



biowatch
SOUTH AFRICA

biodiversity | food sovereignty | agroecology | social justice

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31 August 2022

Department of Agriculture, Land Reform and Rural Development
Directorate: Genetic Resources

Attention:

- Mr Herman Mootane (Acting Registrar-PIA) – By email to HermanMo@dalrrd.gov.za
- Mr Kgomoamogodi Petje – By email to KgomoamogodiP@dalrrd.gov.za

**Biowatch SA Comments on the Regulations made in terms of the Plant Improvement Act,
2018 published in the Government Gazette on the 10 June 2022**

Thank you for the opportunity to provide input on the Regulations made in terms of the Plant Improvement Act, 2018.

Our submission follows below and consists of:

1. Introduction to Biowatch South Africa
2. Comments on the Regulations made in terms of the Plant Improvement Act, 2018 published in the Government Gazette on the 10 June 2022

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rose Williams', is placed over a light grey rectangular background.

Rose Williams
Director

1. Biowatch South Africa

Biowatch is a non-governmental organisation established in 1999, which strives for social and environmental 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 policy issues concerning agriculture, biodiversity, and indigenous knowledge systems.

2. Comments on the Regulations made in terms of the Plant Improvement Act, 2018 published in the Government Gazette on the 10 June 2022

We submit the following comments on the Regulations to the Plant Improvement Act from the perspective of safeguarding farmers' rights and agrobiodiversity in South Africa as well as in addressing the inequalities in our food system, especially as experienced by the vast majority of rural peoples and those small producers seeking livelihoods from the land in South Africa.

In this regard we note Farmers' Rights to at the very least save, reuse, exchange and sell seed, as described in the ITPGRFA under Article 9 as well as in Article 19 of the UNDROP which South Africa has been an instrumental country in promoting and supporting. However, we also note that the scope of Farmers' Rights in both of these instruments goes beyond these basics to also recognise the critical role that farmers, especially small producers and indigenous communities, play in conserving and developing the plant genetic resources on which we all rely and for their need to be involved in decision-making regarding the use and conservation of these resources. The UNDROP goes even further to outline the ways in which the State should proactively support farmer-led seed systems in all aspects relating to their use, conservation and ongoing development.

In this context we specifically note the importance of supporting farmer-led seed systems so that these can flourish, rather than being stifled through private and profit-based interests. This is essential to enable farmers to conserve and continue developing the agrobiodiversity that is necessary for cultural diversity, good nutrition and adaptability to climate change, pests and our diverse production contexts.

Farmer-led seed systems are fluid with farmers both consuming, saving and exchanging propagating material as the need arises. Surplus may be exchanged in various ways, including for consumption and propagation through gifting and sale. It is this very fluidity and the custom of exchange that is at the core and the strength of farmer-led seed systems and the agrobiodiversity that we benefit from today. Farmers should not be prevented from continuing their ages old practices of saving and exchanging seed that are essential to adequately develop and conserve agrobiodiversity for their own and society's benefit.

Our comments on these regulations are through the lens of ensuring that farmer-led seed saving, multiplication and exchange including sale isn't overwhelmed in red tape and that there can be active participation by a currently marginalised smallholder sector in economic activities related to the sale of seed and consequent produce.

We welcome and support the recognition of small producers (including vulnerable, subsistence and smallholder producers) in these regulations and the broad provisions provided that will, in part, allow these farmers their right to save, reuse, exchange and sell seed by exempting certain kinds of plants and varieties under Regulation 5(1)(a)(b) and (2), and exempting certain businesses under Regulation 6(1)(b) and 6(2)(c)(ii).

We are however concerned that these do not go far enough and there are still some ambiguities that arise in reading the PIA in conjunction with the Regulations, which will limit the ability of smallholder farmers in particular, to exercise their Farmers' Right to freely save and exchange seed. These are discussed below.

Clause 2. (1) of PIA says that the Act only applies to kinds of plants for agricultural, industrial and forestry production as the Minister may declare. These are listed in Table 1 of the Regulations. The Regulations go further to say that if these listed kinds of plants are going to be used for ornamental and decorative uses or for sports fields, micro-greens and green manures then they are exempt. One would then assume that any kinds of plants that are not on the list in Table 1 of the Regulations can be freely cultivated, and the propagation material can be saved and exchanged.

