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ECONOMIC COMMISSION FOR EUROPE

MEETING OF THE PARTIES TO THE
CONVENTION ON ACCESS TO INFORMATION,
PUBLIC PARTICIPATION IN DECISION-MAKING AND
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

Working Group of the Parties

Eleventh meeting
Geneva, 8–10 July 2009
Item 5 of the provisional agenda

GENETICALLY MODIFIED ORGANISMS

INTERNATIONAL EXPERT MEETING ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE WITH RESPECT TO GENETICALLY MODIFIED ORGANISMS

Report by the Secretariat

1. At their second meeting, the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) agreed to hold an international expert meeting on access to information, public participation and access to justice with respect to genetically modified organisms (GMOs) as part of the 2006–2008 workplan (ECE/MP.PP/2005/2/Add.11; decision II/7, activity IX).

2. At its sixth meeting, the Working Group of the Parties expressed its wish to hold the expert meeting back-to-back with the fourth meeting of the Conference of the Parties to the Convention on Biological Diversity serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-4), which was held from 12 to 16 May 2008 in Bonn, Germany.

3. The international expert meeting was held on 19 and 20 May 2008 Cologne, Germany.

4. The meeting was attended by experts designated by 27 States, namely Armenia, Austria, Belgium, Belize, Bulgaria, China, Czech Republic, Egypt, Finland, France, Georgia, Germany, Indonesia, Lao People's Democratic Republic, Latvia, Liberia, Lithuania, Netherlands, New Zealand, Norway, Republic of Moldova, Romania, Serbia, Slovenia, Swaziland, Ukraine and Uzbekistan, and also by the European Commission.

5. Participants from the following international and regional organizations and instruments attended: the Convention on Biological Diversity, the United Nations Environment Programme, the United Nations Environment Programme-Global Environment Facility (UNEP/GEF) Project for Building Capacity for Effective Participation in the Biosafety Clearing House, the Regional Environmental Centre for Central Asia (CAREC) and the Regional Environmental Centre for Caucasus (REC Caucasus).

6. Participants from the following international non-governmental organizations (NGOs) attended: European Environmental Bureau (EEB), European ECO-Forum and Greenpeace International. Participants from the following national NGOs attended: Ecological Society "Ruzgar" (Azerbaijan), Horizons sprl (Belgium), INF'OGM (France), Biological Farming Association Elkana (Georgia), ECOROPA (Germany), Genethisches Netzwerk e.V. (Germany), "Greenwomen" Analytical Environmental Agency (Kazakhstan), Ecospectrum-Bender (Republic of Moldova) and Center for Environmental Research and Information "Eco Sense" (the former Yugoslav Republic of Macedonia).

7. Participants from the following academic or research institutions attended: Embrapa Environment (Brazil), Federal University of Santa Catarina (Brazil), Bulgarian Biotechnology Information Centre (Bulgaria), Public Research and Regulation Initiative (PRRI) (Netherlands), King Abdulaziz City for Science and Technology (Saudi Arabia), University of Cape Town (South Africa) and the Réseau Interdisciplinaire Biosécurité (RIBios, Switzerland).

8. Participants from Croplife International, Global Legislators Organisation for a Balanced Environment-Europe (GLOBE Europe) and the Aarhus Centre Georgia (Georgia) also attended.

9. The meeting was chaired by Dr. Helmut Gaugitsch (Austria), the former Chair of the Aarhus Convention Working Group on Genetically Modified Organisms.

10. The aim of the meeting was to provide a forum in which interested Governments (including representatives of interested Parties to the Aarhus Convention or the Cartagena Protocol on Biosafety), intergovernmental organizations, NGOs, business and academia could meet to exchange information on good practices on access to information, public participation and access to justice with respect to GMOs, with a particular focus on identifying and addressing needs and challenges, in particular in countries in transition, especially those from Eastern Europe, Caucasus and Central Asia (EECCA), and in developing countries. The Cartagena Protocol and the Aarhus Convention, including the Almaty Amendment

(ECE/MP.PP/2005/2/Add.2, annex) and the Lucca Guidelines[1] (MP.PP/2003/3) adopted under its auspices, were key background documents for the expert meeting.

11. The annotated programme, the list of questions considered by participants in the discussion groups and the list of participants and presentations delivered using PowerPoint presentations may be viewed at: http://www.unece.org/env/pp/gmo.htm.

I. OVERVIEW OF THE AARHUS CONVENTION AND THE CARTAGENA PROTOCOL

12. In the opening session, representatives of the Aarhus Convention and the Cartagena Protocol bodies provided an overview of each instrument's requirements regarding access to information, public participation and access to justice with respect to GMOs.

