

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS ON THE PLANT BREEDERS' RIGHTS BILL, [B 11B-2015]

1. INTRODUCTION

The Speaker referred the **Plant Breeders' Rights Bill [B 11B-2015]** to the Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs (the Committee) for consideration and report back to the House in accordance with the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of Section 114 of the Constitution of the Republic of South Africa, 1996, (the Constitution) the Legislature is mandated to consider, pass, amend or reject any Bill referred to it. In considering a Bill, the Legislature is also mandated to facilitate public involvement in the legislative and other processes of the Legislature as per Section 118(1) of the Constitution. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The Bill seeks to provide for a system where-under plant breeders' rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be complied with for the grant of such rights; for the scope and protection of such rights; and for the grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith.

3. METHOD OF WORK

The Committee met with the National Council of Provinces (NCOP) Permanent Delegate, Hon AJ Nyambi, MEC, Hon VR Shongwe, and HOD, Ms. SP Xulu of the Department of Agriculture, Rural Development, Land and Environmental Affairs and officials from the Department of Agriculture, Forestry and Fisheries on the 21 February 2017 for a briefing on the Bill. The public hearings were conducted after publishing an invitation in the print media (Lowvelder, Provincial Media, Thaba Chweu News and Streek Nuus) in order to solicit inputs/comments from interested stakeholders and members of the public. The Public hearings were conducted on Tuesday, 16 May 2017, from 10h00 – 13h00 in the following Districts.

DISTRICT	VENUE
Ehlanzeni	Mashishing Community Hall - Thaba Chweu Local Municipality
Nkangala	Botleng Extension 5 Community Hall – Victor Khanye Local Municipality
Gert Sibande	Thuthukani Community Hall – Msukaligwa Local Municipality

The committee thereafter met on 26 May 2017 and 1 August 2017 to consider the draft report and Negotiating Mandate on the Bill, noting that the written submissions on the Bill were extended until 31 July 2017.

On the 03 May 2018, the Committee had another meeting to consider the Final Mandate on the Bill.

4. INTERACTION BY THE COMMITTEE WITH THE NCOP DELEGATE AND THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

The Permanent Delegate gave a brief political overview on the Bill, which amongst reported that:

- The Bill had been tagged as a Section 76 Bill, which means it involves provinces.
- He raised a concern on the technicality of the Bill and that it might not be well understood by members of the public.

4.1. Briefing by the Department of Agriculture, Forestry and Fisheries

The Department highlighted that people breed new plant varieties for various reasons, such as higher yields; better product quality; better resistance to plant pests and disease, etc. Therefore; a plant breeder's right (PBR) is a form of intellectual property right and is granted to breeders of newly bred plant varieties.

4.1.1. Development of Plant Breeder's Rights Bill

The development of the Bill took into account the following:

- the principal legislation: The Plant Breeders' Right Act, 1976 (Act 15)
- experiences/ constraints in the implementation of the PBR Act
- other relevant national legislation, policies, strategies & programmes
- relevant international obligations
- available options to protect intellectual property rights concerning plant varieties (patents, plant breeders' rights)

The Bill also recognized the following elements:

- the importance of new plant varieties to support sustainable agricultural production
- the important role of breeders in developing new plant varieties
- the importance of an effective plant variety protection system

According to the department, the Bill acknowledged the following matters:

- the considerable investments needed to develop a new variety
- the need to provide incentives for breeders of new plant varieties
- the importance of balancing the needs of farmers and breeders

4.1.2. Scope of the Bill

Section 7 of the Bill provides for the protection given to the holder of plant breeders' right, wherein:

(1) The protection is given to the holder of a plant breeder's right is that prior authorization has to be obtained for the duration of the plant breeder's right from that holder, by way of a license granted or issued in terms of section 34 or section 35, by any person intending to undertake the following:

- (a) the production or reproduction (multiplication) of the protected variety;*
- (b) the conditioning for the purposes of propagation of the protected variety;*
- (c) the sale or any other form of marketing of the protected variety;*
- (d) the exporting of the protected variety;*
- (e) the importing of the protected variety; or*
- (f) the stocking of the protected variety for any of the purposes referred to in paragraphs (a) to (e).*

4.1.3. The need for Plant Variety Protection

It was indicated that the plant varieties are important for sustainable agricultural production. The consequences of the absence of Plant Variety Protection is resulting to breeders being reluctant to release plant varieties and has had negative impact on farmer competitiveness.

In terms of the economic benefits of new plant varieties; new plant varieties contributes to increased agricultural productivity with higher yields and better product

quality, which impact to address the higher demand for food due to increased population numbers higher value products with increased marketability and better processing properties as well as support publicly-funded research (Royalties can serve as a source of income).

