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Substantive issues: genetically modified organisms

Report on the workshop on public awareness, access to information and public participation regarding living/ genetically modified organisms

**Prepared by the secretariat of the Convention on Access to
Information, Public Participation in Decision-Making and
Access to Justice in Environmental Matters and the
secretariat of the Convention on Biological Diversity**

Summary

This document was prepared pursuant to the work programme for 2009–2011 for the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted by the Meeting of the Parties to Convention at its third session (11–13 June 2008) (see ECE/MP.PP/2008/2/Add.17), and the decision of the Working Group of the Parties (ECE/MP.PP/WG.1/2011/2, para. 17).

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Introduction

1. At its second meeting, held from 30 May to 3 June 2005 in Montreal, Canada, the Conference of the Parties to the Convention on Biological Diversity (CBD) serving as the meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP) requested the Executive Secretary of the CBD to intensify cooperation with the secretariat of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) on issues of public awareness and participation (decision BS-II/6, para. (d)). Furthermore, the COP-MOP invited Parties, other States and concerned relevant international bodies to explore and maximize opportunities for cooperation in the promotion of public awareness, education and participation concerning living modified organisms (LMOs) through the frameworks provided by related national and international instruments, in particular the Aarhus Convention (decision BS-II/13, para. 11).

2. At its second session (Almaty, Kazakhstan, 25-27 May 2005), the Meeting of the Parties to the Aarhus Convention adopted, through decision II/1, an amendment to the Convention setting out provisions specifically requiring Parties to provide for early and effective information and public participation in decision-making regarding the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs) (the GMO amendment). In the same decision, the Meeting of the Parties recognized the need to cooperate with other international organizations and forums, in particular the Cartagena Protocol on Biosafety, with a view to maximizing synergy and avoiding duplication of efforts, inter alia, through encouraging the exchange of information and further collaboration between the secretariat of the Convention and that of the Cartagena Protocol. In that regard, the 2009–2011 workplan of the Aarhus Convention (decision III/9) envisages the organization of joint workshops with the Cartagena Protocol on Biosafety in the 2009–2011 intersessional period.

3. The joint Aarhus Convention/Cartagena Protocol on Biosafety workshop was organized pursuant to the above decisions taken by the governing bodies of the two treaties.¹ The workshop was held in Nagoya, Japan, on 8 and 9 October 2010. Its main objective was to enable participants to share experiences and lessons learned in promoting public awareness, access to information and participation in decision-making concerning LMOs/GMOs. The workshop produced a number of recommendations, including proposals to facilitate implementation of the Cartagena Protocol's programme of work on public awareness, education and participation and the Aarhus Convention's GMO amendment.

4. The workshop was attended by 50 participants from 19 States, 3 international and regional organizations, 18 international and national non-governmental organizations (NGOs) and 3 academic institutions. The States represented were: Antigua and Barbuda, Belarus, Belgium, Burundi, Finland, Georgia, Germany, Guinea, Guinea-Bissau, Indonesia, Hungary, Maldives, Norway, Republic of Moldova, Slovenia, Spain, Swaziland, Tajikistan and Viet Nam.

5. Participants from the following international and regional organizations attended: the African Union Commission; the Food and Agriculture Organization of the United Nations Regional Office for Europe and Central Asia; and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

¹ This workshop was the second event on which the two secretariats have collaborated. The first joint workshop was held on 19 and 20 May 2008 in Cologne, Germany.

6. The following international non-governmental organizations (NGOs) were present: European ECO-Forum; GENET — European NGO Network on Genetic Engineering, Greenpeace International, Public Research and Regulation Initiative (PRRI) and RAEIN-Africa. Participants from the following national NGOs attended: “YANUS” (Armenia); ECOROPA (Germany); Federation of German Scientists (Germany); Aarhus Net Japan (Japan); Japan Environmental Council (Japan), “Greenwomen” Analytical Environmental Agency (Kazakhstan), ECO-Tiras International Environmental Association of River Keepers (Republic of Moldova); and Washington Biotechnology Action Council (United States of America). Participants from Bayer BioScience NV (Belgium), ISAAA AfriCenter (Kenya), GenØk — Centre for Biosafety (Norway), the Organization for Security and Cooperation in Europe (OSCE) Office in Tajikistan (Tajikistan) and the Global Industry Coalition (United States) also attended.

7. The following academic or research institutions were also represented: Osaka University (Japan); College of the Atlantic (United States of America); and Universidad Nacional Agraria La Molina (Peru).

8. The workshop was chaired by Mr. Helmut Gaugitsch (Austria), the former Chair of the Aarhus Convention’s Working Group on Genetically Modified Organisms.

I. Opening of the workshop

9. The workshop was opened by the Chair, Mr. Gaugitsch. Mr. Charles Gbedemah, Senior Programme Officer in the Biosafety Division of the CBD secretariat, also made opening remarks on behalf of Mr. Ahmed Djoghlaif, Executive Secretary of CBD. In his remarks, Mr. Gbedemah noted that workshop had been organized at an opportune time, when the Parties to the Protocol were about to consider a programme of work on public awareness, education and participation concerning LMOs, and he hoped that the workshop outcomes would provide invaluable input to those discussions.

