CASE STUDY 56

The ICBG Maya bioprospecting project

#### **Notes to the facilitator**

The objective of the case study is to stimulate participants’ thinking around the challenges and complexities of ensuring adequate community involvement in safeguarding projects. It should develop participants’ understanding and awareness of the complexity of issues at stake when involving multiple stakeholders on community-based projects.

The case study concerns a bioprospecting project in Chiapas, Mexico. Bioprospecting refers to the search for natural resources that can be used to develop new medicines and other commercially valuable products. While the project focuses on bioprospecting, it is nonetheless relevant to discussions regarding community representation and consent in ICH safeguarding projects: although the project intended to contribute to community development, it ultimately failed because of disputes over

* who constituted the community;
* who represented the community;
* how the community would benefit; and
* what constituted community consent for the project to proceed.

The reasons for the project’s failure have been subject to considerable debate among academic and scientific circles. This case study does not intend to provide a definitive answer of why the project failed. Some references at the end of the case study provide further information to facilitators and participants who are interested.

**Key words**: Community involvement; Ethics; Benefit sharing; Free, prior, informed consent; Commercialization; Indigenous Peoples

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#### **Introduction**

The ICBG Maya project[[1]](#footnote-1) was a 5-year research project designed to collect ethno-botanical information in the highlands of Chiapas, Mexico. The project sought to develop an inventory of indigenous plants from the area with the aim of developing commercial products. It also intended to contribute to community development by enhancing local technical and scientific capacity.

#### **Socio-political context**

The highland communities of Chiapas include approximately 8,000 villages, representing 900,000 people who speak one of the four Maya languages. Indigenous peoples in the Chiapas region have historically been marginalized. Many live in conditions of extreme poverty and have experienced decades of religious and political conflicts.

The concept of ‘community’ is furthermore contested in Chiapas. No single, overarching socio-political body existed to represent communities and speak on their behalf. Rather, the Maya population was organized around a number of dynamic and sometimes conflicting forms of territorial, economic, political and religious organizations.

#### **Key stakeholders**

In 1998, the International Cooperative Biodiversity Groups (ICBG) programme awarded the bioprospecting project a grant of US$2.5 million. The ICBG is a consortium of US federal agencies, including the National Institutes of Health (NIH) and the US Department of Agriculture. In addition to the US research team, the partnership included University of Georgia, El Colegio de la Frontera Sur (ECOSUR), a Mexican research and teaching centre, and Molecular Nature Ltd., a small biotech company based in Wales, UK.

The fourth major stakeholder group were the indigenous highlanders. Despite the crucial role of the indigenous peoples, however, the initial consortium did not include any Maya representation. A major goal of the project was to give the indigenous peoples an equitable share of the benefits generated from the project. As a result, the project established a non-profit organization called PROMAYA (Promotion of Intellectual Property Rights of the Highland Maya of Chiapas, Mexico) to represent the local Maya population and its interests in relation to the project. The organization was to receive one quarter of all profits generated by successful bioprospecting work. It was designed to have a majority of Maya representatives and some outside members.

#### **Community consent**

The 1992 Convention on Biological Diversity (CBD) gives states sovereign rights over their biological resources.[[2]](#footnote-2) It furthermore acknowledges that consent for the use of genetic resources must be obtained from the local community.[[3]](#footnote-3) The Project proceeded in line with these international requirements to obtain the free, prior and informed consent (FPRIC) of the ‘community’ in Chiapas, despite the contingent and shifting nature of the concept in this context.

At the national level, Mexican regulations stated that plant collection for scientific purposes was only permitted with the FPIC of the legal owners of the land where the plants were found. These regulations, however, did not account for situations of biotechnological research, where samples may be developed for commercial purposes. The ICBG Maya project made the first application for such ‘biotechnology collections’ in Mexico.

The ICBG Maya project recognized the need to establish FPIC with the communities and developed an elaborate informed-consent protocol involving multiple steps. The project members began by organizing a national forum on Mexican experiences with bioprospecting to draw lessons from other projects. They followed with a general-information assembly of Maya community members, flyers in native languages and radio spots. In addition, they put much of their proposal and their progress reports on the project web site at the University of Georgia and invited comments to improve their plans.

