



IELRC.ORG

LIABILITY + REDRESS
under the
CARTAGENA PROTOCOL



FINAL STATEMENT
of the
WORKSHOP on LIABILITY and REDRESS
under the
CARTAGENA PROTOCOL

22-26 SEPTEMBER 2003

MOMBASA (Kenya)

Contacts

IELRC, PO Box 2394 KNH,
Nairobi, Kenya, nairobi@ielrc.org

RiBios, 24 rue Rothschild, C.P. 136, 1211 Geneva
21, Switzerland, tel. +41-22906 5975

FINAL STATEMENT

The International Environmental Law Research Centre (Kenya) in collaboration with the Biosafety Interdisciplinary Network of the University of Geneva and with the support of the Swiss Agency for Development and Cooperation (SDC) hosted a Workshop on Liability and Redress under the Cartagena Protocol in Mombasa from 22 to 26 September 2003.

The participants were drawn from academia, government, non-governmental organisations and international organisations, and came from Kenya, Uganda and Switzerland.

The objectives of the workshop were to

- Situate biosafety in broader biotechnology debates
- Look at liability and redress legal regimes operative in Kenya and Uganda
- Identify gaps in those regimes
- Learn from existing liability and redress regimes at international law and from Switzerland
- Suggest tenets of a biosafety liability & redress system, and
- Identify issues for further discussion & consensus

The workshop came in the backdrop of the coming into force of the Cartagena Protocol on Biosafety which calls for the adoption of 'a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms' (Article 27).

A number of African countries have adopted or are in the process of adopting legal and policy frameworks for biosafety. This should in theory include provisions on liability and redress as part of the regulatory regime. Kenya has, for instance, deferred to existing liability and redress regimes in its draft Biosafety Bill while Uganda recognizes the need for a liability and redress scheme. However, more work needs to be done in this area.

The deliberations brought out the following issues:

- International rules on civil liability exist in some areas and could be used as a model for the development of a liability and redress regime in the field of biotechnology. Similarly, existing regimes in other jurisdictions should be taken into account to the extent that reliance on a model such as the new Swiss liability regime in biotechnology should be tailored to the needs of Kenya and Uganda.
- Existing principles and norms of international environmental law such as the precautionary principle, and the polluter pays principle should also inform the development of liability and redress regimes.

- There are concerns about the potential impacts of biotechnology on human health, plant and animal health and the environment and there is therefore a need to develop regimes to deal with liability and redress loss when it occurs.
- A liability and redress regime should address socio-economic, ethical and cultural aspects.
- There exist liability and redress regimes in Kenya and Uganda which can cover some but not all of the concerns related to biotechnology.
- Neither Kenya nor Uganda has developed a biotechnology specific liability and redress regime.
- The complexities of liability and redress issues in biotechnology necessitate the establishment of a specialised liability and redress normative and procedural framework.
- An appropriate legal regime synergising the activities of different relevant actors and institutions is required to deal with procedure, proof, causation, time limitations and other issues pertinent to liability and redress for biotechnology regimes.
- Insurance as a complement to a liability and redress regime must be considered in general and in the context of state liability schemes.
- Discussions for the development of an international liability and redress regime should start at the first meeting of the parties of the Cartagena Protocol. Kenya, Uganda and other African countries must prepare for the discussions and at the same time develop their domestic liability and redress regimes in the field of biotechnology.

The workshop participants called for the mobilisation of resources to develop capacity in Kenya, Uganda and other African countries to participate in international discussions on liability and redress and to develop and implement national liability and redress regimes.

Workshop participants and the International Environmental Law Research Centre (Kenya) propose the following activities as a follow-up to the workshop:

- Participation in meetings of the parties to the Cartagena Protocol and other meetings devoted to the development of international rules and procedures in the field of liability and redress.
- Work towards the development of a common position on liability and redress among East African countries.
- Capacity building for representatives from African countries in international discussions on liability and redress for biotechnology activities.

- Training courses and workshops for law enforcement officers, and judicial functionaries as well as regulators and scientists.
- Publication and dissemination of information pertinent to liability and redress for biotechnology activities, in particular for the benefit of farmers and consumers.
- Future workshop to examine how the standards have developed and examining the contributions that the participants can make to national processes.

The participants of the workshop and IELRC gratefully acknowledge the support of the Swiss Agency for Development and Cooperation (SDC) in making this workshop possible and the collaboration of the Biosafety Interdisciplinary Network, Geneva (RIBios) in organising it.

Mombasa, 26 September 2003