

CIVIL SOCIETY ENGAGEMENT IN THE GM TRADE DEBATE: A DEVELOPING COUNTRY PERSPECTIVE

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Introduction

Civil Society Organisations (CSOs) are those informal, semiformal or formal organisational formations that protect, promote and facilitate the principles and practice of democracy, participation, pluralism, rights, equity and justice among people locally, nationally or internationally, functioning outside the conventional spaces of State power and market forces.¹ Civil Society may be regarded as an arena where voluntary associations of citizens seek to shape government structures and policies, including non-governmental organisations (NGOs), local community groups and many more. In the context of this paper, the term is being used to denote institutions which are voluntary, non- governmental, non- state and community based.

In recent times, civil society groups are at the forefront in many areas, advocating proactively for good governance, transparency and accountability in the affairs of the state, the public sector and the private sector. They are also playing a significant role in a changed international scenario. International relations agenda is increasingly expanding into areas previously considered to be the domestic jurisdiction of states and issues of immediate concern to citizens are subject to decisions in multilateral forums.

In India, NGOs and other groups have been energetically involved in the field of agricultural biotechnology and biosafety since the late 1990s, making a strong case for transparency and accountability in the regulatory system and to incorporate the public interest and greater common good in policy decisions. They have played a crucial role in highlighting the biosafety concerns which adoption of GM technology would entail- concerns regarding the health safety of humans and livestock, safety of the environment (possible impact on ecology and biodiversity) and socio- economic safety. Concerns with respect to socio- economic safety include concerns regarding the likely economic and social impact on farmers, consumers, traders and different social classes and the possible ramifications on trade and economy (which this paper tries to address).

The objective of this paper is to look into the trade concerns of India with respect to the adoption of GM technology and the role of CSOs in highlighting these issues. It seeks to look into their engagement in the GM trade debate, especially in the context of the trade dispute between the European Union and the United States, over the European Commission's moratorium on approval of GMOs and the Ruling of the WTO in this regard. However, while doing so, the GM trade debate is sought to be placed in the

¹ Samuel, J., "Civil Society Organisations: What They Say and What They Do", June 2004, <http://www.inforchangeindia.org/analysis22.jsp> (accessed on August 17, 2007).

broader context of the agricultural biotechnology and biosafety debate in India and CSO participation in it, as an illustration of what CSOs have done and can do in the future.

Trade Concerns of Developing Countries with Respect to GMOs

The main concerns of a developing country like India, with respect to GMOs (Genetically Modified Organisms), arises from the fact that while very few developing countries export GMOs, many are exporters of conventional agricultural products. By adopting GM technology, such countries may find themselves at a loss in terms of their trade with countries and markets, which are opposed to GM technology.

In order to preserve their export prospects, developing countries exporting non-GM products may either need to be totally 'GM-free' or have a stringent system for segregation of GM and non-GM crops. Segregation of GM from non-GM crops, foods and products requires financial and technical resources that may be beyond developing countries. The fact that a country like the United States with vast resources at its disposal has not been able to prevent the accidental contamination of food corn with corn containing the Cry9C Bt gene, known to have allergenic potential in humans, drives home the point that contamination from trial plots and field sites assumes a strong likelihood in a developing country like India.

Losing 'GM-free' status or the slightest hint of contamination has the potential to negatively impact the export opportunities of such countries for all agricultural products. In order to avoid cumbersome documentation, traceability requirements, as well as to meet consumers' expectations, trade diversion may be resorted to by the importing country by replacing some inputs with others (which do not bear the risk of being genetically modified) or by using inputs from alternative countries, which are supposed to be 'GM-free'.

Organisations like Gene Campaign have played an important role in pointing out the implications of adoption of GM technology with respect to special crops like rice and soybean, which are major foreign exchange earners for India. Green Peace, in a market report,² also warns that growing GM crops could cost Indian farmers their entire European market.

India is one of the few countries in the world from where soybean can be sourced without risk of contamination and it can easily certify it to be 100% GM free. Today, all the soy that India produces is sold. Even if it were to increase its soy production several fold, all the soy would still be sold because the international market is increasingly seeking GM-free foods due to growing rejection by consumers. The Indian soy is supplied to niche markets mainly in Japan and South Korea, which are seeking assured GM-free produce and are strongly opposed to GM foods. Dr. Suman Sahai³ of Gene Campaign has pointed

² Holbach, M., L. Keenan, "No Market for GM Labelled Food in Europe," April 16, 2005, <http://www.greenpeace.org/india/press/reports/eu-market-report-no-market-fo> (accessed on August 23, 2007).

³ Sahai, S., "GM or GM Free, What is India's USP?", *The Hindu*, June 4, 2004.

out that under these circumstances, resolutely remaining a non- GM producer of soybean best serves the interest of Indian farmers. If India were to become a producer of GM soy, it would lose its special markets. Further, its GM soy would not be able to compete with huge producers like the US and its highly subsidized, low cost soy.

Gene Campaign⁴ has highlighted that adoption of GM technology with respect to rice would have an adverse effect on India's export market in both Basmati and non- Basmati rice. Basmati rice is perhaps India's most easily identifiable premium product in the area of food, after Darjeeling tea. It is a high end, expensive product, comparable to Champagne wine and truffles from France, with a growing niche market among discerning international consumers. It is precisely this section of international consumers, who are willing and able to spend money on expensive foods, who are the most strongly opposed to GM crops. Gene Campaign and other groups vehemently criticised the Department of Biotechnology's (DBT) efforts to promote a genetically modified Basmati. According to Dr Suman Sahai, ⁵ 'tainting' Basmati with the GM label would ruin its legend and perception in the international market and that it needs to be handled in a special way.

