

Att: Minister Tina Joemat Pieterse
Minister of Agriculture, Fisheries and Forestry
Department of Agriculture, Fisheries and Forestry
Private Bag X250
PRETORIA
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
7 pages

5 June 2009

RE: Compliance with the Cartagena Protocol on Biosafety and Constitutional Court judgement regarding access to information concerning GMOs

Dear Minister Pieterse

We congratulate you on your appointment as Minister of Agriculture, Fisheries and Forestry and wish you much success in your post.

The African Centre for Biosafety (ACB) is a non-profit NGO that is committed to biosafety in South Africa and on the continent. We have played an important role in shaping biosafety policy and practice in this country in the public interest, over a number of years.

Non-Compliance with international law

On 14 January 2009 we wrote to your predecessor informing her of our difficulty in accessing state-held information about genetically modified organisms (GMOs). We alerted her to the fact that South Africa is not in compliance with the Cartagena Biosafety Protocol, a UN international environmental agreement, to which South Africa has been a Party since 2003. In terms of the Protocol, a Party is required to post information regarding GMOs to the international Biosafety Clearing House (BCH) to ensure transparency and information sharing with the international community and South African citizens. The minimum information has not been posted to the international Biosafety Clearing House in contravention with international law.

We asked that this be attended to within 30 days of receipt of our letter, failing which we would have no choice but to lay a complaint with the Compliance Committee established by the Biosafety Protocol. Please find attached a copy of that letter and the acknowledgement of receipt from the department of Agriculture and Land Affairs, dated 29 January 2009. **(Ref: 3/2/15/1)**. We have received no further correspondence on this matter since that date.

We write to you to again and raise our concerns at South Africa's lack of compliance with international law and ask you to urgently address this issue,

Po Box 29170, Melville, 2109 Tel/fax: +27 (0) 11 482 8915
www.biosafetyafrica.org.za

failing which, we will have no alternative but to lodge a complaint with the Compliance Committee under the Biosafety Protocol.

Non-Compliance with Constitutional Court Judgement

The African Centre for Biosafety tracks applications and permits for GMOs. In order to make informed comments on applications and permits we need access to information held by the Registrar. Indeed, we are entitled to such information under South African law. We are in regular contact with the department, but battle to access information that should be in the public domain. The withholding of information is unlawful in terms of the recent decision by eleven judges of the Constitutional Court who ruled in favour of Biowatch in *Biowatch vs the Registrar, Genetic Resources*. In this case Biowatch was awarded costs as the court held that “the root cause of the dispute was the obduracy of the state officials’ refusal to supply information that they were duty-bound to give.”¹

The judgement established that it is the State’s duty to act in the public interest and to be seen to act transparently by sticking to the objectives of the Constitution and PAIA. This is especially the case when issues are highly contentious, as is the case with GMOs. The failure to fulfil its Constitutional and legal obligation by withholding information, or appearing to side with one or other party will incur a cost order been awarded against them.

Implementation of NEAF’s Recommendations

In 2007, the National Environmental Advisory Forum (NEAF) - a body set up to advise the Minister of Environmental Affairs and Tourism- commissioned a study on public participation to “assess the extent and nature of public participation in GMO decision making in South Africa”.¹ The research examined a range of laws that impact on public participation, including the Promotion of Access to Information Act (PAIA), the Public Administrative Justice Act (PAJA), the National Environmental Management Act (NEMA), the National Environmental Management Biodiversity Act (NEMBA), and the South African Constitution.

The finding was that current provisions in the Genetically Modified Organisms Act (15) of 1997 are inadequate, unfair and not in accordance with the South African Constitution. The NEAF recommended that the public participation procedures in their GMO Act be reviewed as they do not meet the minimum requirements of PAJA or NEMA. In other words, it violates our Constitutional Right to public participation and fair administrative procedures.

In light of the aforementioned, the African Centre for Biosafety demands the following:

- i) That the Minister of Agriculture, Fisheries and Forestry ensures that the obligation under the Cartagena Protocol to make information available through the Biosafety Clearing House is met within 30 days of receiving

1

this letter, failing which ACB will lay a complaint with the Compliance Committee.

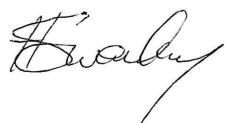
- ii) You further take measures to implement the NEAF's recommendations on public participation within the GMO Act, set a time frame for this to take place and inform the public of what you have done; and
- iii) You direct the officials in the department of agriculture to put in place measures to effectively perform their duty to act in the public interest and facilitate access to information that is in the public domain.

South Africa has a reputation for aggressively advancing genetically modified organisms on the continent. We hope that South Africa will instead develop a reputation as champions of transparency, democracy and excellent biosafety standards under your leadership.

We look forward to hearing from you.

Haidee Swanby

Researcher and outreach officer



On behalf of

Mariam Mayet

Director

ⁱ Sachs, J in Trustees of Biowatch v Registrar, Genetic Resources, Executive Council for GMO, Minister for Agriculture and others 2009 CCT 80/08 (CC) 14 para 49.

Public Participation in the Context of the Regulation of Genetically Modified Organisms in South Africa. A study prepared for National Environmental Advisory Forum. A. Pole. November 2007