



biowatch
SOUTH AFRICA

biodiversity | food sovereignty | agroecology | social justice

222 Evans Road, Glenwood, Durban, South Africa Tel: +27(0)31 206 2954 Fax: +27(0)86 510 1537 www.biowatch.org.za

18th April 2017

Attention Mr Asgar A. Bawa
Select Committee on Land and Mineral Resources
By email: abawa@parliament.gov.za

Submission on the Plant Improvement Bill [B 8B – 2015]

Thank you for the opportunity to provide further comment on the Plant Improvement Bill.

Our submission follows below and consists of:

- Background on Biowatch South Africa
- General comments
- Comments on the specific provisions of the Plant Improvement Bill [B 8B – 2015]

Yours sincerely

A handwritten signature in black ink that reads 'Rose Williams'.

Rose Williams
Director

Trust No. IT 4212/99

Biowatch South Africa

Biowatch is a non-governmental organisation established in 1999, which strives for social and ecological justice within the context of food sovereignty. Biowatch works to challenge unsustainable agricultural practices and to advocate for agroecology as an ecologically viable alternative that safeguards people and land. This includes supporting smallholder farmers; working with civil society to create joint understanding and action; and constructively engaging with government in implementing policies and practices that promote, facilitate and actively support agroecology and farmers' rights. We have a long track record of working on issues concerning seeds and indigenous knowledge systems, not only with farmers but also internationally. Our contribution to this draft Bill thus stems from this experience.

General comments on the PI Bill

Biowatch SA's previous submission (dated 14th June 2013) outlined the context to consider when drafting a plant improvement law as part of seed regulation.

The aim of the Plant Improvement Act should be to regulate the seed sector in such a way as to provide reliable, quality seed to farmers and support the development of varieties that meet the needs of farmers within their production, economic, cultural and climatic contexts to ensure a sustainable food system into the future. This idea is partially supported in the Memorandum on the objects of the Plant Improvement Bill 2015, which aligns the Bill with the NDP's aims of "job creation, rural development and food security". However, instead of acknowledging and accommodating the diverse agriculture in South Africa with its variety of farmers, seed and cropping systems that are dynamic and intertwined, the Bill is framed in the context of strengthening "existing commercial production while simultaneously improving the participation of new entrants and facilitating smallholder farmers to make the transition to commercial agriculture".

According to the FAO, women smallholders produce 80% of the food in sub-Saharan Africa¹, and in South Africa 2.5 million smallholders still farm for subsistence². Smallholders rely on farm-saved seed for 60-70% of their seed needs³. The industrial seed system which seeks to market and profit from seed production and breeding is actively lobbying governments to put in place policies that disregard farmer seed systems. Increasingly however the genetic diversity inherent in so-called 'informal', farmer managed seed systems is being recognised as essential for food security as well as for conserving and improving agricultural diversity. This wide genetic diversity will ensure the

¹ Food and Agriculture Organization of the United Nations (FAO). (1997). *The State of the world's plant genetic resources for food and agriculture*. Rome: FAO. Available: http://www.planttreaty.org/sites/default/files/state_PGRFA.pdf [24 January 2015].

² Hall, R. and Aliber, M. 2010. *The Case for Re-Strategising Spending Priorities to Support Small-Scale Farmers in South Africa*. Working Paper 17. Institute for Poverty, Land and Agrarian Studies (PLAAS), University of the Western Cape. Available: <http://www.plaas.org.za/sites/default/files/publications-pdf/WP17.pdf> [24 January 2015].

³ Louwaars, N.P., & de Boef, W.S. 2012 Integrated seed sector development in Africa: A conceptual framework for creating coherence between practices, programs, and policies. *Journal of Crop Improvement*, 26:1, 39-59 http://www.issdseed.org/sites/default/files/resource/louwaars_and_de_boef_issd_1_paper.pdf [31 August 2016].

resilience of smallholder farmers, but also provide the genetic material for formal breeding into the future.

