

Shri T. Subbarami Reddy

Chairperson

Standing Committee on Science & Technology, Environment & Forests

Rajya Sabha, Parliament of India

New Delhi

E-mail: reddyts@sansad.nic.in

24th August 2013

Dear Dr. Reddy,

Re: BRAI Bill and Biodiversity

This is to submit to the Committee some of our concerns with respect to the proposed Biotechnology Regulatory Authority of India (BRAI) Bill, 2013. We do so as an India-wide people's group working on issues of conservation of biological diversity for over a decade, through the *Campaign for Conservation and Community Control over Biodiversity*, and therefore wish to place before the Committee certain points from that perspective.

The United Nations (UN) General Assembly declared 2011-2020 the **UN Decade on Biodiversity**; this is with the specific objective to reduce and eventually halt biodiversity loss. The *Statement of Objects and Reasons* of the BRAI Bill, itself points out that India is a party to the UN Convention on Biological Diversity (CBD). Moreover, India both as a centre of diversity as well as the Chair of the CBD has both a responsibility and an opportunity to provide leadership to the biodiversity-rich 'South'. This for a start requires the drafting, implementing and enforcement of a (any) technology regulation that does not compromise biodiversity. The Committee is urged to take cognisance of the fact that outside the CBD, non-parties such as USA, continue to influence the processes of law-making on biosafety in countries that are seen as potential markets for its proprietary (bio) technologies that can put biodiversity at risk.

Meanwhile, life itself and with it livelihoods are dependent on biological heritage. The diversity in natural systems determines their capacity to deal with change. Biodiversity and its local conservation is an insurance against some of the most serious problems that confront us today, which include the climate crises and food security. Therefore, it is absolutely imperative to integrate a robust *biodiversity impact assessment* (BIA) into any decision relating to the country's development planning, economic activities and scientific endeavours. Such a biodiversity-based approach also offers the opportunity to institutionalise sustainable use and a more ecologically sensitive democracy.

In this context India requires a regulation that safeguards biodiversity from the new 'sciences', and not a 'regulatory science' like modern biotechnology that determines how Indian biological resources and related knowledge will be used by the biotechnology industry – be it public

institutions or the large private enterprises. Through the BRAI Bill, the Government of India intends to set up a statutory "science-based regulatory mechanism", yet it falls short of promoting responsible science in many ways. This goes against both sustainable use and biodiversity conservation of biological resources and related people's knowledge.

The BRAI Bill, in its previous and current versions, does not adequately address biodiversity concerns. In fact the manner in which modern biotechnology is being promoted, also undermines the role and responsibilities of those state agencies that are tasked with biodiversity conservation. The said Bill gives a much more pronounced role to the Ministry of Science and Technology (MoST). In doing so it reduces the say of the Ministry of Environment and Forests (MoEF). Regulation of existing, new and emerging biotechnologies from the point of view of biosafety ought to be by an independent body or else continue to be undertaken under the auspices of MoEF and not by MoST, which is the promoter ministry for biotechnology. Else it will very clearly constitute conflict of interest.

The Environment Ministry has the mandate for biosafety and therefore notified the [existing executive rules](#) on the subject, i.e. *Rules for the manufacture, use, import, export and storage of hazardous micro organisms genetically engineered (GE) organisms or cells*, 1989 (under the central Environment Protection Act, 1986). Though the Bill suggests that an Environment Appraisal Panel (EAP) be set up, but the Authority established under the BRAI Bill will not be bound by the EAP. This situation needs to be corrected.

The BRAI Bill also negates another [current domestic legislation](#) namely the Biological Diversity (BD) Act, 2002. As you are probably aware, the MoEF oversees the implementation of the BD regulatory regime. The BD Act in its Chapter IX imposes specific legal duties on the Central Government for biodiversity conservation in the context of biotechnology. Section 36(4)(ii) makes it mandatory for the Central Government to: *regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health*. This provision of law has never been invoked in the decade since the BD Act has come into force. While international law contained in the **Cartagena Protocol on Biosafety** and its supplementary protocol already recognise the likely negative impacts from the use and application of living modified organisms (LMOs) in the open environment.

The Committee may like to itself probe or direct an enquiry into how the biodiversity regime is being used to service the 'life sciences' industry. For instance, under the BD Act the Maharashtra Hybrid Seeds Co. Ltd. (MAHYCO) applied to the National Biodiversity Authority (NBA) to send genetically modified Bt brinjal containing Indian genetic or biological material or resource (GBMR) to Bangladesh, which was allowed. And in fact during the manufacture of GM Bt brinjal in India, MAHYCO, the Indian seed company in which the multinational registered in USA - Monsanto Inc., has a minority stake, accessed genetic material of traditional varieties of brinjals from a state agricultural university in Karnataka in South India, sans any access approval from the NBA. Public pressure led to an investigation by the NBA that found the company in violation of the BD Act. Reportedly, a chargesheet has since been filed against MAHYCO in a court in Dharwad city in Karnataka for wrongful access of Indian GBMR. Any legislation to regulate biotechnology has to contribute to both encouraging biodiversity and discouraging such 'biopiracy'.

At the local level the BD Act mandates biodiversity management committees (BMCs) to be set up by every local body. The NBA and State Biodiversity Boards are required by law to mandatorily consult the BMCs while taking any decision relating to the use of biological resources and associated knowledge that are within the territory of the BMC. The BMC is the lowest rung of the biodiversity institutional structure, which is in line with the 73rd and 74th amendments to the Constitution of India. BMCs need to be consulted before taking any decision on GBMR.

This is negated and made impossible by the BRAI Bill, for it does not provide effective space for citizens to participate meaningfully in decision-making on LMOs. While the BRAI Bill makes it mandatory for the Authority to obtain the objections and suggestions of the public in case of LMOs, but there is nothing in the Bill that expressly either mentions local communities or acknowledges the BMCs. On the contrary the said Bill does not provide for any District-level regulation; while under the existing GE Rules of 1989 a District Level Committee is supposed to be functioning. Biosafety has to literally be made everyone's business. Therefore, while a central independent body may play a coordinating role, but given the nature and scale of the issue the legal regime has to be non-centralised in its design. It can thereby harness the already active citizenry that has been vigilant since the technology was brought in.

It is imperative that the way ahead be paved by a regulatory regime that facilitates biodiversity and capacitates communities. We therefore urge the Committee to through its recommendations suggest that the BRAI Bill be re-drafted to give primacy to biodiversity concerns and local biodiversity-keepers, so as to be in tune with the CBD objectives and the conservation mandate of the BD Act. This will also help in reinstating a new governance model, by putting the realinnovators on the ground in control. The recommendations of the Parliamentary Standing Committee on Agriculture and the Technical Expert Committee of the Supreme Court of India offer useful guidance in that direction. Such an endeavour will also be in sync with the sentiment expressed in India's recent *Science, Technology and Innovation Policy, 2013*: "science, technology and innovation for the people".

Anticipating your kind attention and that of all the members of the said Committee.

Thank you.

Sincerely,

s/d-

Shalini Bhutani & Kanchi Kohli

for Campaign for Conservation and Community Control over Biodiversity

biodcampaign@gmail.com

CC: Shri V. S. P. Singh, Joint Director, Rajya Sabha Secretariat,

Room No. 142, First Floor, Parliament House Annexe, New Delhi – 110 001

E-mail: rsc-st@sansad.nic.in