13. The Chair of the Aarhus Convention Compliance Committee, Mr. Veit Koester, who also serves as Chair of the Cartagena Protocol Compliance Committee, observed that information on GMOs is expressly included within the definition of environmental information under the Convention.[2] Parties are obliged to make such information available upon request[3] and also to actively collect and disseminate such information.[4] However, he pointed out that there is no definition of what type of information should be made available, collected or disseminated. Furthermore, although it is certain that information on the release of GMOs into the environment and placing of GMOs on the market, being at the heart of the matter, falls under the information requirements of the Convention, it is less clear what other information on GMOs is required. In May 2003, the Parties adopted a set of guidelines on access to information, public participation and access to justice with respect to GMOs (Lucca Guidelines) which provide some guidance on this issue. He remarked, however, that a more authoritative interpretation may be needed in the future.

14. Mr Koester noted that under the current article 6, paragraph 11, of the Convention, Parties are required, within the framework of their national laws, to apply, to the extent feasible and appropriate, the Convention's provisions on public participation to decisions on whether to permit the deliberate release of GMOs into the environment. At their second meeting in Almaty, Kazakhstan, in May 2005, the Parties adopted an amendment substituting article 6, paragraph 11, with a new article 6 bis complemented by a new annex I bis (Almaty Amendment). The Almaty Amendment lays down more extensive requirements and modalities for public participation in decisions on the deliberate release of GMOs into the environment and placing of GMOs on the market. The amendment will enter into force when ratified by three fourths of the Parties to the Convention.

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[1] Guidelines on access to information, public participation and access to justice with respect to genetically modified organisms.

[2] Article 2, paragraph 3 (a).
[3] Article 4, paragraph 1.
[4] Article 5.

15. Mr. Koester remarked that the lack of definition in the Convention as to what constitutes GMO information may cause challenges. Conversely, the wide scope of the Cartagena Protocol's article 23 may render its obligations less operational. Harmonization to promote synergies and to avoid conflicting or disparate obligations would be beneficial to all concerned.

16. Mr. Erie Tamale, representing the secretariat of the Cartagena Protocol, stated that the objective of the Protocol is, in accordance with the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development, to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements. Article 23 of the Protocol contains a mix of mandatory and discretionary actions. Parties are required to promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of LMOs and to cooperate in doing so. They must also consult the public in the decision-making regarding LMOs and make the results of such decisions available to the public. Parties should endeavour to ensure that public awareness and education encompasses information on imported LMOs and to inform the public about access to the Biosafety Clearing House (BCH).

17. Mr. Tamale noted that article 20 of the Protocol establishes the BCH (located at http://bch.cbd.int), inter alia, to facilitate the exchange of scientific, technical, environmental and legal information and experience regarding LMOs. The BCH is accessible to the public free of charge. The public can subscribe to the Current Awareness Service to receive regular updates on information posted, http://bch.cbd.int/resources/mailinglist.shtml. At COP-MOP4, Parties to the Protocol agreed to consider a programme of work on public awareness, education and participation.

18. The representatives of each instrument noted that national reports submitted by Parties under the instruments highlight similar challenges and that future joint activities were needed. Although article 23 of the Protocol does not include provisions on access to justice, there are examples of recommendations on access to justice within the framework of its mother convention, the Convention on Biological Diversity, notwithstanding the fact that the text of that Convention does not contain provisions on access to justice either. This was noted as another area where harmonization between the Aarhus Convention and the Protocol might be beneficial.

II. ACCESS TO INFORMATION

A. Most pressing needs and challenges

19. The session on the most pressing needs and challenges regarding access to information began with presentations by representatives of Armenia, Liberia and European ECO-Forum. Following the presentations, participants had the opportunity to take part in interactive discussions in smaller groups.

20. The representative of Armenia reported that the country did not have specific legislation on access to information on GMOs, and that its general legislation may need to be expanded to ensure compliance with the requirements of the Aarhus Convention. Information on GMOs was often not easily understood by the public or they may be misled because of incomplete or inaccurate information on GMOs. Products containing GMOs were not clearly marked as such. Public authorities needed to do more to inform the public, as public awareness still came mainly from specialists, NGOs and the media. Early ratification of the Almaty Amendment was needed. Armenia had recently adopted a law on organic agriculture which included protection of organic agriculture against contamination from GMOs. However, the law was designed without public hearings and consultations and there was no right of public access to information on organic agriculture.

