



**Briefing on Liability and Redress Negotiations and Civil Society submissions
at the MOP 4, 12-16 May, Bonn, Germany**

Gene Campaign, the only Indian Civil Society Organization to attend the 4th Meeting of Parties to the Cartagena Protocol on Biosafety, briefed the press on the developments on developing a regime for Liability and Redress. This has always been a controversial subject in the Biosafety Protocol since the biotech industry (supported by countries like the US, Brazil , Australia etc.) strongly opposes any international regime that would fix liability if something goes wrong with the use of genetically engineered organisms. (GEOs). Developing countries want parties that produce and export GEOs to be made accountable if any damage is caused.

At the negotiations, there was a heated debate where the developing countries proposed a compulsory liability regime that is legally binding on all countries. The leadership of the developing country group was taken by Malaysia, supported by the Philippines, Colombia and other Latin American countries and very decisively the African countries who were vocal in their support and effectively blocked the developed country positions with firm arguments.

India was silent spectator during the entire debate, disappointing many that had hoped to see India in a leadership role , fighting for the environmental and health safety of people in all countries where GEOs are being produced.

At the initiative of Malaysia, which led the initiative, a group of about 80 countries formed a Like Minded Group (including India) , in order to lobby more effectively against the developed country efforts to block the emergence of a legally binding liability and redress regime.

The opposition to the international liability regime was consistent and led by Japan, Peru and Brazil. At a point it appeared as though the talks would break down and delegations were getting ready to leave for home. It was again the Malaysian delegation that fought hard to keep the talks going and asked for several closed-door meetings with allies to thrash out a counter strategy to the Japan led opposition. Ultimately, the talks could be saved but no decisions could be taken on developing an international liability regime. In that sense, the biotech industry and the developed countries were able to block the emergence of a legally binding liability regime for now.

The compromise that was struck was to continue the talks at a later date in the beginning of 2009. In the meantime, it was pointed out that had the developing countries developed domestic liability laws, their negotiating position would have been stronger at the international level. Whereas some countries (Lat Am) have such laws, others do not.

India has consistently refused to frame a liability law despite a great deal of pressure from Civil Society to do so.

Gene Campaign, which has been working on developing components of a liability law for India, has been at the forefront of pushing for a domestic law. During the MOP 4 meeting in Bonn, it had organized a panel discussion on “Developing a Liability and Redress Regime” as a side event. The following are the consensus recommendations proposed by Gene Campaign, Anthra (India), Centre for Interdisciplinary Studies (India) and TWN, Malaysia

- (1) Liability for damage arising from Genetically Engineered Organisms (GEOs) to be imposed on the basis of possible effects of introduction of GE products for which strict scientific proof is not yet available (“precautionary principle”).**
- (2) The term “Damage” to be given the widest possible interpretation to include environmental damage, risks to human and animal health as well as socio- economic damage including loss of income, damage to food security and livelihood, to culture and livelihoods of indigenous and local communities etc.**
- (3) The liability for damage caused as a result of introduction of GEOs is to be channeled to the ‘polluter’ which includes the industries and activities responsible as well as the state and its regulatory agencies, under whose jurisdiction or control the activities involving GEOs take place.**
- (4) In recognition of the intrinsically hazardous nature of GEOs, Gene Campaign, Anthra, CIS and TWN support the adoption of a strict liability regime for damage from GEOs, where liability could be imposed, without the necessity to prove fault or negligence on the part of the defendant, with few exceptions such as Act of God, war etc. We recommend adoption of absolute liability for damage in centers of origin and genetic diversity of crops, where no exceptions could be pleaded. Gene flow and contamination in these centres of origin and genetic diversity could lead to irrepressible loss of traditional plant varieties and agricultural diversity, having grave consequences for food security.**
- (5) In the case of damage caused by LMOs, the time limit should take into consideration the fact that damage in biology may only appear after several generations. As such, an absolute time limit of 50 years (a period during which effects on two generations could be manifest) should be considered.**
- (6) A Non- Governmental Organisation (NGO) acting in the general interest (*actio popularis*) serves a fundamental civil purpose, fulfilling capacities for which the government is incapable. NGO are the vessels through which the affected parties’ concerns are communicated and as such, should have the right to bring a claim for damages on behalf of those directly or indirectly affected.**

These recommendations have been submitted to the secretariat of the Meeting of Parties as inputs from civil society. The Cartagena Protocol negotiation process allows industry and NGO representatives to participate in the deliberations on biosafety. Taking advantage of this, Gene Campaign and other groups have submitted inputs on liability .