

International law governing GMOs

Introduction

Genetic engineering (GE), also called genetic modification (GM), is not just a modern version of the natural breeding that we know and have practised for many thousands of years. It is a new and totally artificial way of creating living organisms that can never occur in nature. These genetically modified organisms (GMOs) have a life of their own; once released, they will spread and multiply and cannot be recalled. Many scientists believe that the way of producing these GM foods is so new that we can't be sure of the long term impacts on our health and the environment. We don't yet fully understand the potential risks of growing and eating these GM foods. However, scientists have already begun to see early warning signals of serious health and environmental problems. Therefore, special laws are required to regulate GMOs.

International law

The Cartagena Protocol on Biosafety (CPB), a United Nations (UN) treaty is the main international agreement that deals with GMOs. This agreement was negotiated by many countries in the world, including South Africa, over a period of 8 years. The “mother” agreement of the CPB is called the Convention on Biological Diversity.

The CPB governs how GMOs move across borders, what safety measures must be taken and how governments should make decisions on whether or not to allow them into their countries. Most African states are among the 163 countries that are “Parties” to the CPB¹. A Party to the CPB refers to a country that has agreed to adopt the measures of the CPB in its domestic laws. Parties may develop stricter laws than those set out in the CPB in their own countries, but may not



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develop weaker laws. The CPB sets the lowest standards of biosafety because every country at the negotiating table must agree on every clause before it is finalised. This consensus leads to a lot of compromise and a watered down Protocol.

South Africa became a Party to the CPB in 2003. The overall authority in the South African government responsible for matters relating to the CPB is the Directorate of Biodiversity and Heritage of the Department of Environmental Affairs and Tourism.

The need for caution

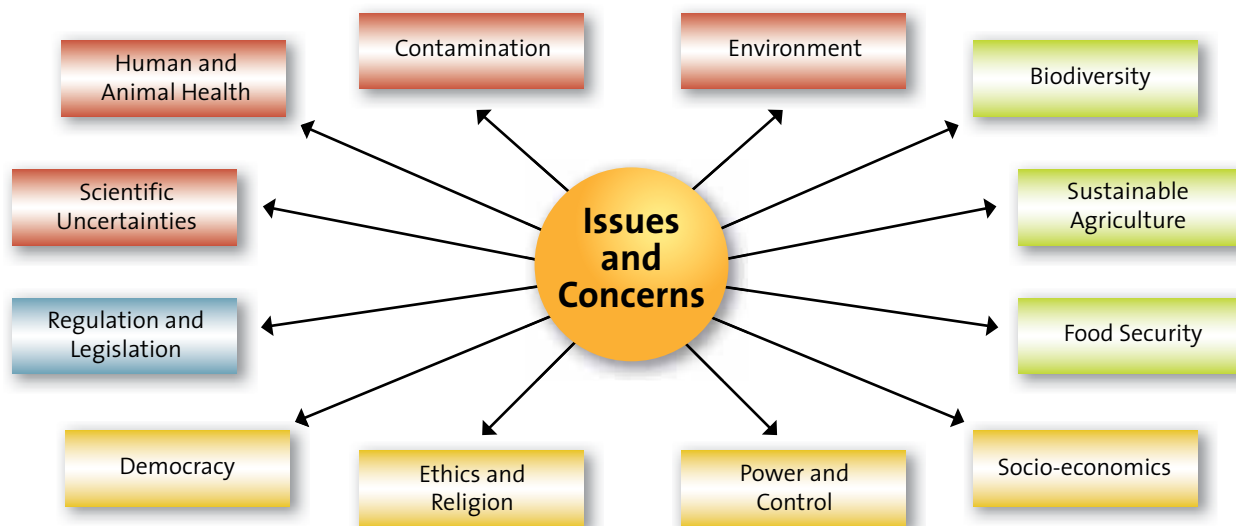
The CPB allows Parties to take a “prevention is better than cure” attitude toward GMOs - if there is reason to believe that a GMO could cause harm a government can decide not to allow it into the country based on the ‘Precautionary Principle’ (PP). This was one of the greatest battles in the negotiation of the CPB. It was a great victory that the Precautionary Principle was included. The GM industry claims that it is unreasonable to reject GMOs without sound scientific proof that they cause harm. However, the PP allows Parties to refuse to approve the use of a GMO where there is scientific uncertainty as to the harm that the GMO may cause to biodiversity and human health.

