Att: Ms. Lulama Xingwala
Minister of Agriculture and Land Affairs
Department Of Agriculture and Land Affairs
Private Bag X250
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0001

Fax: 012 321 8558

Cc: Director: Genetic Resources: Dr J. Japhta fax: 012 319 6329
Cc: Director: Biosafety: Ms. C. Arendse fax: 012 319 6339

14 January 2009

RE: Compliance with the Cartagena Protocol on Biosafety to the Convention on Biological Diversity

Dear Minister Xingwala

The African Centre for Biosafety (ACB) is an NGO deeply concerned with biosafety in South Africa and on the continent. We have, over the years, participated in the development of our biosafety regime as well as actively participated in decision making on genetically modified organisms. Unfortunately our work is severely hampered by a lack of transparency from government in decision making and information sharing. In this regard, we would like to alert you to South Africa's non-compliance of the Cartagena Protocol, to which South Africa became a party in August 2003.

Article 20 establishes a means for information sharing through the Biosafety Clearing House (BCH) as the key means of implementing the Protocol and to ensure an up-to-date repository of information on LMOs and biosafety in order to assist decision makers in countries around the world, as well as civil society and the biotechnology industry. We have listed the minimum information required to be posted to the BCH further down in this letter, much of which the South African Government is not complying with.

There are currently only a total of 18 records posted to the Biosafety Clearing House (http://bch.cbd.int/about/countryprofile.shtml?country=za), despite the fact that the South African government has granted well over 2000 permits since 1999. In addition, the link to the South African Biosafety Clearing House on the Department of Agriculture's site is not functional. (We note that posting to the South African portal is optional and that doing so without posting to the international BCH does not fulfil the requirements of the Protocol).

Of particular concern to the ACB is the lack of compliance in the following:

1. Decisions are not being posted regularly and in a timely manner, leaving decision makers and civil society entirely in the dark (13 decisions regarding LMOs have been posted while the South African government has granted over 2000 permits since 1999).

2. Not a single risk assessment to date has been posted to date as required.
3. Maize seed exported to Kenya from South Africa was found to be contaminated with MON810 in early 2008. This variety is not approved in Kenya. The contamination was not posted to the BCH as required.

South Africa has been a leader on the continent in promoting and adopting GMOs, but is failing to implement and follow minimum international biosafety procedures. Lack of compliance with these requirements is in contravention of international law. In the interests of the biosafety of South Africa as well as our neighbouring countries, we respectfully request that the National Competent Authorities fully comply with the requirements as set out in the Cartagena Protocol within 30 days of receiving this letter, failing which, the African Centre for Biosafety will take action by filing a complaint with the Compliance Committee.

We have set these requirements out below.

Your attention in taking this matter forward would be greatly appreciated.

Kind regards

Ms. Haidee Swanby

On behalf of Ms. Mariam Mayet
Director

Article 23. of the protocol deals with Public Awareness and Participation and requires that:

1. The Parties shall:

(a) Promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. In doing so, the Parties shall cooperate, as appropriate, with other States and international bodies;

(b) Endeavour to ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported.

2. The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 21.

3. Each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

List of Minimum Information Requirements to the BCH by the Parties

a) Existing national legislation, regulations and guidelines for implementing the Protocol, as well as information required by Parties for the advance informed agreement procedure (Article 20.3.(a));

b) National laws, regulations and guidelines applicable to the import of LMOs intended for direct use as food or feed or for processing (Article 11.5)
c) Bilateral, multilateral and regional agreements and arrangements (Articles 14.2 and 20.3(b));
d) Contact details for competent national authorities (Articles 19.2 and 19.3), national focal points (Articles 19.1 and 19.3), and emergency contacts (Article 17 .3(e));
e) Reports submitted by the Parties on the operation of the Protocol (Article 20.3(e));
f) Decisions by a Party on regulating the transit of specific LMOs (Article 6.1)
g) Occurrence of unintentional transboundary movements that are likely to have significant adverse effects on biological diversity (Article 17.1)
h) Illegal transboundary movements of LMOs (Article 25.3)
i) Final decisions regarding the importation or release of LMOs (i.e. approval or prohibition, any conditions, requests for further information, extensions granted, reasons for decision) (Article 10.3 and 20.3(d));
j) Information on the application of domestic regulations to specific import of LMOs (Article 14.4)
k) Final decisions regarding the domestic use of LMOs that may be subject to transboundary movement for direct use as food or feed, or for processing (Article 11.1)
l) Final decisions regarding the import of LMOs intended for direct use as food or feed, or for processing that are taken under domestic regulatory frameworks (Article 11.4) or in accordance with annex iii (Article 11.6) (requirement of Article 20.3(d));
m) Declarations regarding the framework to be used for LMOs intended for direct use as food or feed, or for processing (Article 11.6)
n) Review and change of decisions regarding intentional transboundary movements of LMOs (Article 12.1)
o) LMOs granted exemption status by each Party (Article 13.1)
p) Cases where intentional transboundary movement may take place at the same time as the movement is notified to the Party of Import (Article 13.1); and
q) Summaries of risk assessments or environmental reviews of LMOs generated by regulatory processes and relevant information regarding products thereof (Article 20.3(c)).