Apart from Basmati, India also exports non- Basmati rice, largely to the European Union and West Asia as well as to Africa. The importers of Indian rice are countries where there is mounting opposition to GM foods. Indian rice enjoys assured markets today and there is a distinct upward trend in exports of both Basmati and non- Basmati rice. In such a scenario, as pointed out by Gene Campaign, cultivation of GM rice in India would jeopardize this assured market and cause revenue losses to the farmers and traders. A similar opinion has also been expressed in the Report of the Centre for Budget and Policy Studies and the Stockholm Environment Institute⁶ which is the most comprehensive and credible report on the state of agricultural biotechnology and biosafety in India till date. It suggests that in order to preserve its export markets for rice and other food crops, India would do well to emulate Thailand. The world's premier rice exporter, Thailand is maintaining its ban on the commercial cultivation of GM- crops, while simultaneously encouraging R&D work.

International Trade Dynamics and GMOs

The above trade concerns of developing countries like India need to be placed in the context of the international trade dynamics, determined by overlapping and conflicting regulatory principles as embodied in the two multilateral paradigms- the World Trade Organisation (WTO) and the Cartagena Protocol on Biosafety (CBD). The interplay of

⁴ *ibid.*

⁵ Sahai, S., "Bt Basmati: Does it Make Sense?" www.genecampaign.org/Publication/Article/GMtech/BT-BASMATI.pdf.

⁶ Indira, A., M. R. Bhagavan, I. Virgin, April 2005, *Agricultural Biotechnology and Biosafety In India: Expectations, Outcomes and Lessons*, Centre for Budget and Policy Studies and Stockholm Environment Institute, p.132.

the two has a bearing on individual member countries' positions with respect to GMOs and the level of protection adopted, in terms of trade restrictions on GMOs.

The Cartagena Protocol on Biosafety allows countries to refuse to import genetically modified organisms where there are legitimate safety concerns even when there is a lack of scientific evidence (a use of the precautionary principle). On the other hand, international trade rules like the Technical Barriers to Trade Agreement of the WTO allows the discrimination only on the basis of scientific certainty of harm. Under the Biosafety Protocol, it remains open to Parties to determine independently the level of protection of environment or human health they wish to achieve, and they may then impose such restrictions on the trade in GMOs as are appropriate to achieve the desired level of protection. However, the WTO may be used to challenge and potentially overturn trade regulations introduced by countries under the Protocol, even if they have been tailored to the needs of the country and respond to public concerns. Under the WTO's General Agreement on Tariffs and Trade (GATT) and the Agreements on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT), the reasons that may be used to justify restrictions on trade are strictly limited; they must be based on scientific risk assessments.

According to Issac⁷, there are two significant differences between the two instruments: the first being that the WTO has a product approach, whereby trade agreements do not focus on how a good is processed or produced but rather on the end- use attributes of the good. On the other hand, the Cartagena Protocol supports a process- based approach whereby it is the use of modern biotechnology- regardless of the impact of the end like product –that triggers regulatory oversight. Also, while WTO's underlying regulatory principle is the principle of non- discrimination, underlying the Cartagena Protocol is the principle of Advance Informed Agreement. The Cartagena Protocol essentially treats products of biotechnology as hazardous whereby the government of the importing country must be notified by the government of the exporting country of the intended transboundary movement of living products of biotechnology to allow the party of import to conduct its own risk analysis and permit parties of import to set market access bans according to any factors which they deem fit.

The incongruencies between the two approaches to the international regulation of biotechnology gets reflected in domestic and regional regulatory mechanisms which impact trade. It is these inconsistencies between the two instruments that came into sharp focus in the WTO decision on the trade dispute between the United States and the European Union (EU), with the US favouring the WTO approach and the European Union going by the Cartagena Protocol.

The WTO Ruling in the EC Biotech Products case between the European Union and the United States, over the European Commission's moratorium on approval of GMOs and EU member states bans on import and sale of certain GMOs is of great interest to the rest

⁷ Isaac, Grant E., 2003, "The WTO and the Cartagena Protocol: International Policy Coordination or Conflict? ", *Current Agriculture, Food & Resource Issues* 4: 116-123. : //www.CAFRI.org (accessed on June 14, 2007).

of the world, particularly India. The US has been promoting the view that with the EU losing its case and its decision standing nullified, countries' flexibilities to regulate trade in GMOs stands affected. CSOs all over the world (including Indian organisations) which had campaigned for strong controls on GM trade under the Biosafety Protocol were concerned that the outcome of the EC- Biotech dispute could undermine biosafety regulation around the world. This is, however, not the case. A careful interpretation of the Ruling reveals that it is binding only to the parties to the dispute and post the WTO-Ruling, countries' flexibilities to choose any level of protection they deem fit remains unaffected. It is now upto these organisations to carefully consider the implications of the Ruling and generate awareness regarding it, critically assess the strategies they used to voice their concerns about the dispute and forge the way ahead.

Civil Society Organisations (CSOs) and the GM Trade Debate

Civil society in India has played a meaningful role in highlighting the country's trade concerns, both nationally and internationally. They have made their presence felt at the international level, contributing to the democratisation of international governance. On the other hand, there is an increasing assertion and effective advocacy by them in the domestic policy and regulatory deliberation on GMOs, together with awareness generation. While still heavily reliant on state mandated legal control mechanisms and bodies, the Indian state is exhibiting frequent and ever increasing engagement with these non- state, independent actors. Participation of NGOs and the public is vital owing to the need to tailor national approaches to regulation to address the specific circumstances of individual countries or regions. The impacts and risks associated with GMOs are likely to be specific to different local and regional situations, which only NGOs with their local level constituencies can address.

The role played by Indian CSOs in the context of the GM trade debate and in highlighting the trade concerns of India in advocacy and policy- making may be studied from a national and international perspective.