Farmer managed seed systems have the following characteristics:

- Farmers select and save seed based on a wide variety of criteria of importance to the local community and the farmer. The traits they may select for are as diverse as their contexts, and for example could include: the taste and appearance when cooked; the ease of cooking; the ability to satisfy more than one purpose, such as food and fodder; hardiness in drought; adaptability to particular soils; resistance to pests and disease in the field and in storage; early maturing, softness or hardness of the grain; ceremonial and spiritual use; reliability in challenging environments; etc.⁴. These are mostly not the criteria of importance in formal breeding.
- The traditional and landrace varieties that farmers have, are often **not** distinct, uniform and stable as they carry many traits within them – this is their strength, which allows them to be adaptable and resilient to unpredictable conditions.
- Farmers rely on ages-old practices of seed exchange, barter and sale with other farmers to re-invigorate their seed. This exchange can happen at markets or through customary and familial relationships. These exchange systems are fluid and responsive to farmers' needs and do not always differentiate whether seed has come from formal breeding or from other farmers. So long as seed can be saved and replanted farmers will experiment with it. Propagation material is assessed at face value and on performance recommendations from other farmers. Farmer seed saving and exchange is and should be an inalienable right as this practice is what has sustained humans over the last several thousand years.
- Farmers constantly breed new varieties, but they do not have the capacity and resources to register these varieties, register as a formal business or even formally label propagating material.
- Many of the crops and fruits that sustain rural families are not of interest to the private sector.

Unfortunately, this draft Bill caters entirely to the formal system, which is increasingly owned and manipulated by multinational corporations, and completely ignores farmer managed seed systems. This has far-reaching consequences:

- Customary and ages-old farming practices of seed saving and exchange that have provided us with a vast genetic heritage are being criminalised.
- The Bill provides no mechanisms to facilitate and support agri-diversity and farmer managed seed systems. It is vital for our future as a nation to support and protect this critically important seed system.
- The Bill works against other initiatives of the Department of Agriculture that promote diversity and support community seed systems. Here we refer, for example, to a programme that supports and develops community seed banks.

⁴ FAO. op.cit. and see for example Sibaya, J.; et al. 2013. Farmers' desired traits and selection criteria for maize varieties and their implications for maize breeding: A case study from KwaZulu-Natal Province, South Africa. *Journal of Agriculture and Rural Development in the Tropics and Subtropics* Vol. 114 No. 1 (2013) 39–49

- There is no consideration or facilitation of public sector plant breeding that will focus on food security crops rather than industrial crops. This would be in public interest rather than in the interest of international seed companies.
- Existing agri-diversity will continue to diminish, making the farming sector increasingly vulnerable to calamities. Recent examples of the impact of promoting genetic uniformity is the widespread impact of the Fall Army Worm, and crop failures in the drought.
- The Act as it currently stands, limits smallholder farmers to strict subsistence farming and does not allow them any scope to continue to be seed producers as they have always been. To comply with the Act, they will have to acquire skills and resources beyond what is accessible to them.

We would argue that the Bill does not support smallholders – it will criminalise and stifle the customary activities of a large sector of the farming population, nor does it make it possible for them to enter the commercial sector, even if on a very localised scale.

We require new sections to the Bill be drafted that allow for the development and support of farmer seed systems with more flexible and appropriate mechanisms for assuring quality seed and plants for propagation, and that encourage breeding of diverse crops with diverse genetic traits, with public sector support for participatory breeding with farmers.

Comments on the specific provisions of the Plant Improvement Bill [B 8B – 2015]

Chapter 1:

Application of the Act

The scope of this law in its current form should only apply to seeds produced on large scale and by the formal seed sector.

In order to preserve agri-diversity, it should encourage the development of new varieties and the conservation of genetic resources. Therefore, the activities and persons that further this work should specifically be excluded or be exempted from the law, including: plant material intended for and produced by gene banks, community seed banks, networks and organisations working for genetic conservation; and farm-saved seed and seed for research purposes.

Registration of business and premises

Type of business that may be conducted

9. (1)

This clause is ambiguous in several respects. One would imagine that the intention of this clause is to register the premises and entities that are in the business of selling propagating material, however, the wording in several areas is ambiguous in relation to farmers. In section (1) the wording “business relating to plants of propagating material for cultivation and sale” could mean cultivation or sale. The text should change to say “***cultivation for sale***”. However even this is not entirely clear as farmers are also businesses that cultivate propagating material and could be involved in activities (a) cleaning and conditioning of seed, (c) selling of seed or (d) the running of a nursery. Surely it is not

the intention to have all farmers registered under this Act and comply with prescribed requirements? This would be beyond the ability of small and medium-scale farmers and small enterprises who would be saving and conditioning their own seed, and often sell to farmers in their community. This effectively excludes small scale farmers from any income generating activities in relation to the seed produced by them.