21. The representative of Liberia noted that although the country enjoyed rich biodiversity, its basic infrastructure had been destroyed during a 14-year civil war. Illiteracy was high amongst the 16 ethnic groups, most of whom were poor subsistence farmers. There was no specific legislation dealing with access to information regarding GMOs but rather legislation on environmental information and information generally. A national biosafety framework had been prepared but needed funding to support its implementation. Challenges to meaningful public awareness and participation included lack of financial and human resources, lack of a specific domestic law on biosafety, lack of facilities and trained personnel for GMO monitoring and detection, the refusal of aid agencies to disclose whether or not imported food aid included genetically modified (GM) crops, language barriers, illiteracy in rural areas and limited access to electronic mass media.

22. European ECO-Forum reported that while some EECCA countries had legislation on biosafety, e.g. Republic of Moldova and Ukraine, others still did not. Many countries of the region had still not developed their national biosafety frameworks nor special legislation dealing with access to information regarding GMOs. In a number of instances, they were using general Aarhus Convention procedures on access to information, often misapplying its confidentiality provisions. European ECO-Forum remarked that some Governments had formed the view that the Almaty Amendment was “anti-GMO” and were therefore reluctant to ratify it. It called for the prompt ratification of the Almaty Amendment and the introduction of access to information and public participation provisions into national biosafety frameworks. It also noted that in some countries, the national legal framework was quite adequate but its implementation had shortcomings. For example, the presentation of information on permits for field releases was in some cases confusing and really comprehensible only for experts, with no summaries available. Regarding labelling, monitoring and enforcement were sometimes quite weak and there was limited laboratory capacity to test products.

23. The discussion groups reported the following outcomes from their discussions on the most pressing needs and challenges regarding access to information:

(a) The legislative situation varies. Some countries, e.g. Norway and Brazil, have specific legislation on access to GMO information. Other countries, e.g. Belize and Liberia, utilize their general legislation on access to information or environmental information. The European Union (EU) has a fairly advanced legal framework on access to GMO information. The Republic of Moldova has endeavoured to follow the EU model in its 2001 biosafety law

and 2003 regulations. In 2006 the Commonwealth of Independent States adopted a model law on biosafety for the Newly Independent States, which also provides for access to GMO information, albeit in less detail. Most EECCA countries either have no specific legal framework dealing with access to information on GMOs or only assert such a right generally without procedures or implementing mechanisms;

(b) Developing new legislation specifically dealing with access to information on GMOs may not be practical in some countries and it may be more harmonious to amend existing legislation to address this issue;

(c) Mechanisms for monitoring and data collection are urgently needed, including GMO testing laboratories, particularly in EECCA and developing countries. It was suggested that it would be better to have laboratories in each country rather than to send samples to laboratories in other countries. However, each centre costs approximately €100,000 and also needs trained personnel. An alternative proposal was for a centralized testing facility to be established under the auspices of the Cartagena Protocol which countries without such facilities could use. It was reported that in a number of EECCA and developing countries, NGOs are working with independent scientists to carry out monitoring but are under financial constraints in doing so;

(d) Whilst labelling is well implemented in the EU, it was reported to be almost non-existent in EECCA countries. It was stated that Ukraine's new biosafety law does not require labelling. Labelling is required under Russian and Moldovan law, though enforcement was said to be problematic in the latter country because of a lack of adequate testing laboratories;

(e) Establishing an effective framework to control and monitor GMO imports can be difficult;

(f) A concern was expressed that scientists who obtained their funding from biotechnology companies may not always wish to present the most accurate information on the risks of the products they have been funded to develop;

(g) Although EU legislation requires Governments to make the information they hold publicly available, it contains limited requirements on what Governments should collect;

(h) The media can play an important role in shaping the public's understanding of GMO issues.

B. Good practices

24. The session on good practices regarding access to information began with presentations by representatives of Belize, UNEP/GEF, the Bulgarian Biotechnology Information Centre (Bulgaria) and Horizons sprl (Belgium). Participants then had an opportunity to take part in interactive discussion groups.

25. The representative of Belize reported that in the period 2006–2007 the country undertook public consultations on its draft national biosafety policy, since adopted. Under the policy, a public education committee was to be established with the responsibility to ensure public awareness and participation through periodic consultation and dissemination of up-to-date information on GMO issues, using all available media. The policy was developed through a

consultative process in the various regions of the country as well as consultations with government departments, industry and farmers' organizations. Additional outreach was conducted through television news, talk shows, newspapers, a website, an electronic listserve, government information services and agricultural shows. The consultations highlighted a number of public concerns, including the effects of GMO products on human health; labelling and questions as to who will certify products as GMO/non-GMO; who will be responsible for any damage caused by GMOs; who owns the GMO technology, how will prices be affected; whether the human and financial resources exist to test, trace and monitor GM products; and whether there will be guidelines in place to protect local organic crops.

