



6 May 2015

Ms. Machwene Rosina Semanya,
Chairperson of Portfolio Committee in Agriculture, Forestry and Fisheries,
P O Box 15,
Parliament of South Africa,
Cape Town
8000

Attention Ms. Albertina Kakaza

Dear Madam,

PLANT BREEDERS' RIGHTS BILL B11-2015

We wish to submit the following comments to the above Draft Bill:

1. DURATION OF PLANT BREEDER'S RIGHT

Section 8

This section provides for periods of 20, 25 or 30 years for the duration of a Plant Breeders' Right depending on the particular kind of plant, calculated from the date on which the certificate of registration is issued in terms of section 28(b), but does not specify which of the aforementioned periods will apply to which types of plants.

Section 8 (2) determines that "The period of validity of the plant breeder's right in respect of a particular kind of plant must be prescribed." It does however not specify by whom, when or how the period of validity must be described.

This is too vague to be acceptable. It leaves room for the periods being altered at any stage which will have an enormous negative effect and impact on the industry.

2. PERIOD OF SOLE RIGHT

Section 9

This section provides for a period “as may be prescribed” during which a holder of a Plant Breeders’ Right will have the sole right to undertake various actions regarding the relevant variety protected by a Plant Breeders’ Right, despite having a registration valid for the periods referred to in section 8. During the aforementioned period, the Registrar may not issue a compulsory license in terms of section 35 of the Act.

It does not specify who will prescribe how long the period of sole right will be. This is too vague to be acceptable and will lead to absolute uncertainty. It furthermore leaves room for the periods being altered at any stage which will have an enormous negative effect and impact on the industry.

3. FARMERS’ PRIVILEGE

Section 10

Section 10 provides for certain exceptions to the provisions of section 32 (a) relating to actions that will infringe the rights of the owner of a protected variety.

Section 10(d) specifically provides an exception for a farmer who uses the protected variety in accordance with subsection (2).

In terms of section 10 (2) (a), the Minister must prescribe the following -

- (i) the category or categories of farmers who may use the protected variety;
- (ii) the category or categories of plants that may be used;
- (iii) the uses to which the protected variety may be put; and
- (iv) where applicable—
 - (aa) conditions for payment of royalties; and
 - (bb) labelling requirements.

This section does not specify which category of farmers will qualify for the exception and how or on what basis the categories of farmers will be selected or prescribed.

The same goes for the categories of plants that may be used and the uses to which protected variety may be put.

This section is a far cry from the exception offered under the current act in section 23 (6) (f) –

..”is a farmer who on land occupied by him or her uses harvested material obtained on such land from that propagating material for purposes of propagation: Provided that harvested material obtained from the replanted propagating material shall not be used for purposes of propagation by any person other than that farmer.”

It is obviously intended as a way to circumvent the Act rather than providing an exception as provided for in the current Act.

It is also not in keeping with the 1991 Act of the UPOV Convention which provides for the following exception relating to actions that will infringe the rights of the owner of a protected variety -

15 (1) (1) “acts done privately and for non-commercial purposes”.

The aforementioned exception is explained as follows “This exception means that, for example, subsistence farming is excluded from the scope of the breeder's right”.

The following guideline regarding the exception under section 15 is also provided to members

“each Contracting Party (*member*) may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder's right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(5)(a)(i) or (ii)....”.

The exception provided for in section 10 is in fact almost contrary to the provisions of the UPOV Act.

In view of the aforgoing it is suggested that the relevant exception be replaced by one that is similar to the Article 15 (1) (1) of the UPOV act or at least conforms to the UPOV guideline.

Regards



MICHIEL PRINS

Director