Central to their community consent process was a one-act play performed in native languages designed by ECOSUR and Mayan project members. The play depicted the aims and methods of the project, and its potential benefits. It was performed for community officials and accompanying community members who responded to general invitations from the group. The project team also invited community representatives on a tour of the laboratory and offered to return to villages to reenact the play for the entire community. After a performance in a village, the community was invited to participate in the project and to draft and sign a general memorandum of understanding expressing its interest. In the three-month period in which the play was enacted, 46 out of the 47 hamlets decided to sign up.

#### **Opposition to the project**

Although the ICBG Maya project leaders thought they were following legal and ethical requirements for the FPIC and the distribution of benefits, community organizations raised objections to the project.

A confederation of local healers’ organizations called Council of Traditional Indigenous Doctor and Midwife Organizations (COMPITCH) and an international NGO called Rural Advancement Foundation International (RAFI) launched a media campaign against the project in 1999. They asserted that the consent process of the participating villages was inadequate and that the expressed interest of the communities should thus be overruled. Their basic critique was that there was insufficient legal protection of indigenous rights over genetic and intellectual resources at the national and global levels.

Their more specific criticisms of the ICBG Maya project consent process were:

1. that the informative play omitted a description of the global policy debate about patents and traditional knowledge;
2. that the signatures on many of the community memoranda of understanding did not represent the percentage of community members required by customary law; and
3. that until all Maya-speaking communities in Mexico and Guatemala (over 2 million people) were engaged, valid consent could not be achieved.

The objections of COMPITCH gained considerable momentum in the media. The campaign reignited a national and international debate on bioprospecting, the patent system and the plight of the Maya Chiapas. As some observers noted, community participants were rarely represented in the press even when they had been interviewed. Nor did not have their own websites or platforms to present their views.

With mounting national and international pressure, ECOSUR, the national partner, eventually withdrew its application for a permit from the Mexican authorities. Without a national partner, the project no longer satisfied the minimum criteria for the ICBG grant and the ICBG Maya project was cancelled in 2001.

#### **Conclusion**

The project leaders intended the indigenous Maya population to both contribute to and to significantly benefit from the project. They developed an extensive community process and plans to ensure community participation and involvement. However, as this case study shows, despite best intensions, the project encountered many difficulties and was eventually abandoned in 2001.

The reasons why the project failed are multiple and complex. Distrust between the parties played an important role. Disputes arose between community organisations, activities and the project team about the process, intentions and likely outcomes of the project, how consent should have been reached and how the community concerned should have been defined. The case study also shows that that it is difficult to establish community consent in the absence of strong community governance structures that are perceived as legitimate by all concerned. The lack of a clear and consistent national legislation and monitoring mechanism to ensure that community rights over traditional knowledge were protected posed additional problems.

This case study also demonstrates the complexities at stake when multiple actors have competing stakes in a safeguarding project, and should be seen within the broader political and social contestation between community activists.

Another key lesson from this project’s fate concerns the importance of developing tailor-made community participation, consent and benefit models, as well as ICH safeguarding strategies that are considered acceptable and legitimate by the communities concerned and other parties involved, from the very outset.

#### **For further information**

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**Stakeholder analysis**

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| **Actor** | **Description** | **Key interests** |
| ICBG International Cooperative Biodiversity Groups | Funding agency representing a consortium of US federal agencies, including the National Institutes of health and the US Department of Agriculture |  |
| ECOSUR University of Georgia, El Colegio de la Frontera Sur | A Mexican research and graduate training centre |  |
| Molecular Nature Ltd. | A for-profit biotech company based in the UK |  |
| PROMOYA Promotion of Intellectual Property Rights of the highland Maya of Chiapas, Mexico | A non-profit organization established by the ICBG project to represent the local Maya population |  |
| Maya community members | The indigenous and local communities embodying the traditional knowledge |  |
| COMPITCH Council of Traditional Indigenous Doctor and Midwife Organizations | A confederation of local healers’ organizations and an ally of pro-Zapatista social organizations |  |
| RAFI Rural Advancement Foundation International | An international NGO with a history of opposing bioprospecting |  |

1. . The full title of the project is the ‘Drug Discovery and Biodiversity among the Maya of Mexico’, but it is usually referred to as the ‘ICBG Maya bioprospecting project’ or the ICBG Maya project. [↑](#footnote-ref-1)
2. . CBD 1992, Article 15: “Access to genetic resources shall be subject to prior informed consent of the Contracting party providing access to such resources.” [↑](#footnote-ref-2)
3. . CBD 1992, Article 8j: “Respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.” [↑](#footnote-ref-3)