

PLANT BREEDERS' RIGHTS BILL

Department of Agriculture, Forestry and Fisheries

Meeting of the Select Committee on Land and Mineral Resources (NCOP)

01 August 2017



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REPUBLIC OF SOUTH AFRICA

ACRONYMS

- **DUS:** Distinctness, Uniformity & Stability
- **PBR:** Plant Breeder's Right
- **PGRFA:** Plant Genetic Resources for Food and Agriculture
- **UPOV:** International Union for the Protection of New Varieties of Plants

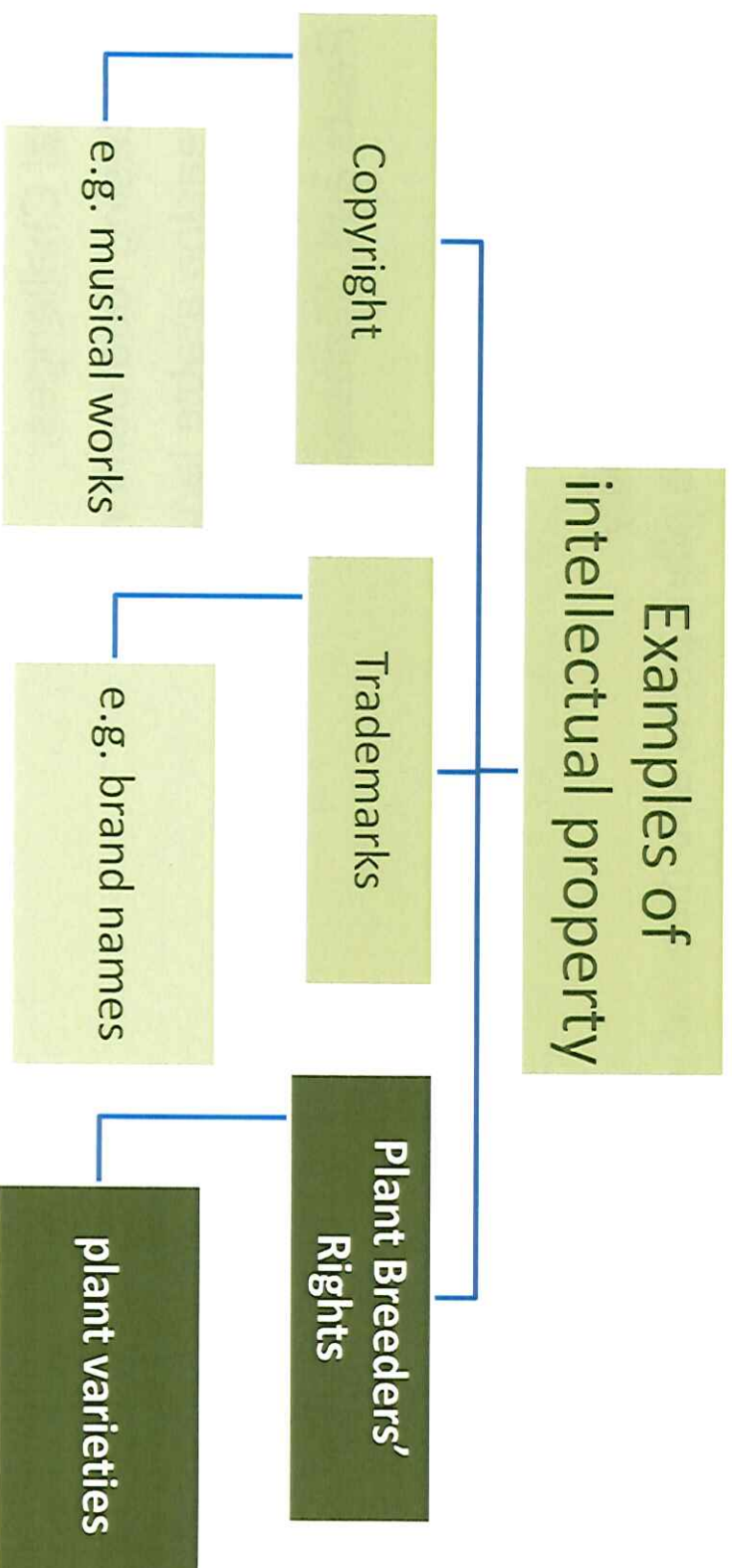


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A PLANT BREEDERS' RIGHT (PBR)

- ❖ A plant breeder's right is a form of intellectual property right granted to breeders of newly bred plant varieties



WHY NEW PLANT VARIETIES?

