



## Convention on Biological Diversity

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OPEN-ENDED AD HOC WORKING GROUP OF  
LEGAL AND TECHNICAL EXPERTS ON  
LIABILITY AND REDRESS IN THE CONTEXT OF  
THE CARTAGENA PROTOCOL ON BIOSAFETY

Fifth meeting

Cartagena, 12-19 March 2008

Item 3 of the provisional agenda\*

**LIST OF DOCUMENTS AVAILABLE IN THE BIOSAFETY CLEARING-HOUSE  
ADDRESSING LIABILITY AND REDRESS FOR DAMAGE RESULTING FROM LIVING  
MODIFIED ORGANISMS, INCLUDING NATIONAL LAWS AND REGULATIONS**

*Note by the Executive Secretary*

1. The Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety (the “Working Group”, hereinafter) held its fourth meeting from 22 to 26 October 2007 in Montreal. At the end of that meeting, the Working Group requested, among other things, the Secretariat “to make available, at its fifth meeting, a list of the documents that are available in the Biosafety Information Resource Centre of the Biosafety Clearing-House that address liability and redress for damage resulting from living modified organisms, as well as a list of national laws and regulations containing rules and procedures on damage resulting from living modified organisms”. Accordingly, the Executive Secretary is circulating herewith, for the information of participants, the following list of documents addressing liability and redress for damage resulting from living modified organisms.

2. The list was prepared on the basis of information available in the Biosafety Clearing-House on the date this document was finalized. The list is drawn from two sources in the Biosafety Clearing-House, namely: (i) the Laws and Regulations database; and (ii) The Biosafety Information Resource Centre. The information in the laws and regulations database is provided by Parties and other Governments and it also includes guidelines and draft laws. Only documents that are made available through the Central Portal of the BCH in one of the United Nations languages are included in the list. The Biosafety Information Resource Centre is a database of biosafety-related publications and information resources compiled by the Secretariat. The list below provides, for each item: (i) the title of the law or the document; (ii) the country legislating, the organization publishing or the person preparing the document; (iii) the date the document/law was prepared, published or entered into force, as appropriate; (iv) the scope or description of the document or the legislation; (v) the text of the provisions or sections relevant to liability and redress, where necessary; and (vi) the web link to the full text of the document, where available, in the BCH or the Biosafety Information Resource Centre.

\* UNEP/CBD/BS/WG-L&R/4/1

**A. Laws and regulations (including guidelines and draft laws)**

<b>1</b>	<b>Title</b>	<b>Law on Genetically Modified Organisms (official translation)</b>
	<b>Issued by</b>	Lithuania
	<b>Date of entry into force</b>	2002-12-31
	<b>Scope</b>	<p>The Law establishes the spheres of activities involving genetically modified organisms and genetically modified products, their state management and regulation, also the rights, duties and responsibility of the users of the said organisms and products.</p> <p>The Law applies to all natural and legal persons who are connected with activities involving genetically modified organisms and genetically modified products in the territory of the Republic of Lithuania. The Law does not establish compulsory safety requirements for the carriage of genetically modified organisms and genetically modified products across the territory of Lithuania in transit, also by rail, road, inland waterway, sea or air. (Article 1)</p>
	<b>Text of some of the relevant provisions</b>	<p style="text-align: center;"><b>Article 13. Liability for the Violations of this Law</b></p> <p>Natural and legal persons who violate the requirements of this Law shall be held liable according to the procedure established by the laws of the Republic of Lithuania.</p> <p style="text-align: center;"><b>Article 14. Compensation for Damage</b></p> <p>Natural and legal persons who inflict damage on the environment, human health, property and interests of other legal and natural persons by their activities involving the use of genetically modified organisms and genetically modified products must compensate for the damage inflicted and, where possible, restore the object of the environment to its previous condition according to the procedure laid down by laws and other legal acts. If damage has been caused to the environment or human health, the Ministry of the Environment and the Ministry of Health according to their competence shall represent the interests of the State.</p>
	<b>Link</b>	<a href="http://bch.cbd.int/database/attachedfile.aspx?id=291">http://bch.cbd.int/database/attachedfile.aspx?id=291</a>
<b>2</b>	<b>Title</b>	<b>Act No.151/2002 Coll. of 19 February 2002 on use of genetic technologies and genetically modified organisms (amended by Act No. 77/2005 Coll.)</b>
	<b>Issued by</b>	The National Council of the Slovak Republic
	<b>Date of entry into force</b>	2005-04-01

	<p><b>Scope</b></p> <p>[1] The Act stipulates rights and responsibilities of users using genetic technologies and genetically modified organisms and the competence of state administration authorities.</p> <p>[2] The rights and obligations of users in transboundary movement of genetically modified organisms are regulated under special regulation.</p> <p>[3] The competence of authorities set out in special regulations is not affected by this Act. (Article 1)</p>	
	<p><b>Text of the relevant provisions</b></p> <p><b>Article 38. Common provisions</b></p> <p>(1) The general provisions on foodstuffs shall apply for labeling of the foodstuffs being introduced into circulation.</p> <p>(2) For purposes of liability for damage, contained use and deliberate release are considered operating activities in accordance with special regulation (A footnote refers to Art. 420a of the Civil Code).</p>	
	<p><b>Link</b></p>	<p><a href="http://bch.cbd.int/database/attachedfile.aspx?id=448">http://bch.cbd.int/database/attachedfile.aspx?id=448</a></p>
3	<p><b>Title</b></p>	<p><b>Austrian Gene Technology Act</b></p>
	<p><b>Issued by</b></p>	<p>Austria</p>
	<p><b>Date of entry into force</b></p>	<p>1995 (amended in 1998, 2002, 2004 and 2005)</p>
	<p><b>Scope</b></p> <p>The act regulates the main aspects of biotechnology and genetic engineering: contained use of genetically modified organisms (GMOs), deliberate release of GMOs into the environment, the placing on the market of products that contain GMOs and the application of biotechnology in human medicine, such as gene analysis and gene therapy. The objective of the Austrian Law on Genetic Engineering is to ensure the protection of human health and the environment from adverse effects connected with the use of living modified organisms resulting from modern biotechnology and GMO products. The act lays down the rules for the installation and work of an Advisory Board on Gene technology (Gentechnikkommission) and its three scientific committees, <b>for strict liability for damages due to genetic engineering and punishment for offences against the law.</b></p>	
	<p><b>Text of the relevant provisions</b></p> <p>The full text of the Act is not available in the BCH</p> <p><b>Link</b></p> <p><a href="http://bch.cbd.int/database/attachedfile.aspx?id=863">http://bch.cbd.int/database/attachedfile.aspx?id=863</a></p> <p>This is a link to a description of the Act available in the BCH, not the full text of the Act.</p>	

