

COMMITTEE REPORT

(Negotiating mandate stage)

Report of the Standing Committee on Economic Opportunities, Tourism and Agriculture on the ***Plant Breeders' Rights Bill*** [B 11B - 2015](NCOP)(S76), dated 27 September 2017.

The **Standing Committee on Economic Opportunities, Tourism and Agriculture**, having considered the subject of the ***Plant Breeders' Rights Bill*** [B 11B - 2015](NCOP)(S76) referred to it in terms of Standing Rule 220, and having considered the extensive submissions from its Public Hearings, reports as follows:

This Rule confers on the Western Cape's delegation in the NCOP the authority not to support the Bill for the following reasons:

1. Expanding the scope and duration of breeders' rights:

It is observed in the proposed Bill that the period of a plant breeder's right to protection is not only extended potentially to a period of 30 years, but the Bill also seeks to extend the protection to harvested materials from protected varieties. The impact of this extended period is that it not only stifles development of new varieties by small-scale and emerging farmers, but it also makes smallholder farmers beholden to large-scale commercial farmers, and in this way it creates monopoly.

(Refer to Clauses 7 and 8)

2. Exceptions to Plant Breeder's Right:

It has been submitted that it is unfair to subject small-scale farmers to a system of royalty payments. Clause 10(2) of the Bill provides for exceptions by empowering the Minister to devise regulations which will identify a category of farmers and plant varieties, which will be exempted from plant breeders' rights. However, in practice regulations can take an unreasonably long time to be devised and implemented through the legislative system. Therefore, in the absence of such regulation, small-scale farmers, who remain the most vulnerable community in agriculture, remain unprotected.

3. The Bill is incongruent with the aims and purpose of:

a) The national Constitution; and the

b) National Environmental Management Biodiversity Act.

The Constitution provides for recognition of customary law and thus for the rights of farmers to save and exchange, and to claim proprietary rights over seeds of traditional crop varieties and any associated knowledge. It is submitted that the proposed ***Plant Breeders' Rights Bill*** is also at odds with the intended purpose and effect as envisaged in Chapter 6 of the **National Environmental Management: Biodiversity Act, No.10 of 2004**. This Act provides for Access and Benefit Sharing (ABS) for indigenous biological resources and associated traditional knowledge, but excludes agricultural genetic resources listed under the International Treaty on Plant Genetic Resources for Food and Agriculture. Questions have been raised as to whether the Bill makes provisions to protect farmers' rights and local knowledge from being appropriated.

c) **Conflict with health targets as adopted at the United Nations Summit on Sustainable Development:**

The Bill does not assist in creating an environment for small-scale farmers' input to help meet the Sustainable Development Goals health targets adopted at the United Nations Summit on Sustainable Development in September 2015. The government needs to look at all possible ways to address the root causes of rising non-communicable diseases in South Africa, malnutrition and food insecurity, while supporting small-scale and subsistence farmers. The United Nations has often called for agro-ecology as the best system for smallholder farmers.

Given the above reasons for not supporting the Bill, the Committee RECOMMENDS that:

- a) The entire contents of the proposed ***Plant Breeders' Rights Bill*** should be revised; and/or
- b) There should be separate legislation that speaks to and addresses the concerns and interests of "informal", small-scale, and part-time farmers.



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Ms B. SCHAFER, MPP

CHAIRPERSON: STANDING COMMITTEE ON ECONOMIC OPPORTUNITIES, TOURISM AND AGRICULTURE