26. UNEP/GEF reported on its eight years of experience in assisting developing countries to develop and implement their national biosafety frameworks. UNEP/GEF helps countries to participate in the infrastructure of the BCH and builds capacity to effectively access and use the BCH. One hundred thirty-nine countries are eligible to take part in the UNEP/GEF project; 119 of these have signed memorandums of understanding with UNEP/GEF so far. The UNEP/GEF project includes training of regional advisors, global, regional, sub-regional and national workshops and peer-reviewed training material. So far, 142 workshops have been held and 1,950 people have been trained. Regional advisors network electronically to share experiences and reports. Training materials are modular, can be customized for different stakeholders and are available in Arabic, English, French, Russian and Spanish. Lessons learned include: (a) countries should do a cost-benefit analysis on how to interact with a biosafety clearinghouse; (b) countries should not underestimate the need for a national website; (c) training materials must be continuously updated and new materials developed; (d) it is sometimes difficult for national biosafety focal points to know where information exists, so a coordination committee is useful; (e) regional advisors are appreciated because of their regional knowledge; and (f) sharing information through a clearinghouse is not necessarily public participation. In May 2008, UNEP/GEF published a report, "Effective participation in the Biosafety Clearing House: Participation options and impediments to information provision".

27. The representatives from the Bulgarian Biotechnology Information Centre and Horizons sprl each provided checklists of matters to be considered when providing access to information. Both passive access to information and active dissemination of information should be addressed. Information should be provided on the following: What is modern biotechnology? How does it work? What are its potential benefits? What are its potential risks? How are those risks assessed and regulated and what actions are taken to manage or alleviate them? How does the government make informed risk/benefit decisions in the interest of human health or the environment? Who are the competent authorities and relevant institutions? What is the relevant legislation and what rights and tools does it provide? The presenters recommended using a variety of media, depending on national traditions and capacity, e.g. websites, leaflets, videos, public meetings, documentaries, to be as proactive, transparent, factual and balanced as possible. The Bulgarian Biotech Information Centre has a bilingual website (www.bgbic.abi.bg) and organizes biosafety conferences, workshops with journalists and farmers, discussion clubs and essay-writing opportunities for scholars and university students.

28. The discussion groups reported the following outcomes from their discussions on good practices regarding access to information with respect to GMOs:

(a) The first tier of good practice is comprehensive legislation. It was recommended that EU legislation may serve as a useful model for EECCA countries;

(b) Information should be summarized and presented in a way appropriate to the needs of each target group. Providing a summary of a notification with a link to the full text of the application or risk assessment was considered to be good practice;

(c) Access to original studies and reference materials is also important to enable independent scientists to check results;

(d) Information should be as neutral as possible. Information provided by applicants should be made available, as far as possible, in its original form.

(e) Information should be made available in the relevant national languages;

(f) Electronic registers of interested public such as those used in the Republic of Moldova are useful;

(g) The EU requires the detection method for each GMO to be approved before its release;

(h) The scientific community considers peer reviewed journals as the only source of verified scientific information;

(i) The cooperation of Governments with NGOs is valuable to assist with disseminating information to different stakeholders. As NGOs play an important role in public perception, they should act responsibly in undertaking their role and provide science-based, accurate and factual information;

(j) Governments may wish to consider employing professional science/risk communicators to provide information to the public. It is important however, to ensure communicators' understanding of public values and concerns;

(k) Governments need to ensure good information flows within and between their ministries;

(l) Because different ministries have different opinions and priorities, it may be useful to designate a separate agency to provide information to the public;

(m) A biosafety clearing house should be easily searchable, e.g. via keywords. It is also useful to have a decentralized, password-protected way of adding information, together with automatic dissemination to a self-selecting list;

(n) It was noted that in 2003, Norway had adopted environmental information legislation which gave the public access to environmental information directly from the private sector. Companies were required to provide justification for withholding information or otherwise it would be released;

(o) Belgium's biosafety clearing house and Switzerland's biosafety website were noted as examples of good practice;

(p) Denmark has a co-existence law in place, i.e. a law stipulating measures to protect organic and conventional production from the risk of contamination by GMO crops. Finland is currently drafting a co-existence law, expected by 2009 and all fields where GM crops are grown will be able to be seen on the Web. In Germany, notification of field trials is posted in the

locality. Switzerland and the United Kingdom have GIS[5] to show where GM crops are grown. France does not give site-specific information, although this is currently being discussed. Some participants queried whether this could result in GM crops being sabotaged;

(q) In Peru, data on access to genetic resources and benefit sharing is accessible to anyone without having to prove a direct interest.