10. After the opening statements, representatives from the CBD and the Aarhus Convention secretariats outlined the objectives and expected outcomes of the workshop.

II. Overview of legal framework on public awareness, access to information and participation regarding living modified organisms/genetically modified organisms

11. The CBD secretariat gave an overview of article 23 of the Cartagena Protocol on Biosafety, which dealt with public awareness, education and participation concerning the safe transfer, handling and use of LMOs, and article 20, on information sharing and the Biosafety Clearing-House. Previous decisions on public awareness, education and participation taken by the second and fourth meetings of the COP-MOP were described, together with the draft programme of work, to be considered by COP-MOP. The draft programme of work contained four main elements to be focused on: capacity-building; public awareness and education; public access to information, and public participation.

12. A representative of the Aarhus Convention secretariat then provided an overview of the Aarhus Convention and how it worked, in particular detailing the Convention’s provisions relating to GMOs, including the GMO amendment currently pending entry into force. Also described were the requirements with regard to the right of access to information, public participation in GMO decisions and access to justice regarding GMOs, and the proposed future steps for Aarhus and biosafety, including preparation of the draft

2012–2014 workplan and further collaboration and dialogue with Cartagena Protocol and other relevant organizations.

III. Public awareness and access to information: good practices, needs and challenges

A. Outreach and awareness-raising regarding living modified organisms/genetically modified organisms in developing countries

13. A representative from the Third World Network (TWN) made a presentation describing its biosafety programme, in particular its activities to raise public awareness on biosafety issues, including public awareness and education initiatives; the biosafety website; a biosafety information service; biosafety publications; and meetings and seminars.² Biosafety awareness and outreach were about empowering the public and enabling policymakers to make informed choices. Awareness-raising and access to information in a timely manner were necessary preconditions for meaningful public participation and access to justice. Therefore, it was necessary to raise awareness also about the public's rights to access information, to participate and to have access to justice. Information should be presented in a transparent and open manner, taking into account sensitive confidential business information. Stakeholders had to bear in mind the challenges of communicating complex scientific issues, including how to convey scientific uncertainty and scientific disagreement. It was important to reach out to sectors of the public that were not organized. The right to prior informed consent regarding, among other things, the location of the proposed sites for GMO releases was noted, together with the need to respect confidential information: in other words, article 21 of the Cartagena Protocol needed to be implemented in a manner that was consistent with article 23. The scope and criteria for protection of confidential information should be defined at the national level. Finally, it was noted that the Agreement on Trade-Related Aspects of Intellectual Property Rights,³ which protected undisclosed data against disclosure except where necessary to protect the public, was not consistent with wide access to information.

B. Access to information regarding use of living modified organisms/genetically modified organisms

14. A representative from the Federation of German Scientists (FGS) made a presentation emphasizing the importance of making relevant information (including scientific and legal information) available to the public — farmers, consumers/citizens, politicians, journalists, and scientists. For the public to effectively participate in decision-making processes, they needed to be well informed. Access to information was a right that should be entrenched in the national laws and enforced through the courts.

15. The FGS representative observed that a precondition for access to information was knowing that there was information to be accessed. The public needed to understand: (i) what information was being presented (facts, opinions or findings); (ii) what information might be missing; and (iii) what assumptions were behind the information provided. Access

² The TWN website on biosafety can be accessed at <http://www.biosafety-info.net>.

³ See annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994.

to information should be easy and affordable. Information should also be presented in a concise and comprehensible manner. In many cases, it might be useful to have scientific experts to “translate” technical and scientific information into formats more understandable and accessible to the public. All relevant information, including scientific data such as molecular data and the methodologies used to generate the data, should be publicly available so that other scientists could review them and reproduce the experiments to verify the findings if necessary.

16. The FGS representative also highlighted the need to ensure that information classified as confidential business information was limited to the absolute minimum so as not to hinder or block scientific review and verification. Details of field trials and applications for GMO release and placement on the market should be posted online in order to allow timely access to the information and to facilitate effective public participation. The Roadmap for Risk Assessment of Living Modified Organisms developed under the Protocol stated that sound science was based on transparency, verifiability, reproducibility and accessibility of data, taking into account the confidentiality of information provisions contained in article 21 of the Protocol.⁴

C. Experiences with developing and implementing national mechanisms, frameworks and systems regarding public awareness and education and access to information regarding living modified organisms/genetically modified organisms

17. A representative of Viet Nam presented the biosafety information-sharing mechanism and awareness activities under the National Biosafety Framework of Viet Nam. The framework included the 2008 Law on Biodiversity, which required organizations and individuals that researched, imported, purchased, sold or released GMOs to publicize information on the risk level and risk management measures. It also required labelling for goods that contained GMOs and products derived from GMOs. Article 45 of decree No. 69 of 2010 on biosafety for GMOs, genetic specimens and products of GMOs also required information on GMOs to be published on the website of the Ministry of Natural Resources and Environment and on websites of relevant line ministries. A public hearing one month before a GMO appraisal was also required. Under the National Biosafety Framework, a number of awareness-raising activities had been implemented, including media activities and dissemination of information materials (such as brochures and newsletters). Some successes included increased public awareness of GMOs, the establishment of a mechanism for public hearings and an information-sharing mechanism. However, a number of challenges remained, including the technical nature of information on GMOs/LMOs; the influence of different interest groups; limited access to the information available; and a lack of human resources to raise awareness about biosafety.

