



Memo n°11: María Colin Lawyer

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LEGAL CASE MAYA YUCATAN BEEKEEPERS AND CAMPECHE, MEXICO, TRADE PERMISSION AGAINST RESISTANT SOYBEAN transgenic herbicide glyphosate AWARDED TO MONSANTO IN 2012

(1) In 2012, the company Monsanto S.A.V.C. (a Mexican Plc) requested a permit from the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA) for the commercial release of glyphosate-resistant GM glyphosate over 253,500 hectares in the states of Campeche, Yucatan, Quintana Roo, San Luis Potosi, Veracruz, Tamaulipas and Chiapas. SAGARPA, through the National Service for Health, Food Safety and Quality (SENASICA) gave permission to grow GM soy on a commercial scale, with the support of the Ministry of Environment and Natural Resources (SEMARNAT), This was despite the conflicting views from its technical bodies, which advised against granting permission because of the environmental effects that would this planting would lead to in the Yucatan Peninsula.

(2) In view of the above, in February 2012 beekeepers and beekeeping groups in Yucatan filed a lawsuit (file no. 286/2012, First District Court in the State of Yucatan), while in Campeche in June 2012 two lawsuits were filed (files no. 753/2012 and 762/2012, Second District Court in the State of Campeche).

(3) Among the main arguments raised in the lawsuit is the violation of the right to work of beekeepers that would result from planting genetically modified soy, as this is one of the main economic activities in the region. Also included is the violation of the right to a healthy environment by overuse of herbicides and deforestation, along with the lack of application of the precautionary principle. Violations of the right to free, prior and informed consent of indigenous peoples and communities, in violation of Article 2 of the Constitution of the United Mexican States and Convention 169 of the International Labour Organization (ILO) concerning Indigenous or Tribal Peoples. Finally, it was alleged that the authorities responsible had failed to take into account the binding verdicts issued by the then National Institute of Ecology (INE), the National Commission for Biodiversity Knowledge and Use, Conabio (CONABIO) and the National Commission for Protected Natural Areas (CONANP). They advised against granting permission because of the environmental effects that would result in the planting of GM soybeans in the Peninsula.

(4) In response, the Second District Judge in the State of Campeche suspended the permission for trade, implying that no permission would be given until the matter was resolved. This suspension was in force from June 28th, 2012 to January 30th, 2013, when it was overturned by the Court of Appeal of the Thirty-First Circuit in the State of Campeche. Finally, in March 2014, the Second District Court of the state of Campeche issued verdicts in favour of the communities and associations of Mayan beekeepers, and in July the same year, the First District Court of Yucatan also ruled in favour of beekeepers in the state of Yucatan. Both rulings stated that the right to prior,

free and informed consent had been violated, i.e. the Mayan people, and ordered the following: a) declare void the permission for the commercial release of genetically modified soybeans; b) consult the Mayan people according to international standards in this area; c) once the consultation had been carried out, issue a new decision on the Monsanto's application.

(5) Given these verdicts, Monsanto, SENASICA and the Federal Public Ministry filed a total of 7 motions for review that were resolved by the second chamber of the Supreme Court of Justice (SCJ) on November 4th, 2015. In those rulings the violation of the right to free, prior and informed consent was confirmed, as there is sufficient evidence to state that glyphosate herbicide-resistant GM soy planting is a significant project, because of the potential effect it may have on the indigenous communities concerned. Therefore, the decision of the judges of first instance to nullify the permission was reconfirmed, and it was ordered that a consultation be held in the municipalities where the plaintiffs lived. Permission to plant GM soy was banned in several municipalities in Campeche and Yucatan.

(6) The most pertinent points of the high court ruling state that the release of glyphosate herbicide-resistant GM soybean could have a significant impact on the environment in which indigenous communities live, due to the possibility of it altering biodiversity, animal and plant health. The Second Chamber of the Supreme Court refers to the WHO's classification of glyphosate, in March 2015, declaring it as "probably carcinogenic" to humans, with a rating of Group 2A instead of 2B.

