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MEDIA STATEMENT

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Approved Seed Bills undermine farmers' rights

In 2012 the Department of Agriculture set a process in motion to rewrite apartheid era laws governing seed breeding and sale. However, the current versions of the Plant Breeders' Rights and Plant Improvement Bills are disappointingly non-transformative; and go even further to entrench private control and property rights to seed.

Of greatest concern is the all-encompassing definition of "selling" at the beginning of these Bills, which includes "keeping, exposing, offering, exchanging and disposal to any person in any manner". This definition, read in conjunction with other clauses in the Bills, could prevent and even criminalise traditional seed saving and exchange practices, as well as confine small-holder farmers entirely to producing seed and food for their own consumption.

The Plant Breeders' Rights Bill extends plant breeders' rights to "harvested material and the products of harvested materials". Although it is often possible to tell the difference between traditional varieties of maize and hybrids, which carry plant breeders' rights, the seed of many other crops, including beans and vegetables, are difficult to distinguish and are thus likely to enter farmer seed systems inadvertently. There are also plant breeders' rights over open-pollinated varieties (OPVs) of crops, which are typically saved for replanting and exchange. The Bill has removed a clause from the Act that excludes "innocent infringement", which would protect small-holders who are simply saving and exchanging seeds as all farmers have for centuries. For most traditional farming communities, the very idea of property rights over a living heritage is shocking as seed exchange is necessary and encouraged to invigorate the seed system.

The Plant Improvement Bill requires various forms of registration for seed breeding activities, which are beyond the pocket and capabilities of most small-holder farmers. These include the registration of the "business" and premises of anyone who is cleaning and conditioning, pre-packing seed, and selling seed. Furthermore, the sale of seed and propagating material is limited to plants registered on the national variety list. This registration requires a hefty fee and testing to prove that the variety is "distinct, uniform and stable" (DUS) and has "value for cultivation and use" (VCU). DUS requirements arise in an industrial agricultural system where uniformity facilitates processing and marketing but is counter-productive to maintaining the genetic diversity inherently found in farmer seeds.

The Plant Improvement Bill says that OPVs that have no plant breeders' rights over them are exempt, provided that this is at "non-commercial scale", but this is not defined. Future regulations are likely to limit the quantity of seed that can be sold (exchanged) as the current regulations do now.

(more)

Parliament approved “the Seed Bills”, in 2015 and then referred them to the National Council of Provinces (NCOP). The NCOP initiated a fresh round of public consultations including hearings in all provinces. An upswell of concern around the implications for small-holder farmers required additional hearings and an extension of the comment period in several provinces, resulting in at least 1300 written submissions.

Provincial deliberations resulted in two provinces outright rejecting the Bills and five others requiring changes. However, in ensuing meetings of the NCOP steering committee on Land and Mineral Resources, which oversees these Bills, Department officials dismissed concerns by putting forward pro-business legal arguments and promising that small-holder seed systems will be protected in yet-to-be-drafted regulations. With these assurances, a majority vote of the committee approved the Bills on 22 May 2018 with only two minor amendments.

Biowatch South Africa, along with many other civil society organisations and farmers, argue that although these Bills are intended to regulate the plant breeding industry, they should firstly recognise and protect the rights of farmers as the primary custodians and breeders of seed. Not doing so threatens the food security and livelihoods of 2.5 million small-holders – who through these Bills are being coerced into dependence on seed and inputs provided by a global monopoly of just four multinationals.

How much food is produced by small-holders, how much is grown from farm-saved seed, and the extent of seed exchange and trade is a poorly researched or understood part of the South African food security picture. These Bills not only limit livelihood strategies and potentially criminalise these farmers, but also fail to proactively maintain and conserve farmer seed varieties, which carry the genetic adaptability required for the challenges we are likely to experience in the future with climate change.

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