D. Case studies and discussions on public awareness and access to information

18. After the three presentations, the needs and challenges were discussed, emerging good practices and lessons learned were identified and recommendations were made on future actions and modalities for cooperation between the Aarhus Convention and the Cartagena Protocol. Key points included:

⁴ The Roadmap (UNEP/CBD/BS/COP-MOP/5/12, annex III, part I), is available on the website of the Cartagena Protocol on Biosafety at <https://www.cbd.int/doc/?meeting=MOP-05>.

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- (a) Access to information is fundamental to awareness-raising and public participation. Thus it should be conducted in a timely manner;
- (b) In general, most people are still not fully informed about the benefits and risks of GMOs/LMOs, the procedures for their safe transfer, handling and use, nor of their right to access biosafety information;
- (c) The type and source of information provided are both important. It is essential that the sources are neutral and credible, even though independent information is at times difficult to obtain;
- (d) It is crucial that information is made available in many languages, especially local languages, to facilitate public awareness and outreach activities;
- (e) Governments and industry should make information regarding the location of field trials available to the public;
- (f) Currently, many countries lack the human, technical, institutional, legal and financial capacity to manage and facilitate access to information. Government agencies need to cooperate with other agencies, NGOs and United Nations agencies to develop and maintain information-management mechanisms;
- (g) Many countries also lack systems for labelling GMO products;
- (h) The CBD Biosafety Clearing-House (BCH) and the national BCH nodes and information centres are important mechanisms for facilitating access to information, but more is needed for the BCH to play a more effective role in promoting biosafety awareness and education. For example, to date, the BCH contains little information regarding field trials and is also mostly used for commercial purposes. Linking the CBD BCH with the Aarhus Clearinghouse would be useful;
- (i) Media involvement is essential to foster public access to information and awareness;
- (j) There is a need for guidelines on public awareness, access to information and education on LMO/GMOs;
- (k) It is important that policymakers and Government officials are equipped to make informed choices;
- (l) Improved collaboration within Governments is needed, in particular between ministries and parliamentarians to enhance communication and coordination on biosafety issues.

19 Following the open discussions, the workshop participants discussed two case studies in smaller interactive discussion groups.⁵ The participants were asked to identify aspects of good practice and areas for improvement.

Case study 1: Outreach to small-scale farmers and rural communities in South Africa

20. Case study 1 looked at an outreach programme by AfricaBio in South Africa in which a number of small-scale maize farmers were invited to grow a field of insect-protected biotech maize next to a conventional field. With the support of programme staff, the farmers were asked to share their experiences with other farmers in their local community through information days and other events.

⁵ The case studies discussed are available at <http://www.unece.org/env/pp/gmo.htm>.

21. Workshop participants considered the case study to be an example of good practice in raising public awareness about the benefits of biotechnology in the following respects:

- (a) The persons raising awareness were farmers themselves, lived in the same community and knew the local language, situation and culture;
- (b) The awareness-raising process involved the rural community as a whole and other stakeholders;
- (c) The information regarding the technology was easily available;
- (d) Farmers could directly see what was produced while comparing yields.

22. However, some participants observed that the case study was not good practice in the following respects:

- (a) The information presented was not complete and was not balanced;
- (b) Other organizations or experts who might have provided a different standpoint were not involved in the awareness-raising process;
- (c) The case study did not indicate if any information was given to the farmers beforehand;
- (d) Information was lacking on whether any local maize varieties or practices existed that could have been affected by the trial. The farmers were not provided with all the information;
- (e) The information focused mainly on the increased maize yield and low insect numbers, but not the risks and/or the long-term effects, so the information provided was not balanced;
- (f) The information seemed to have been presented by those with a vested interest and not from a neutral point of view.

23. In general, most participants found the case study useful for raising awareness on biotechnology, but not on biosafety. While the methodology used for raising awareness at the local level was good, the information presented was incomplete and imbalanced. The awareness-raising process should have allowed input from different sources and should have included more about biosafety. Farmers had not been provided with all the information needed to decide whether or not to grow insect-protected biotech maize.

Case study 2: Labelling of genetically modified food in Australia and New Zealand

24. Case study 2 considered the joint GMO labelling standard for Australia and New Zealand. The study outlined key features of the Food Standards Australia New Zealand (FSANZ), including its regulatory framework, exceptions, the voluntary labelling system and the mechanism to enforce regulatory standards.

25. Workshop participants considered the case study to be an example of good practice for public access to information in the following respects:

- (a) The regime established a common regional standard and provided for a special designated organization that was independent and participatory;
- (b) Labelling genetically modified (GM) food and feed helped to raise awareness of the products containing GMOs and allowed consumers a choice when purchasing;
- (c) The labelling regulations and standards allowed the public to access information on GM products that could raise safety, ethical, cultural or religious concerns among consumers.

