

# NATIONAL LEGAL FRAMEWORK FOR LIABILITY AND REDRESS FOR BIOTECH DAMAGE

Case Study of Uganda

# Components of Legal Framework

- Common Law
- Measure of Damages
- Limitation of Time
- Civil Procedure
- Criminal law
- Statutory regimes

# Common law of Tort

- Definition
- Application to Uganda
- Concepts impacting on biosafety liability and redress
  - *Rylands Vs Fletcher* Regime
  - Public and Private Nuisance
  - Negligence

# *Rylands Vs Fletcher*

- Applies to “anything likely to do mischief if it escapes”.
- Liability concerned with escape of a thing which results in damage even if escape and damage not reasonable foreseeable

# Applicability to biosafety liability and redress

- Offers weak protection because:-
- very Would apply only to GMOs intentionally brought onto land
- Alienates damage caused by GMOs since by their very nature, GMOs are things not naturally on land
- Requirement for natural user of land limits application to such uses as industrial applications and pollution clean up.

# Inadequate because:-

- Reliance on *Rylands Vs Fletcher* regime would not offer sound protection in case of harm caused by these products

# Nuisance

- Defined as
- “ an act or omission which is an interference with, disturbance of or annoyance to a person in the exercise or enjoyment of
  - (I) a right belonging to him as a member of the public
  - or (ii) his ownership/occupation of land, easement, profit or other use connected with land.

# Applicability to biosafety liability and redress

- Inappropriate since conduct will only become a nuisance when consequences of acts extend to neighbour or interfere with convenient and comfortable enjoyment of land.



# Negligence

- Occurs when there is damage arising out of a breach of duty of care owed by defendant to plaintiff.

# Ingredients of Negligence

- Breach of duty of care
- Foreseeable Damage

# Applicability to liability and redress

- Inappropriate due to requirements of foreseeability which is not possible with biotech damage
- *Locus standi* issues since plaintiff must prove that defendant owed him a duty of care
- Limitation of time issues since no action can be brought for negligence after three years.
- However, under negligence damage is sustained regardless of when damage is discovered – useful for biosafety liability and redress.

# Measurement of Damages

- Regime governed by common law
- Object of damages – *restitutio in integrum* – “that sum of money which will put the injured in the same position he would have been had he not sustained the injury.
- Issue of quantum and measurement of damages subject to these principles

# Limitation of Time

- Limitation Act Cap 74
- Sets periods within which actions can be brought
- Actions for liability and redress would have to be subject to these periods
- Limiting in cases of biosafety liability and redress since damage may not be immediately obvious, or if it is caused by government affiliated institutions.

# Procedural Issues - Instituting Claims

- Laws of Civil Procedure
- Disclosure of a cause of action
- Plaintiff must disclose that the defendant has infringed his rights
- *Locus standi* issues
- negative implication for Public Interest Litigation

# Criminal law

- Law that governs detection and punishment of crimes
- Penal Code Act Cap 106
- No specific mention of any offence arising from or actions or omissions leading to loss or injury from GMOs
- Totally unsuitable as a liability and redress regime for LMO damage.

# Strict Liability

- Crimes which do not require proof of recklessness, intention or even negligence.
- Creation of statute
- Relate mainly to breaches of obligations owed to society as a whole



# Advantages

- Virtually impossible to prove criminal intent for every offence committed
- Necessary in the public interest

# Disadvantages

- May punish those who are not authors of the crime but involved circumstantially

# Other Statutory Regimes

- The Food and Drugs Act 1964
- The Plant Protection Act 1964
- The Uganda National Council for Science and Technology Statute 1990
- The National Agricultural Research Organisation Statute 1992
- The Biosafety Regulations 2001

# Inadequacy of legal framework as an effective liability and redress regime for biotech damage

- Sectoral legislation
- Incapacity of institutions set up by legislation to handle issues of biosafety and redress e.g. National Biosafety Committees
- Inadequate Judicial systems
- *Locus standi* issues
- Limited experience with public interest litigation
- Therefore gap in legal and institutional framework for biotechnology and biosafety.

# Conclusion

- Adoption of new technologies crucial for development especially in modernization of agriculture
- However, imperative to put in place a system that can manage and assess risks present in the new technology.
- Biosafety liability and redress regime therefore very crucial.
- Imperative for Uganda to participate in the negotiations for international liability and redress under the Cartagena Protocol.