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Attention
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Biowatch SA comment on the Guidance concerning Smallholder Farmers in relation to the definition of private and non-commercial purposes in the UPOV 1991 Convention

Thank-you for the opportunity to provide comment on the Guidance concerning Smallholder Farmers in relation to the definition of private and non-commercial purposes in Article 15(1)(i) of the 1991 Act of the UPOV Convention, which requires a compulsory exception.

With regard to the questions being asked by the UPOV Working Group on Guidance concerning Smallholder farmers we have the following responses:

1. *Is your country/intergovernmental organization implementing the exception "acts done privately and for non-commercial purposes"? If so, how is it implemented?*

We understand that this is being implemented through definition in the Regulations to the Plant Breeders' Rights and Plant Improvement Acts but await the conclusion of this process.

2. *Concerning this exception, are there definitions for the following term: "acts done privately and for non-commercial purposes"?*

As the Regulations are not yet published following the public consultations, we do not know what this will be, but strongly support that:

'Private' means saving of seed on one's own holding for the next season and the use of the products produced by that seed.

'Non-commercial' means producers who are 'small-scale' in their production where the farmer, co-operative or farming entity produce for own household and community consumption, and some seed and produce is exchanged and sold as part of their livelihood strategy.

Individual signatory countries need to be able to define what 'small-scale' means in their national context that would allow for own consumption household and community consumption, exchange and sale for a reasonable livelihood.

In the South African context, we support that this includes, as one group, those producers defined as 'Vulnerable Household Producers', 'Subsistence Household Producers' and 'Smallholder Producers', all of which is currently defined as those producers who have an annual turnover of one million Rands. However, this delineation needs to be updated annually with inflation.

3. *Please specify legislation/regulation and jurisprudence concerning this exception.*

Plant Improvement Act (2018) and the Plant Breeders' Rights Act (2018) and the draft Regulations thereto.

Civil society organisations are looking forward to supportive policy that gives effect to Farmers' Rights, that goes beyond narrow exceptions to Breeders' Rights.

4. *Are there any challenges and/or opportunities in implementing this exception in your jurisdiction? Please explain.*

We appreciate that as a member of UPOV 78 there is an opportunity to provide exemptions to the Breeders' Right that would take into account the following:

- The high levels of food insecurity and poverty in South Africa,
- The malnutrition in South Africa evident in high rates of stunting and rapidly increasing levels of diabetes and obesity as a consequence of an increasing reliance on industrially produced and highly processed food. This malnutrition is counteracted by access to more nutritious, diverse and fresh foods available in communities which are able to save, plant and exchange their own seed.
- The precarious conditions under which smallholder farmers support food security in their communities both through their own consumption, donation to vulnerable community members, and sale of seed and produce.
- The increasing impact of climate change causing weather variability, drought and extreme winds and storms with flash flooding which requires that communities are able to replenish seed through exchange, and that farmers have sufficient seed to enable replanting in a season.
- The important role smallholders play in ensuring the ongoing conservation and development of varieties with diverse and resilient genetics, and the contribution of these varieties to cultural practices, local food cultures and agricultural resilience.
- The fluidity of smallholder farmer seed systems, where seed with breeders' rights may inadvertently enter through exchange, or through unpreventable cross-pollination and is not always visually recognizable as coming from the commercial system.

We are extremely concerned about powerful players in the seed industry lobbying to limit the exchange of even farmers' varieties of seed to extremely small quantities applicable only to back-yard or hobby gardening; and to completely prevent the sale of seed by smallholders thus undermining food insecurity and farmers' rights. We see this as challenging the implementation of the exception and thereby undermining Farmers' Rights, which are recognised as a human right in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

Yours sincerely

Rose Williams
Director