Advocacy and Policy-Making at the National Level

According to the Report of the Centre for Budget and Policy Studies and the Stockholm Environment Institute⁸, civil society groups in India have been actively engaged in the field of agricultural biotechnology and biosafety, particularly after 1999, in the context of four important issues: (i) the biosafety of GM crops (ii) the biosafety regulatory regimes and the formulation of biosafety and biotechnology policies (3) the workings of and the procedures within the biosafety regulatory authorities, and (4) the implementation of biosafety legislation, regulations and procedures. The Report states that organisations like Gene Campaign, Karnataka Rajya Raitha Sangha (KRRS) and Research Foundation for Science, Technology and Ecology (RFSTE) were the first to raise the issues of agricultural biotechnology and biosafety in India publicly. It further says that but for the vigilance of these groups and their sustained effort over the years, the environmental,

⁸ *op.cit.*, p.74.

health and socio economic issues (including trade) linked to the introduction of GM-crops would not have emerged into the public domain at all.

The following table lists the groups in India active in the arena of agbiotechnology and biosafety, indicating their main stated activities, objectives and constituencies:

CSO	Main activities and objectives	Main constituencies catered to
Gene Campaign, New Delhi	Policy Issues. Farmers' Rights. Studies and Research. Dissemination of information and studies through articles, seminars, workshops etc. Scrutiny of regulatory and policy-making bodies	Farmers, media, policy-makers and opinion-makers
Research Foundation for Science, Technology and Ecology (RFSTE), New Delhi and Navadanya, Dehra Dun	Policy issues, with focus on biodiversity, intellectual property rights and international trade.	Farmers, media, policy-makers and opinion- makers
Forum for Biotechnology and Food Security, New Delhi	Analyses of issues and dissemination of information and studies through articles	Media, policy- makers and opinion- makers
M.S. Swaminathan Research Foundation (MSSRF), Chennai	Research in sustainable agriculture and policy issues relating to sustainability	Farmers and the government
Green Foundation, Bangalore	Organic farming and indigenous knowledge	Farmers
Shetkari Sanghatana, Maharashtra	Farmers' rights and interests. Dialogue with government	Farmer and the government
Karnataka Rajya Raitha Sangha (KRRS)	Farmers' rights and interests. High profile field campaigns.	Farmers, media, policy-makers and opinion-makers
Karnataka Krishi Sangha	Farmers' rights and interests. Agricultural policy.	Media, policy- makers and opinion-makers.

Federation of Farmers' Associations (FFA), Hyderabad	Promotion of agriculture as a profitable occupation	Media, policy-makers and opinion-makers. Own subscription membership. The general public.
Centre for Science and Environment, New Delhi	Protection of the environment. Policy issues. Studies and research. Dissemination of information and studies through articles, workshops and seminars	Media, policy-makers and opinion-makers. Subscribers to CSE's journal <i>Down to Earth</i> .
Greenpeace India	High profile campaigns for the protection of the environment. Policy issues. Dissemination of information and studies through articles, workshops and seminars.	Media, policy-makers and opinion-makers. Own subscribing membership. The general public.
AgBioIndia	Network for information dissemination and campaigning	Media, policy-makers and opinion-makers
Foundation for Biotechnology Awareness and Education, Bangalore	Dissemination of information through articles, workshops and seminars.	Media, policy-makers and opinion-makers
All India Biotech Association, New Delhi	Exchange and dissemination of information through meetings, workshops and seminars. A scientific and industrial lobby.	Government, research funding councils and industry
Consumer Voice, New Delhi	Food safety and consumer protection	Media, policy-makers and opinion-makers

Adapted from the Report of the Centre for Budget and Policy Studies and the Stockholm Environment Institute., *op.cit*

In India, advocacy groups have led a sustained campaign for transparency, full disclosure, serious monitoring and inclusion through a number of activities such as research and dissemination of information, advocacy at policy level (questions in parliament, engaging parliamentarians, through membership of different Committees etc.), awareness generation, public debates, legal challenges, activist action, capacity building (local, national and regional levels) and networking with like-minded NGOs. The role played by CSOs in India in advocacy and policy making with respect to

adoption of GM technology and its fallout on trade, can be best appreciated under the following heads:

(i) Lobbying for Public Participation and Integrating Socio- Economic Considerations

At the national level, NGOs in India have been lobbying for more effective **public participation and integrating socio-economic considerations**, particularly India's trade interests, in national policy. The Biosafety Protocol, to which India is a signatory, in Article 23, requires Parties to promote and facilitate public awareness, education and participation with regard to biosafety, and also requires mandatory public consultation and disclosure of results of decisions back to the public in the decision-making process. Civil society groups all over the world have been instrumental in opening up the decision-making processes on biotechnology and biosafety to public scrutiny and challenge. According to Glover⁹, to a large extent, the public debate does not require to be artificially generated by "facilitation" or "promotion" under the Biosafety protocol, but is essentially a spontaneous social and political debate, which can occur in "bottom-up" processes where demand is expressed by civil society rather than at the invitation or encouragement of the state. Public participation addresses the democratic deficit in regulatory systems and ensures a greater plurality of voices and points of view and can accomplish many things which a state cannot.

NGOs in India have repeatedly highlighted the need for developing a sound policy framework on biotechnology which takes into account real public concerns, based on indigenous needs and a thorough needs assessment.¹⁰ The hasty framing of a draft biotechnology policy without adequate time for public comments have been protested against by civil society, in response to which the Department of Biotechnology (DBT) organized two hearings for selected members of civil society, one at Chennai and the other at Delhi. Dr. Suman Sahai¹¹, the only member representing CSOs in the Expert Committee constituted by the Government of India to frame the National Biotechnology Policy (also discussed later on in the paper) has pointed out that atleast one year should be set aside for comments and public participation. During this period, a genuine effort should be made to make the consultation process on the draft policy more inclusive and transparent. She has regretted the fact that the draft report totally excludes civil society, particularly NGOs from any aspect of decision making or implementation of biotechnology, stressing on the need for having civil society members on board in the regulatory structures and bodies.

Gene Campaign¹² has submitted that excluding the public from decision making constitutes undemocratic governance and a violation of the Cartagena Protocol on Biosafety. Excluding NGOs also deprives the government of a valuable and critical

⁹ Glover, D., "Public Participation in National Biotechnology Policy and Biosafety Regulation", IDS Working Paper 198, August 2003.