4	<b>Title</b>	<b>Nigeria Biosafety Guidelines</b>
	<b>Issued By</b>	Nigeria
	<b>Date of publication</b>	1994
	<b>Brief description</b>	
	<p>The Guidelines address human and environmental safety of all types of biotechnological products containing or consisting of organisms with novel traits including but not limited to LMOs/GMOs. The Guidelines recognize and address the need for such products to comply with any specific product requirement such as food safety, efficacy and quality before their release into the environment.</p> <p>The guidelines aim to provide a framework for biosafety with a provision on liability. Liability is strict for the person responsible for an activity causing any harm, injury or loss caused directly or indirectly by LMOs/GMO(s) or products thereof or any activity in relation to them. The harm, injury or loss includes personal injury, damage to property, financial loss and damage to the environment or to biological diversity.</p>	
	<b>Text of the relevant sections or provisions</b>	
	<p style="text-align: center;"><b>4. Scope and method</b></p> <p>These guidelines shall cover the following:</p> <ul style="list-style-type: none"> <li>(a) Safety in Genetic transformation of microorganisms, plants and animals</li> <li>(b) Safety in DNA technology in vaccine and pharmaceutical products development.</li> <li>(c) Large-scale production and deliberate or accidental release of LMOs/GMOs and products derived therefrom.</li> <li>(d) Appropriate measures to avoid adverse effects on human health, biodiversity and the environment, which might arise from the deliberate or accidental release of LMOs/GMOs.</li> <li>(e) Export, importation and use of LMOs/GMOs and other biotechnology products.</li> <li>(f) Liability and redress in the use, handling, transportation of LMOs/GMOs.</li> </ul> <p>The Guidelines shall deal essentially with:</p> <p>Notification and Authorization - covering procedures for the Advance Informed Agreement, Acknowledgement, Decision-making and Review of decisions.</p> <p style="text-align: center;"><b>14. Liability and redress</b></p> <ul style="list-style-type: none"> <li>(a) Any person who carries out any activity in relation to LMOs/GMO(s) or products thereof shall be strictly liable for any harm, injury or loss caused directly or indirectly by such LMOs/GMO(s) or products thereof or any activity in relation to them. The harm, injury or loss includes personal injury, damage to property, financial loss and damage to the environment or to biological diversity.</li> <li>(b) Liability shall attach to the applicant, the person responsible for the activity, which results in the damage, injury or loss, as well as to the provider, supplier or developer of the LMOs/GMO(s) or products thereof.</li> <li>(c) Where liability under this section is incurred by a corporate body, any director, manager, secretary or similar officer of the corporate body shall be similarly liable unless he/she can show that he/she did everything in his/her power to prevent the import, deliberate release, placing on the market or contained use which caused the damage in question.</li> </ul>	

	<p>(d) If there is more than one person responsible for the damage, injury or loss, the liability shall be joint and several.</p> <p>(e) Where proceedings are brought against more than one person it shall not be a requirement for the person bringing the proceedings to identify the person who caused the damage in question, provided that he/she can prove that one or more of the persons so proceeded against could have caused the damage.</p> <p>(f) In the case of harm to the environment or to biological diversity, redress shall include the costs of reinstatement, rehabilitation or clean-up measures actually incurred or to be incurred and, where applicable, the costs of preventive measures and any loss or damage caused by the taking of the preventive measures; provided that the person responsible may be required to carry out the reinstatement or rehabilitation at its own cost and to the satisfaction of the competent authorities.</p> <p>(g) Liability shall also extend to harm or damage caused directly or indirectly by the LMOs/GMO(s) or products thereof to the economy, social or cultural practices, livelihoods, indigenous knowledge systems, or indigenous technologies. Such harm includes the following: disruption or damage to production systems, agricultural systems, reduction in yields, and damage to the economy of an area or community.</p> <p>(h) An applicant shall indemnify:</p> <ul style="list-style-type: none"> <li>(i) Any other person who deliberately releases or markets LMOs/GMO(s) or products thereof; and</li> <li>(ii) Any person who manufactures, processes or markets food, food ingredients or animal feed containing or derived from LMOs/GMO(s) against any civil liability where the LMOs/GMO(s) or products thereof in question was first imported, deliberately released, used in contained conditions, or placed on the market by the applicant.</li> <li>(iii) Any person who fails to label seeds, food, a food ingredient or animal feed containing or derived from LMOs/GMO(s), against any civil liability.</li> </ul> <p>(i) The right to bring any action to redress the harm caused by the LMOs/GMO(s) or products thereof shall lapse only after a reasonable period from the date on which the affected person or community could reasonably be expected to have learned of the harm, taking due account of:</p> <ul style="list-style-type: none"> <li>(a) the time the harm may take to manifest itself; and</li> <li>(b) the time that it may reasonably take to correlate the harm with the GMO(s) or products thereof, having regard to the situation or circumstance of the person or community affected.</li> </ul> <p>(j) Any person or group of persons may be entitled to bring a claim and seek relief in respect of the breach or threatened breach of any provision of this draft Guidelines, including any provision relating to damage to the environment and biological diversity:</p> <ul style="list-style-type: none"> <li>(i) in that person's or group of persons' interest;</li> <li>(ii) in the interest of or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;</li> <li>(iii) in the interest of or on behalf of, a group or class of persons whose interests are affected;</li> <li>(iv) in the public interest; and</li> <li>(v) in the interest of the environment or biological diversity.</li> </ul> <p>(k) No costs shall be awarded against any of the above persons who fail in any action as aforesaid if the action was instituted reasonably out of concern for the public interest or in the interest of protecting the environment or biological diversity.</p> <p>(l) It shall not be a defence to any claim for compensation or damage that the activity had been consented to by the competent authorities.</p>
<p><b>Link</b></p>	<p><a href="http://bch.cbd.int/doc/leg/NIGERIA_BIOSAFETY_GUIDELINES_2001.pdf">http://bch.cbd.int/doc/leg/NIGERIA_BIOSAFETY_GUIDELINES_2001.pdf</a></p>