III. PUBLIC PARTICIPATION IN DECISION-MAKING

A. Most pressing needs and challenges

29. The session on the most pressing needs and challenges regarding public participation in GMO decision-making included presentations by representatives of China, Eco Sense (the former Yugoslav Republic of Macedonia) and Greenpeace International. Following the presentations, participants had the opportunity to take part in interactive discussions in smaller groups on the issue.

30. The representative of China observed that the country has extensive experience in dealing with GMO applications (as of the end of 2006, the Ministry of Agriculture had approved over 450 cases for field trials, over 200 cases for environmental release and over 180 cases for production tests). In addition, it has approved large quantities of GM soybeans, rapeseed, cotton and corn for import. In the last five years, new legislation has been developed which places importance on the role of the public in environmental matters. This includes a 2003 law on environmental impact assessment (EIA) which requires competent authorities to consider comments from the public and to attach an explanation indicating whether the comments have been adopted or not. These developments notwithstanding, a number of remaining challenges were referred to: (a) there remains a lack of legal channels for public participation overall; (b) access to GMO information is limited because it is largely considered confidential; (c) many officials believe that GMO issues are too technical for the public to understand and that NGOs are too radical and will bias the process; and (d) the national agro-biosafety committee has no civil society representatives and its decision-making processes are not transparent.

31. Eco Sense reported that while there is a law on GMOs in the former Yugoslav Republic of Macedonia, its implementation is problematic because of a lack of bylaws and supporting regulations. It stated that the former Yugoslav Republic of Macedonia does not have legislation requiring the labelling of products containing GMOs and the Ministry for the Environment and parliamentarians have limited capacity for preparing or implementing appropriate regulations. Public awareness is almost non-existent and citizens are not informed about the potential risks of consuming or growing GMOs. Political decision makers and NGOs also have very limited knowledge on the issue. To date, there has been no public debate on GMOs. Only a small portion of the population has access to the Internet and thus public debates need to be announced through newspapers, radio and television. Eco Sense reported that it had organized several events to inform the public about GMOs and their rights to be involved in decision-making on the issue,

[5] Geographic information systems.

including workshops for farmers and for NGOs. It had also established a national NGO network to share information about GMOs. .

32. Greenpeace International expressed its concern regarding the authorization process for GMOs within the European Union. It remarked that the European Food Safety Authority (EFSA) classified information as confidential business information without criteria or explanation. There was no standard study design for its approval process and EFSA could dismiss differences that were statistically significant as biologically irrelevant without any criteria. In respect of the EU Member States, Greenpeace expressed concern that the outcome of GMO votes in the EU Council of Ministers was not public and that some Member States were very secretive. In some countries, not all members of the risk assessment bodies were allowed to speak to the public. Greenpeace considered that European Commission proposals to amend EU Regulation 1049/2001 on public access to European Parliament, Council and Commission documents currently under consideration were retrogressive.

33. The discussion groups reported that the following points had been raised during their discussions on the most pressing needs and challenges regarding public participation in GMO decision-making:

(a) In a number of EECCA countries, including Armenia, Georgia and Uzbekistan, it was stated that there is no specific legislation regarding public participation in GMO decision-making. Some participants considered that public participation provisions in general environmental legislation were not enough to ensure effective public involvement in the decision making process because GMO decisions may raise ethical, religious or socioeconomic concerns not raised by other environmental issues. Others considered that general EIA legislation was sufficient.

(b) In some other countries, e.g. Azerbaijan, there is framework legislation in place but bylaws and regulations were needed to effectively implement the legislative requirements and there is a need to establish mechanisms for public consultation.

(c) In some countries, the public is largely unaware of GMO issues and awareness-raising is therefore an essential precondition to effective public participation.

(d) Although information regarding applications for placing on the market is available in EU countries, it can be difficult to access and to understand. It was said that the public require access to a computer to find out whether an application has been made and then must follow the progress on the application on an almost daily basis. Comments may only be sent by the Internet and it is not disclosed who the comments will go to.

(e) Determining how the public’s comments should be taken into account can be difficult, for example how to be balanced and how to decide which views should be considered as representative. Several participants indicated that public comments are more likely to be taken into account when they are based in science and provide technical data. Others took the view that other considerations, such as ethical or religious concerns, are also important. A view was expressed that top-down approaches to assessment of risk must change.

(f) Scientists should endeavour to communicate their research to the public better.

(g) Public consultation processes should be designed in a way that avoids public participation fatigue.

(h) In some countries, the public place less importance on environmental protection because they consider other needs to be more pressing.