¹⁰ Sahai, S., "Does India have a Policy for GM Crops?" 2003

¹¹ Sahai, S., *Recommendations for Change in India's Biotechnology Strategy*, New Delhi: Gene Campaign

¹² *ibid.*

source of information and analysis, since civil society usually has better and quicker access to information and developments in the field of agricultural biotechnology than government departments in India.

Besides public participation, civil society groups have been proactive in making a case for **more liberal socio economic risk assessment parameters** (including indicators to assess impact on trade) and negotiate for their inclusion in the Biosafety Protocol. Though the Protocol admits consideration of socio- economic concerns, the scope is greatly restricted and limited to effects on biodiversity (Article 26). Even then, it can be further curtailed by a Party's international obligations, chiefly with respect to the WTO. NGOs have pointed out that Developing country policy makers need to be especially vigilant about the potential for devastating economic impacts when adopting biotechnologies. For instance, Gene Campaign¹³ has highlighted that indicators need to be developed to measure the loss of organic markets by small farmers owing to the introduction of GM technology and assess their impact on incomes and livelihoods. A similar viewpoint has been expressed by La Vina and Fransen¹⁴ when they say that where exports or domestic consumption of organic products comprise a significant percentage of a country's agricultural sector, governments would be particularly wise to institute policies that take special measures to safeguard organic markets, research on which will be helpful.

CSOs in India have also stressed that possible ways of taking socio-economic considerations into account could include procedures for assessing and addressing socio-economic impacts in risk assessment and management and prior public consultation processes with respect to decisions on import, especially with respect to communities that will be directly affected by the import.

(ii) Recommendations to the Government from the National Symposium

According to the Report of the Centre for Budget and Policy Studies and the Stockholm Environment Institute, one particular important outcome of CSO-activity, leading to significant changes in the government's handling of agricultural biotechnology, was the result of a two-day **national symposium** in New Delhi in November, 2003 on "The Relevance of GM Technology to Indian Agriculture and Food Security" organized by Gene Campaign. This symposium brought together influential participants and speakers, representing the GEAC (Genetic Engineering Approval Committee), several ministries and research councils, agricultural universities, R& D institutions, social science and policy research institutions, CSOs (farmers, consumers and environmental organizations), private sector, seed companies, Indian subsidiaries of agro- chemical TNCs and the media. Twenty key recommendations emerged from this multi- stakeholder symposium, which were presented to the Government of India.

¹³ Sahai, S., "Indicators Needed to Assess the Socio- Economic Impact of GM Crops", *Biospectrum*, March 29, 2005.

¹⁴ La Vina, Antonio and Lindsey Fransen, "Integrating Socio- Economic Considerations into Biosafety Decisions: The Challenge for Asia", http://pdf.wri.org/lavina_fransen_socioeconomics.pdf (Accessed on June 10, 2007).

Recommendations from the Symposium are as follows:

1. A distinct law should be enacted to oversee GM Technology and its implementation. This law must harmonize with other laws and national and international agreements.
2. A comprehensive biotechnology policy should be developed in consultation with all stakeholders.
3. A statutory National Bioethics Commission must be set up.
4. There should be a consultative and participatory process to prioritize crops and traits for genetic improvement through biotechnology with the goal of addressing the needs of small farmers and Indian agriculture.
5. Investment in public sector research should be encouraged and strengthened. Novel gene discovery in crops of relevance to India should get highest priority.
6. India must develop a policy for transgenic varieties of crops for which it is a Centre of Origin and Diversity. Commercial cultivation of GM rice should not be allowed until the nature of gene flow and its impact is understood.
7. The Herbicide Tolerance trait should be subject to rigorous cost and risk benefit analysis before being considered for adoption.
8. Alternatives to the GM approach must be carefully evaluated in each case before deciding on the GM route. A cost and risk benefit analysis must be conducted before deciding on a GM product.
9. Protocol for food safety tests must be vastly improved and mechanisms for long term monitoring of human health (post GM food release) be put in place.
10. Develop a stringent protocol to assess environmental and ecological impact.
11. There should be provisions for post- market surveillance and monitoring of GM products.
12. Have a policy to deal with bio terrorism urgently.
13. India must exercise caution in the Intellectual Property Rights (IPR) regime that it adopts. The current Protection of Plant Varieties and Farmers' Rights Act should be retained since it balances Breeders and Farmers' Rights.
14. A new statutory, independent National Biotechnology Regulatory Authority must be established.
15. Make the Genetic Engineering Approval Committee (GEAC), the apex regulatory body, more competent, transparent and accountable. Post data on research and development of GM crops and products on websites and local newspapers.
16. An annual review of all decisions on GM products must be presented to Parliament.
17. Conduct a scientifically sound study to assess attitudes and perceptions about GM technology among stakeholders in India.
18. Undertake a program of awareness about GM technology to educate the public.
19. Organize a series of public debates across the country to elicit the views of the people, to channel it into policy- making. The government should fund this exercise.
20. There should be a moratorium on commercial cultivation of GM crops until the regulatory system is demonstrably improved. Research on GM crops, however, should continue.

(iii) Submissions before the Agbiotech Task Force

Due in part to the submission of these recommendations, as well as mounting pressure from a number of influential stakeholders, the Government set up an Agbiotech Task Force in 2004 under the chairmanship of Dr. M.S. Swaminathan to submit a report on 'streamlining' the biotechnology and biosafety regulatory structures and procedures. This was accomplished after consulting a range of stakeholders, which included groups like Greenpeace India and Gene Campaign. Another Task Force was also constituted with respect to medical/ bio-medical/ pharmaceutical biotechnology (chaired by Dr. R. A. Mashelkar).