5	<b>Title</b>	<b>Cadre National de Biosécurité</b>
	<b>Issued by (draft)</b>	Republique du Burundi
	<b>Date of publication (draft)</b>	2006
	<p><b>Scope/ Du champ d'application</b></p> <p>La présente loi fixe les règles fondamentales destinées à garantir la sécurité de la population et de l'environnement contre les risques que peuvent faire courir les organismes génétiquement modifiés (OGM) et les produits dérivés d'organismes génétiquement modifiés résultant de la biotechnologie moderne.</p> <p>Elle s'applique à l'importation, l'exportation, le transit, l'utilisation confinée, la dissémination ou la mise sur le marché de tout organisme génétiquement modifié, qu'il soit destiné à être disséminé dans l'environnement, denrée alimentaire, aliment pour bétail ou produit de transformation, ou d'un produit dérivé d'organisme génétiquement modifié. (Article 1)</p> <p><i>In order to fulfil the requirements of the Cartagena Protocol on Biosafety, Burundi has drafted the 'Cadre National de Biosécurité', a national regulatory framework.</i></p> <p><i>According to the draft, any person handling GMOs can be held liable and be required to compensate for direct and indirect damage caused by GMOs.</i></p>	
	<b>Text of the relevant provisions</b>	
	<p><b>CHAPITRE X : DE LA RESPONSABILITE.</b></p> <p><b>Article 44 :</b> Toute personne qui importe, utilise en milieu confiné, dissémine ou met sur le marché un organisme génétiquement modifié ou un produit dérivé d'organisme génétiquement modifié est responsable des dommages causés par cet organisme génétiquement modifié ou ce produit d'organisme génétiquement modifié, conformément aux dispositions édictées par la loi en matière de délits et de quasi-délits. Ces dommages doivent être entièrement réparés.</p> <p><b>Article 45 :</b> La responsabilité sera attachée à la personne responsable de l'activité qui a causé le dommage, nuisances ou perte ainsi qu'au fournisseur, au dépositaire ou au développeur de l'organisme génétiquement modifié ou des produits dérivés d'un organisme génétiquement modifié.</p> <p>En cas de dommage à l'environnement ou à la diversité biologique par un organisme génétiquement modifié ou un produit dérivé d'organisme génétiquement modifié, le montant de la compensation comprendra les coûts des mesures de rétablissement, réhabilitation et assainissement qui auront été réellement encourus et, le cas échéant, les coûts liés aux mesures préventives.</p> <p>En cas de dommage pour la santé humaine, la compensation comprendra :</p> <ul style="list-style-type: none"> <li>▪ le montant total des frais encourus pour trouver et obtenir le traitement médical requis et</li> </ul>	

approprié ;

- le montant des indemnités d'invalidité, de diminution de qualité de vie et le total des frais encourus pour rétablir, dans la mesure du possible, la qualité de vie dont jouissait la personne avant qu'elle n'ait subi les dommages ;
- le montant du capital décès et l'ensemble des frais encourus pour les obsèques.

**Article 46 :**

La responsabilité s'étendra aussi aux nuisances et aux dommages causés directement ou indirectement par l'organisme génétiquement modifié ou le produit dérivé d'organisme génétiquement modifié à l'économie, aux conditions sociales ou culturelles, notamment les effets négatifs sur les modes de vie, les connaissances ou technologies locales, ou les dommages et pertes causés par des troubles publics suscités par l'organisme génétiquement modifié ou le produit d'un organisme génétiquement modifié, la destruction totale ou partielle des systèmes de production industrielle ou agricole, la perte de récoltes, la contamination des sols, les dommages causés à la diversité biologique, à l'économie d'un milieu donné.

**Article 47 :**

En cas de dommage provoqué par un organisme génétiquement modifié ou par un produit dérivé d'organisme génétiquement modifié, le droit d'intenter une action en justice ne pourra être caduc qu'après un délai de 10 ans à partir de la prise de conscience du dommage par la personne ou par la communauté affectée, en tenant compte des éléments suivants :

- Le temps nécessaire à la manifestation du dommage ; et
- Le temps nécessaire pour faire le lien entre le dommage et l'organisme génétiquement modifié ou le produit dérivé d'organisme génétiquement modifié, en tenant compte de la situation de la personne ou la communauté affectée, ou des circonstances.

**Article 48 :**

Toute personne, groupe de personnes ou organisation privé ou public peut porter plainte et demander réparation en cas de manquement ou risque de manquement aux obligations de la présente loi, notamment les dispositions liées aux dommages causés à la santé humaine, à la diversité biologique, à l'environnement ou encore aux conditions socio-économiques :

- dans l'intérêt de cette personne ou du groupe de personnes ;
- dans l'intérêt ou au nom d'une personne qui, pour des raisons pratiques, est incapable de lancer une telle procédure ;
- dans l'intérêt ou au nom d'un groupe ou classe de personnes dont les intérêts sont menacés ;
- dans l'intérêt général ; et
- pour la protection de l'environnement ou de la diversité biologique.

**Article 49 :**

Aucune demande en réclamation de dommages et intérêts provenant de la personne physique et morale traduite en justice ne peut valablement être admise si l'action en justice ci-dessus a été intentée de manière désintéressée ou dans l'intérêt général ou dans le but de protéger l'environnement ou la diversité biologique.

