

Disputes over GM maize in Mexico from the Perspective of Human Right to Food

Jasmin Mäki

Fierce battle over GM maize in Mexico

For some years now, a fierce battle has been going on in Mexico about whether to allow the cultivation of genetically modified (GM) maize. Between 2009 and 2012, GM maize was experimentally cultivated and Monsanto with other agribusiness companies requested permission for commercial cultivation. 2013 brought good news to civil society; releasing GM maize was suspended until it is resolved whether it causes harm to the environment and to consumers' rights. This resolution was a result of a class action suit presented by Semillas de Vida and Colectivas AC, backed up by 20 organizations and 53 individuals (ETC Group 2014). In August 2015, another court ruled against this prohibition, which in turn was soon ran over by social movements' appeal. Other actors active on the issue include organizations and campaigns such as Sin Maíz no hay País, VíaOrgánica, Red enDefensadelMaíz and Greenpeace. Farmers and civil society have strongly opposed the application of GM maize in the country of its origin and biodiversity. Maize is the main food source for Mexicans, and has deep cultural meanings rooted in indigenous communities. Mexico is the only country whose cuisine is protected by UNESCO as the cultural heritage of humanity.

The battle over maize keeps on going. The agribusiness companies have not given up easily a chance for a market expansion. In the last few years, they have made about 100 new appeals for the government and about the same amount of legal charges against the suspension, trying to open the possibility for cultivation. Monsanto has also charged the judge who ruled the suspension in 2013, Jaime Manuel Marroquin, for being partial. Also, the Mexican governmental institutions, including Ministry of Agriculture and Ministry of Environment, have raised charges against the suspension, this way promoting the interests of companies (ETC Group 2014).

GMOs (genetically modified organisms) are a highly disputed issue for the novelty, scientific uncertainty and possible risks related to them. According to sociologist Ulrich Beck the progress of GMOs is based on scientific evaluations, but final decisions depend on social acceptance. The independence in this decision-making is a measure of democracy. He criticizes underestimating the risks and the use of biotechnology as a means to solve problems related to human health and food security(Beck 1995: 23-58).The concept of biohegemony has been used to describe how material, institutional and discursive power of

politicians, scientists and companies maintain a hegemony favourable for agrobiotechnology (Newell 2009: 38). As social movements do not hold the same amount of power, they argue strategically in the media in order to justify their viewpoints and influence general opinion. In this process they actively create new meanings, but this creation is also subject to restricting structural factors, such as legislation and the social and political environment (Motta 2014: 5). In this article the focus is on the relation of GM cultivation and human right to food and especially how the social movements in Mexico interpret GM maize as a threat to the realization of this right.

Social movements in Mexico mostly argue against GM products on the grounds of possible environmental and health risks; there is not enough scientific proof about the safety of GMOs. They pose a threat of genetic contamination and damage to biodiversity. There is a great risk for human health, as in no other country biotechnology is allowed on crops which form the basis of nutrition. Allergenic reactions, adverse effects by toxins and possible other currently unknown harms for health are subjects of concern. It has been argued that sufficient investigations were not conducted when authorizations were given for experimental cultivation of GM maize in Mexico. Social movements have expressed their worries about the government's inability to take adequate samplings and coordinate responsibilities on biosafety; this violates national laws on biosafety and environment, as well as the international Cartagena Protocol on Biosafety (2000; 2003). The National Commission on the Use and Knowledge of Biodiversity (Conabio) proposed as a conclusion of their research a total prohibition on GM maize. The promoters of GM corn argue the opposite: GMOs are safe, do not threaten the native corn, possible risks are carefully controlled (Motta 2014: 44-52).

From human right to food to GM regulation

How do GMOs relate to universally declared human rights? How can the discussion about GM maize in Mexico be seen from the viewpoint of human right to adequate food? The Mexican civil society actors have argued that cultivation of GM maize threatens the right to adequate food, among other rights. Human right to adequate food is protected in the article 25 of Universal Human Rights Declaration (1948) and in the article 11 of the International Covenant on Economic, Social and Cultural Rights (1966). The latter also establishes the obligations of states, "to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources".

The right to adequate food is essential for human dignity and for the fulfilment of other human rights. The Human Rights Council appoints the Special Rapporteur on the right to food, for whom "the right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear" (OHCHR).