(7) In addition, the Second Chamber of the Supreme Court consider the studies of the National Commission of Natural Protected Areas (CONANP) and the Secretariat of Environment and Natural Resources of the State of Yucatan (SEDUMA) indicating "*evidence (of) the possible risks of glyphosate, among which is the dissipation of it to underground aquifers, **affecting all forms of nearby life**, in particular ... the subsoil of the Yucatan Peninsula has karst features, so that chemicals and other substances applied to the soil move quickly to aquifer layers*".¹

(8) The Ministers of the Second Chamber of the Supreme Court consider the warnings by CONANP and CONABIO about bee pollination contaminating the genetic material from other organisms via pollen, as they have a radius of 1-3 kilometres, or during periods of shortage of nectar up to 12 kilometres.²

(9) The Chamber of the Supreme Court also includes the statements that CONABIO had made in their technical opinion concerning Monsanto's release of GM soybean

¹ Ruling of the Second Chamber of the Supreme Court, November 2015.

² Ibid.

outside authorised areas and in the natural Protected Areas (PNA) Bala'an Kaxx and Calakmul.³

(10) Despite multiple rulings against it in the first and second grades, ordering the suspension of planting GM soybeans, apparently some producers in the region have persisted in planting them, without the Mexican State taking action to investigate, discipline or seek adequate and effective measures to prevent the planting GM soy and the use of glyphosate. This has caused serious impacts on the life and personal integrity of Mayan communities, for example water polluted with glyphosate and the disappearance of hectares of forests in the territory where Mayan people undertake their traditional activities.

Needless to say, this planting of GM soybeans in the area would not be possible if the company Monsanto were not distributing GM seeds without the consent of the Federal and State authorities.

(11) Additionally, although other environmental authorities had the duty to supervise the planting of genetically modified soy so that it did not cause damage to the environment, this has not been the case. On July 25th this year, people from the Mayan communities filed a petition (1447-1416) with the Inter-American Commission on Human Rights (IACHR) alleging that the planting of GM soybeans in the states of Campeche and Yucatan, Mexico, is affecting the life, integrity, health and healthy environment of Mayan communities.

(12) In the IACHR petition it is suggested that the rights of Mayan communities are at risk because of deforestation and pollution caused by the planting of genetically modified soy has in their territories, particularly water pollution with glyphosate residues. This is compounded because the Mexican State has not taken effective measures to safeguard their rights; therefore precautionary measures have been requested from the Commission, which until the end of August was in the process of analysing these measures.

(13) In addition, on January 25th, 2014, a people's initiative was filed with the Federal Attorney for Environmental Protection (PROFEPA), highlighting that deforestation caused by the planting of GM soybeans leads to the death of bees and loss of hives. The opening of absorption wells – a practice which is banned under Mexican law - causes water pollution in groundwater, because it acts as a direct drain from the ground where glyphosate is applied to the water table itself. This was settled on December 2nd, 2015, in order to close the file without taking any measures to prevent the recurrence of the alleged events.

(14) The 13th and 24th August 2015 separate people's initiatives were filed with the National Water Commission (CONAGUA) due to the construction of more absorption

³ Ibid.

wells. The authority responded to the first initiative that the well had a permit, without further investigation. The second one received no response.

(15) On 21st and 24th August 2015 (File. PFPA / 5.3 / 2C.28.5.2 / 00156-15) two new, separate people's initiatives were filed to PROFEPA, warning again of deforestation caused by planting GM soy, the death of bees and loss of hives, as well as the opening of absorption wells. To date, these have not been resolved.

(16) Even though the Supreme Court rulings are in the implementation stage (given the consultation with the communities in Hopelchén and Tenabo in Campeche, which began on March 31st and April 1st, respectively) farmers in the state of Campeche have stated in meetings with various authorities - including those with supervisory powers on GMOs like SAGARPA and SENASICA - that planting of transgenic soy has continued, leading to the presentation of a series of lawsuits that they are listed at the end of the document in Annex 2, filed by several civil society organizations such as: the Interamerican Association for Environmental Defence (AIDA); the Mexican Centre for Environmental Law (CEMDA); Greenpeace Mexico; Indignation, Promotion and Defence of Human Rights, AC (Outrage); and Litiga, Organization of Strategic Litigation for Human Rights AC (Litiga OLE) who act as advisers for communities.

