

# Just Governance : The Nigerian Biosafety Act and GMOs Implications for Nigerians and Africa 24-25 MAY 2016

## **Nigerian Biosafety Law: The Journey and the Need to Act-**



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# **Overview of International Agreements Relevant to Biosafety and The Nigeria Biosafety Law**

- ***Cartagena Protocol  
on Biosafety***

# Introduction to the Cartagena Protocol on Biosafety

- 1st and only international law that **deals purely** on genetic engineering/genetically modified organisms
- Adopted: 29 January 2000 in Montreal
- Entered into force: 11 September 2003
- As of May 15, 2012, there are 163 Parties
- Most of the Parties are developing countries, with the majority from Africa
- Nigeria is one of the Parties

# Objective

“In accordance with the ***precautionary approach*** contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is **to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of LMOs** resulting from modern biotechnology that may have *adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health, and specifically focusing on transboundary movements*”

# Scope

- **Transboundary movement, transit, handling and use** of all **LMOs** that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account human health

# Significance of the Protocol

- For the 1st time in international law there is a **recognition that GMOs are different** from other naturally occurring organisms **and may carry special risks and hazards and therefore need to be regulated internationally**
- Deals with the **international transboundary** movement (import and export) and will deal with **international liability & redress**

# Main Principles

- Precautionary Principle
- Principle of prior informed consent (AIA)
- Establishes the right to say 'no'
- National sovereignty in decision-making
- Obligations and responsibility on producers/exporters



# National implementation

Article 2(1) –

“Each Party shall take necessary and appropriate legal, administrative and other measures to implement its obligations under this Protocol”

A minimum standard that Parties must implement-Article 2 (4):

“Nothing in this Protocol shall be interpreted as restricting the right of a Party to take action that is more protective of the conservation and sustainable use of biological diversity than called for in this Protocol, provided that such action is consistent with the objective and the provisions of this Protocol and is in accordance with that Party’s other obligations under international law.”

***Nagoya-KL***  
**•*Supplementary***  
**•*Protocol on***  
**•*Liability & Redress***

# The outcome

- Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety **adopted 15 October 2010 at COP-MOP 5 in Nagoya, Japan**
- Open for signature 7 March 2011 – 6 March 2012
- 51 signatories so far (as of 15 May 2012) = **includes Nigeria**

# Supplementary Protocol: Administrative approach

- Agreement that the international liability and redress regime would **be legally binding and would comprise administrative approaches**
- **No legally binding international harmonization of civil liability rules and procedures**, but countries' rights to have national civil liability regimes are preserved
- One clause on civil liability in SP
- Clause on review to assess effectiveness of domestic civil liability regimes (five years after entry into force of SP)

# Liable for?

- Damage
  - Adverse effect on the conservation and sustainable use of biological diversity
  - Taking into account risks to human health
- Threshold
  - Damage that is measurable or observable *and* “significant”

# Scope

- Applies to damage resulting from :
  - LMOs which find origin in transboundary movement (that starts after the entry into force of the SP for the Party into whose national jurisdiction the LMO enters)
    - intended for direct use as food or feed, or for processing
    - destined for contained use
    - intended for intentional introduction into environment

# Scope

- Applies to damage resulting from :
  - Authorized LMOs; also LMOs in unintentional and illegal transboundary movements
  - Transboundary movements of LMOs from non-Parties (*shall* be addressed through domestic law implementing the SP)



# Who is liable?

- Operator: Any person in direct or indirect control of the LMO
- Could include, and determined by domestic law:
  - Permit holder
  - Person who placed the LMO on the market
  - Developer
  - Producer
  - Notifier
  - Exporter
  - Importer
  - Carrier
  - Supplier

# Response measures

- Central obligation of Parties to the SP
- Must be implemented by, and in accordance with, domestic law
- **Response measures to**
  - **Prevent, minimize, contain, mitigate or otherwise avoid damage, as appropriate**
  - **Restore biological diversity**

# African Model Law on Biosafety

- Drafted to guide African governments as they domesticated their Biosafety Laws.
- **In 2003** The African Union Adopted the Model Law
- Member States were encouraged to use the African Model Law on Safety as a template for drafting their national biosafety laws.
- **In 2011** Model Law was updated and finalised.
- **in 2014** after the adoption of the **The Nagoya–Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety**, it was adopted at the **Conference of African Ministers of Justice**.
- The Model Law raises the bar for best biosafety practice, going far beyond the provisions of the Cartagena Protocol.
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# THE JOURNEY

