structures to become more reliable for conceivable ABS partners.
 - Build up a knowledge basis and train experts for ABS.
 - Envision and draft specific benefits and justifiable consultation schemes.



Lessons from ProBenefit case

- **Companies**

- Communicate profit interests and constraints (e.g., R&D costs, drug approval barriers, portfolio and pipeline problems, marketing costs) to qualify bioprospection myths (“oro verde” etc.) and convey the importance of IPR.
- Develop a clear framework for benefit options to encourage negotiation and decision-making.
- Display and communicate possible licensing and patenting options available to negotiating parties (e.g., patent granted to NGO, university, government, park; joint ownership of patent; licensing of patent to company).
- Look for strong counterparts which claim and enforce strong positions.



Lessons from ProBenefit case

- **Science**

- Invest even more in working out a stakeholder analysis before entering the field.
- Get to know more about interethnic knowledge.
- Explore in more depth the dynamics and resolution of nested, multi-level bargaining situations.
- Sharpen the concept of capacity-building.



Lessons from ProBenefit case

- **Development cooperation:**
 - Carry out information and training on ABS issues to contribute to a stable expertise basis.
 - Take seriously Rio principles such as: fostering a civil society, promoting capacity building, endorsing good governance.