(17) At the meeting during the preliminary agreement stage for the consultation of the Mayan people held on 30th June in the town of Hopelchén, the Interministerial Commission on the Biosecurity of Genetically Modified Organisms (CIBIOGEM) - together with the National Commission for the Development of Indigenous Peoples (CDI) who is in charge of carrying out consultation with indigenous communities - pledged to follow up on the claims by farmers that they are planting GM soybeans for agricultural cycle that began in June 2016. However, until the end of August 2016, neither CIBIOGEM nor any other authority have been shown to be performing the inspections and monitoring to verify that there is illegal planting of GM soy.

(18) To this end, the Second District Court in the State of Campeche has been requested to begin procedures for non-compliance with a ruling, because planting continues, a request that was denied and that is being disputed internally.

Anexo

Legal proceedings filed by communities and various organisations for damages to Mayan communities in the states of Campeche and Yucatan derived from commercial permits for the planting of GM soy

Type of Trial	Date of presentation	Administrative body or legal court	Case file	Defendant or accused	Fact or facts presented	State of trial
-Lawsuit filed by beekeepers and beekeeping groups of Yucatan.	February 2012	First District Court in the State of Yucatan.	286/2012	Ministry Of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA).	Against permits given to Monsanto for the commercial cultivation of GM soy.	On November 4th, 2015, the Second Chamber of the Supreme Court of Justice of the Nation (Supreme Court) ruled on 7 review appeals of cases where violations were confirmed of the right to prior, free and informed consent for members of the Mayan people with regard to permits for Monsanto, because there is sufficient evidence to believe that planting soybeans resistant to the herbicide glyphosate GM is a project which will have a significant impact, due to the potential affect that may be experienced by indigenous communities indigenous
-Lawsuit filed by beekeepers and beekeeping groups in Campeche	June 2012	Second District Court in the State of Campeche.	753/2012 762/2012	National Service for Health, Food Safety and Quality (SENASICA). Ministry Of Environment and Natural Resources (SEMARNAT)		

People's Initiative	24 August 2015.	Federal Prosecutor for Environmental Protection (PROFEPA)	PFPA / 5.3 / 2C.28.5.2 / 11824 Against whomever is found to be responsible	Deforestation, linked to arson, illegal coal mining in the municipality of Hopelchén.	concerned. The decision of the judges of the first instance was upheld, and it was ordered that consultations be carried out in the municipalities inhabited by the applicants. Permission to plant transgenic soybeans had no legal basis in several municipalities of Campeche and Yucatan until such time as the consultation was carried out. Sent to PROFEPA Campeche on 15 September 2015. No action taken since that date. Complaint will be lodged for administrative silence.
People's Initiative	August 24, 2015.	National Water Commission (CONAGUA)	Against the person responsible	Illegal use of water through absorption wells, despite the express prohibition of illegal use of groundwater in the municipality of Hopelchén. Serious risk of contamination of groundwater.	Writ admitting the lawsuit. No action since that date. Complaint will be lodged for administrative silence.
People's Initiative	June 2, 2016.	PROFEPA	PFPA / 11.7 / 2C.28.2 / 00094-16 Monsanto Commercial, SACV and / or Monsanto Commercial,	Desiccation of the Ik and Cancabchen lagoons. Illegal planting in the city of Campeche and Hopelchén without proper permit.	Referred to the PROFEPA Campeche. August 9 PROFEPA Delegation Campeche requested via email that we give more details of the