There are three key aspects regarding right to food: adequacy, availability and accessibility. Adequacy refers to a range of factors to be taken into account when considering the appropriateness of a certain diet in specific conditions; economic, social, cultural, climatic and ecologic conditions. Sustainability and food security form part of adequacy, as they address the future conditions for the realization of the right to food. Availability means that sufficient quality food, “free from adverse substances, and acceptable within a given culture” should be available, either by direct production using natural resources or by functioning distribution and markets. Cultural values and consumer concerns regarding food should be considered. Accessibility is both economical and physical; it should be financially at reasonable level, and especially physical access of vulnerable groups should be guaranteed. Food should be accessible in a sustainable manner in accordance with other human rights (CESCR 1999). Food security is realized when “all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life” (World Food Summit Plan of Action 1996).

The 4th article of the Constitution of Mexico also guarantees: “Every person has a right to food, which is nutritious, sufficient and of good quality. The state guarantees it.” The Mexican Biosafety Law (2005, art.2) offers special protection for native maize in its centre of origin. The law establishes a case-by-case evaluation process for application of GM crops, and stages of experimental liberation, pilot liberation and commercial liberation. This is in accordance with the ‘precautionary principle’ established in the international Cartagena Protocol on Biosafety to the Convention of Biological Diversity (2000; 2003), of which Mexico is party. Precautionary principle promotes cautious consideration because of the scientific uncertainty and possible risks whereas the principle of ‘substantial equivalence’ treats GMOs as equivalent to traditional products. With both principles case-by-case considerations are applied, though up to varying extents.

Ensuring right to food and regulating GMOs – State role in Mexico?

States are obliged to secure progressively the access to adequate food by respecting, protecting and fulfilling the right to food. Respecting means not to deny access by any measures. States should also protect individuals’ access to food from negative interference by other individuals or companies. Fulfilling means positive measures of facilitating the access to food, livelihood and food security, and ultimately providing food if necessary. The state has the responsibility to provide an environment where also business actors, local communities, individuals and civil society organizations can and should contribute to the realization of the right to adequate food (CESCR 1999).

Food and Agriculture Organization of the United Nations has established the “Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security” (2004). According to guideline 8D about biodiversity of genetic resources for food, states should act to:

"— — prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture, including, as appropriate, for the protection of relevant traditional knowledge and equitable participation in sharing benefits arising from the use of these resources, and by encouraging, as appropriate, the participation of local and indigenous communities and farmers in making national decisions on matters related to the conservation and sustainable use of genetic resources for food and agriculture."

Decision-making processes should be open for individuals, indigenous communities and vulnerable groups. When necessary, public resources should be allocated to secure the participation, especially when other participants are more powerful (FAO Corporate document repository). This is crucial when decisions about GM crops are being made. Because of scientific uncertainty and disputes, the issue should be socially negotiated. GM application can only take place, if it is largely accepted in the society.

Former Special Rapporteur on the right to food, Olivier de Schutter, also highlights the responsibility of states to guarantee the right to food of smallholders and secure their position in the agribusiness. It means involving them when food security and other relevant aspects are considered, and promoting diverse ways of trading. It is considered "vital that farmers are not forced to join the agro-export networks, and that they are sufficiently supported if they opt, instead, for the production of food crops for local consumption". Smallholders in developing countries are the most vulnerable group for food insecurity (De Schutter 2009a: 11). Another vulnerable group are indigenous communities. The state also has obligations to protect their right to food from external parties. Here applies the obligation to fulfill; indigenous peoples' access to food and its production should be facilitated, and the ways indigenous peoples aspire for food security should be respected (Ziegler 2005).

Mexican government has shown inabilities to build a coherent long term plan for efficient food production and distribution. Hunger is a real problem in the country, despite of the fact that overweight is more and more common. There is imbalance in food politics and inequity of access to food. The right to food of vulnerable groups such as indigenous communities, small farmers and people of the countryside is not sufficiently addressed. Also, the nutritional content of food should be taken into account; fast food is displacing domestic fresh food. GM maize has been offered as an answer to food security, but it is questionable whether it provides an answer to Mexican food problems. So far GM cultivation by large companies has often worsened vulnerable groups' food security situation. Additionally, the deep cultural

values associated to native maize are to be respected, and the specific conditions of Mexico regarding food adequacy should be considered. Civil society has expressed concerns about the disappearance of maize related knowledge and practices (ETC Group 2014).