The World Trade Organisation (WTO) is an international body that has laid down rules to promote free trade between member countries. The WTO has a lot more control over whether or not its members abide by its trade rules than the United Nations has over countries that sign treaties. Countries that break the WTO rules may be punished through trade sanctions or other forms of financial punishment. This is a great advantage for more wealthy countries.

The WTO approaches GMOs as a trade issue rather than a safety one. It turns the Precautionary Principle on its head. The WTO Agreement on Sanitary and Phytosanitary Measures (SPS) says that decisions must be based on risk assessments that use the most current science. According to this, GMOs must not be rejected without hard scientific backing. Rejecting GMOs without scientific proof of harm could also be punishable under the WTO's agreement on Technical Barriers to Trade. This says that countries should not restrict trade from other countries without sound reasons². The USA, Canada and Argentina used the SPS to bring a WTO case against the European Union (EU) because some countries in the EU had banned particular GMOs they thought were unsafe. The WTO ruled that there was not enough scientific evidence of harm to justify the bans.

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GMOs can impact on so many aspects of our life, as shown in the picture below. Unfortunately international and national laws often only focus on what can be tested by science while the other important issues are ignored.



Source: Steinbrecher, R. 2012. Genetic Engineering. The risks to food, farming and biodiversity. Presentation at Regional Biosafety Meetings 2012

Sharing information with the public

Parties to the CPB are required to publish all their decisions on GMOs, on an international website called the Biosafety Clearing House (BCH). They must also publish summaries of the scientific safety studies carried out on these GMOs. This information is very important – as it should inform citizens, governments and industry about decision making on GMOs. It also assists in building scientific knowledge about the risks and performance of GMOs. Other important information that governments must post on the BCH includes the various laws that are related to GMOs in their country, as well as contact details of the relevant authorities and experts. Each country is responsible for ensuring that its country profile is kept up-to-date. The BCH can be accessed at www.bch.cbd.int

South Africa has been a Party to the CPB since 2003, but is yet to fulfil its legal responsibility to publish all the necessary information on the BCH. This is extremely serious because it leaves everyone in the dark about what is being approved and cultivated in the country. This lack of information is a massive handicap for an organisation like the ACB, which plays a vital watchdog role; we need information to engage meaningfully and to know when our rights are being violated. It is also serious for the governments of our neighbouring countries because seeds and plants move across borders very easily through trade and human movement.

To date, South Africa has granted well over 2000 permits for laboratory experiments, import, export and cultivation of

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GMOs³. However, there are only 13 decisions on GMOs posted on the BCH; the last decision was posted in 2009⁴. The Department of Agriculture has been in the process of developing a South African BCH on their own website since 2005⁵. While the link appears on the site under biosafety, it still does not work (<http://saagis:3333/gmo/index.jsp>).

During the course of 2009 and 2010 the ACB sent three complaints to the various (changing) Ministers of DAFF alerting them to the fact that South Africa is not publishing this information. The ACB warned that a complaint would be laid with the Compliance Committee of the CPB if the government did not fix the problem⁶. Ultimately the ACB did lodge a complaint with the Compliance Committee. To our disappointment the Committee ruled that civil society could not lay a complaint; it would have to be brought by a government. South Africa continues not to fulfil its international legal obligations to this day.

Public Participation and Awareness

The CPB is very clear that the public must understand what GMOs are and must be actively encouraged to participate in decision making processes. This goes hand in hand with ensuring that information is available for public scrutiny. Promoting education on GMOs can also be a double edged sword – whose version of the GMO debate will be promoted through education materials? In South Africa, the organisation called AfricaBio has played a key role in assisting government to develop educational materials. They also actively lobby other African governments. This organisation promotes the interests of the GM industry and for the most part, represents GMOs as an exciting scientific breakthrough with the potential to solve issues of hunger. Issues on their long term safety or socio-economic impact are not dealt with in any depth.