				SRLCV		complaint.
				Farmers cooperating with the company and whomever is found to be responsible.		PROFEPA request was dropped Aug. 10.
Lawsuit of Criminal Wrongdoing	July 6, 2016.	Attorney General of the Republic (PGR)	AYD-UEIDAPLE-020/2016	Against those responsible.	Violation of Art. 119 sections I and XXVII of LBOGM when planting for GM soybeans for commercial purposes in the municipality of Campeche, Campeche, without the proper permit.	Visit to PGR on 28 July with the lawyer leading the case, Ms. Nabor Nely Magali Alvarado.
					Possible Criminal act in accordance with Article 420 TER of the Federal Criminal Code.	Lawyer requested further information about communities where GM soy is planted since the investigating police would visit these areas the first or second week of August.
Complaint against a civil servant	July 14, 2016	Internal Control Office (OIC) SAGARPA	2016 / SAGARPA A7DE299	State Delegate of SAGARPA in Campeche, Cruz Alberto Uk Hernandez	Violation of Arts. 7, 8, 10 and 49 of the Federal Law of Administrative Responsibilities of Civil Servants (LFRASP) for making statements during the consultation process in which: They have encouraged farmers to illegally plant GM soybeans in the municipality of Campeche, State of	July 22, 2016, the head of the OIC Complaints Areas in the SAGARPA office sent a letter indicating the file number and stating that the matter would be investigated.

Campeche.

This despite the fact that the municipality does not have the permits and, if done, would be violating the provisions of Article 119, sections I and XXVII of the Law on Biosecurity of GMOs (LBOGM), and could also be considered a criminal act under Article 420 TER of the Federal Penal Code.

Plaintiffs have been intimidating by stating that: "*because of 6 communities we can't plant anything*", violating the character of free consultation and the principle of good faith, as well as causing social conflict.

2. Farmers have been misinformed, because as a representative of SAGARPA said: "*whoever wants to plant GM soy can do*" without informing them that the municipality of Campeche can not do

this, since it lacks the permit and that Hopelchén and Tenabo the permit is suspended due to the process of consultation; thereby generating the possible violation of Art. 119 sections I and XXVII of LBOGM.

3. It shows bias towards the illegal planting of GM soybeans thus violating the right to free consultation and good faith for indigenous people and communities, as established in the Art. 2 of the Constitution, ILO Convention 169 of the Organization and the ruling of the 2nd Chamber of the Supreme Court.

Citizen's complaint August 22, SENASICA 2016.
SAGARPA
Directorate General.

Monsanto Commercial, SACV and / or Monsanto Commercial,

Planting illegally in the city of Campeche, Campeche, without proper permit.

Planting illegally in the municipality of Hopelchén,

		Agrifood Safety, Aquaculture and Fisheries Biosecurity Directorate for GMOs.		SRLCV Farmers cooperating with the company and those responsible.	Campeche, violating the ruling of the 2nd Chamber of the Supreme Court, as the permission granted to the company Monsanto has no legal basis until the consultation is carried out.	
					Inspection and surveillance of the areas reported are requested. Communities of Mayan beekeepers, the Interamerican Association for Environmental Defence (AIDA), the Mexican Centre for Environmental Law (CEMDA), Greenpeace Mexico; Indignation, Promotion and Defence of Human Rights, AC (Outrage); and Litiga, Organization of Strategic Litigation for Human Rights	On 26 July, the Commission sent an official letter stating that the petition had been received and registered under the number indicated below: Number: P-1447-1416 Date Received: 07/25/2016 State: Mexico.
Petition to the Inter-American System of Human Rights	July 25, 2016	Inter-American Commission on Human Rights	P-1447-16	Mexican Government	AC (OLE) reported that the planting of GM soybeans in the states of Campeche and Yucatan, Mexico, is affecting the life, integrity, health and healthy environment of the Mayan communities. Their rights are at risk because of deforestation and pollution that the planting of	On August 4, the Commission requested more information for the granting of precautionary measures such as: a) Providing more elements on the risk situation of the petitioners. If possible, attach a copy of recent medical certificates and

genetically modified soy individual studies.
leads to in their territories.

The situation is worsening, b) Indicate medical treatment
as the Mexican State has not according to the
taken effective measures to recommendations of experts.
safeguard the rights of
communities.

Precautionary measures
called for.

August 19, the petitioners
requested an extension of 15
days from the date of receipt,
given the complexity of the
matter.