- Agricultural Challenges:
 - Increasing food demand
 - Decreasing arable land
 - Climate change, etc.
 - Pests and diseases, etc.
- New plant varieties bred for various reasons, e.g:
 - higher yields
 - better product quality
 - better resistance to plant pests and disease, etc.



WHY NEW PLANT VARIETIES

FARMER	CONSUMER
<ul style="list-style-type: none">• High yield• Good quality• Storage quality• Market acceptability, etc.	<ul style="list-style-type: none">• Taste• Appearance• Size• Choice, etc.



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NATIONAL LEGISLATION

- ❖ In South Africa, plant breeders' rights are protected under the Plant Breeders' Rights Act, 1976 (Act No.15 of 1976).
- ❖ The Act provides for:
 - the requirements for the grant
 - scope of protection of plant breeders' rights;
 - the grant of licences;
 - other matters
- ❖ Plant Breeders' Rights Bill
 - Comments received from various stakeholders



1. EXPANDING DURATION OF PLANT BREEDERS' RIGHTS

Comments	DAFF's response
<p>Section 8 of the Bill extends the possible duration of a PBR up to 30 years from the current 20-25years</p> <p>UPOV 1991 does not require a duration of up to 30years</p>	<p>Article 19 UPOV 1991 Convention</p> <p>[Minimum period] The said period shall not be shorter than 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall not be shorter than 25 years from the said date.</p>



2. EXTENDING PBRs TO COVER ALL CROPS

COMMENT	DAFF'S RESPONSE
<p>It is important to preserve the possibility of restricting PVP to a limited number of genera and species.</p>	<ul style="list-style-type: none"> • Conditions of protection <ul style="list-style-type: none"> ○ Distinctness, Uniformity & Stability
<p>It simply does not make sense to allow the granting of PBRs in relation to crops that are of no commercial interest and/or crops that might be needed for food security</p>	<ul style="list-style-type: none"> • Compulsory Licences <ul style="list-style-type: none"> ○ Public interest



4. DISTINCTNESS, UNIFORMITY and STABILITY (DUS) CRITERIA

Comments	DAFF's response
<p>Farmers' varieties (landraces) may not fulfill these requirements and therefore may not obtain breeders' rights.</p>	<ul style="list-style-type: none"> • International standards • Markets • Protection of farmer varieties • Type of protection? • Ownership, etc.? • Osame legislation?



EXAMPLES OF FARMER VARIETIS



Maize, Sweet sorghum and cowpea landraces (Sterkspruit)

