

## **South Africa's new seed and PVP Acts undermine farmers' rights and entrench corporate capture, control and domination**

*Press Release from the African Centre for Biodiversity (ACB)*

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The highly problematic new Plant Improvement Act 2018 (PIA) and Plant Breeder's Rights Act 2018 (PBR), approved by Parliament last year, have been signed into law this March by the President, replacing the 1976 versions. Regulations are currently being drafted to bring these Acts fully into effect. The framing and scope of these Acts form part of the architecture that reinforces historically unequal seed, agricultural and food systems, and strengthens the power of large-scale commercial breeders. Thus, we have called for specific exemptions to protect and support the rights of smallholder farmers and their farming systems.

During the stakeholder consultation phases, the African Centre for Biodiversity (ACB) and networks of farmer associations and other civil society organisations (CSOs) raised concerns with government, at national and provincial levels. Some provincial governments did reject the PBR Bill but these rejections were overridden at parliamentary level by a problematic and skewed voting system and these Bills were passed in October 2018.

We have produced two updated briefings, on the [Plant Improvement Act](#) and [Plant Breeder's Rights Act](#) respectively, to provide an overview of what they mean for smallholder farmers' seed systems and for the recognition and implementation of farmers' rights in South Africa.

In a nutshell, the role of smallholder farmers in the new PIA (the seed law) in maintaining and adapting seed is left in limbo, potentially unregulated but also unrecognised. Yet diversity of seed and crops as part of broader, open-pollinated populations is maintained through farmers' use, knowledge, management, exchange and local sale of their seed. This is for sustaining agricultural biodiversity, adapted to local agroecological conditions, which ensures food availability and nutritional security.

We are uncertain whether the provisions set out in the PIA dealing with commercial varieties, pertaining to 96 crops regulated by the Act, indeed apply to farmers' varieties. This is an important issue to clarify in order to enable farmers to freely exchange and sell all seed, including their varieties, in their farmer managed seed systems. This issue has to be clarified in the Regulations, including appropriate definitions for farmer seed, which comprise of a mixture of populations of wild species/relatives, germplasm/breeding materials, landraces, and traditional/farmer/folk varieties (cultivars).

However, as ACB Director Mariam Mayet explains: "There is still a default impact on farmers' seed in the sense that it is excluded from entering the markets in South Africa, however one defines such a market. Exemptions from the PIA for smallholder farmers who are producing and selling seed is a necessary but insufficient condition for protecting and promoting farmers' access to diverse adapted seed in enough quantities at the right time. We are seeking to work towards the recognition,

support and strengthening of farmer seed and seed systems that go beyond narrowly defined varieties, according to the PIA.”

The PIA provides for a number of exemptions that need further elaboration in the Regulations. The exemptions in Section 23 say that varieties regulated by the Act are exempted from the PIA as long as they are available for cultivation and sale on a “non commercial scale”. Regulations need to define “non-commercial scale” so as to enable farmers, farmer collectives and other small and medium seed enterprises to produce any seed, including varieties regulated by the Act, in their systems and exchange/sell such seed without undue restrictions and compliance with legal requirements emanating from a commercial seed law.

The new PBR Act 2018 is based on the 1991 revision of the International Convention for the Protection of New Varieties of Plants (UPOV), which sets binding international standards for plant variety protection (PVP). Currently, South Africa is only a member of UPOV 1978, which is a far more flexible regime, but the government intends to accede to UPOV 1991, which hugely strengthens breeders’ rights while undermining farmers’ rights.

On a contradictory note, the South African government has also indicated its intention to join the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). This Treaty not only recognises and promotes the role of smallholder farmers in reproduction, maintenance, use and exchange of agricultural biodiversity it also recognises farmers’ rights.

Under the provisions of the PBR Act 2018, breeders can seek exclusive ownership claims over a new plant variety if it passes the New, Distinct, Uniform and Stable (NDUS) testing. The grant of PBRs confers exclusive IP rights for a period of time, and restricts use by others, including farmers, unless royalties are paid.