(i) During the last few years some EECCA countries have observed a decrease in assistance from international organizations and this may have led to a slowdown in public participation in such countries.

(j) A concern was expressed that some national biosafety commissions included representatives of the biotechnology industry and that this was not appropriate.

(k) In some countries there is a lack of political will to promote public participation in GMO decision-making.

(l) In France, the courts have held that the procedure for approving field trials which allows one month for online consultation is not compatible with the Aarhus Convention and that a public inquiry would be preferable.

(m) Public debates and citizens juries are expensive.

(n) It was remarked that the institutional framework in countries of the Andean region is weak, that there is generally a 30-day commenting period but citizens only have access to summaries of risk assessments.

B. Good practices

34. The session on good practices regarding public participation in GMO decision-making opened with presentations by Norway, the European Commission and RIBios. Participants then broke into smaller groups to exchange their experiences on this issue.

35. The Norwegian representative reported that Norway has had legislation on the production and use of GMOs since 1993. In cases where the legislation requires an approval process, the competent authority may decide that a public consultation is to be held. Applications for the deliberate release of GMOs always require a public consultation. The public consultation shall be held well before a decision is made. It must be carried out in a way that ensures that the general public, and particularly affected interest groups, are given access to relevant information and a real opportunity to make their opinions known. The public generally has six weeks for comments. Information on new applications is published in *Norsk Lysningsblad,* the Norwegian official paper, and on the website of the Directorate for Nature Management as soon as possible after receipt. A summary of applications is also accessible on the website.

36. The representative of the European Commission noted that the authorization of GMOs for food and feed in the European Union is governed by Regulation (EC) No. 1829/2003. An application will be submitted through the competent authority of the Member State. Risk assessment is handled by the European Food Safety Authority (EFSA) and risk management by the European Commission through a regulatory committee procedure. Member States are entitled to make comments on the application dossier and the Authority’s comments and answers will be annexed to its opinion. The public has 30 days to comment on the opinion. If EFSA

requests the applicant to provide further data, this will be reported in the minutes of EFSA panel meetings which are posted on the EFSA website. Approved products are entered in a public register of GM food and feed. A request for public access to a GMO dossier can be submitted at any point of the procedure and must be answered within 15 days. EFSA has a Stakeholder Consultative Platform to gather feedback to assist EFSA in the development of its policy and relations with stakeholders.

37. The RIBios representative indicated that RIBios is an interdisciplinary team based at the Graduate Institute of International and Development Studies in Geneva, which has been involved in organizing "citizens' spaces for information and dialogue" (Espace Citoyen d'Information and Dialogue (ECID)) in francophone Africa. It was reported that RIBios had organized a "citizens' space" in Mali in 2006 on the opportunities and risks of GMOs for Malian agriculture. In May 2008, it had organized a "citizens' space" in eastern Burkina Faso on the options for sustainable management of natural resources and cotton cultivation, including consideration of the potential benefits and risks of Bt cotton[6]. It was observed that citizens' spaces are an adaptation of citizens' juries to the context of West African culture. They specifically focus on subsistence producers, stakeholders who generally have little access to information and few opportunities to participate in higher level decision-making. A steering committee comprising all stakeholders in the region is responsible for organizing and implementing the process.

38. The discussion groups identified the following as good practices with respect to public participation in GMO decision-making:

(a) All members of the public should be entitled to participate and all stakeholders should be represented in decision-making.

(b) Risks are country- and locality-specific and even within a locality risks and benefits will differ for different people. Public participation also means different things in different countries;

(c) A case-by-case approach to decision-making is required as not all GMOs are equally useful or equally risky;

(d) The decision-making process and the final outcome should be transparent. There should be an equitable allocation of benefits and risks to stakeholders;

(e) The public should have access to timely and objective information which is both scientifically and precautionary based to assist their participation. Socioeconomic and sustainable development considerations may also be important;

(f) It would be useful to have guidance on organizing public debates, such as the environmental debates organized by France;

(g) It is important that decision-making bodies are, and are perceived to be, even-handed and impartial;

(h) From the perspective of the scientific community, clear legal frameworks, time-effective time frames and transparency are beneficial;

[6] Cotton genetically modified to contain *Bacillus thuringiensis* (Bt) insecticidal toxins.