**Link**

<http://bch.cbd.int/database/attachedfile.aspx?id=965>

**B. Other documents or resources**

6	<b>Title</b>	<b>Policy and Regulation of Biotechnology in Food Production (ARC/06/INF/5) Twenty-Fourth Regional Conference for Africa (Bamako, Mali, 30 January– 3 February 2006)</b>
	<b>Issued by</b>	Food and Agriculture Organization of the UN (FAO)
	<b>Date</b>	2006
	<p data-bbox="228 606 461 640"><b>Brief description</b></p> <p data-bbox="228 659 1443 1024">The paper reviews existing policy and legal instruments and summarizes discussions in the field on genetically modified products. The document contains policy considerations and recommendations, which are made for further regional dialogues on the issue of incorporation of genetically modified products in food and agriculture systems in Africa. The paper specifically focuses on: research and impending development of foods produced through modern biotechnology; development of regulatory and food safety systems; a review of existing rational, regional and international policy and regulatory instruments on biotechnology in the Africa region; a review of reports of various technical and policy meetings on biotechnology in food production in the African region; policy considerations, and policy decisions that ought to be made on national strategies to consider the expected role of GM products in food security and economic growth, considering stakeholder opinions for the development of regulatory instruments, including provisions on liability and redress.</p> <p data-bbox="228 1062 1443 1192">As regards liability and redress issues related to GM products, the article indicates that they are currently the subject of international discussions under the Cartagena Protocol on Biosafety. In that regard, the article argues that Africa as a region should initiate activities to elaborate a regime which could facilitate national choices and regional positioning on liability and redress issues.</p>	
	<b>Link</b>	<a href="http://bch.cbd.int/database/attachedfile.aspx?id=900">http://bch.cbd.int/database/attachedfile.aspx?id=900</a>
7	<b>Title</b>	<b>Biosafety Protocol Process on Liability and Redress: Food for Thought on Key Issues (paper No. 1-11)</b>
	<b>Prepared by</b>	Kummer Ecoconsult, Environmental Law and Policy Consulting, Switzerland
	<b>Date</b>	January-May 2005
	<p data-bbox="228 1644 461 1677"><b>Brief description</b></p> <p data-bbox="228 1696 1443 1896">The document is a compilation of a series of short papers on key concepts of liability and redress in the context of biosafety intended to facilitate understanding of the issues involved. The papers cover the following areas and issues: Paper No. 1- Options for addressing liability and redress under Article 27 of the Protocol, Paper No. 2- Effective use of an international civil liability treaty depends on national legislation and judicial institutions, Paper No. 3- State liability and civil liability: Two fundamentally different concepts, Paper No. 4- Establishment of a compensation fund: a complex</p>	



and costly process, Paper No. 5- A precise definition of damage is essential to the functioning of liability rules, Paper No. 6- A clear definition of causation provides the necessary legal certainty, Paper No. 7- Imposing the burden of proof on the claimant provides legal certainty and protects court systems, Paper No. 8- Strict liability for environmental damage is normally reserved for hazardous activities, Paper No. 9- Channelling liability to persons having control over an activity provides the necessary legal certainty, Paper No. 10- Only persons or entities directly impacted can bring a claim, Paper No. 11- Exemption from liability if the damage was caused by an event outside the control of the defendant.	
<b>Link</b>	<a href="http://www.ecoconsult.ch/uploads/1144-biosafety_liability_discussion_papers.pdf">http://www.ecoconsult.ch/uploads/1144-biosafety_liability_discussion_papers .pdf</a>
<b>8</b>	
<b>Title</b>	<b>Biosafety Protocol Process on Liability and Redress: Food for Thought on Key Issues. The burden of proof is reversed only in particular circumstances defined by the law. Paper No. 12</b>
<b>Prepared by</b>	Kummer Ecoconsult, Environmental Law and Policy Consulting, Switzerland
<b>Date</b>	2006
<b>Brief description</b>	
The paper is a continuation of the series of papers (1-11) that had been circulated before by the author with the intention to help the liability discussions in the framework of the Cartagena Protocol on Biosafety. The current paper highlights procedural rules that reverse the burden of proof in specific circumstances. It points out that the burden of proof in civil cases is normally on the claimant. Only in specific circumstances, where it is considered justified, does the law provide for a presumption in favour of the claimant and the defendant has to supply evidence in order to free himself or herself from liability	
<b>Link</b>	<a href="http://www.ecoconsult.ch/uploads/1144-note_reversal_burdenofproof.pdf">http://www.ecoconsult.ch/uploads/1144-note_reversal_burdenofproof.pdf</a>
<b>9</b>	
<b>Title</b>	<b>Biosafety Protocol on Liability and Redress: Food for Thought on Key Issues. Measuring and valuating damage to biological diversity. Paper No. 13</b>
<b>Prepared by</b>	Kummer Ecoconsult, Environmental Law and Policy Consulting, Switzerland
<b>Date</b>	2006
<b>Brief description</b>	
The paper is a continuation of the series of papers (1-11, 12) that had been circulated before by the	

	author with the intention to help the liability discussions in the framework of the Cartagena Protocol on Biosafety. The paper deals with the issues of measuring environmental damages. Quantification and monetization of damage is a prerequisite to determining compensation. Damage to biological diversity or to ecosystems poses a particular challenge, as there is no “market value”. Different methods have been developed and used in different contexts, but there appears to be no commonly agreed methodology. The establishment of baselines against which to measure impacts, and estimating the replacement costs of a particular aspect of biological diversity is one of the available methods.
<b>Link</b>	<a href="http://www.ecoconsult.ch/uploads/1144-note_damage_valuation.pdf">http://www.ecoconsult.ch/uploads/1144-note_damage_valuation.pdf</a>
<b>10</b>	<b>Title</b> <b>Biosafety Protocol Process on Liability and Redress: Food for Thought on Key Issues. Why have existing civil liability treaties failed to enter into force? Paper No. 14</b>
<b>Prepared by</b>	Kummer Ecoconsult, Environmental Law and Policy Consulting, Switzerland
<b>Date</b>	2006
<b>Brief description</b>	The paper is a continuation of the series of papers (1-11, 12, 13) that had been circulated before by the author with the intention to help the liability discussions in the framework of the Cartagena Protocol on Biosafety. The paper advises to look at the many examples of existing treaties on civil liability in areas relevant to the environment that have not entered into force while deciding to establish or adopt international liability regimes. In the discussions on the negotiation of a treaty on liability and redress in the context of genetically modified organisms, it would therefore be useful to consider why countries have not ratified existing liability treaties. The paper refers to surveys carried out by competent international organizations, as well as academic research that have identified four types of obstacles to ratification of these treaties: economic, legal, policy and capacity obstacles.
<b>Link</b>	<a href="http://www.ecoconsult.ch/uploads/1144-note_entryintoforce.pdf">http://www.ecoconsult.ch/uploads/1144-note_entryintoforce.pdf</a>
<b>11</b>	<b>Title</b> <b>Compilation of expert papers concerning liability and redress and living modified organisms: A contribution to the Article 27 process under the Cartagena Protocol on Biosafety.</b>
<b>Prepared by:</b>	Kummer Ecoconsult Environmental Law and Policy Consulting, Switzerland
<b>Date</b>	2004

