DEALING WITH THE TERMINATOR PATENT

Dr. Suman Sahai, Convenor of the Gene Campaign said that the knee jerk reactions to the announcement that the Terminator patent had been filed in India revealed the confusion and lack of preparedness on the part of Indian policy makers about dealing with this new menace. Some have given implausible assurances that there was nothing to fear since all possible safeguards were already in place, when they know that this is not the case. The agriculture minister has assured Parliament that there was little cause for worry since steps to block the entry of the Terminator into India had been taken. May be he does not know that this is not the case. After asserting that the Terminator technology would not be allowed into India, Sri Som Pal explained that there would in fact be a single point entry for the Terminator for research purposes. Is the Minister clear whether Terminator would be allowed entry into India or not? Sri Som Pal along with some others is also under the impression that the Terminator technology is not real, it is only a concept.

Dr. Sahai said that this thesis that the Terminator is not a real technology, it is only a concept, betrays an ignorance of the technicalities of patenting. The patent system in operation today is also called the utility patent system. This means that before a patent can be granted, its utility has to be clearly established. The utility clause, perhaps the most important requirement of a patent application, is precisely there to ensure that the patent is not granted for ideas and concepts but for something that actually works and has a use. Not only that. That patented something whether it is a product or process, in this case the Terminator gene, should be reproducible by anyone with reasonable skills in the same field. So, before the Terminator patent could be granted, it would have to satisfy all the technical requirements of patentability, including utility. Therefore if there is a valid patent for the Terminator technology, it is because it has been demonstrated to work and is in existence. It is not a concept.

Dr. Sahai said that the official strategy to counter the Terminator threat is unrealistic and headed in the wrong direction. According to the official line, India will develop methods to ‘catch ‘the Terminator genes in incoming material and stop seeds with this gene from entering the country. In order to detect these genes, we will have to develop genetic probes which can attach themselves to the offending gene and so betray its presence in the seed. In order to structure such probes, we will have to have reasonable knowledge about the function and location of the gene/ genes. Other wise making an effective probe could take a very long time and may not even succeed. It would be madness to expect multinational companies who are the owners of these Terminator genes and who expect to make pots of money from their use to co -operate in their detection and subsequent ban. Therefore Indian laboratories which do not have too much experience in this field will have to work all on their own.

India should not merely take a defensive position and place on itself the onus of catching out the Terminator gene. If we fail to detect a Terminator gene somewhere and it slips past the check into the field, the fault will be ours. We should instead adopt an aggressive posture, shifting the onus onto the foreign company, forcing it to give assurances that the

seed it is providing does not contain the Terminator gene. Seed imports should be allowed only after the company has signed a legally binding undertaking that the seed does not contain the undesired gene. These undertakings should be backed by the government of the company's home country. Violations should carry the heaviest penalties including cancellation of their license. This is not to say that we do not continue the work of developing probes and doing germination tests on imported seeds but our primary 'near - future' strategy should be to place the burden of compliance on the seed company.

Dr. Suman Sahai