In the PBR, the exclusive breeders’ rights are also dramatically expanded to include:

- Rights over harvested material and products derived from harvested material derived from the unauthorised use of a protected variety (e.g. to the maize grain and milled maize);
- Extending breeders’ rights over all crops, which prevents the South African government from excluding certain crops from PVP from private ownership, in the national interest, even though UPOV allows South Africa a discretionary limit, in order to keep some seed varieties in an open source or public interest space and in this regard, goes beyond UPOV 1991; and
- Extends a breeder’s right from 20 and 25 years to up to 30 years (depending on the plant variety).

Central concerns are around exceptions to breeders’ rights as set out in Chapter 2, Section 10. These exemptions are about what farmers may or may not do in relation to farm saved seed of protected varieties. Section 10(1)(a) provides for exemptions for reusing farm saved seed of protected varieties for “private and non-commercial” purposes. This concept has to be clearly defined in the Regulations in terms of which farmers this will apply to, and whether it will enable the use, exchange and sale of farm saved seed by smallholder farmers beyond their own holding, including, harvested products and products of the harvest as part of their farming systems.

Further exemptions are provided in Section 10(2), which provides that farmers may be exempted from the law based on what the Minister indicates in Regulations pertaining to the categories of farmers, the category of plants and the use to which the protected variety will be put. We believe that a proper consultation process must be conducted with smallholder farmers and small and medium seed enterprises to assist in defining these categories. The Regulations must also define in this context what the “legitimate interest of the breeder” entails and how it relates to these exemptions in terms of royalty claims.

Highly concerning is that if South Africa ratifies UPOV 1991, government authorities will be unable to permit exemptions beyond these narrow interpretations of farmers’ privilege. And yet these exemptions are necessary for the state to fulfil its constitutional obligations towards the realisation of social and economic justice.

Penalties have also become more severe, where any contravention of the Act could lead to a fine or imprisonment of up to 10 years, and public resources will be used to police farmers in order to enforce the private rights of breeders. The Constitutionality of these provisions are questionable. According to Linzi Lewis, researcher and advocacy officer at the ACB: “Clearly, social and economic justice needs to include a more equitable distribution of resources and opportunities through stabilising and supporting the expansion of smallholder farmers in diversified agricultural and seed production. And this needs to be recognised in our policies and laws. At present, in addition to the lack of protection of the rights of smallholder farmers, they receive almost no financial, institutional or political support. Instead, agricultural support policy is oriented towards integrating a relatively thin layer of black small-scale farmers into the commercial sector, mostly through integration into large-scale commercial value chains.”

Promoting the use of farmers’ varieties, and farmers’ seed more generally, requires the space for such heterogenous seed to be sold and exchanged, on any market, and for the right of farmers to continue these routine practices to be supported. Farmers’ rights to save, use, exchange and sell all farm-saved seed is a *sina qua non* for their contributions to the ongoing evolution of crop diversity and their use.

For more information, please contact ACB Executive Director Mariam Mayet on [mariam@acbio.org.za](mailto:mariam@acbio.org.za).

**Please see the links to both the seed briefing papers and the press release below:**

[South Africa’s new Plant Breeders’ Rights Act and its effect on farmers’ rights and farmer managed seed systems](#)

[South Africa’s new seed law and its impacts on farmer seed systems and agricultural biodiversity](#)

[Press release South Africa’s new seed and PVP Acts undermine farmers’ rights and entrench corporate capture, control and domination](#)

For further information, please see these previous ACB publications on this issue:  
[Parliamentary consultation & decision making on SA’s Corporate Seed Bills a Sham!!](#)

[Reflections on ITPGRFA, UPOV 1991 and South Africa  
ACB's comments on the Plant Breeders Rights Bill  
Concerns with the Revised Plant Breeders' Rights Act](#)