26. However, some participants observed that the case study was not good practice for public access to information because of the following reasons:

(a) Labelling alone was not sufficient as labels only informed consumers that a product contained GM ingredients but did not say which GMOs. Thus labelling did not allow them to make an informed decision;

(b) A “may contain GMO” label could be not only unclear and misleading, but could also be misused;

(c) The voluntary “negative labelling” (i.e., the labelling of products as “GM-free”) which was supported by the FSANZ could also be misleading or deceptive. A strict regime was required in order to prevent false claims;

(d) Exemptions provided for under the GM food labelling regulation (including exemption of foods that contained less than 1 per cent of GM material and highly refined food that did not contain DNA or protein) provided loopholes that could be exploited. Some participants argued that labelling should be standard across all foods without any exceptions;

(e) Thresholds for labelling (in this case 1 per cent of content) were not science-based (which would be at the level of detection), but were chosen for reasons of economics;

(f) Some participants argued that specifying the type of GMO on the label was particularly useful if problems arose: scientists would be able to follow up easily. Others argued that labelling GM products was not positive because some retailers might then decide not to put GM products on their shelves;

(g) Another negative aspect of the case study was that the law provided for a weak enforcement mechanism that had to be strengthened. It was noted that FSANZ only set regulatory standards and lacked enforcement powers;

(h) Finally, a number of participants suggested that it would be useful to provide on the labels contact details where additional information might be obtained.

IV. Public participation: good practices, needs and challenges

A. National experiences in implementing the Aarhus Convention’s amendment on genetically modified organisms and public participation under the Cartagena Protocol on Biosafety

27. Presentations were made by representatives from the Government of the Republic of Moldova, the Government of Belarus and the NGO ECO-Tiras International Environmental Association of River Keepers regarding national experiences in implementing the Aarhus Convention’s GMO amendment.

28. The representative from the Republic of Moldova outlined the Moldovan regulatory framework for public awareness and participation regarding LMOs/GMOs. The framework had facilitated public awareness and participation activities, including consultations with the public in the decision-making process. The Republic of Moldova had also participated in the UNEP-Global Environment Facility (GEF) Project on Implementation of National Biosafety Frameworks to implement the Cartagena Protocol. A number of initiatives had been undertaken and achievements included:

(a) The Moldovan National Biosafety Action Plan (2009–2015), which had been developed and widely consulted on, through meetings, workshops and debates with various

stakeholders. Following its approval in 2009, it had been published in newspapers and on the BCH and Ministry of Environment website;

(b) A socio-economic assessment of the draft action plan had been performed to identify its impacts on the economy, trade, farmers and agriculture;

(c) Establishment of the National Biosafety Committee, including representatives from governmental bodies, academia, lower levels of education and NGOs, who participated in the decision-making process;

(d) Establishment of a biosafety website, an electronic register of environmental NGOs online and a mechanism for the public to request additional information (such as the risk assessment information and monitoring plan) supporting public participation. Information posted on the website was useful in public hearings organized on applications for contained use. The public had one month to comment on the application.

29. The Republic of Moldova faced a number of challenges regarding public participation in relation to biosafety issues, including: insufficient awareness among decision makers and the public; insufficient scientific data regarding possible adverse risks of GMOs; and insufficient national capacities and experience in monitoring of GMOs in food and feed and in risk assessment and evaluation, including public participation in risk assessment processes. Other challenges included a low level of Government-NGO cooperation and of cross-sectoral cooperation, and the gap in public awareness between urban and rural communities. It would also be helpful to have internationally agreed upon guidelines and/or toolkits regarding public participation in risk assessment procedures and on management and labelling of GMOs and to increase the capacity of both the CBD BCH and the Aarhus Clearinghouse.

30. The representative of Belarus also reported on their national experiences with public participation in LMO/GMO decision-making. The country had a number of national laws relating to GMOs, including the Law on Protection of Consumer Rights; the Law on Quality and Safety of Food Raw Materials and Foodstuffs for Human Life and Health; the Resolution of the Council of Ministers of the Republic of Belarus on Some Issues to Inform Consumers about Raw and Processed Food Products; and the Law on Safety of Genetic Engineering. The Law on Safety of Genetic Engineering established a framework for State oversight of the safety of genetic engineering and genetically engineered organisms, including liability for breaching its legal requirements.

31. The National Biosafety Coordination Centre, established to promote public participation in biosafety processes, aimed to promote exchange of information with biosafety focal points of other countries and international organizations. Information was exchanged via the Centre's website, which was also used to engage stakeholders in biosafety issues.⁶ Other biosafety-related activities included active participation of NGOs and civic associations: for example, from December 2006 to March 2007, a Belarusian NGO, "Ecosphere", carried out a national study of public awareness about GMOs and GM products.⁷ Another activity was a round-table discussion for NGOs regarding GMOs.

32. The representative of ECO-Tiras made a number of suggestions on raising public awareness on GMO issues. It was important for stakeholders to be scientific, not populist, in their approach and to use simple but accurate language. Stakeholders should keep in mind the European Union (EU) view that there was not one answer — each GMO needed

⁶ The website is available at <http://biosafety.org.by>.