- **Nigerian Biosafety Guidelines (2001):**
- First it was Nigerian Biosafety Guidelines (2001): as a regulatory framework to regulate, manage or control the risks associated with the use and release of (GMOs) and for the establishment and maintenance of national and institutional capacities to provide for safety in biotechnology, development of expert human resources and efficient exchange of information. They were merely advisory and did not have the weight of law.
- ***The Nigeria Biosafety Bill***

# An Act to Provide for the Management of Biosafety and for other Related Matters, 2010 (HB 184)



- 1<sup>st</sup> Reading - March 17, 2009
- 2<sup>nd</sup> Reading - June 2, 2009
- 3<sup>rd</sup> Reading – December 7, 2010

**Public Hearing on the Biosafety Bill Organised by the Joint  
Committee on Science and Technology and Agriculture, ABUJA,  
9th December 2009**





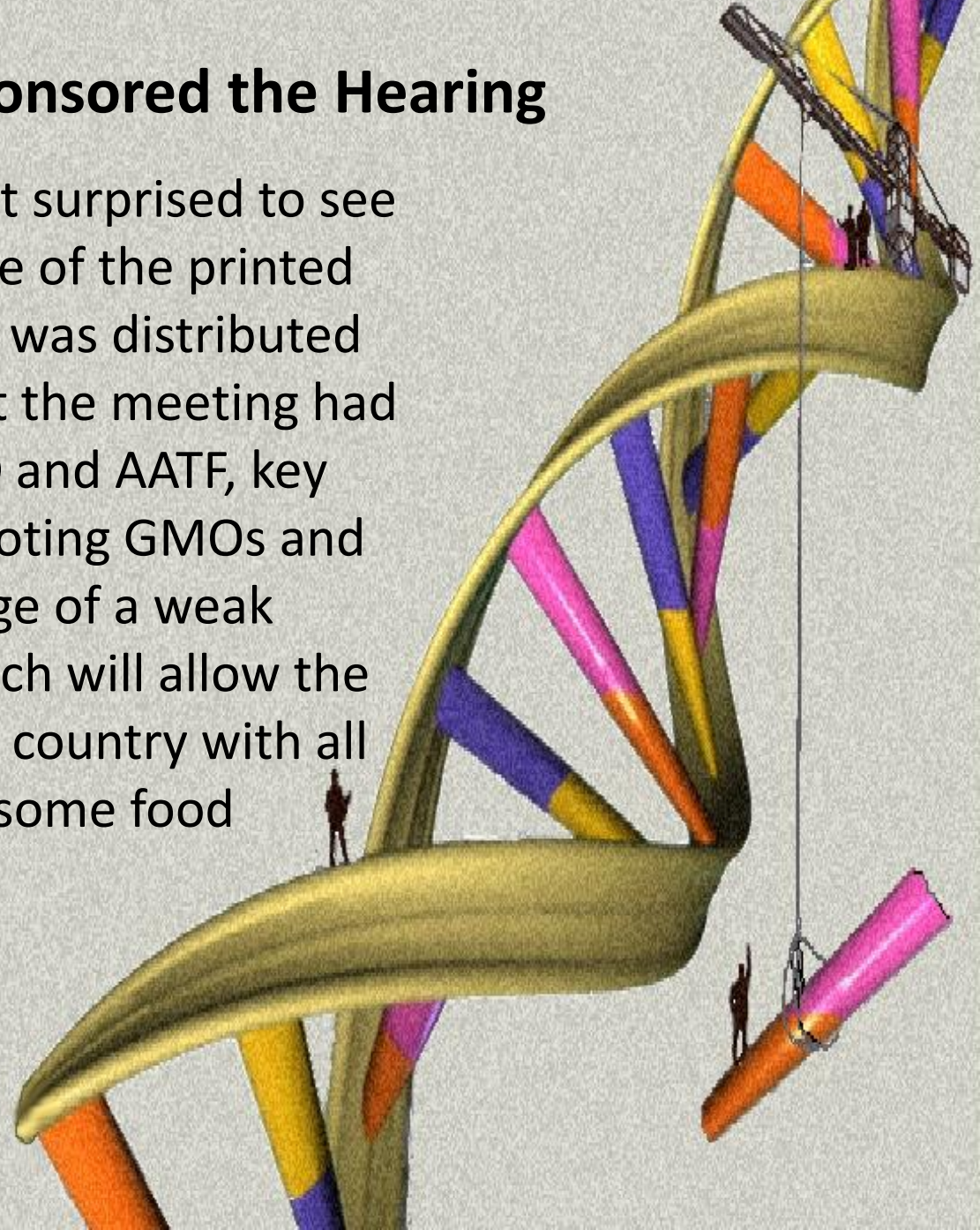
## PURSUIT FOR THE 'QUICK' PASSAGE OF a BILL/LAW