	<b>Brief description</b>	
	<p>This document presents a compilation of several articles, written by different authors, concerning liability and redress and living modified organisms and it also provides a glossary of legal terms of environmental law.</p> <p>The first part of the document examines reasons behind the limited number of ratifications of international liability treaties and lists the particular fields where negotiations of liability treaties have been difficult, but also the potential factors for adopting a successful liability regime. The second part of the document highlights the existing legal solutions for liability applicable to traditional damages, the role of international arbitration, claims in national courts based on national legislation and international private law. It concludes that traditional damage, including damage allegedly caused by living modified organisms (LMOs), is already adequately covered by existing international and national legal systems. In the third part of the document two distinct approaches for liability and redress for damage to biodiversity are discussed. The paper states that the majority of the negotiated liability and redress regimes at the international level are sector-specific. It also refers to the opposite approach, with general or “horizontal” environmental liability legislation, which is being considered pursuant to the process mandated by Article 14.2 of the Convention on Biological Diversity.</p> <p>The paper concludes that general environmental liability regimes may be able to adequately address possible environmental damage caused by LMOs. The last parts of the document raise the cases where countries want to develop guidelines for liability and redress for damage caused by LMOs. The paper argues that for a number of reasons, including particularly the protection of biodiversity, a general environmental liability and redress regime should be preferred over one that covers only biodiversity damage caused by transboundary movement of LMOs.</p>	
	<b>Link</b>	<a href="http://www.ecoconsult.ch/uploads/1144-croplife_handbook.pdf">http://www.ecoconsult.ch/uploads/1144-croplife_handbook.pdf</a>
12	<b>Title</b>	<b>Developing a Liability and Redress Regime under the Cartagena Protocol on Biosafety for Damage Resulting from the Transboundary Movements of Genetically Modified Organisms</b>
	<b>Prepared by</b>	Gurdial Singh Nijar, Legal Consultant, Third World Network, Law Faculty, University of Malaya, Malaysia
	<b>Date</b>	2005
	<b>Brief description</b>	
	<p>The document is an analysis of the ongoing processes in international law and identifies possible elements of a liability and redress regime with the aim to assist negotiations for the development of such a regime in the context of the Biosafety Protocol. The first part of the document sets out the broad general principles of State responsibility for environmental harm; and outlines the specific principles of international environmental obligations. The second part identifies the possible main elements of existing international treaties that relate to liability and redress for damage resulting from transboundary movements of potentially harmful materials; and examines how these elements</p>	

	<p>have been, or are being, developed in other fields. The last part of the document provides various options of constructing the regime.</p> <p>The following elements have been identified and highlighted in the document:  The first element is the scope of the regime, whether it shall apply to activity or damage. The second element relates to whether a private individual or legal entity can be held liable under the treaty, and also how to deal with situations, which involve several liable states. Another important element is who can bring claims and in which fora, the standard of liability, if there shall be any grounds on which liability can be excused. The other element is a definition of damage, how to measure damage and also if there are any limitations of liability. The document also addresses procedural issues such as: burden of proof; choice of law; forum for claims; right of recourse.</p>		
	<table border="1"> <tr> <td><b>Link</b></td> <td><a href="http://bch.cbd.int/database/attachedfile.aspx?id=1020">http://bch.cbd.int/database/attachedfile.aspx?id=1020</a></td> </tr> </table>	<b>Link</b>	<a href="http://bch.cbd.int/database/attachedfile.aspx?id=1020">http://bch.cbd.int/database/attachedfile.aspx?id=1020</a>
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<b>13</b>	<b>Title</b>		
	<b>Genetically Modified: Precautionary Principle and Consumers' Rights in Peru</b>		
	<b>Prepared by</b>		
	Isabel Lapeña García, Sociedad Peruana de Derecho Ambiental, Peru		
	<b>Date</b>		
	March 2006		
	<b>Brief description</b>		
	<p>The focus of the article is the precautionary principle and its relationship with the subject of liability and redress. The article indicates that while the precautionary principle responds to the need to adopt measures before actual damage occurs, the systems on liability address situations where the damage is occurring or has already occurred. Usually those systems leave it to the producer of potential risks to carry the burden in case of damage. An additional issue refers to the failure of liability measures to adequately respond to considerations of a distributive character. Certain situations exist where the damage may be impossible to compensate. Therefore, an option may be found in the context of cost-benefit analysis even though this same option may imply damage not accounted for or which cannot be compensated, in which cases ex ante measures would have to be considered. The precautionary principle implies making consumers participate in policies and decision-making on modern biotechnology and biosafety; the right to obtain information and the right to choose among available alternatives.</p> <p>National and international regimes on liability are still subject to testing and considerable uncertainty. In order to create an international liability regime there are several obstacles to face in order to create an efficient tool to approach LMOs and the involved potential risks. The paper also has a section that addresses liability regulations in Peru.</p>		
	<b>Link</b>		
	<a href="http://www.spda.org.pe/portal/_data/spda/publicacion/20060512164600_.pdf">http://www.spda.org.pe/portal/_data/spda/publicacion/20060512164600_.pdf</a>		