⁷ Out of the 700 respondents, 60 per cent were aware of GMOs, 4 per cent believed GMOs were safe with respect to human health, 16 per cent paid attention to product labelling when making a purchase and 76 per cent of study respondents asked for more information about GMOs and GM products.

to be risk evaluated. It was important to work with the media as the most efficient mechanism for promoting public awareness and public participation. Establishing partnerships between the mass media and those working on GMO issues was also important in order to avoid mistakes in media reports that could lead to public misinformation. It was suggested that stakeholders should critique unscientific articles or broadcasts that appeared in the mass media.

33. ECO-Tiras suggested that stakeholders participating in biosafety awareness-raising activities should be neutral in championing the public's right to know. Stakeholders should evaluate risks proportionately and share their knowledge within their networks. Wherever possible, stakeholders should cooperate with State and local authorities.

B. Public participation in living modified organism/genetically modified organism risk-assessment procedures

34. Presentations were made by representatives from Greenpeace International and the European NGO Network on Genetic Engineering (GENET) on the topic of public participation in living modified organism/genetically modified organism risk-assessment procedures.

35. The representative from Greenpeace International noted the importance of the Cartagena Protocol on Biosafety and the Aarhus Convention as legal instruments that supported public participation. However, to date, there was limited capacity and support from Governments or other stakeholders regarding the conduct of LMO/GMO-related socio-economic impact assessments. Under article 26 of the Cartagena Protocol, in reaching a decision on import of LMOs, Parties could take into account socio-economic considerations arising from the impacts of those LMOs. However, socio-economic impact assessment was rarely considered as seriously as environmental risk assessment and risk management.

36. Using a case study from New Zealand, the Greenpeace representative illustrated how a failure to enforce information access requirements could effectively preclude meaningful public participation and access to justice. In another case study, an application to genetically engineer salmon from Panama for export had raised a number of socio-economic and environmental issues, including a potential loss of natural and agricultural biodiversity, loss of traditional farming practices and loss of food sovereignty. There was a need for active participation of the local communities that would be affected.

37. In some recommendations, the Greenpeace representative highlighted the need to: (a) develop guidance under the strategic plan of the Protocol on integrating socio-economic considerations into the decision-making process; (b) increase research and information exchange on socio-economic impacts; (c) build national capacity to do socio-economic research as part of risk assessment and risk management; (d) provide adequate access to information for effective public participation; (e) ensure that socio-economic impact studies were part of a package of information for public participation; and (f) have policies on food security and food sovereignty in place at the national level to prevent transnational genetically engineered food production from negatively effecting domestic food production and land tenure, with implications for access to justice.

38. On the same theme, a representative from GENET observed that participatory tools included both "invited" public participation (e.g., consultations, and stakeholder forums and dialogues) and "non-invited" public participation (e.g., through press/media campaigns, lobbying of Governments at different levels, consumer campaigns, press work, publication of materials for policymakers and conduct of independent research). The outcomes of invited public participation were often predetermined and limited, and uninvited

participation was the preferred option for many NGOs. Dialogue with civil society could be more open and promoted through a two-way exchange, with genuine interest in taking into account all sides. Consultations designed to get a particular answer were not constructive.

39. Furthermore, the GENET representative highlighted the following points:

(a) Public participation was often hindered by lack of access to information. NGOs and individuals needed to invest efforts in promoting easy public access to information in order to achieve effective participation;

(b) Public participation should occur from the very beginning, including in policymaking, as to whether a certain technology should be introduced;

(c) Science should not be separated from its social context. Science should not be viewed as objective and social, ethical and political concerns as subjective and therefore not a good basis for decision-making;

(d) The public should not be considered inherently ignorant on scientific issues and thus excluded from the debates;

(e) Resources needed to be provided to assist NGOs and other elements of civil society to participate in consultations and public hearings. Otherwise there was inequality, as NGOs often did not have the same resources as others to participate.

40. The GENET representative noted that for EU member States most of the important decision-making regarding GMO/LMOs took place at the EU level, so only a small number of Brussels-based NGOs had easy opportunities to participate. NGOs were dissatisfied with the European Food Safety Authority (EFSA) decision-making process and believed it lacked broad civil society participation and was strongly influenced by some industry members. Despite some improvements, most consultations were in a written form with little chance for direct participation, making it markedly more difficult for the average citizen or civil society group to participate.

C. Implementation and enforcement of living modified organism/genetically modified organism-related laws, in particular the main challenges and the role of the public

41. Regarding implementation and enforcement of living modified organism/genetically modified organism-related laws, presentations were made by representatives from European ECO-Forum, the “Greenwomen” Analytical Environmental Agency and the Commission of the African Union.

42. The representative of European ECO-Forum noted that NGOs were generally less satisfied with the outcomes and impact of the implementation of legislation than they were with the actual legal provisions themselves, especially in the countries of Eastern Europe, the Caucasus and Central Asian. Public participation procedures in many countries of that subregion were incomplete, underdeveloped or poorly elaborated and the public was not involved early enough in the process. NGOs were not satisfied with the provisions in the legal frameworks which empowered the relevant public authorities to identify which segments of the public to involve in the decision-making process, noting that in some cases that had been used to exclude or hinder relevant members of the public from participation.