- The processes that produced the National Biosafety Agency (Establishment) Bill, 2010 (HB. 184) were neither transparent nor participatory.
- A December 3<sup>rd</sup>, 2009 Public Hearing on the draft Nigeria Biosafety bill, unequivocally pointed to the fact that the Biotech industry was behind the promotion and sponsor of the draft bill and the succeeding Public Hearing at the complex of the National Assembly .



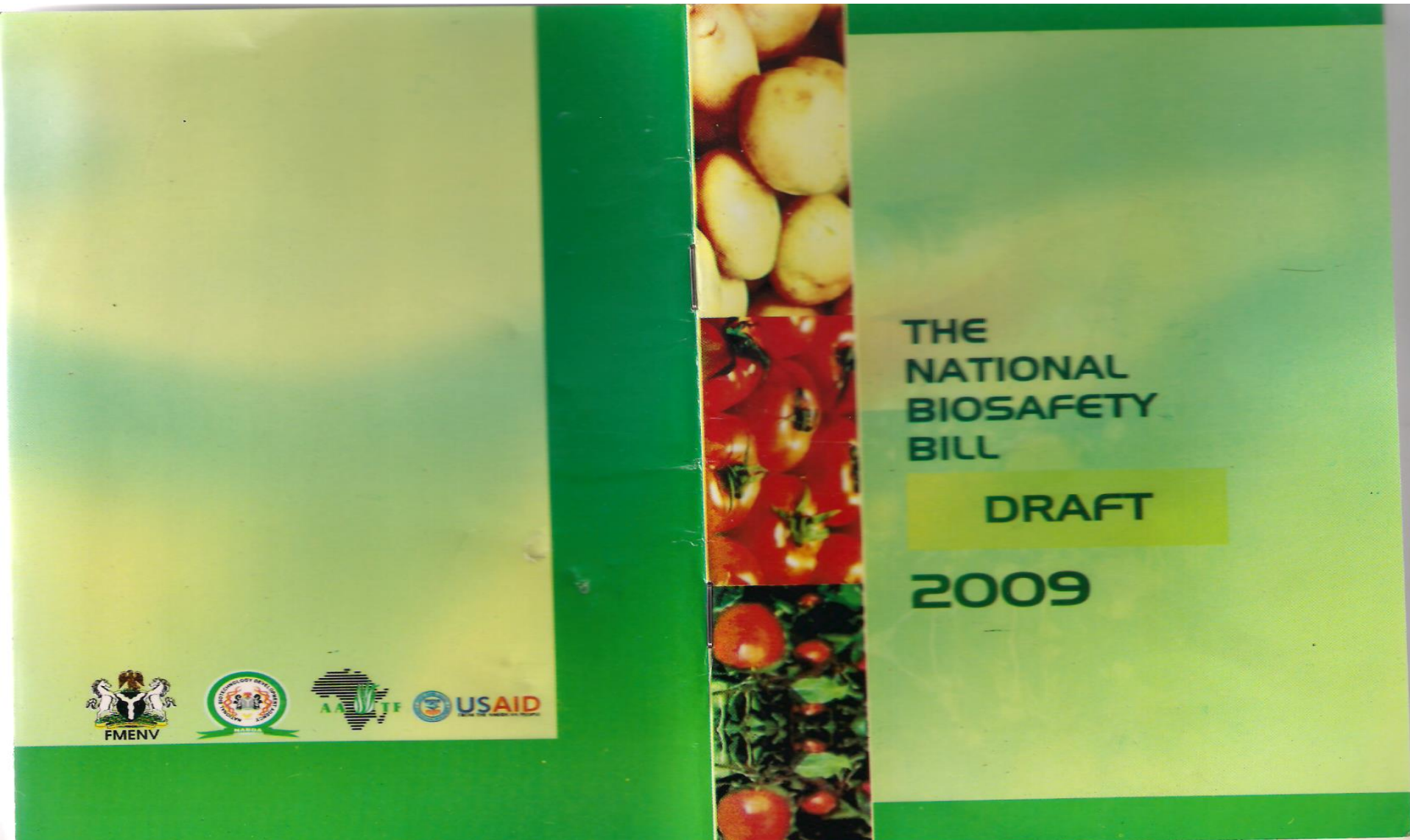
# GMOs PROMOTERS Sponsored the Hearing

- We were also not surprised to see that the back page of the printed biosafety bill that was distributed to stakeholders at the meeting had the logo of USAID and AATF, key institutions promoting GMOs and driving the passage of a weak biosafety bill, which will allow the flooding of of our country with all kinds of unwholesome food





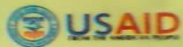
# USAID assists in developing domestic Biosafety Frameworks, an obligation under Cartagena, despite not being signatories themselves



## THE NATIONAL BIOSAFETY BILL

DRAFT

2009



## SKEWED PUBLIC HEARING

- One thing was evident from the start of the debate the House committee were unanimous in their conviction that GMOs must be introduced in Nigeria.
- This position was evident not only in the tone of Honorable Members of the House in their respective welcome remarks, but also by speeches and goodwill messages from mainly biotech research-based organizations that took the podium on invitation from the Chairman of the House Committee on Agriculture, Hon... According to Hon Member (sponsor of the bill), **“biotechnology was a technology that could not be stopped and must be accepted by Nigerians.”**

# What the GMO Proponents Openly said and Declared at the Hearing

- ***“Mr President’s assent after which the coast will be clear ... Nigeria can go into commercialization of genetically enhanced crops/foods”, and also for the government to “encourage foreign investments on genetically engineered crops and products, development and deployment of genetically enhanced crops/products.”***