Public Understanding of Biotechnology

A programme on the Public Understanding of Biotechnology (PUB) was funded by the Department of Science and Technology in 2003. The aim of the programme is to “promote a clear understanding of the *potential* of biotechnology and to ensure broad public awareness, dialogue and debate ...”⁷ PUB has teamed up with an organisation called AfricaBio to develop public awareness and educational materials on GMOs⁸. AfricaBio is registered as an NGO set up to promote GMOs in South Africa and the region. It is funded by the biotech industry and USAID⁹. AfricaBio have “taken the approach that public understanding is an important prerequisite for public acceptance [of GMOs].” Unfortunately in South Africa, the CPB’s article on Public Participation and Awareness has become an opportunity for the biotech industry to hijack public funds to create acceptance of their controversial products through public awareness campaigns and even curriculum development¹⁰. The PUB website can be found at www.pub.ac.za.

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International law and when GMOs cause harm

Another great battle in the negotiation of the Cartagena Protocol was agreeing on how to deal with harm caused by GMOs. In 2010, after 10 years of negotiation on this issue, an international agreement has finally been made, called the Nagoya- Kuala Lumpur Supplementary Protocol on Liability and Redress. This law is much weaker than most developing countries had hoped for; they were pushing for strict rules to hold the developers of GMOs directly liable (responsible) for the damages their technology causes. Instead, national governments are left with the responsibility to fix any damages and try to get payment and assistance from those who caused the damage. The Nagoya- Kuala Lumpur Supplementary Protocol on Liability and Redress will only come into effect when 40 countries have ratified it. To date, only two countries have ratified¹¹. When a country ratifies an international agreement, it means that it has committed to adopting the measures set out in the international agreement in its national laws.

References and notes

- 1 Biosafety Clearing House <http://bch.cbd.int/> (accessed 18 August 2012)
- 2 World Trade Organisation. http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c8s1p1_e.htm (accessed 26 August 2012)
- 3 Department of Agriculture, Forestry and Fisheries <http://www.nda.agric.za/> (accessed 18 August 2012)
- 4 Biosafety Clearing House <http://bch.cbd.int/> (accessed 18 August 2012)
- 5 Department of Environmental Affairs South Africa. 2005. Interim National Report. http://bch.cbd.int/protocol/cpb_natreports.shtml?country=za#natrep. (accessed 18 August 2012)
- 6 African Centre for Biosafety. 6 July 2010. Letter to the Minister of Agriculture re: Compliance with the Cartagena Protocol. <http://acbio.org.za/index.php/gmo-regulatory-issues/110-south-africa/317-letter-to-minister-of-agriculture-regarding-south-africas-non-compliance-with-information-sharing-requirements-of-the-cartagena-protocol-6-july-2010>
- 7 PUB Website. www.pub.ac.za (accessed 26 August 2012)
- 8 Parliamentary Monitoring Group. 2003. **A brief overview of AfricaBio's activities and achievements**. <http://www.pmg.org.za/docs/2003/appendices/030610africabio.htm> (accessed 26 August 2006)
- 9 USAID General Management Assistance Contract (GMAC). **Biotechnology Outreach, Capacity Building, and Information Transfer in South Africa: AfricaBio**. See also USDA. 8 October 2006. **Pretoria's Biotechnology annual with minor corrections 2006**. GAIN Report Number: SF6029. <http://www.fas.usda.gov/gainfiles/200608/146208636.pdf> (accessed 26 August 2012)
- 10 PUB deals with other biotechnologies besides GMOs. These are not a focus of this factsheet, which deals only with GMOs.
- 11 Biosafety Clearing House. **Parties to the Protocol and signature and ratification of the Supplementary Protocol**. <http://bch.cbd.int/protocol/parties/#tab=1> (accessed 26 August 2012)