43. Moreover, the time frames for public comment were generally insufficient, according to ECO-Forum. Usually there was no feedback on how public comments had been considered in the final decisions or reasons provided for not incorporating them. Furthermore, if decisions were reconsidered or changed, it was not always clear which changes required public participation beforehand.

44. In addition, it was noted that access to information was a major challenge for effective public participation. Often the information provided was incomplete or of poor quality and was generally only available after an application had been made. The information was also often not easily accessible or was available at times not convenient for the public. The legal provisions for exceptions regarding public access to information were sometimes extensively or arbitrarily interpreted. For example, the exception regarding intellectual property had often been misused, and access to reports prepared by third-party consultants for public authorities denied.

45. The European ECO-Forum representative made the following observations and recommendations to improve public participation:

(a) Government and State bodies needed to become more proactive in encouraging public participation;

(b) There was a need for further investment in education and capacity-building to improve both the public and officials' understanding of public participation in environmental decisions;

(c) The public participation procedures needed to be revised to allow sufficient time frames for the public to get informed and to prepare and participate effectively;

(d) The Internet should complement other systems of access to information and not replace them;

(e) Legislation/amendments should be made at the national level (and also at EU level) to allow for public participation early in the process;

(f) It was necessary in many cases to include a general definition of the "public concerned" so that the range of participants was not narrowed to environmental NGOs only (which often happened);

(g) Significant emphasis should be placed on the practicalities of public participation. Relevant information (assessments, reports and other relevant documentation) should be available and accessible at times which were suitable for the general public (both during and outside office/general working hours);

(h) Notices had to be made more practical and citizen-friendly;

(i) The public should be notified of the relevant environmental aspects of projects when being notified of final decisions;

(j) Efforts had to be made by the relevant parties to synchronize public consultation periods with notification of the public particularly in relation to article 7 of the Aarhus Convention;

(k) Safeguards needed to be established to ensure public authorities took due account of public comments when making decisions;

(l) Public participation monitoring committees should be created in all countries and at EU level;

(m) Courts and administrative authorities should directly apply the Aarhus Convention where national law conflicted with or did not fully implement its provisions.

46 The representative of the "Greenwomen" Analytical Environmental Agency described technical regulations related to GMOs and the challenges regarding public participation in Kazakhstan. In September 2010, Kazakhstan had adopted a technical regulation on "Requirements for Safety of Food Products Fabricated From Genetically Modified (Transgenic) Plants and Animals". The technical regulation set minimal requirements for safety of transgenic foods during their fabrication, processing, circulation,

use and elimination. The regulation required that information about food products had to include data about components composed of or made from LMOs that were above the threshold of 0.9 per cent. However, products containing GMOs were widely available on the market, possibly due to the insufficient number of laboratories specialized in identifying the presence of GMOs in products.

47. “Greenwomen” reported that there were no concrete mechanisms for public participation in decision-making related to GMOs in Kazakhstan. In addition, dissemination of information was not systematic and there was no regular access to scientific information. It was noted that even though civil society was legally entitled to be involved in risk-evaluation activities, research and discussions of regulatory policies, public participation was very limited.

48. The representative from the Commission of the African Union made a presentation on “Public Participation in African Biosafety Regulations and Policies”. It was noted that while most African countries were Parties to the Cartagena Protocol, only seven countries (Kenya, Tanzania, Ethiopia, Mali, Namibia, Cameroon and Zambia) had adopted national biosafety laws which provided for public participation as envisaged in article 23 of the Protocol.

49. A number of common assumptions made about the public and their understanding of GMOs were noted by the Commission. For example, the “illiteracy model” assumed that the public could not understand GMO science or scientific uncertainty and that once the public was educated they would accept GMOs as good and safe. In the Commission’s view, in contrast, the public could and did understand science and scientific uncertainty and could rework scientific information with reference to their own experiences, contextual needs, values, culture and interests. Therefore the poor of Africa should themselves be allowed to decide whether GMOs were useful and beneficial to them. The decisions should not be taken only by scientists or industrial groups, donor agencies or foreign Governments.

50. It was also noted that policymakers needed to implement a number of initiatives to facilitate public participation. For example, there was a need for clearly defined responsibilities for bodies or committees on public participation. Annual budgetary allocations were needed to support public awareness and consultation processes. It was also recommended that African biosafety policymakers should:

- (a) Promote the adoption of legally binding biosafety instruments and provisions on public participation;
- (b) Review and question the assumptions and justifications that shaped the claims made by some stakeholders regarding GMOs;
- (c) Provide the public and NGOs with opportunities to contribute, in an efficient manner, to biosafety decision-making and to ensure that such decision-making was transparent and accountable; and
- (d) Promote financial support for an information mechanism to support communication tools for public participation.