Along with the right to food should be considered other rights closely linked to it; healthy environment, right to informed choice (labelling of GM products) and to democratic participation. A holistic view should be applied in politics regarding these interdependent rights.

Free trade, intellectual property rights and GM crops

According to Jean Ziegler, another former Special Rapporteur on the right to food, one major economic factor preventing the realization of the right to food is related to biotechnology and GM plants in the form of ownership of patents by companies of the North. This affects negatively to accessibility and availability of food (Ziegler 2001: 3). Considering this it can be argued that the introduction of GM cultivation, at least under the current system of multinational company dominance, might risk the food security of small farmers and vulnerable groups.

AsbjørnEide, also a former Special Rapporteur on the right to food, writes about state obligations regarding economic, social and cultural rights:

"— State obligations require active protection against other, more assertive or aggressive subjects - more powerful economic interests, such as protection against fraud, against unethical behaviour in trade and contractual relations, against the marketing and dumping of hazardous or dangerous products. This protective function of the State is widely used and is the most important aspect of State obligations with regard to economic, social, and cultural rights, similar to the role of the State as protector of civil and political rights; —" (Eide, A: 1999)

In the context of Mexico, this statement imposes a pressure on the government which finds itself in the midst of appeals and lobbying by large multinational companies and fiercely resisting civil society. The situation is not made easier by the ostensible democracy of the country; corruption and close ties between politicians and economic actors are not a rarity. The multilevel system of tribunals at both federal and state levels complicates the issue; the

decisions regarding GMOs have not been coherent. The inability to state a clear long-term stance can be seen in the resolutions.

De Schutter has criticized the uneven realization of the right to food in Mexico, despite general improvements in alleviating hunger. According to official numbers, 28 million people had insufficient access to food in 2010 (De Schutter 2012). At the same time, the wider availability of unhealthy options and economic growth have resulted in a largest number of overweight people in the world (Mann 2014: 100). The challenge for Mexico is to secure the good function of different forms of farming coexisting in the country. The key problems are the power of interest groups and insufficient mechanisms for people to claim their rights. There are various social assistance programs, but their beneficiaries are not stated clearly enough and they should focus better on the aspect of adequate food. De Schutter made specific notions on GM maize cultivation plans in Mexico. He sees the benefits unclear, as transgenic maize does not bring a solution to the issues relevant for Mexican agriculture, such as drought or poor soil. Instead, there are various problems. The separation of GM and native maize would be impossible because of gene flow and seed exchange by farmers. Conserving biodiversity is a crucial factor in answering challenges posed by climate change and environmental changes. Another threat is the increasing power of companies and thereby growing insecurity of food and income for small farmers. There are more relevant aspects to be considered when aiming for food security and efficiency in farming in Mexico (De Schutter 2012: 6-17).

According to FAO: "It is said that consumers take the risks while the producers reap the benefits." These risks imply the possible harm that GMOs might cause to human health. FAO promotes considering equity; the gap between poor and the rich. Especially how the widening application of GM agriculture could guarantee the nutrition and health also for poorer populations in the developing countries. According to the Union of Concerned Scientists, on the large scale the GM crops have not been especially productive compared to conventional farming. Also, improving traditional farming methods improves the crops and it should be carefully investigated which are the best ways to improve food production (Gurian-Sherman 2009).

Patents on seeds can prevent the full realization of the right to food. Following the principles of the right, people should have economic access to food, or have the possibilities to produce the food. Expensive seeds protected by intellectual property rights and the obligation to buy new GM seeds every year from companies pose a threat to these aspects. Patents on the main source of food and life are in contradiction with the principle of human

right to food which guarantees access to nutrition, the basic need for every human to exist. Intellectual property rights should be rightfully respected, but when companies are taking hold of source of nutrition, should it be under closer scrutiny.