- ***“workable guideline that will allow biotech practitioners to conduct research and development as well as ag-biotech business.”*** Another stated reason was that national and international institutions ***“will have the opportunity to reap the benefits of biotechnology.”***
- Dr Martin Fregene, director of the BioCassava(BC+) in the office of the International Programme, Donald Danforth Plant Science Centre, St Louis, stated that ***“with the passage of the bill, advanced research institutions abroad and the private sector seed company will be interested in partnering with Nigerian institutions and businesses to evaluate the potential of several relevant GM technologies.”***

# KEY PUSHERS OF GMOS INTO NIGERIA AND WHY NIGERIA IS A TARGET

- The Danforth Center also made it public knowledge that “***We need to start making plans for how these product developments are going to be carried out in our countries of interest and how these products are going to meet the regulatory requirements of those countries***” They were simply looking for countries that have big markets for their products. Nigeria, one of the world’s largest producers of cassava tubers - with over 34 million metric tons produced annually since 2004, and consumed by millions of people – became their focus.

# Bill and Melinda Gates Facilitation of the GM agenda in Nigeria

- in January 9th, 2009, the Bill & Melinda Gates Foundation awarded the Donald Danforth Plant Science Center a \$5.4 million grant. According to the report ***“the funding will help the center secure the approval of African governments to allow field testing of genetically modified banana, rice, sorghum and cassava plants that have been fortified with vitamins, minerals and proteins. These crops are mainstays in the diets of millions in developing countries around the globe”***



A group of eight people, four men and four women, are standing outdoors in a paved area with trees in the background. They are holding a large white banner. The banner features the text "BIG INDUSTRY: TAKE YOUR HANDS OFF OUR FOOD" in large, bold, black, sans-serif capital letters. Below this, the text "Friends of the Earth" is written in a smaller, green, serif font. To the left of the text is a green circular logo consisting of a solid outer ring and a white inner circle with a small gap at the bottom.