The environmental benefits of new plant varieties are the increased disease and pest resistance, drought tolerance and minimizing harvesting of species from the wild (e.g. Proteaceae family).

4.1.4. Major shortcomings in current legislation

The department reported that the current Act dates from 1976 and does not cater for recent developments and that it has ambiguous administrative procedures. Furthermore, protection is offered to limited number of genera. The current prescribed penalties are inadequate to deter deliberate infringements and also that the act is limiting Farmers' privilege provision. The other shortcomings relate to the lack of advisory body for the registrar as the general structure of the Act.

5. INPUT BY THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS

- The department raised a concern on how the Bill was going to assist farmers in the province;
- The department requested for a meeting with the Department of Agriculture, Forestry and Fisheries in order for the Bill to be explained in simple terms to them.

6. INPUT BY THE COMMITTEE

The Committee made the following inputs on the Bill:

- The introduction of the Bill was welcomed by the Committee.
- The Department of Agriculture, Forestry and Fisheries must explain whether the Bill seeks to redress or protect the breeders rights of the previously disadvantaged.
- A budget must be made available after the Bill has been passed.
- Inspectors must be appointed to assist people with the registration process.
- Inspectors must give feedback to the people.
- The Department of Agriculture, Forestry and Fisheries must invest in the education of ordinary people of Mpumalanga about the Bill, including terminology and technicalities.

7. INPUT BY THE LEGISLATURE LEGAL TEAM

- The Legislature Legal Team raised a concern on the financial implication that the Bill will have when it is being implemented.
- The Legal team wanted to know if the Department of Agriculture, Rural Development, Land and Environmental Affairs will have sufficient budget to implement the Bill.

8. INPUTS BY STAKEHOLDERS

8.1. Public Hearing

The following stakeholders were invited by the Committee to attend the public hearing held on 16 May 2017:

- Community Members (including farmers)
- Department of Agriculture, Forestry and Fisheries
- Department of Agriculture, Rural Development, Land and Environmental Affairs

- Mpumalanga House of Traditional Leaders (HTL)
- Thaba Chweu, Msukaligwa and Victor Khanye Local Municipalities
- Ward Committees
- Community Development Workers
- Agricultural Extension Officers

During the public hearings, members of the committee explained the purpose of the Bill thoroughly and presented the intended changes to the bill in local languages. The Committee also reported that the closing date for written submissions on the Bill will be Monday, 22 May 2017. The Committee after receiving a written communication from the NCOP extended the due date for submission of written inputs to 31 July 2017 and also responded to the questions of clarity raised thereafter. The stakeholders who were present at the public hearing raised concerns which were also related to the Bill as follows:

a) Thaba Chweu Local Municipality

- The new improved crops must be given Nguni/ indigenous names.

b) Victor Khanye Local Municipality

- The community stated that they agree with the bill, as there are a lot of people around the Nkangala District who knows traditional medicine and would like to own their product and be protected.
- A concern was raised that the Government implements laws and do not follow them or take ownership. A request was made. Wherein the bill must ensure that the Government have its own scientists to check the products from individuals and ensure that they make the correct decision.
- It was stated that some of the community members are not educated and cannot mention the trees that they use by their name but they can identify

them, there should be a clause that enforces the department to help community members on that issue or educate them about different types of plants.

c) Msukaligwa Local Municipality

- Community members supported the Bill and raised a number of clarity seeking questions that were answered by officials from the Department of Agriculture, Rural Development, Land and Environmental Affairs and the Mpumalanga Legislature (Legal services);
- A concern was raised that the Bill was not addressing the issue of what will happen to the plants that have already been taken by white farmers and were not protected.
- A concern was raised that the working relationship between the DAFF and the DARDLEA needs to be strengthened as the DARDLEA is responsible for agriculture in the province.
- Community members requested for more public engagements on the Bill as it affects more un-educated farmers.

8.2. Written Inputs:

1. African Center for Biodiversity:

- The justification put forward for the proposed changes are often flawed. The proposed changes are not required by the TRIPS Agreement. Many of the new changes goes even beyond the requirements of UPOV 1991.
- The framework favours the extension of control and power of multinational corporations over plant breeding and agriculture at the expense of farmers, especially smallholders, and the broader society.