However, Clause 22 (1) of the PIA also says that 'Plants and propagating material sold for purposes of cultivation **must be** of varieties of the kinds of plants contemplated in section 24', that is on the National Varietal List (NVL), **unless** these are, as described in Clause 23 (1) (d), non-commercial varieties of the kinds of plants regulated by this Act.

Non-commercial varieties are further described in 23 (2) of the PIA as meaning:

- (a) an *unprotected variety* of any kind of plant regulated by this Act that is available for cultivation and sale on such *non-commercial scale as may be prescribed*; and
- (b) in the case of any kind of plant of which seeds are regulated by this Act, means *any open-pollinated variety* of that kind of plant.

The Regulations then prescribe in Table 3 the 'non-commercial' scale for all the plants that are listed in the NVL.

It is not clear from the wording of these clauses if:

- the requirement for 'non-commercial scale' applies to OPVs that are *not* protected for the plants on the list.
So, for example:
 - are all farmer varieties of OPVs able to be saved, exchanged **and sold** in unlimited quantities, or is the limitation for non-commercial scale applied to unprotected OPVs as well?
 - could popular commercial OPVs of maize that no longer carry a PBR be cultivated and exchanged and sold as one wishes to, or would these be limited to 2500kg per year as prescribed in Table 3?
- varieties that are not listed among the varieties in the kinds of plants on NVL can be bulked, exchanged and sold at any scale one wishes? For example, the NVL speaks to white, yellow and sweetcorn maize varieties – do farmer varieties such as red maize varieties have no limit?
- Types of plants that are not listed in Table 1 can be sold for cultivation.

This ambiguity should be clarified in the Regulations.

Non-commercial scale is described in Table 3 of the Regulations in terms of the maximum amount of seed that can be produced per year in kilograms per variety and the maximum number of seed there can be in a packet for sale of that variety.

Examining Table 3:

- it is not clear if the maximum quantities prescribed only apply to crops when the material is specifically used for propagation, given that for grains and legumes these can also be used as food, animal feed and seed.
- The allowable kilograms per year of certain crops is very low, and more so if these include all uses for seed, animal feed and food.
- The amounts for potato haven't been given.
- The quantities of seed allowable 'per packet' are unacceptably small. It is also not clear if 'non-commercial scale' for sale (and therefore also the traditional exchange of seed as per the problematic definition of sale in the PIA) limits farmers to exchanging and selling only in packets. This is clearly ridiculous for key food security grains and legumes which are grown in rain-fed fields at a larger scale and would likely be exchanged in bucketful's and not in packets. This provision seems intentionally aimed at confining seed exchange outside of the commercial sector to backyard production, while ensuring that smallholders must become commercial seed consumers to secure livelihoods.

The question of protected and non-protected varieties

According to the PIA if a variety is protected one may only use the variety on one's own land for one's own use. While some farmer seeds are clearly identifiable as farmer varieties that have no plant breeders' rights over them, not all crops and seeds are as clearly identifiable with visual differences – especially where farmer varieties have great inherent diversity. Also, smallholder farmers embrace diversity as a practice and will often experiment with varieties.

In the South African context there is also distribution of varieties with plant breeders' rights through State input subsidies and extension, and with the proximity of fields where land is scarce, cross-pollination and volunteer growth will inevitably occur in addition to exchange. It has also often been reported that the seed accessed through extension is not clearly labelled. It is therefore highly unlikely that farmers will be able to identify varieties with PBR. This is particularly the case with OPVs that have breeders' rights, and farmers may not even be aware that they could be contravening any law if they condition and exchange the seed.

To not criminalise small producers as defined in the regulations, it would be better to proactively exempt the activities of saving, conditioning, and exchanging seed for all crops and all varieties for these producers.

Clause 3 Application for declaration

Additional kinds of plants can be declared (added to the plants listed to Table 1) following application to the Registrar motivating for the plant's usefulness to cultivation and use. Once the Registrar approves the plant for listing Clause 3 (5) allows for an applicant or applicable industry to apply to have the varietal list closed. In other words, only varieties as listed in the NVL will then be allowed for cultivation. This clause is a concern in that it makes provision for agribusiness breeders to apply to narrow the market and limit the propagation material that is available to producers to protected varieties. This approach will over time focus cultivation on fewer and fewer varieties foreclosing farmers access to diverse germplasm that is necessary for resilience to climate shocks and pests and placing our food security at risk.