The mandates of both the Agbiotech Task force as well as the Task Force on Recombinant Pharma were to formulate a long term policy on applications of biotechnology in agriculture and pharmaceuticals and suggest modifications in the existing administrative and procedural arrangements in order to improve regulation. Both the Task Forces have found the regulatory system to be cumbersome, ambiguous and inadequate to deal with the challenges of transgenic technology in agriculture as well as pharmaceuticals, which has also been the submission of NGOs like Gene Campaign. The Agbiotech Task Force Report's basic recommendation is that the national policy should seek the 'economic well- being of farm families, food security of the nation, health security of the consumer, protection of the environment and the security of our national and international trade'. Dr. Suman Sahai has said that if the recommendations of this Task Force are upheld, no policy implementation can deviate from these goals.¹⁵

In submissions before the Agbiotech Task Force, Gene Campaign stressed that India's trading interests must be kept in mind when deciding on research and product development. It has highlighted here the connection between transgenic research in India and the international market, recommending that transgenic research should not be done on crops that we sell in the international market, like soybean, Basmati rice and Darjeeling tea.

(iv) Recommendations for Change in the National Biotechnology Development Strategy

It is Gene Campaign's view that the draft National Policy on Biotechnology (also discussed earlier) must take into account the socio- economic concerns in addition to science based evidence when doing risk assessment. The Precautionary Principle, especially relating to the centers of origin for crop plants, socio- economic concerns relating to small farmers and consumers and the right of the public to participate in decision making must form an integral part of the biotechnology policy, implemented with the highest levels of technical competence.

¹⁵ Sahai, S., "The Agbiotech Task Force Report", *Biospectrum*, June 14, 2004.

Dr. Suman Sahai¹⁶ of Gene Campaign has pointed out the imperative for the national policy to address India's trade interests. In her view, which GM tagged crops will get hurt in the export market, what should we keep off GM and where can using the GM approach be beneficial, are questions which the policy must address. It must also provide answers to questions like what sort of liability and redress regime should we have that would protect farmers, consumers and traders and what will be our policy on GM crops for which India is a center of origin/ diversity, especially rice.

Civil society groups have also criticized the considerable leeway given by the Policy to the producers of GM products with respect to the introduction of foreign genes into different kinds of crop plants. This puts at risk farmers' livelihoods, the nation's trading interests as well as the health of consumers and the environment, and should be revoked immediately. They have also criticized the reticence discernible in the policy to forbid the private sector to use GM technologies which they warn, would hurt trading interest and livelihoods.

One CSO recommendation has been for the constitution of an autonomous Trade Monitoring Body (TMB), located in the Ministry of Agriculture, to collect market intelligence with respect to GM crops and products and follow the trend of organic markets. The TMB should watch international developments to identify niche markets, monitor countries that are rejecting GM foods and feed this intelligence to concerned agencies to help guide national policy on GM crops and products. The TMB should conduct studies to identify India's comparative advantage and assess the socio-economic impact of imports of GM crops and foods.

(v) Task Force on Biodiversity and Genetically Modified Organisms

A Task Force on Biodiversity and Genetically Modified Organisms was set up by the Planning Commission under the chairmanship of Dr. Suman Sahai to develop recommendations for the Eleventh Plan period. The Report of the Task Force has reiterated the concern repeatedly expressed by civil society on achieving greater transparency and public participation in regulation and decision-making. Pointing out the problems in India's existing regulation on GMOs, it has recommended a liability and redress regime and has called for a vastly improved regulatory system. The Report also recommends that until such steps are taken, commercial cultivation of GM crops should not be allowed.

The Task Force has highlighted that the GM crop research agenda must be sensitive to India's trade interest. It has also stressed the need to review the policy of promoting GM vs. Organic crops, assessing the USP of particular agriculture zones like rainfed areas, hill states and mountain ecosystems.

¹⁶ Sahai, S., "Recommendations for Change in the National Biotechnology Development Strategy", New Delhi: Gene Campaign.

(vi) Interventions With Respect to Approval of GM Crops

Community groups have been voicing many concerns with respect to approval of GM crops in India. They have expressed worry over the lack of capacity of the regulatory institutions to play a strong and independent monitoring role, conflict of interest within government agencies, the lack of transparency and hesitation to heed public demands for information and participation in the decision-making process. Their interventions have to some extent influenced government decision to defer approvals for field trials and subsequent commercialisation of certain GM crops in India.

As mentioned earlier, NGOs vociferously criticised efforts to develop a genetically engineered Basmati in India, warning that it would have a disastrous impact on the high-end market for this premium product. The government has since then slowed down the process. Other examples are the cases of GM mustard and GM potato.

Initial approval for commercialisation of the genetically modified mustard developed by Aventis/ ProA gro was given by the GEAC in early 2003, based on the claims made by ProA gro regarding the safety of the crop. Gene Campaign¹⁷ questioned the veracity of the test data for GM mustard, highlighting that the safety tests were conducted by ProA gro itself, by feeding seeds and leaves of the transgenic plant to pigeons and rabbits. The company reportedly supplied both the samples to be tested and the controls against which the samples had to be tested, making the tests a farce. Moreover, the tests were not conducted in any government laboratories which are open to scrutiny but in private institutions. Even in these privately conducted tests, there was no involvement of scientists from the national agricultural system. Equally questionable was the manner in which the field trials were done. Like in the food and feed safety tests, ProA gro had supplied the bulk of the data on field performance to the GEAC, on the basis of tests it has done itself on its own trial variety.

As a result of the pressure exerted by civil society over these issues, the GEAC deferred the decision to allow cultivation of transgenic mustard in India, which would have been the first GM food crop in India.

GM Potato was projected by its promoters as offering a solution to malnourishment and susceptibility to blindness among poor children in India. Advocacy groups pointed out the dangers inherent in rushing untested GM potatoes to these children through government-run mid-day meal schemes in schools, as envisaged by the promoters. Dr. Suman Sahai¹⁸ in an article published in 2003, highlighted that at that time, the appropriate experiments had not been done to test whether this transgenic potato is stable or not in the long run. Experiments had been done only on the vegetative cycle, which means that that was no knowledge on how the variety behaves when it is sexually reproduced (flowering and setting seed). Also, the increase in protein in the GM potato,

¹⁷ Sahai, S., "ProAgro's Inferior Mustard Variety to be Released Soon", AgbioIndia Mailing List, September 24, 2002, <http://www.lobbywatch.org/archive2.asp?arcid=636> (accessed on September 10, 2007).