**"BIG INDUSTRY:  
TAKE YOUR HANDS OFF OUR FOOD"**  
Friends of the Earth



# Defective Bill Passed and Signed into Law



**MONSANTO PROPERTY  
NO TRESPASSING  
ALLOWED**

# Defective Bill Passed and Signed into Law

## [The National Biosafety](#)

### [Management Agency Act, 2015,](#)

was signed into law in the last week of the administration of President Goodluck Jonathan. In spite of the far-reaching importance of biosafety matters to citizens of Nigeria, the process that led to the passage of the Biosafety Bill and its eventual signing into law was trailed by controversies and complaints from key stakeholders including farmers, consumers and civil society groups.





# A VERY DEFECTIVE LAW/ACT

- The Act has major fundamental flaws: The gaps that have to be filled at least are:
- Access to information;
- Public consultation and participation
- Liability and redress
- Labelling and the right to know
- Decision-making; and
- Appeals and reviews.



# Key Findings

- 1. Composition of the Governing Board is arbitrary**
  - **Section 10 (1) (d).** There are representatives from the private sector, National Biotechnology Development Agency (NABDA), Industry, Trade and investment and the Biotechnology Society of Nigeria. Why should they be part of the Governing Board, when it is really their conduct, their technology and products the law is aiming to regulate? We believe that this is setting the stage for conflict of interest. Industry, Trade and Investments, Biotech Agency and Biotech Society people are not the best regulators here.
  - **No representatives of farmers and consumers in the Governing Board.** It is critical to ensure participation of farmers, because they will be the prime target, they should be "saved" according to the biotech industry.

# Key Findings

- 2. Section 18** : Very alarming provision is the right of the Agency to accept gifts of land, money, or other property or things from within and outside Nigeria, on such terms and conditions if any as may be specified by person or organization offering the gift. The only limitation is that the terms and conditions attached should not be inconsistent with the functions of the agency under the Act.



# Key Findings

The provisions on public participation only requires displaying of copies of the application and relevant information to such places and for such period as the agency may, from time to time, determine in order for the general public to make comment on the application and relevant information. Further, holding of public hearings or consultations in order to obtain further comments and inputs is recommended but not mandated (use of the word “may” rather than “shall”); thus, falls within the discretionary power of the Agency.

# Key Findings

- **FAULT BASED LIABILITY** instead of **STRICT LIABILITY Section 41(1)**: The standard of liability and redress used in the Act is fault-based. We would recommend **Strict Liability**, which is the standard in the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress and in line with the precautionary approach. Fault-based liability requires a higher burden of proof, and could make it difficult for liability to be established.

# Key Findings

- 8. Section 30(1) of the Act provides that only an aggrieved applicant is given the right to appeal against a decision of the Agency. No similar right is given to interested and affected parties who may be adversely affected by a decision.**

# What is Missing?

1. There is no mention of “precautionary principle”.
2. There is no mention of liability and redress in case damage arises from the release of GMOs into the environment (Nigeria signed the Nagoya-KL Supplementary Protocol)

# What is Missing?

3. **No provision on co-existence**, i.e., any person who cultivates any GM crops shall prevent any contamination or commingling of GM crops with any non-GM crops.
4. **No provision on labelling**, i.e., any GMO or product of GMO shall be clearly identified and labelled accordingly.