The state obligations on the right to food apply to regulating commercial seed markets, as well as protecting traditional farmers' seeds and agrobiodiversity. Emergence of GM crops and seed markets have led farmers to become dependent on it. Therefore, it is the obligation of state to ensure that the conditions for farmers remain reasonable for them to be able to continue farming and producing food and that new innovations benefit all farmers, including the most vulnerable groups. This is something where the international community and states have work to do. Scientific progress should be for the benefit of all. Commercial and traditional seed systems should have a balanced co-existence. The states should take these aspects into account as much as possible in relation to intellectual property rights. To promote food security, appropriate methods should be used for given conditions. Commercial seeds do not necessarily need to be turned down, but states should appreciate traditional methods and protect their development and seed diversity (De Schutter 2009b).

Civil society: No to GM maize! Broadening the concept of the right to food

Mexican civil society has argued that GM maize poses a threat for the right to food; above it has been argued that this is possible. GM maize brings along unknown risks, which can have adverse effects on the access to healthy food. Under the current system of corporate power and intellectual property rights the livelihoods of farmers and vulnerable groups are threatened.

The concept of food sovereignty is central in the arguments of civil society in Mexico. It is also the focus of the campaign "Sin Maíz no hay País" (Without Maize there is no Country). To achieve this the campaign addresses various issues regarding food politics (for more information www.sinmaiznohaypais.org). Food sovereignty has come to be seen as an alternative to free trade in agriculture. The concept was introduced by Via Campesina, a peasants' movement, as: "the right of each nation to maintain and develop its own capacity to produce its basic foods respecting cultural and productive diversity" (Claeys 2013). Food sovereignty highlights the national and individual access to food security in time when free trade agreements undermine the ability of states to secure access to food. The idea of food sovereignty is not against trade, but it argues that exports and subsidized imports should not

be prioritized excessively over local production as it may suffer of this. Food sovereignty also implies that countries should be able to decide whether they allow GM crops and recognizes the right of people to know and decide what they eat. Ziegler considers that food sovereignty is an interesting alternative to be taken into account when right to food is considered, as the current system of free trading does not seem to secure, and instead prevents, the realization of the right to food for all people, especially for most vulnerable groups. Right to food can actually be used as an instrument for aspiring food sovereignty, when trade conditions are creating unequal conditions for access to food (Ziegler 2004). Following fast integration to global food markets, Mexico has already lost a great deal of its food sovereignty. A third of all maize is nowadays imported. National production relies still largely on small farmers, who collectively produce 75 % of the national grains (Mann 2014: 100).

Priscilla Claeys suggests that Via Campesina, by introducing the concept of food sovereignty, has actually introduced new ideas of human rights, instead of resorting to the old ones. This is their way to reframe rights from a more collective point of view, to work more effectively for peasants' rights. The framing allows the organization to go beyond the possibilities offered by traditional concepts of rights, which could be considered more liberal and individualistic. Via Campesina includes not only obligations of states, but also those of private and transnational actors. It corresponds to some extent with collective rights already recognized by United Nations. Via Campesina has even sought the establishment of the right to food sovereignty as a new human right, however unsuccessfully (Claeys 2013).

The Mexican Chapter of the International Peoples' Tribunal, an independent institution working on human rights issues, demanded in 2014 that the government of Mexico prohibit all GM maize cultivation. According to the resolution, the government should prohibit the cultivation because native maize is the most important food source and "a vital element of the social structure and cohesion". It is "basis of the livelihood of the Peoples that created it for the good of all mankind". The protection of biodiversity from contamination is highlighted (The Mexican Chapter of International Peoples' Tribunal 2014: 72).

Conclusion

Genetically engineered crops have been introduced as an answer to hunger and malnutrition; they are said to provide better crops and to be more nutritious. At the same time, they imply possible risks to human health and access to food. They also affect environment and biodiversity. Human rights are interdependent and indivisible; rights to health, adequate food, healthy environment, democratic participation and informed choice all affect each other in this case. A holistic view should be applied when looking for solutions to hunger and more efficient farming methods. The inequality embedded in current seed market system should be addressed.

Mexican maize is an especially delicate issue, as it implies so many valuable things: biodiversity, food security, cultural meanings and the basis of nutrition. Mexican civil society is rightfully concerned about the right to food. GM maize does not fit in the idea of adequate food in Mexico and among its indigenous peoples. The fierce battle proves this. Mexicans and the world have the right to GM free maize as part of a healthy nutrition and environment, and as part of a cultural heritage. The Mexican state is responsible for realization of these rights.

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