¹⁸ Sahai, S., "Splice of Life: GM Potato Could Come a Cropper?", *The Times of India*, June 21, 2003.

touted by its promoters, was negligible and would make no real difference nutritionally. Since then, there has not been much headway in the direction of approval of GM potato for commercial release.

(vii) Engagement with the Judiciary

NGOs like Gene Campaign have been pointing out the inadequateness of the regulatory mechanism to control the potential environmental and health hazards due to GMOs. They have also expressed worry over the lack of attention to the socio-economic and ethical aspects of GM technology in food and agriculture; and lack of transparency and public participation in the decision-making process.

Unfortunately, the Indian government chose not to heed these legitimate public concerns, showing no sensitivity to the concerns that civil society was raising. Despite repeated representation made to the authorities, Gene Campaign faced continuous stonewalling from the government departments, leaving it with no alternative but to approach the judiciary for relief. It filed a Public Interest Litigation (PIL) in the Supreme Court of India on 7th January 2004.

The PIL challenges the constitutionality of the Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms, Genetically Engineered Organisms or Cells, 1989 framed under the Environment (Protection) Act, 1986 and which govern the regulatory regime on GMOs in India. It alleges that they are not in consonance with the principles evolved under Article 21 (Right to Life) of the Constitution and that they have not been brought in line with the Biosafety Protocol, to which India is a signatory. The PIL points out lacunae in the Rules of 1989 and the bodies set up under it, which includes the Genetic Engineering Approval Committee (GEAC). The regulatory agencies set up under the Rules of 1989 lack technical competence, transparency, and public participation. They are not competent to deal with the potential environmental, health and socio-economic risks posed by GMOs in India.

In the light of the above, the PIL has prayed for amendment in the present Rules governing GMOs and the setting up of a High Powered Committee to formulate a National Policy on GMOs through a multi-stakeholder consultation process. It has prayed that the government must observe a moratorium on permissions/ approvals/trials concerning GMOs, especially those of a commercial nature and for which India is a Centre of Origin/ Diversity, till the Rules are amended and a sound Regulatory and Monitoring System is put in place.

In 2005, a second, similar PIL was filed by Aruna Rodrigues and others, whereby the court was requested not to allow any release of GMOs into the environment by way of import, manufacture, use or any other manner unless certain specific precautions are taken. It also prayed for banning the import of any biological organism, food or animal feed unless they have been certified and labelled to be GM free, by the exporting country

and to put in place rules to ensure that it shall be compulsory for any dealer or grower selling GMOs to label them as such.

Proceedings in the two PILs are still ongoing in the Apex Court.

(viii) Using the Right to Information Act

It has been the experience of NGOs in India that the government does not readily provide information on transgenic research, field trials or biosafety, despite persistent enquiries. There is neither interface with the public nor any consultations with it. This is a clear infringement of the people's right to know and to participate in a matter that has grave implications for their life and welfare.

Since the enactment of the Right to Information Act, 2005, groups such as Gene Campaign, Greenpeace India and the Centre for Sustainable Agriculture have used this new legislation to access information from the biosafety regulatory bodies.

Gene Campaign had moved applications before the Ministry of Environment and Forests (MoEF) seeking information on the GEAC, on educational and professional qualifications required to be appointed as Member of different committees, on Bt cotton, on GM crops and on risk and cost benefit analysis of GM crops. Delay in receiving the information compelled Gene Campaign to file complaints with the Central Information Commission. The RTI Act obliges the Public Authority to furnish information promptly, failing which penalty is to be imposed under section 20(1) of the Act.

Disposing of the complaints, the Chief Information Commissioner did not propose any penalty owing to the fact that these were all complaints filed almost simultaneously with the actual enforcement of the Act and the public authority did not have the time to put its processes in place. The victory for CSO intervention, however, lay in the fact that though the Public Authority was not penalized, a strict warning was issued to it, cautioning against any repeat of such delay, owing to the sensitive nature of the research¹⁹.

A similar request for information under the Act was also made by Greenpeace India in February, 2006, requesting the Review Committee on Genetic Manipulation (RCGM), to make public the toxicity and allergenicity data for GE brinjal, rice, mustard and okra. There was also a request to make the minutes of the RCGM meeting public. The RCGM refused to divulge the data on the grounds that disclosure of the information would harm the competitive position of the third party, in this case, the company making the GE crops, therefore placing the economic interest of the corporation above public interest. Striking down this contention, the CIC found that the request of the applicant for toxicity, allergenicity, (for GE rice, GE mustard, GE okra and GE brinjal) cannot be refused under the RTI Act. The CIC's decision vindicated the position of civil society that it is imperative to have access to details of biosafety tests so as to protect our food from untested, unapproved GM crops.

¹⁹ "RTI Act: MoEF Cautioned Against Delay", *Gene News* (Gene Campaign Magazine), May - June 2007, Vol 2, No.3, p.26.

The Centre for Sustainable Agriculture has also used the Right to Information Act to obtain crucial information with respect to decision- making process and approvals for GE crops, biosafety data and other data which form ostensible basis for decision- making, monitoring reports, Bt cotton performance reports, compliance to laws, Public Private Partnerships in consortium projects etc.²⁰ This data has been put into the public domain through a website and has aided legal challenges by putting forward compelling evidence and have also helped substantiate civil society investigations into field trials.

Participation in the International Arena

Apart from national level advocacy and policy- making, Indian NGOs have been proactive in influencing international deliberation and policy- making in multilateral forums. Their efficacy in international forums is enhanced in most instances by networking with other groups and building diverse coalitions, with representatives from both developed and developing countries.