- It is important for South Africa to invest in the development of diverse seed systems.
- Strengthening private PBRs and expanding already excessive exclusivity periods for PBRs stifle innovation and marginalise other economic actors.
- The extension of breeders' rights to cover all crops and genera including those of no commercial interest does not make sense and unnecessarily restricts farmers' activities to secure diverse seed.
- Cooperation and shared/pooled knowledge and resources are a strong and vibrant source of innovation, and should be encouraged and promoted through protection of Farmers' Rights to freely recycle and exchange plant materials and seed.
- Key Exceptions to PBRs are demolished and/or reduced by the Bill. It is critical to retain Sections 23(6) (e) and (f) of the existing Act to ensure that farmers have adequate freedom to operate in relation to the protected variety.
- Criminal sanctions and procedures Introduced by Section 55 (1) of the Bill are wholly inappropriate for dealing with PBRs. Intellectual Property are private rights that should be enforced by the right holder and not the State.
- The process of making must include broader consultations with small holder farmers and civil society organizations.

2. The following stakeholders also commented on the Bill:

- Stephen Barrow
- Linzi Lewis
- Anthena Mazarakis
- Delia Oosthuizen
- South African Food Sovereignty Campaign
- Delia Oosthuizen
- Zane Lambert
- Lesego Monyai

- Jane Harley
- Lourens Steenkamp
- Alet Van Wyk
- Biodynamic Agricultural Association of South Africa
- Justin Johnson
- Lucia Rodriguez Garcia
- Haydn Edwards
- Andrew Rathbone
- Leon Greef
- Elvorne Palmer
- Kylie Schafer
- Benjamin Pyatt
- Elsie van den Bergh
- Mieke Krynawv
- Katlego Mathibedi
- Polly Anderson
- Anthea Torr
- Helena Paul
- Charl Roux
- Lee Howe
- Andre Shirley
- Daryl Fuchs
- Wendy Stayte
- Louise van Straaten
- Martin Dower
- Johan Blingaut
- Beatriz Tainta

These Stakeholders submitted that:

Plant breeders should not be given rights over harvested materials (grain and milled maize).

- Government has a duty to keep some crops in an “open-source” or public interest space and therefore must not extend breeders’ rights over all crops. Government must consult with small scale farmers with regard to these exceptions.
- Smallholders must continue to have the freedom to reuse farm-saved seed from protected varieties.
- I strongly object to the criminalisation of the exchange of farm-saved seed from protected varieties, and the use of South Africa’s criminal justice system and public resources to police farmers, in order to enforce the rights of breeders.
- We need crop diversity and genetic diversity to face climate change and hunger and create space for smallholders practising agroecology.

The following recommendations are in response to the points made above:

- Section 7(2) (b), which extends breeders’ rights to harvested materials must be deleted.
- The right of a farmer to reuse saved seed of a protected variety for purposes of propagation on his/her own holdings available in Section 23(6) (f) of the existing Act has been replaced with Section 10(2) in the Bill, which requires the Minister to prescribe who might use the protected variety, for what purpose, and under which conditions. Article 23(6) (f) of the existing Act must be retained. The proposed Section 10(2) of the Bill is simply inadequate to address this critical activity on the part of farmers, as it does not expressly recognise the right of farmers to reuse and exchange farm saved seed of a protected variety, and its operation is at the discretion of the Minister and may be subject to conditions and payment of remuneration to the rights holder.

- Section 10(1) (a) - “private and non-commercial” - is new. The original wording “private or non-commercial” should be retained and be properly defined to allow for the reuse by a farmer of a protected variety including exchange.
- Section 55(1) of the Bill provides that any person convicted of an offence is liable to a fine or imprisonment for a period not exceeding 10 years, or both. Royalties/compensation can be claimed in addition to Section 55(1) (b). (Section 45 of the existing Act corresponds to Section 55(2) of the Bill). This section should be deleted, as the state must not spend public money policing and enforcing private rights.
- DUS criteria are dealt with in Clause 15.2 of the Bill, and Chapter 5 Clause 26 deals with tests and trials for DUS. Drafters must extend the space for consideration of non-DUS varieties throughout the Bill to allow for a diversity of agricultural practices.

9. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

Generally, members of the public were in support of the Bill as presented.

10. RECOMMENDATIONS

The Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs, after considering the Bill, supports the Bill as presented by the Department of Agriculture, Forestry and Fisheries with proposed amendments.

11. CONCLUSION

The Chairperson wishes to thank the Honourable Members, all members of the public for their worthwhile participation in the public hearings and for the inputs or comments they have made. A word of gratitude to the MEC, Hon VR Shongwe, HOD, Ms. SP Xulu, the Senior Officials of the Department of Agriculture, Rural Development, Land and Environmental Affairs, the Department of Agriculture, Forestry and Fisheries; Executive Mayors and Speakers of the Thaba Chweu, Victor

Khanye and Msukaligwa local municipalities; for their efforts in ensuring that the committee meets its obligation and the support staff who contributed to the success of the public hearings and the production of this report.



HON BD DUBE

09/05/18
DATE

**CHAIRPERSON: PORTFOLIO COMMITTEE
ON AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL AFFAIRS**