<b>14</b>	<b>Title</b>	<b>Germany's Liability Law for GMO Cultivation</b>
	<b>Prepared by</b>	Anja Gerdung, Sustainability Council, New Zealand
	<b>Date</b>	June 2006
	<b>Brief description</b>	
	<p>This paper shows Germany's approach to liability for damage attributed to genetically modified organisms and lessons learnt. The paper states that the experience of Germany in this regard is a result of a directed effort to explicitly allocate liability for the financial risks arising from the cultivation of GMOs, with a general focus on responsible parties meeting the costs and a clear intent to protect non-GM farmers, an experience different from the New Zealand approach which allocates risks and costs to innocent parties.</p> <p>The paper describes the new regulatory reforms and their background. It states that in the new reform there is an attempt to avoid placing liability on operators and farmers who comply with what is recognized as good practice. Compensation for eventual damage caused by LMOs shall instead be covered by a fund.</p>	
	<b>Link</b>	<a href="http://www.sustainabilitynz.org/docs/germanliabilitylawforgmcultivation.pdf">http://www.sustainabilitynz.org/docs/germanliabilitylawforgmcultivation.pdf</a>
<b>15</b>	<b>Title</b>	<b>Health and Food Safety: The Benefits of Bt-Corn</b>
	<b>Prepared by</b>	Drew L. Kershen, The Food and Drug Law Institute, Food & Drug Law Journal, United States, Volume 61, No. 2
	<b>Date</b>	2006
	<b>Brief description</b>	
	<p>This article examines issues associated with Bt-corn varieties consumption by a population group of Mexican-American women and argues that this population group would benefit from consuming corn tortillas produced from Bt-corn varieties. The case involves risk assessment, risk management, scientific, liability and regulatory policies issues in the context of food safety.</p> <p>The goal of this article is to assist policymakers, regulators, judges, scientists, and lawyers in understanding appropriate legal and regulatory responses to the health benefits of Bt-corn. The article brings up the difficulties to establish the causal link between damage and action in order to make a successful liability claim.</p>	
	<b>Link</b>	<a href="http://jay.law.ou.edu/faculty/kershen/articles/healthandfoodsafety.pdf">http://jay.law.ou.edu/faculty/kershen/articles/healthandfoodsafety.pdf</a>

<b>16</b>	<b>Title</b>	<b>International procedures governing transboundary litigation on alleged LMO damage: An overview of existing approaches</b>
	<b>Prepared by</b>	Kummer Ecoconsult, Environmental Law and Policy Consulting, Switzerland
	<b>Date</b>	2006
	<b>Brief description</b>	
	<p>The paper provides an overview of existing international procedures governing transboundary litigation in areas related to liability and redress, and to investigate to what extent these could be used in the event of allegations of damage during transboundary movements of LMOs. The paper examines procedures under public international law, procedures under private law, and alternative dispute resolution methods. Each type of procedure is briefly outlined, followed by a discussion of its possible utility in disputes or conflicts on alleged damage occurring during transboundary movements of LMOs.</p> <p>The paper concludes that there is a dearth of procedures that can be used in this context. Alternative dispute resolution methods such as arbitration, conciliation and mediation appear to be the most viable and interesting option. They are widely offered by specialized institutions in different parts of the world.</p>	
	<b>Link</b>	<a href="http://www.ecoconsult.ch/uploads/1144-transboundary_litigation_rules.pdf">http://www.ecoconsult.ch/uploads/1144-transboundary_litigation_rules.pdf</a>
<b>17</b>	<b>Title</b>	<b>Legal Liability Issues in Agricultural Biotechnology</b>
	<b>Prepared by</b>	Drew L. Kershen, The National Agricultural Law Centre, University of Arkansas School of Law
	<b>Date</b>	November 2002
	<b>Brief description</b>	
	<p>The article provides an overview of tort related legal liability issues in agricultural biotechnology. The article addresses liability in agricultural biotechnology in the United States, but it also compares various approaches in different countries.</p> <p>Legal liability in tort addresses the kinds of liability that may exist for possible damage to property, persons, markets, the environment, or to social structures, in contrast to regulatory approval that deals with whether and under what conditions agricultural biotechnology crops and animals may be produced, marketed, and used.</p>	

	The document urges for the need for producers, users and others dealing with agricultural biotechnology products to be able to foresee what sort of damage they may be held accountable for.	
	<b>Link</b>	<a href="http://www.nationalaglawcenter.org/assets/articles/kersten_biotech.pdf">http://www.nationalaglawcenter.org/assets/articles/kersten_biotech.pdf</a>
<b>18</b>	<b>Title</b>	<b>Liability and Redress for Modern Biotechnology</b>
	<b>Prepared by</b>	Philippe Cullet, International Environmental Law Research Centre, International Environment House, Switzerland,  <i>15 Yearbook of International Environmental Law (2006), PP. 165-195</i>
	<b>Date</b>	2006
	<b>Brief description</b>	
	<p>The article presents the issues involved in relation to the development of liability and redress in the field of biosafety taking into account the process under Article 27 of the Biosafety Protocol. The first section introduces the current process of adopting a liability and redress regime under the Biosafety Protocol, as well as some specific issues that member states need to address in this context. The second section highlights some of the substantive issues that need to be addressed in the development of a liability and redress regime in the field of modern biotechnology, such as the question of environmental damage, a central concern in an environmental treaty, as well as other equally important issues such as risks to human health, socio-economic aspects and the question of patent liability. The third section analyses existing legal frameworks to highlight some rules and principles that current negotiations on liability in the context of the Biosafety Protocol can use as models. It examines international environmental civil liability regimes whose general structure provides an appropriate starting point for liability and redress in biotechnology. It then analyses some existing liability regimes in the field of biotechnology, which provide more specific pointers for the development of a biotechnology-related liability regime. The last section examines some of the points that need to be addressed in the context of the ongoing development of a liability and redress regime under the Biosafety Protocol. These include a number of elements within the environmental liability regime which need to be adapted to the field of biotechnology as well as issues concerning the link between environmental liability and patent liability, an issue of increasing importance at the national and international levels.</p> <p>The document concludes that existing national biotechnology-specific liability regimes, such as Switzerland's Gene Technology Law, can provide a model for some of the specific issues that need to be addressed in the context of GMOs. However, existing regimes neither cover the question of the link between environmental and patent liability nor satisfactorily address the question of socio-economic damage. The development of a comprehensive and adequate liability and redress regime under the Protocol and in all individual countries is critical in view of the uncertainties surrounding the impacts of the introduction of GMOs on the environment. These uncertainties can be critical for the process that started under Article 27 of the Protocol and for the effectiveness of the international law regime that may be adopted. The adoption of individual liability regimes in all states where GMOs are introduced will be the necessary complement to the international law regime.</p>	