Many believe that NGO participation addresses, if not closes, the democratic deficit in international governance.²¹ It is believed that civil society participation holds two promises²². First, by taking part in political debates at the global level, they have the capacity to transport new ideas, interests and concerns from local stakeholders to global governance arrangements. Second, their presence contributes to the emergence of a global public sphere in which policy choices are exposed to public scrutiny. Representatives of civil society monitor internationalized policy- making and critically comment on it, often adding counter- expertise and alternative viewpoints. They then disseminate the information on global policy developments to their own constituency, thus triggering the emergence of public debate.

The trade- related aspects of the regulation of GMOs is a highly contested issue at the international level- addressed in both the WTO and the Cartagena Protocol. This issue has mobilized all types of civil society organisations, from advocacy NGOs to business lobby groups. The role of NGOs in this regard may be studied under the following heads:

²⁰ Kuruganti, K., "Right to Information and GMOs: Experience of Centre for Sustainable Agriculture", a power point presentation made at the *Workshop on Impact of the WTO Ruling on the EU- US Trade Dispute on GM Crops* organised by Gene Campaign and GeneWatch UK at Delhi on July 17-18, 2007.

²¹ Cellarius, R.A., J.D. Ellis, "Strengthening Participation of Civil Society in Global Environmental Governance", paper prepared for the 2005 Berlin Conference on the Human Dimensions of Global Environmental Change, International Organisations and Global Environmental Governance, Berlin, Germany, 2-3 December, 2005, http://web.fuberlin.de/ffu/akumwelt/bc2005/papers/cellarius_ellis_bc2005.pdf. (accessed on August 16, 2007).

²² Steffek, J., U. Ehling, "Civil Society Participation at the WTO- a Cure for its Democratic Deficit?" paper prepared for presentation at the 3rd ECPR General Conference, Budapest, 8-10 September, 2005.

(i) Amicus Curiae Briefs in the WTO Dispute

Civil Society has been instrumental internationally in asserting the right of every country (especially, developing countries) to be able to decide their own level of protection from the risks of GM crops and food, free from pressure exerted by GM exporter countries. This is what the **amicus curiae brief** filed by the Amicus Coalition comprising of leading public interest environmental organisations spanning Europe, North and South America and Asia sought to do at the WTO in the EC- Biotech Products case. This is but one of the three amicus briefs submitted by CSOs, both from the developed and developing countries, in this dispute. All these briefs stressed the public interest, pointed out the dangers of unimpeded trade in GMOs and emphasized on health, environmental, social and economic issues.

The WTO dispute settlement system provides the possibility for non- parties like CSOs and private individuals to file *amicus curiae* (friend of the court) briefs, whereby they can set out facts or arguments relevant to the dispute and often in the public interest. The Appellate Body is vested with the discretion to take or not take them into account while deciding the case. Though there is no guarantee that these would be taken into account, it is expected that amicus curiae briefs would help in developing balanced and just decisions in the WTO dispute settlement system by presenting relevant information and technical advice.

As already mentioned, one such amicus brief was submitted by a coalition of CSOs from both developed and developing countries (with India being represented by two CSOs) referred to as the Amicus Coalition. The members of the Coalition included Gene Watch UK, Foundation for International Environmental Law and Development (FIELD), Five Year Freeze, Royal Society for the Protection of Birds (RSPB), the Centre for Food Safety, Council of Canadians, Polaris Institute, Grupo de Reflexión Rural Argentina, Centre for Human Rights and the Environment (CEDHA), Gene Campaign (India), Forum for Biotechnology and Food Security (India), Fundación Sociedadus Sustentables, Greenpeace International, Californians for GE-Free Agriculture and International Forum on Globalisation. The CSOs decided to submit an amicus brief because they felt that the decision on the WTO GM dispute will have far reaching implications not only in the EU, but also on other developing countries like India, where agriculture is the most important sector in the socio-economic fabric. It was pointed out that the science of GM crops and foods is uncertain and the potential for serious and irreversible risks to the environment and human health remains. Also, the ownership and control of the technology by multi-national corporations means it does not meet the needs of the poor and hungry. Thus, countries should be able to decide their own level of protection.

Another amicus brief (April 30, 2004) was submitted by a team of international scholars of science, technology and society, comprising of Lawrence Busch, Robin Grove- White, Sheila Jasanoff, David Winickoff and Brian Wynne. This brief aimed at providing information on two fundamental aspects of the dispute: interpretation of the terms

‘science’, ‘risk assessment’ and ‘risk management’ in the context of evaluating agricultural biotechnologies and the relationship of risk assessment to the broader role of public deliberation and rational decision making in supporting the free flow of trade. While acknowledging that regulatory polarization in the agricultural biotechnology sector has created tensions in the world trading system, it brought into focus the fact that risk assessment of GMOs is full of complexities and therefore, requires processes of public deliberation and review and most especially in relation to the transfer of GMOs across national borders.

The third amicus brief (June 1, 2004) was submitted by a group of CSOs, mainly from the developed countries, including Centre of International Environmental Law, Friends of the Earth- United States, Defenders of Wildlife, Institute for Agriculture and Free Trade and Organic Consumers Association- United States. This brief presented considerable scientific evidence as to the extent of the uncertainty involved in evaluating the risks of GMOs to human, animal, and plant life and health so much so that it impedes any adequate consideration of those risks. This situation fulfils the condition of ‘insufficient scientific evidence’ provided for in Article 5.7 of the SPS Agreement, which can be used by Member Countries to assert their right to establish the level of protection they deem adequate.

Though the amicus briefs were not able to exert much influence in the decision (with the WTO Panel stating that it did not consider it necessary to take them into account), nevertheless, the amicus submissions served a broader purpose. They brought CSOs from all over the world on a common platform and raised considerable awareness. CSOs not only represent the interests and perspectives of their country and of the broader society at the international level. They also serve to transmit information and arguments back to their respective constituencies, governments and fellow members of civil society, building capacity for more informed participation in the future.