D. Different types of public participation in living modified organism/genetically modified organism decisions

51. Regarding different types of public participation in living modified organism/genetically modified organism decisions, the Government of Slovenia described the benefits of its regulatory framework, including its national biosafety framework and GMO legislation, and some key activities. The Management of Genetically Modified Organisms

Act (2002, as amended in 2004 and 2010) regulated contained use, deliberate release, placing on the market and the export and transit of all GMOs (genetically modified micro-organisms (GMMs), GM plants and GM animals) and their products. Under the Act, the public had the right to be informed about GMO management and to be involved in permitting a process. The Act provided for a public GMO Register containing records, receipts and permits or approvals for contained use, deliberate release including field trials, placing on the market of GMOs and products and premises for GMOs. The public had the right to peruse the data and request and obtain an extract from the GMO Register upon payment of a charge not exceeding the material costs of communicating the data in order to effectively provide input in imports and exports of GMOs.

52. The GMO management system was administered by a Commission for GMO Management, nominated by the Government and consisting of representatives of science (social, humanist, natural, medical and veterinary), NGOs, the Chamber of Commerce and Industry and the Chamber of Agriculture and Forestry. The Commission was independent and its work public.

53. In addition, the Slovenian representative described the two scientific committees that provided professional assistance to ministries regarding contained use and deliberate release into the environment of modified organisms. The scientific committees issued annual reports on their work, which were available to the public. For permits for contained use classes 3 and 4, for deliberate release and for placing on the market, the public were entitled to have access to the notification, including the risk assessment, the scientific committee's opinion and to take part in a public hearing. The Ministry of Environment and Spatial Planning's decision on the permit was required to express a view on the opinions and comments received from the public.

54. It was also noted that, while setting up the biosafety information system in Slovenia to raise awareness and participation had been challenging, it had to date, among other things, simplified the notification procedure, facilitated the administrative and decision-making procedures and supported the regular provision of information to the public. However, specific administrative systems providing information on LMOs/GMOs were needed; building ongoing human and financial capacity was essential; and improving education and enhancing the infrastructure would also facilitate meaningful public participation.

E Case studies and discussions on public participation

55. Following discussions on the needs and challenges and emerging good practices and lessons learned in public participation, the participants discussed future action needs and modalities for cooperation, and further possibilities for synergy and coordination between the Aarhus Convention and the Cartagena Protocol. Some of the key outcomes were as follows:

(a) Public participation procedures are underdeveloped and early participation remains a significant problem. Government and state bodies must become more proactive in encouraging public participation. There is a need for further commitment and funds for investment in education, capacity-building and the sharing of information among stakeholders in order to improve both the public and officials understanding of and engagement with public participation in environmental decisions;

(b) Time frames should be revised in order to establish sufficient time for participation and to give the public sufficient time to get informed and to prepare and participate effectively. Current deadlines are largely inadequate, particularly when combined with poor access to information. The Internet should complement other systems

of access to information and not replace them. Legislation/amendments should be made at the national level (and also at the EU level) to allow for public participation early in the process;

(c) It is necessary in many cases to include a general definition of the “public concerned” so that all of the interested public may participate;

(d) Greater attention should be given to the practical aspects of public participation. Relevant information (assessments, reports and other relevant documentation) should be available and accessible at times which are suitable for the general public (both during and outside office/general working hours). Notices must be made more citizen-friendly.

(e) Safeguards should be established to ensure public authorities take due account of public comments when making decisions;

(f) It may be useful to establish national (and EU) committees to monitor public participation regarding GMOs;

(g) Internationally agreed guidelines and/or toolkits regarding public participation in risk assessment procedures, the management and labelling of GMOs and to increase the capacity of both the BCH and the Aarhus Convention Clearinghouse would be useful.

56. Following the open discussion, workshop participants discussed the two case studies on public participation and took part in interactive discussion groups.⁸ The participants were asked to discuss in what ways, and why, the case studies were considered to be examples of good practice in public participation.

Case study 1: The “GM Nation?” Debate

57. Case study 1 considered the process by which the “GM Nation?” Debate had been carried out in the United Kingdom of Great Britain and Northern Ireland. In anticipation of a new regulatory process being put into place EU-wide, the United Kingdom Government had set up the “GM Nation”, which was a public debate involving six major regional debates and meetings which, among other things, provided information materials, feedback forms and other initiatives to initiate discussions mostly targeted to people not involved in GM issues.

58. Workshop participants considered the case study to be an example of good practice in public participation about the debate in the following respects:

(a) The public debate in the case study had attracted a high level of interest, with approximately 3 million hits on its website;

(b) The public debate had been a very inclusive and open, two-way process, with grass-roots workshops setting the agendas and sharing material and ideas, with the public being able to choose the topics they wished to participate in and being able to exchange views on the socio-economic aspects of the GM issue; and

(c) The public debate had been a good attempt at promoting and accepting public opinions as a method for public participation.

59 However, some participants had the following concerns about the case study as an example of good practice:

⁸ The case studies discussed are available at <http://www.unece.org/env/pp/gmo.htm>.

(a) The focus groups had been selected rather than open to whomever wished to be consulted on those issues, and the format of the discussion workshops had been determined by the Government rather than open for discussion by other stakeholders;

(b) The public participation had been removed from the actual decision-making, with no real link to the Government policy and decision. As a result, there had been no concrete outcome or follow-up from the public participation and no impact on the policy and decision;

(c) The social and scientific aspects had been separated, and it would have been better to have had one consultation package on all issues, including bioethical considerations; and

(d) Participants had had insufficient information, materials and training relevant to the decision-making for public participation.