(i) National biosafety committees should include civil society representatives. There should be transparency regarding who are the decision makers deciding the application;

(j) Some participants considered that the public should be informed as to what they may expect in terms of a possible outcome of their participation. A contrary view was that this could be seen as potentially predetermining the issue;

(k) UNEP is currently developing non-binding global guidelines on access to information, public participation and access to justice regarding environmental matters;

(l) Swaziland has a draft biosafety bill before Cabinet which will contain provisions on public participation in decision-making on the release of GMOs into the environment. Under current legislation, the Government must publicize information on applications in the media and give time for the public to comment;

(m) The Republic of Moldova has adopted biosafety legislation which contains provisions on public participation and has drafted regulations with the assistance of UNEP/GEF. The legislative framework specifies the target groups that should have access to the decision-making process, e.g. NGOs, farmers, economic operators, importers, medical professionals, governmental officials and scientists. The legislative framework also specifies the methods of providing public access to information, e.g. through the Internet. An important element of the framework is an online register which allows members of the public to register as interested parties and to be constantly informed about notifications. It was said however that the Republic of Moldova still lacks some of the technical mechanisms for an efficient regulatory process;

(n) In Slovenia, anybody can participate in public hearings in regard to field trials. Austria would do the same in future application cases. In Germany, the public has the possibility to participate in GMO decisions through public hearings and via written submissions;

(o) Austria and the Czech Republic post the complete GMO application dossier (except for confidential business information as determined by the authorities) on their websites;

(p) In Finland and Norway, ethical considerations can be taken into account in GMO decisions;

(q) Liberia has developed a national biosafety framework which when in force will allow 30 days for public comments. Its EIA law currently covers public participation in decision-making on field trials. Developers are required to seek public comments in the locality of the proposed activity. Regarding higher risk activities, two public hearings are required, one by the developer, the second by the Government;

(r) In the Netherlands, the public can make comments on draft decisions and these must be taken into account in the final decision. Draft decisions and public comments are both posted on the Internet and all comments received must receive a written response. However, the whole process is via the Internet and it was noted that there is no real “discussion” as such;

(s) In Finland, there have been three or four consultations over field releases. Although not many people sought to take part, the consultations were of a good quality, if perhaps not very representative.

IV. ACCESS TO JUSTICE

39. The session on access to justice began with a presentation by Professor Julian Kinderlerer of the University of Cape Town, who shared his view of some needs and challenges regarding access to justice. A representative of Belgium then provided an overview of access to justice regarding GMO in that country. Following the presentations, participants broke into smaller groups to share their views of the most pressing needs and challenges regarding access to justice with respect to GMOs and good practices to address them.

A. Most pressing needs and challenges

40. Professor Kinderlerer provided an overview of two court cases which illustrate some of the difficulties regarding access to justice in connection with GMOs. In 2000, Biowatch South Africa, a South African NGO, had made a request to the Government for access to information on how permitting decisions for GM crops were made. In 2002, with the request still not met, Biowatch had served court papers on the Department of Agriculture. In 2003, Monsanto South Africa (Pty) Ltd had applied to join the proceedings as a co-respondent on the grounds that they had a direct and substantial interest in the subject matter of the proceedings. In a judgement handed down in 2005, Biowatch was granted access to the requested information but was ordered to pay Monsanto's legal costs. Biowatch appealed the costs order but a majority upheld the lower court's decision. Professor Kinderlerer reported that Biowatch was currently seeking leave to appeal that decision to South Africa's constitutional court. He also reported on a case in the United Kingdom in which an organic farmer, concerned that the maize plants in his fields would become contaminated with pollen from GM maize plant seed trials in neighbouring fields, had sought to challenge the permitting process.[7] In its decision, the court held that the competent authority had acted unlawfully by permitting seed trials of a GM maize plant to be conducted without following the correct procedure; however, they had no power under the British legislation to order that the GMO seeds be destroyed.

41. The discussion groups on the most pressing needs and challenges regarding access to justice reported the following observations:

(a) The Almaty Amendment to the Convention excludes an explicit right to access to justice regarding GMO-related decision-making as article 9, paragraph 2, does not refer to the new article 6 bis.

(b) Although, according to Armenia's constitution, any person can go to the court directly, it was reported that in practice lawsuits are often refused on the grounds of lack of a sufficient interest. The cost of litigation is also a barrier. It was suggested that the costs in such cases should be borne by the Government in order to open access to justice to NGOs. It would also be helpful to give training to lawyers and judges on access to justice in relation to GMOs.

(c) A case from Kazakhstan was mentioned in which an independent laboratory detected GMOs in children's food but the Kazakh court was said to have been reluctant to take

[7] *R v Secretary of State for the Environment Transport and the Regions and another, ex parte Watson*, Judgement 21 July 1998.

into account the results of a foreign laboratory. It was suggested that trainings should be organized for judges and laboratory facilities should be established in each country.

(d) It was said that in at least one country that is party to the Aarhus Convention, a procedure to challenge a refused request for access to GMO information is not yet in place.