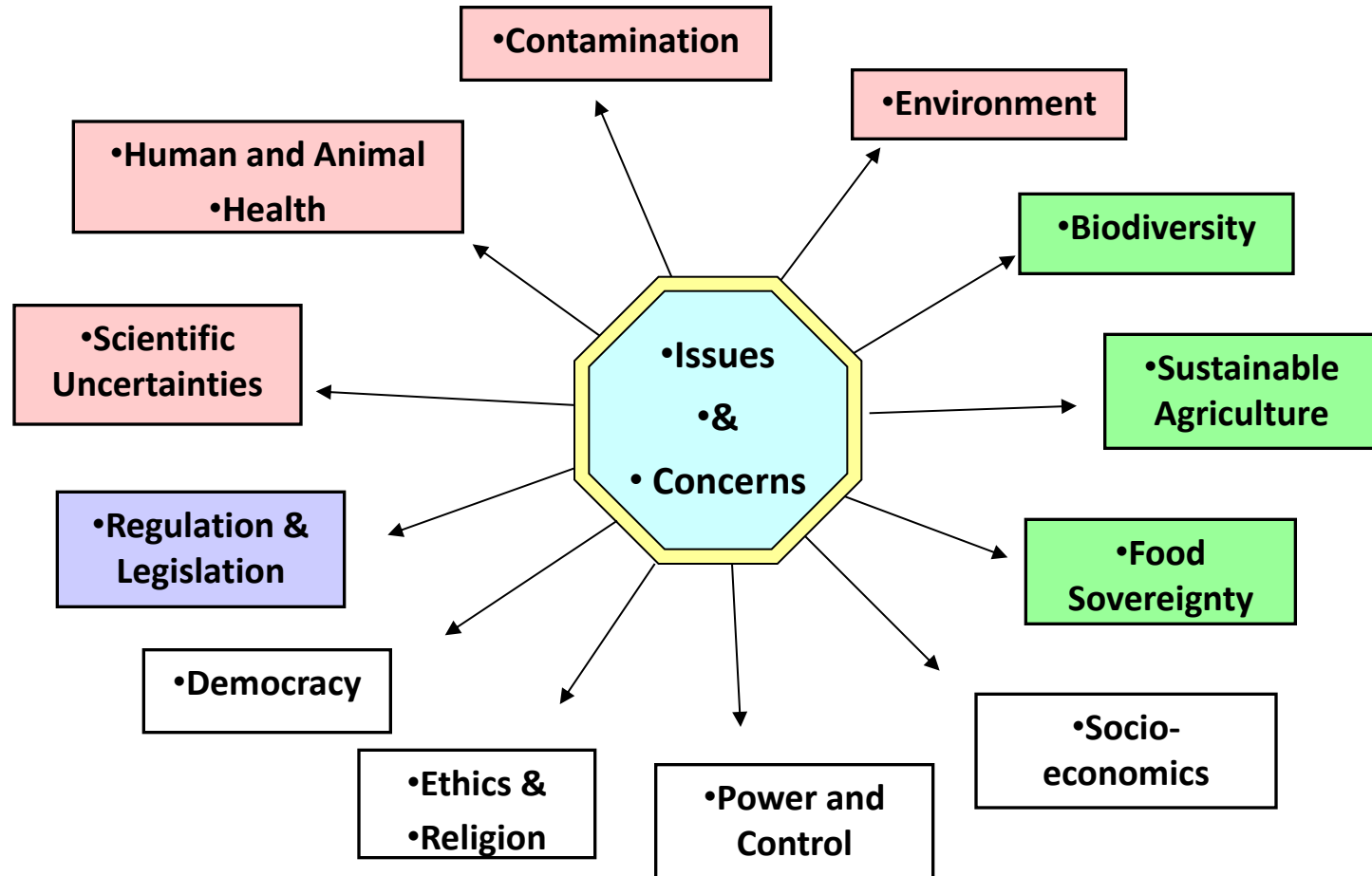


# What is Missing?

- CHECKS and BALANCE: Enormous amounts discretionary powers have been vested in the Agency with not enough mandatory duties in the operational provisions to ensure that the Agency will perform a stewardship role to ensure that GMOs do not pose harm to human and animal health, society and the environment.

# Genetically Modified Organisms

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**Transferring Nigerian Heritage into Private Hands!**

# WHO BENEFITS FROM GM CROPS?



Issue 110

## who benefits from gm crops?

monsanto and the corporate-driven genetically modified crop revolution executive summary



Friends of the Earth International



•What are we doing about all these threats?





In 1998, African agriculturalists and environmental scientists at a UN conference strongly objected to Monsanto's promotional GMO campaign, saying:

"We do not believe that such companies or gene technologies will help our farmers to produce the food that is needed in the 21st century. On the contrary, we think it will **destroy the diversity, the local knowledge and the sustainable agricultural systems** that our farmers have developed for millennia and that it will thus undermine our capacity to feed ourselves."





*we, the people,*

not corporations, not politicians —  
are our best hope for restoring sanity  
to our food and farming system

[organicconsumers.org](http://organicconsumers.org)



WAY TO GO...





**This is not where we want to go!**  
**No to GE and GMO!**



**Thanks for your Attention!**