(ii) Participation in the Biosafety Protocol

Civil society groups since the early 1990s have worked very hard to develop international and national rules on production and trade in GMOs and GM products. The framing of international rules for trade in GMOs, is mandated in the Convention of Biological Diversity (CBD) under Article 19(3). The Cartagena Protocol on Biosafety, adopted in January 2000 and which came into force in September 2003, is a significant outcome of these global efforts and testifies to the right of countries to control the movement of GMOs and GM products across their borders.

CSOs have tried to participate in an effective way in the Conference of the Parties to the CBD serving as the meeting of the Parties to the Protocol (COP-MOP), both in official negotiation discussions and in parallel events held simultaneously. They have tried to contribute through elaboration of positions and strategies, effective interventions, identification of main issues of discussion and the organization of side events, mobilization and awareness-raising campaigns. The positive thing about the COP-MOP as against WTO meetings is that CSOs are allowed to sit and hear in; they can also

interact and make suggestions, which give NGOs a chance informally to put across their view points.

At the first Meeting of Parties to the Protocol held at Kuala Lumpur, Malaysia in 2004, a number of NGOs, including Gene Campaign initiated debate that led to some decision on certain pertinent issues in the Cartagena Protocol which the Miami Group (United States, Canada, Argentina and Mexico) were keen to suppress. Some of these issues were identifying shipments of LMOs, dealing with Parties that do not comply with the provisions of the Protocol and liability and compensation in cases of damage due to trans-boundary movement of LMOs,. There were also discussions and deliberations on Advance Informed Agreement (AIA) and labeling of GMOs, prompted by civil society. They initiated debate over the *ad hoc* grant given to the GM soybean oil import; because although it was given as a special case and not under US pressure, formally the AIA has been exhausted for that. NGOs also highlighted the need for exhaustive labeling on containers of GMOs and that labeling should have detailed scientific information about what is contained so as to anticipate the quarter from which risk may come, meaning from which quarter one should be concerned about biosafety.

Consumers International (Asia- Pacific) and Gene Campaign pointed out at Kuala Lumpur that the ongoing discussions on the Convention of Biological Diversity and the Biosafety Protocol dealing with the impact of GM crops on the biodiversity of the world were ignoring the central concern of developing countries: that of the social and economic impacts of GM technology. The freedom to use socio- economic considerations such as the impact of trade is limited by the condition that such an action must be consistent with the country's other international obligations, particularly with regard to international trade. Gene Campaign has pointed out that an understanding of the socio- economic impact of trade in GM crops needs to be developed urgently by initiating brainstorming discussions involving all stakeholders. The specific socio- economic concerns need to be identified; how are these to be handled in the Protocol; and whether these could be built into the Biosafety Framework, etc.

The delegates of COP-MOP 3 held at Curitiba, Brazil in 2006 approved a requirement for clear labeling of cross-border shipments containing living modified organisms (LMOs) in products for direct use as food or feed, or for processing. Under the new agreement, products that have been clearly identified and separated as transgenic will have to carry the label "contains LMOs".

At the Eight Conference of the Parties (COP8) to the CBD held simultaneously in Curitiba, the "terminator ban" was upheld. Maintenance of the ban on terminator seeds (or GURTS - genetic use restriction technologies - which suspend the reproductive capacity of seeds) is a significant victory for farmers and indigenous communities. Terminator seeds represent a significant challenge to their livelihoods (for they require seeds and possibly other inputs to be purchased annually), to food security and to biodiversity.

The delegates at COP 8 were under immense pressure from industrial countries like Canada, New Zealand and Australia, led by the US and a number of biotech companies to do away with the moratorium on Terminator Technology and accept a 'case by case' assessment of Terminator Technology which meant legitimizing open field testing of the technology. Were it not for the stiff opposition offered by a broad coalition of farmers, indigenous peoples and civil society, the decision to hold on to the moratorium would have been overturned. Widespread protests and demonstrations were held at the venue of the meeting. The daily protests by Via Campesina (an international movement which coordinates peasant organizations of small and middle-scale producers, agricultural workers, rural women, and indigenous communities from Asia, Africa, America, and Europe) at the entrance to the convention centre, the simultaneous events in many countries coordinated by the international Ban Terminator Campaign, the speeches by youths and indigenous leaders, the parallel side events held by the Brazilian NGO and Social Movements' Forum all together were instrumental in achieving this victory.

The above constitute a few important instances of the mobilization and effective participation of civil society groups in influencing international policy with respect to GM trade. That apart, there have been other initiatives by CSOs to network with like minded groups and have a common platform at international and regional levels.

The Way Ahead

Such has been the pioneering role of CSOs in India (both at the national and international level), working towards a policy on GMOs, which keeps India's trade interests at heart. That apart, such groups in India have been relentlessly engaged in research on GM, generating awareness, conducting public debates and building capacity among the public for informed choices.

Regarding the significance of the WTO Ruling for developing countries and CSO engagement in it, it may be concluded that an interpretation of the Ruling makes it evident that no flexibility has been lost following it and that measures, including bans and moratoria, can still be taken in accordance with the Biosafety Protocol, which do not violate WTO Agreements. The Biosafety Protocol continues to be implementable, provided political will is exercised. At this juncture, civil society groups need to play a crucial role in creating awareness about the Ruling, build public opinion and lobby with government on issues such as biosafety, public involvement etc.

There is also need for increased and more effective civil society interventions using instruments such as the Right to Information Act to build awareness, feed legal challenges, take on regulators and strengthen advocacy. For such efforts to yield results and assume the form of a campaign, it is imperative that the information on GMOs (as well the finer points of the Ruling) be demystified into what is understandable by the layperson, enhance the support base and take the campaign to the masses through large-scale awareness generation. Advocacy groups also need to network more effectively,

building coalitions not only with like-minded CSOs but also strategic alliances with diverse groups, to achieve their objectives.

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