Case study 2: Institutional Biosafety Committees

60. Case study 2 involved the presentation of Australia's experience with Institutional Biosafety Committees (IBCs). Many companies and research institutes had IBCs that helped them manage complex decisions about research and development activities involving biotechnology, or genetic engineering. The membership of IBCs usually included people from outside the research organization in order to provide independent review and assessment of their plans.

61. Workshop participants considered the case study to be an example of good practice in public participation about the benefits of IBCs in the following respects:

(a) The Australian example was considered potentially to be good practice, as Australia had required IBCs to actively participate in every stage of GMO research;

(b) It was a good example of a public participation case where a layperson had been involved in representing the public;

(c) People had been involved who could take responsibility and influence the process of decision-making independently.

62. However, some participants had the following concerns about the case study as a good practice example:

(a) More than one layperson should be involved;

(b) The process by which the layperson(s) were nominated and selected should be open and participatory;

(c) The IBCs should also have included scientists from a variety of fields;

(d) Greater access to information and independent review of documents was needed;

(e) An ethics committee would also have been important; and

(f) It was considered that the IBCs with lay members could make a useful contribution, but should be in addition to, and not instead of, other types of public participation such as public hearings.

V. Conclusions and the way forward

63. On the last day, participants discussed general conclusions and possible recommendations from the workshop, which were summarized by the Chair at the closing

session. It was noted that the workshop had moved the issue on public awareness, access to information and participation forward with clear recommendations and practical solutions. It was also noted that the discussions had been constructive and all participants had had a possibility to make contributions.

64. In light of the discussions during the workshop, the Chair suggested, and the participants agreed, that the following conclusions and recommendations be forwarded for consideration by COP-MOP 5 in its consideration of the programme of work on public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms and by the fourth session of the Meeting of the Parties to the Aarhus Convention:

(a) Public awareness, access to information and public participation are different subjects but very much related to each other. There can be no effective public participation without public awareness, which requires education and access to information;

(b) Public awareness, access to information and public participation are rights according to the provisions of the two treaties. However, how to improve their practical implementation is a common challenge that needs to be addressed in the relevant decisions and work programmes of each treaty;

(c) Although it is sometimes important to distinguish between different groups of the public, all of the public should be welcome to participate in decision-making processes;

(d) Guidance on how to ensure public awareness, access to information and participation with regard to GMOs/LMOs would be helpful for many countries and stakeholders. The Aarhus Convention, its GMO amendment and the Lucca Guidelines on GMOs⁹ may be useful in this respect. In particular, there is a need for guidance on effective, accurate and balanced production and dissemination of information to raise awareness on GMOs/LMOs and to promote public participation;

(e) Furthermore, guidance is needed on the level of detail of the documentation provided to the public in the case of applications, how to deal with confidential information, how to involve broad scientific expertise, the time(s) in the decision-making at which public participation should occur, ways to include socio-economic considerations as well as environment and health considerations, mechanisms to provide feedback to the public on how their comments have been taken into account and how to improve the understanding by media representatives or other multipliers of information in society;

(f) Outreach to and collaboration with other international organizations could be beneficial for the processes on public awareness, access to information and public participation at the national, regional and international levels;

(g) Collaboration between the two secretariats with respect to their clearing-house mechanisms, i.e., the CBD Biosafety Clearing-House and the Aarhus Clearinghouse, should be arranged. The two secretariats could identify synergies and links for using these mechanisms for improved public awareness, access to information and public participation;

(h) Effective implementation of article 23 of the Cartagena Protocol at the national level requires Government officials, often in different ministries, to communicate and to work together;

⁹ Guidelines on Access to Information, Public Participation and Access to Justice with Respect to Genetically Modified Organisms, available at <http://www.unece.org/env/pp/documents/gmoguidelinesenglish.pdf>.

(i) Capacity-building, including funding for initiatives, regarding public awareness, access to information and public participation on LMOs/GMOs is essential for developing countries and countries with economies in transition. The media, being communicators and multipliers of information, may also benefit from capacity-building;

(j) Cooperation at all levels and regions is essential to implement the Cartagena Protocol's programme of work on public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms and the Aarhus work programmes;

(k) There is a need for additional joint Aarhus Convention/CBD workshops and other joint activities with more stakeholders. The Aarhus Convention and the Cartagena Protocol on Biosafety should also participate in other processes to raise awareness about GMOs/LMOs.

65. Before closing, participants were invited to undertake an evaluation of the workshop. The results of the evaluation indicated that almost all participants had found the workshop useful. All participants who completed the evaluation indicated that there was a need to organize other joint Aarhus Convention/Cartagena Protocol workshops and other cooperative activities by the two secretariats. Some participants said they would have liked to have had more discussions on public participation related to LMOs/GMOs. Others underlined the need for further discussions on access to scientific information and on capacity-building for implementation of laws. A number of participants also mentioned the need for national frameworks and guidelines, and compilations of good practices on access to information and public participation regarding LMOs/GMOs.