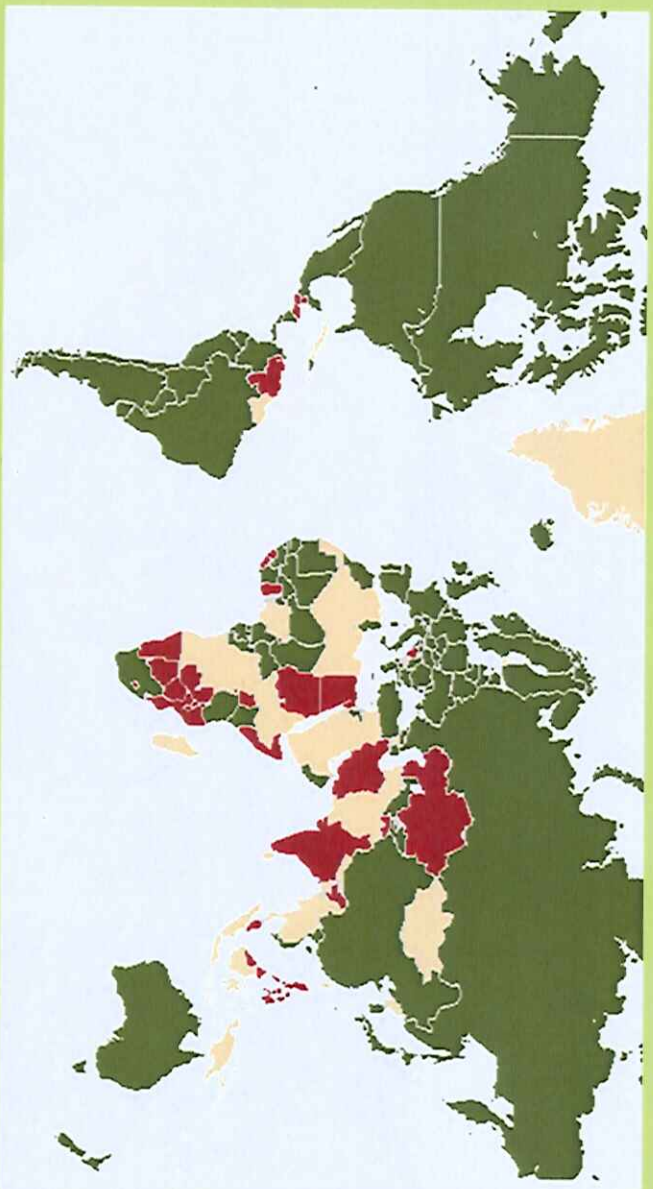


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INTERNATIONAL STANDARDS

**74 members of UPOV (green)
15 initiating States & 1 organization (brown)**



The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory

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MARKET REQUIREMENTS: FARMER VARIETIES VS PBR VARIETIES



4. DISTINCTNESS, UNIFORMITY and STABILITY (DUS) CRITERIA

Comments	DAFF's response
<p>Farmers' varieties (landraces) may not fulfill these requirements and therefore may not obtain breeders' rights.</p>	<ul style="list-style-type: none"> • International standards • Markets • Protection of farmer varieties o type of protection? o ownership, etc.? o same legislation?



5. EXCEPTIONS OF FARMERS' RIGHTS

Comments	DAFF's response
<p>Section 10(2) is inadequate to address the rights of farmers to save seed. Article 23 (6) (f) of the existing Act must be retained.</p>	<p>Intention of amendment: to allow farmers to save, exchange, sell seed.</p>
<p>A person who procured any propagating material of a variety in a legitimate manner shall not infringe the plant breeder's right in respect of the variety if he or she is a farmer on land occupied by him or her uses harvested material on such land from that propagating material for purposes of propagation: provided that harvested material obtained from the replanted material shall not be used for purposes of propagation by any person other than that farmer.</p>	<p>1) A plant breeder's right in respect of a variety obtained in a legitimate manner does not extend to a farmer who uses the protected in accordance with section 2</p> <p>2) In respect of section 1(d), the Minister must prescribe:</p> <ul style="list-style-type: none"> i) Category of farmers ii) Categories of plants iii) Uses iv) Where applicable <ul style="list-style-type: none"> • conditions for payment of royalties • labelling requirements



5. CRIMINAL SANCTIONS

Comment received	DAFF's response
<p>52(1)(b) makes infringement of PBR a criminal offence and requires government to police and enforce these rights.</p>	<ul style="list-style-type: none"> •intention: to protect those breeders who may not be able to go the civil route due to the expensive nature of civil cases •offence requires no further policing capacity as suggested by the submission •the contravention will easily be detected through appropriate administrative functions and taken through the prosecuting processes where necessary.



CRIMINAL SANCTIONS (contd.)

TERRITORY	ACT PROVISIONS
<p>African Intellectual Property Organization (OAPI): Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Comoro Islands, Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Niger, Senegal and Togo</p>	<p>Any person who knowingly commits an infringement within the meaning of paragraph (1) or an act of unfair competition within the meaning of Annex VIII shall be guilty of an offence and liable to a fine of between 1,000,000 and 3,000,000 CFA francs or to a prison term of between one month and six months or to both penalties, without prejudice to civil damages.</p>
<p>Tanzania</p>	<p>Any person who commits an offence referred to under this Act shall upon conviction, be liable to a fine not exceeding ten million shilling or to an imprisonment for a period not exceeding one year or to both</p>
<p>Canada</p>	<p>An individual who commits an offence is liable on conviction on indictment to a fine of not more than fifteen thousand dollars or to imprisonment for a term not exceeding three years, in the case of an offence under subsection (1) or (2) or five years, in the case of an offence under subsection (3), or to both</p>



