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Concerns with the Revised Plant Breeders' Rights Act

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Overview

Plant breeders' rights are monopoly, private ownership rights that can be licensed to other breeders in the public and private sectors for a fee, and that allow the breeder to collect royalties from farmers for the use of the protected seed or variety.

The International Convention for the Protection of New Varieties of Plants (UPOV), crafted mainly by European breeders, was adopted in Paris in 1961, and has been revised several times: in 1972, 1978 and 1991. With every revision, UPOV increasingly favoured breeders. South Africa joined the UPOV in 1978.

The Plant Breeders' Rights (PBR) Act No. 15 of 1976 grants plant breeders intellectual property rights and provides for the protection and enforcement of these rights. In the Act, rights are granted over seed production – also known as 'protected seed' or 'protected variety'. The 1976 Act is being replaced by a new Plant Breeders' Rights Bill, which has already been approved by Parliament and is currently being discussed at the National Council of Provinces.

The new Plant Breeders' Rights Bill is aimed at substantially strengthening the rights of breeders and weakening the rights of farmers.

(although small-scale farmers generally do not differentiate between protected and unprotected seed that comes into their systems).

The new Plant Breeders' Rights Bill proposes changes to the 1976 Act by:

- Extending breeders' rights over harvested products (grain and milled maize);
- Extending breeders' rights over all crops, even though UPOV 1978 allows South Africa a discretionary limit, in order to keep some crops in an open source or public interest space;
- Doing away with farmers' freedom to reuse farm-saved seed from protected varieties on their own holdings;
- Criminalising the exchange of farm-saved seed from protected varieties.
- Extending breeders' rights from 20 and 25 years (depending on the plant variety) to 30 years.
- Using South Africa's criminal justice system and public resources to police farmers in order to enforce the rights of breeders.

This piece of corporate legislation blatantly neglects the role farmers have played in breeding, developing and maintaining the diversity of germplasm.

Main concerns

The architecture of PBR law is based on UPOV 1991, which is an inflexible and restrictive system to heavily protect breeders and take rights away from farmers.

Like the Plant Improvement Act (PIA), the 1976 PBR Act encourages genetic homogeneity and cannot be used to protect more diverse plant varieties, traditional varieties or cultivated land races.

South Africa does not have any law in place to allow farmers the rights to replant, exchange or sell farm-saved seed. The 1976 PBR Act only allows farmers to replant farm-saved seed from protected varieties on their own holdings

The revision of the PBR Act must be considered within the broader context of corporate concentration of South Africa's seed and food systems and the mergers taking place between Bayer and Monsanto, ChemChina and Syngenta, and Dow and Du Pont. These mergers will increase concentration in agricultural input supply, with significant negative implications for South African farmers and consumers.

The fundamental question is whether further concentration in seed markets will really facilitate South Africa's developmental goals to diversify the economic base and to include smaller producers in systems of innovation and production with adequate support. If passed, the new Plant Breeders' Rights Bill, together with the mergers, will reinforce the dominant technological platform

that is in place in South Africa, extract value from the country through payments for technology, and widen the innovation gap, because technologies are developed externally and brought into South Africa, at high costs, for restricted and controlled use.

What we are requesting

We want farmer's rights to be recognised and protected. Farmers must be given the right to reuse all seed and harvested material in the manner they choose, including seed from protected varieties.

Breeders' rights should extend only to the first purchase of the seed. Following this, farmers should be allowed to freely save, trade, exchange and sell ALL materials that are under their control and in their seed systems.

As a developing country, and one of the most unequal countries in the world, whose food and seed systems have been mortgaged to the corporate sector, South Africa should not be passing more corporate-friendly laws. It should transition out of industrial agriculture towards food systems that are socially just and ecologically sustainable, built upon the principles and practices of agroecology and food sovereignty.





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