	<b>Link</b>	<a href="http://www.ielrc.org/content/a0601.pdf">http://www.ielrc.org/content/a0601.pdf</a>
<b>19</b>	<b>Title</b>	<b>Agricultural Genetic Engineering, International Law and Development-</b>  <i>46/3 Indian Journal of International Law 388 (2006)</i>
	<b>Prepared by</b>	Philippe Cullet  International Environmental Law Research Centre, International Environment House, Geneva, Switzerland
	<b>Date</b>	2006
	<b>Brief description</b>	
	<p>The article examines issues that need to be addressed in a comprehensive biosafety regulatory framework, and focus in particular on the Cartagena Protocol and its specific contributions and shortcomings from the point of view of sustainability. The last section of the article lists suggestions for how legal frameworks could be conceived to address sustainability concerns more effectively than what is currently achieved under the Biosafety Protocol.</p> <p>As regards liability and redress the article states the following:</p> <p>“At the international level, while a number of environment-related aspects are covered in the protocol, there are some important gaps which need to be filled. One of them is the question of liability which is mentioned but not comprehensively addressed at Article 27 of the Protocol. A liability regime is required in case of damage occurring as a result of the introduction of genetically modified organisms into the environment. Since it is impossible to preclude the occurrence of damage in the near or long-term, it is necessary to introduce rules which clearly establish the consequences for all interested parties. A process is now under way to develop rules for liability in the context of the Protocol. Its successful conclusion is a prerequisite for ensuring the effectiveness of environmental measures adopted, for instance, with regard to risk assessment and management. In other words, the effective implementation of the legal regime for biosafety adopted under the protocol requires the adoption of liability rules.” (p. 7)</p>	
	<b>Link</b>	<a href="http://www.ielrc.org/content/a0608.pdf">http://www.ielrc.org/content/a0608.pdf</a>
<b>20</b>	<b>Title</b>	<b>Towards a Liability and Redress System under the Cartagena Protocol on Biosafety: A Review of the Kenya National Legal System,</b>  <i>1 East African Law Journal (2004), P. 119</i>
	<b>Prepared by</b>	Patricia Kameri-Mbote, International Environmental Law Research Centre, International Environment House,



		Switzerland,
	<b>Date</b>	2004
	<b>Brief description</b>	
	<p>The objective of the paper is to review Kenya's legal system for liability and redress based both on legislation and common law in order to analyse the adequacy and relevance of such regimes to addressing liability and redress for damage caused by the transboundary movement of living modified organisms.</p> <p>The article examines the legal situation in Kenya. It states that the proposed Kenyan legal framework adopts the African Model Law (2002) provisions on liability and redress, including strict liability, provisions for cost of reinstatement, rehabilitation or clean-up, and preventive measures incurred. Kenya is in the process of putting in place a policy to guide development within the field of biotechnology. Kenya is also developing a national biotechnology strategy, as well as a biosafety law.</p>	
	<b>Link</b>	<a href="http://www.ielrc.org/content/a0406.pdf">http://www.ielrc.org/content/a0406.pdf</a>
21	<b>Title</b>	<p><b>Liability and GMOs : Towards a redress regime in biosafety Protocol</b></p> <p><i>39/7 Economic &amp; Political Weekly, (14 February 2004), p. 615</i></p>
	<b>Prepared by</b>	Philippe Cullet, International Environmental Law Research Centre, International Environment House, Switzerland
	<b>Date</b>	2004
	<b>Brief description</b>	
	<p>The article highlights some of the important concerns that need to be addressed in the development of liability rules for GMOs. It argues that despite the existence of general liability rules at the national level and some general principles applicable to liability at the international level, it is necessary to develop separate liability rules for biotechnology because of the specific and novel challenges linked to the introduction of GMOs into the environment. This is done in part by examining the response given by Switzerland which adopted in 2003 a Gene Technology Law with a strong liability regime.</p>	
	<b>Link</b>	<a href="http://www.ielrc.org/content/a0409.pdf">http://www.ielrc.org/content/a0409.pdf</a>
22	<b>Title</b>	<b>The Development of Biosafety Regulation in Africa in the Context of the Cartagena Protocol, Legal and administrative issues</b>

		<i>11/1 Review of European Community and International Environmental Law (2002), p. 62</i>
	<b>Prepared by</b>	Patricia Kameri-Mbote, International Environmental Law Research Centre, International Environment House, Switzerland
	<b>Date</b>	2002
	<b>Brief description</b>	
	This article investigates the basic requirements of the Biosafety Protocol and identifies and proposes specific legal and administrative mechanisms that need to be instituted at the national and international levels to ensure that Parties to the Protocol, especially African countries, comply with their obligations. The article addresses principles on which biosafety legal and administrative mechanisms should be founded. Emphasis is placed on effective strategies for implementing the Protocol and the roles that civil society can play to monitor and ensure compliance. The article further examines specific endeavours by some African countries at instituting mechanisms for risk assessment and management for safety in biotechnology. Finally, the article assesses current developments and makes recommendations that may help better realize national needs and priorities in biotechnology and biosafety in Africa.	
	<b>Link</b>	<a href="http://www.ielrc.org/content/a0203.pdf">http://www.ielrc.org/content/a0203.pdf</a>
23	<b>Title</b>	<b>Liability and Redress in Biotechnology: Towards the Development of Rules at the National and International Levels</b> <i>Side event on liability at COP-MOP 1 Biosafety Protocol-Background Paper, February 2004</i>
	<b>Prepared by</b>	Philippe Cullet, International Environmental Law Research Centre, International Environment House, Switzerland
	<b>Date</b>	2004
	<b>Brief description</b>	
	The article focuses on the adoption of liability regimes in the field of biotechnology concerning environmental damage. The document states that the liability issue have to take into account four different factors: environment; socio-economic impacts; impacts on human health; respect for intellectual property rights. The specificity and significance of the types of damage that may occur as a result of the introduction of GMOs into the environment indicate that individual states and the international community must take specific action in this field and must ensure that all types of damage are covered by the rules adopted.	
	The development of a liability and redress regime can be based narrowly on Article 27 or on a broader platform which takes into account and emphasises the role of liability rules in fostering preventive and precautionary conduct. A number of already existing general principles and	