This ambiguity is made all the worse for the definition of **“sell” under definitions**, which includes any type of disposal of the seed or propagating material including through exchange.

We strongly object to the inclusion of point (b) in the definition of sell being “to exchange or to otherwise dispose of to any person in any manner” and propose that it is removed from the definition entirely.

Exemption from registration

19. (1) and (2)

This is a vague and highly discretionary provision that should be qualified as to the intent of exemption. Positive reasons for exemption could include: for the purposes of plant genetic conservation, or to stimulate the small-scale seed sector. The Act must be clear on what is exempt and therefore define the activities that should be exempt – such as smallholder farmers and small-scale seed producers and sellers. There are also certain types of risky seed production activities that the Act should specifically regulate and exclude from exemptions. These include very risky technologies such as genetic modification; or using any new technologies. Accidental releases can have potentially severe or catastrophic consequences.

Requirements relating to the sale of plants and propagating material

22. (1)

We object to the requirement that only plants on the national variety list may be sold for cultivation as this denies the existence of a large smallholder sector with traditional or landrace varieties of seed.

It is unreasonable to expect smallholders to register their varieties (with the required fees, applications and testing); or condition and package these according to prescribed standards meant for the commercial sector; or register as businesses, as most smallholders do not have the capacity or resources for these tasks. Even if possible, farmer varieties are by their nature variable and do not comply with DUS criteria required in section (27) and therefore could not be registered.

Since it is normal practice for smallholder producers to sell, barter and exchange seed with other farmers this provision will effectively criminalise a large segment of farmers and stifle needed varietal development essential to continued agri-diversity and food security.

It is also unreasonable to expect such small-holder farmers to apply for exemptions, or to burden the registrar with such a quantity of applications.

23. (1) (b)

We object to this provision which limits the saving of seeds to ‘own use’ as this will criminalise the activities of smallholders that customarily invigorate their seed by selling and exchanging with other farmers.

The clause (b) is also ambiguous – it appears that by qualifying ‘own use’ with ‘private and non-commercial’ that farmers saving and replanting seed cannot sell the produce as food. We object to this as it will again limit small-holders and further exacerbate hunger in communities.

23. (2)

(a) We object to qualifying the use of unprotected varieties to a non-commercial scale, as these are a common heritage developed by thousands of farmers over time and should be freely available to any person wishing to use them for cultivation or exchange.

What is considered a non-commercial scale needs definition.

(b) Confining exemptions to unprotected varieties is unfairly discriminating against the smallholder practice of seed saving and re-use which may even inadvertently include some protected varieties.

National varietal list

24. (1)(a)

Section 24 requires that varieties must comply with DUS criteria and VCU testing criteria. The DUS criteria are completely inappropriate to farmers’ varieties, heirloom varieties and landraces. These DUS criteria should not be a requirement to be on a Varietal Listing. The very narrow definition of what seed can be registered and sold, is one of the reasons biodiversity has largely disappeared *in situ*.

The law should make an exception for small operators and smallholder farmers allowing for the exchange and sale of varieties that are not listed. A similar provision is currently before the European Union for the EU Seed Directive.

Application for national listing

28. (3) (a)

These provisions make no mention of varieties that may have been developed communally and become part of the traditional knowledge of an area. The law should require that breeders disclose the origin of registered and as yet unregistered varieties to ensure that piracy of traditional knowledge and resources does not take place.

Import of plants and propagating material

43. (3)(a)(i)

This is a vague and highly discretionary provision that should be qualified as to the purpose of such possible importation. This provision makes the Registrar vulnerable to industry lobbying and could result in the importation and environmental release of problematic organisms or risky technology without any oversight. The Advisory Committee at least should have oversight and agree to such importation.

Advisory committee

Appointment of members

52. (1)(b)

One of the two members representing farmers should specifically represent the interests of smallholder farmers.

The Advisory Committee should also advise the Minister, particularly in terms of the provisions of regulations.

General provisions

Offences

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We strongly object to the criminalising of farmers who exercise their age-old right to save, replant and exchange seed, which is our common human heritage.

The penalty of a fine and/or 6 years' imprisonment in the case of farmers is extreme. In most cases farmers will not even be aware that they have committed a crime as seed saving and conditioning for planting, sharing and sale is customary practice. The source of seed in the informal system is often unclear, and interaction for the formal seed system is very fluid.

No allowance is made for the innocent transgression of this already unfair law and this must be changed.