(e) Countries that have no specific GMO testing facilities could opt for a zero tolerance test which could be easily performed in any laboratories dealing with DNA[8]**.** However, it was noted that this may not be a solution in those countries whose courts only recognize the results of licensed laboratories.

(f) Because judges are not familiar with the topic, they tend to annul GMO permits, e.g. for field trials, on purely legal grounds, but this would be of little use to the party opposing the field trial if the trial has already taken place. A plaintiff can seek an injunction, but this carries a financial risk.

B. Good practices

42. A representative of Belgium reported that while Belgium does not have specific legislation on access to justice in relation to GMOs, procedures regarding environmental or health-related issues may be used. If a member of the public wishes to challenge a decision on access to information regarding GMOs, he or she can apply to the Federal Appeal Commission within 60 days after receiving a decision or, if there has been no decision, at any time. The Federal Appeal Commission is an independent body set up specifically to deal with environmental information. If the Commission finds in favour of disclosure but the public authority still does not release the requested information, the Commission can disclose the information itself. If the Commission finds against disclosure, the public can appeal to the Council of State free of charge. In respect of access to justice in Belgium regarding public participation in decision-making, a company or research institute applying to carry out a GMO field trial must put together a dossier to inform the public about the planned activities. If a member of the public considers that the procedure for authorizing a field trial or placing on the market has not been respected, he or she can apply within 60 days of the authorization for the decision to be revoked or suspended. To date, there have been no such cases. As regards access to justice in Belgium in respect of environmental damage caused by GMOs, affected members of the public could use the civil procedure to seek compensation.

43. The discussion groups on good practices regarding access to justice with respect to GMOs noted the following:

(a) In the Netherlands, any person who commented during the decision-making procedure, plus the applicant, has the right to go to court in respect of a permit, e.g. for a field trial;

(b) If the administration in France refuses access to information, a member of the public can seek an opinion from the Commission des Accès aux Documents Administratif

[8] Dioxyribonucleic acid.

(CADA). If the administration does not follow the opinion of CADA, the member of the public can file a lawsuit;

(c) In Finland, subject to some exceptions, there is a constitutional right to have access to all administrative information and this can be enforced through the courts;

(d) In Norway, a refusal of an information request can be appealed to a higher administrative body and then to the Ombudsman, or to the courts;

(e) Under Belize freedom of information legislation, a refusal to supply requested information can be appealed to an ombudsman who can compel disclosure if it is not in an exempt category;

(f) A refusal to supply requested information can also be challenged under Romanian law.

V. CLOSING PANEL ON FUTURE PRIORITIES AND CHALLENGES

44. The closing session of the expert meeting included a panel discussion in which four panellists shared their personal reflections on future priorities and challenges regarding access to information, public participation and access to justice with respect to GMOs. Panellists included representatives from Egypt, Republic of Moldova, GLOBE Europe and PRRI. Some of their reflections included:

(a) The three pillars of the Convention build upon one another. Public participation in GMO decision-making is possible only when there is access to information. Neither access to information nor public participation can be enforced unless access to justice and due process of law exists;

(b) Priorities and challenges will vary from country to country. The priority of environmental concerns may particularly differ for people facing economic pressure, social injustice, foreign pressure or conflict;

(c) A cross-sectoral approach to promoting access to GMO information and public participation in GMO decision-making may be useful, i.e. inter-government, intra-government, government-scientists-civil society-business;

(d) Greater political will and additional financial resources for promoting access to information, public participation and access to justice with respect to GMOs are needed;

(e) Governments are urged to ratify the Cartagena Protocol and the Aarhus Convention’s Almaty Amendment and to put in place appropriate implementing legislation and mechanisms. Governments also need to keep up-to-date with developments in biotechnology to maintain effective oversight of the process;

(f) Governments should view well-informed NGOs as a support to providing access to information, public participation in decision-making and access to justice regarding GMOs, not as a threat;

(g) Legislation is never perfect as it is always a result of compromise;

(h) Recommendations such as those contained in the Aarhus Convention's Lucca Guidelines should be considered during the development of future legislation.

VI. EVALUATION

45. Before closing the expert meeting, participants were invited to complete a short written evaluation of the meeting. Almost all participants indicated that there was a need for another event on GMOs to be organized under the Aarhus Convention in the future. Experts had differing views as to the format, but a large majority expressed interest in case studies and exercises, roundtable discussions and plenary presentations. There was strong support for future cooperation between the Cartagena Protocol and the Aarhus Convention.

46. After thanking the Government of the Netherlands and the United Nations Economic Commission for Europe secretariat for their roles in funding and organizing the expert meeting, the Chair closed the meeting.

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