	international treaties constitute an appropriate basis for the development of liability rules in the context of the Biosafety Protocol. In addition, some individual countries have already adopted biosafety legislation including liability rules. The recent Gene Technology Act adopted by Switzerland illustrates that the adoption of a strict liability framework is both feasible and necessary to provide a comprehensive regulatory framework for biotechnology.	
	<b>Link</b>	<a href="http://www.ielrc.org/research_biosafety.php">http://www.ielrc.org/research_biosafety.php</a>
<b>24</b>	<b>Title</b>	<b>Model National Biosafety Law: An introduction to the Model National Law on Biosafety</b>
	<b>Prepared by</b>	Nijar, Gurdial Singh, Third World Network, Malaysia
	<b>Date</b>	1999
	<b>Brief description</b>	
	<p>The document provides a draft proposal for a model law addressing transboundary movements of GMOs. It is a model intended to serve as a sample in drafting actual law to regulate the import, deliberate release into the environment, placing on the market, and the contained use of genetically modified organisms and products thereof.</p> <p>The liability provisions of the model law impose strict liability for any damage caused by the introduction of a GMO or product thereof, and attaches liability to any person or entity responsible for the harm. Liability also attaches to officers of a corporation unless they can show that they did all that was possible to prevent the activity in relation to the GMO or product thereof. If more than one person is responsible, then liability is joint and several. All that is needed is to prove that one or more persons proceeded against could have caused the damage. Liability is not only for personal injury, damage to property and financial loss. It extends to damage caused to the environment and to biological diversity. The person or entity responsible must bear the costs for reinstatement, rehabilitation or clean-up measures and for loss or damage caused by taking preventive measures.</p> <p>Liability also extends to harm or damage caused directly or indirectly to the economy, social or cultural practices, livelihoods, and indigenous knowledge systems and technologies. The time limit to bring an action is extended to a reasonable time after the affected person could reasonably be expected to have learnt of the harm. The fact that the competent authority has consented to the application is no defence to any action brought. A wide category of persons is given the right to institute legal action. This includes, in addition to those directly affected, groups who bring an action on behalf of those who are unable to do so. Any person may also bring an action in the public interest or for protecting the environment or biological diversity.</p>	
	<b>Link</b>	<a href="http://www.twinside.org.sg/title/national-cn.htm">http://www.twinside.org.sg/title/national-cn.htm</a>
<b>25</b>	<b>Title</b>	<b>Report of a workshop on Liability and Redress Under the Cartagena Protocol</b>  <i>Mombasa, Kenya, 22-26 September 2003</i>

	<b>Prepared by</b>	International Environmental Law Research Centre, Kenya
	<b>Date</b>	2003
	<b>Brief description</b>	
	<p>This document is a report of a workshop on liability and redress under the Cartagena Protocol. The report looks at the broad justification for addressing biotechnology and biosafety issues and challenges of putting in place liability and redress regimes. It also looks at the international law approach to liability and redress and broad principles thereon. In the two last parts of the report there is a closer description of the common law concepts of liability and redress, and of the statutory approaches to liability and redress in Kenya, Uganda and Switzerland. The report summarizes the specific issues that a liability regime under Article 27 has to address. The report also provides a list of existing liability regimes in Kenya, Uganda and Switzerland and compares the approaches in those countries.</p>	
	<b>Link</b>	<a href="http://bch.cbd.int/database/attachedfile.aspx?id=1022">http://bch.cbd.int/database/attachedfile.aspx?id=1022</a>
26	<b>Title</b>	<p><b>Summary Report of the Meridian Dialogue on Liability and Redress Issues in the Context of the Cartagena Protocol on Biosafety,</b></p> <p><i>11-13 September 2001, Grottaferrata, Italy</i></p>
	<b>Prepared by</b>	Meridian Institute, United States
	<b>Date</b>	2001
	<b>Brief description</b>	
	<p>This is the report of the Meridian Dialogue meeting that brought together 26 individuals from government ministries, corporations, non-governmental organizations (NGOs) and others to discuss key issues associated with the implementation of Article 27 of the Cartagena Protocol on Biosafety.</p> <p>The Dialogue participants identified a list of issues that will likely need to be considered in future liability and redress discussions related to biosafety including: activities/situations causing damage; the concept and threshold of damage; jurisdictional application or geographical scope; channeling liability; nature of liability; exemptions from liability; nature and scope of redress, including valuation of damage; limitations of liability in amount and time; financial security and funds; jurisdiction, mutual recognition and enforcement of judgments; immunity from jurisdiction; causation; access to justice, standing for NGOs, and bringing of class actions; and insurability.</p>	
	<b>Link</b>	<a href="http://bch.cbd.int/database/attachedfile.aspx?id=1017">http://bch.cbd.int/database/attachedfile.aspx?id=1017</a>

27	<b>Title</b>	<b>Workshop on Liability and Redress Article 27 of the Cartagena Protocol on Biosafety Workshop Proceedings</b>
	<b>Prepared by</b>	Meridian Institute, United States
	<b>Date</b>	16 July 2002
	<b>Brief description</b>	
	This is the report of Meridian Institute's Workshop on Liability and Redress, held in April 2002, in the Netherlands. The workshop provided an overview of some of the substantive and procedural issues related to liability and redress. Experts from NGOs, governments and industry presented information in a panel presentation format. The report covers the four panels of experts who presented information on the following topics: 1. Article 27 and the Process of the Intergovernmental Committee for the Cartagena Protocol on Biosafety; 2. Possible activities and scenarios of concern; 3. Standards of liability and channeling; and 4. Damage and causation.	
	<b>Link</b>	<b><a href="http://bch.cbd.int/database/attachedfile.aspx?id=1018">http://bch.cbd.int/database/attachedfile.aspx?id=1018</a></b>

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