BILL PROMOTES INTERESTS OF FOREIGN COMPANIES (Monsanto) OVER LOCAL COMPANIES/FARMERS

Crop type	Crop	Total no. of varieties (PBR)	Monsanto varieties	South African varieties	Other foreign /multinational varieties
Vegetable crops	Pepper	17	1	6	10
	Garden Bean	30	4	20	6
	Soy bean	130	5	70	55
Agricultural crops	Maize	422	46	55	324
	Sweetcorn	113	1	3	9



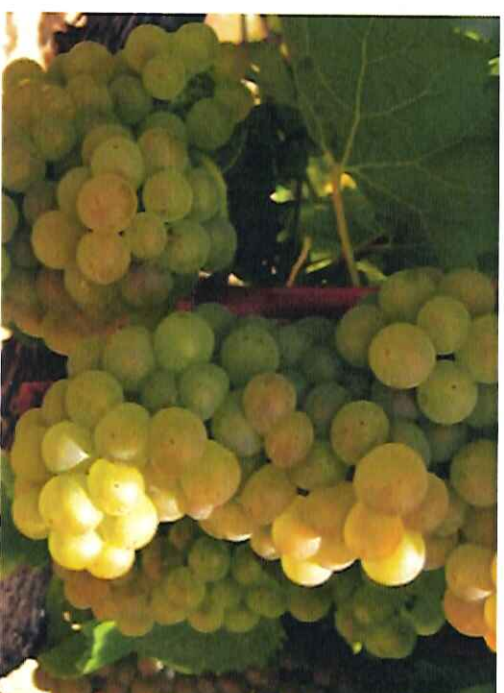
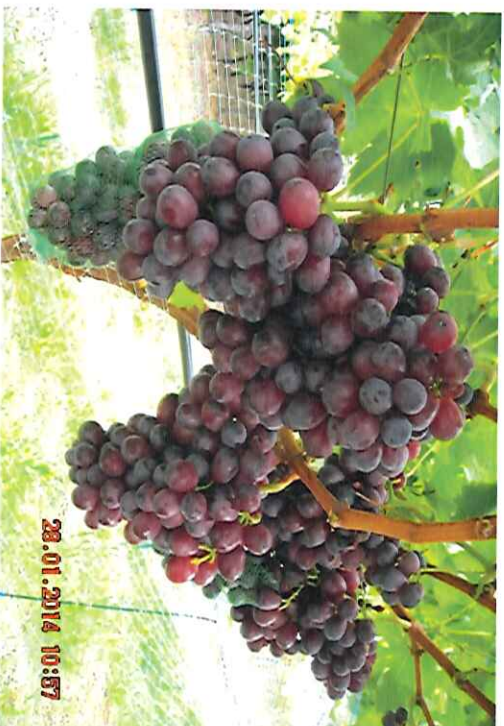
2894 VALID PLANT BREEDERS' RIGHTS: DECEMBER 2016

CROP TYPE	DISTRIBUTION
Agricultural crops	38%
Fruit crops	25%
Ornamental crops	29%
Vegetable crops	8%

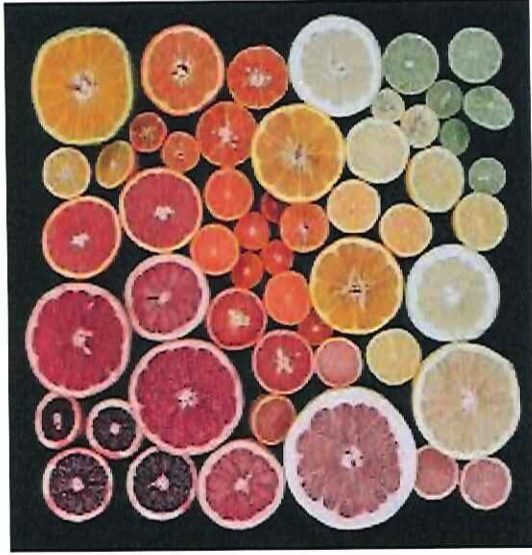


ECONOMIC BENEFITS: e.g. FRUIT INDUSTRY

- The fruit industry is the largest contributor, by value, to South African agricultural exports. The industry has a high job-multiplier effect and creates in excess of **400 000 jobs throughout the value chain**. The industry is also an important generator of foreign currency inflows – about 90% of income derived from fruit earnings is from foreign exchange, with a total **export value of approximately R22 billion**. It is thus of national importance (Farmer's Weekly of 06 June 2016).



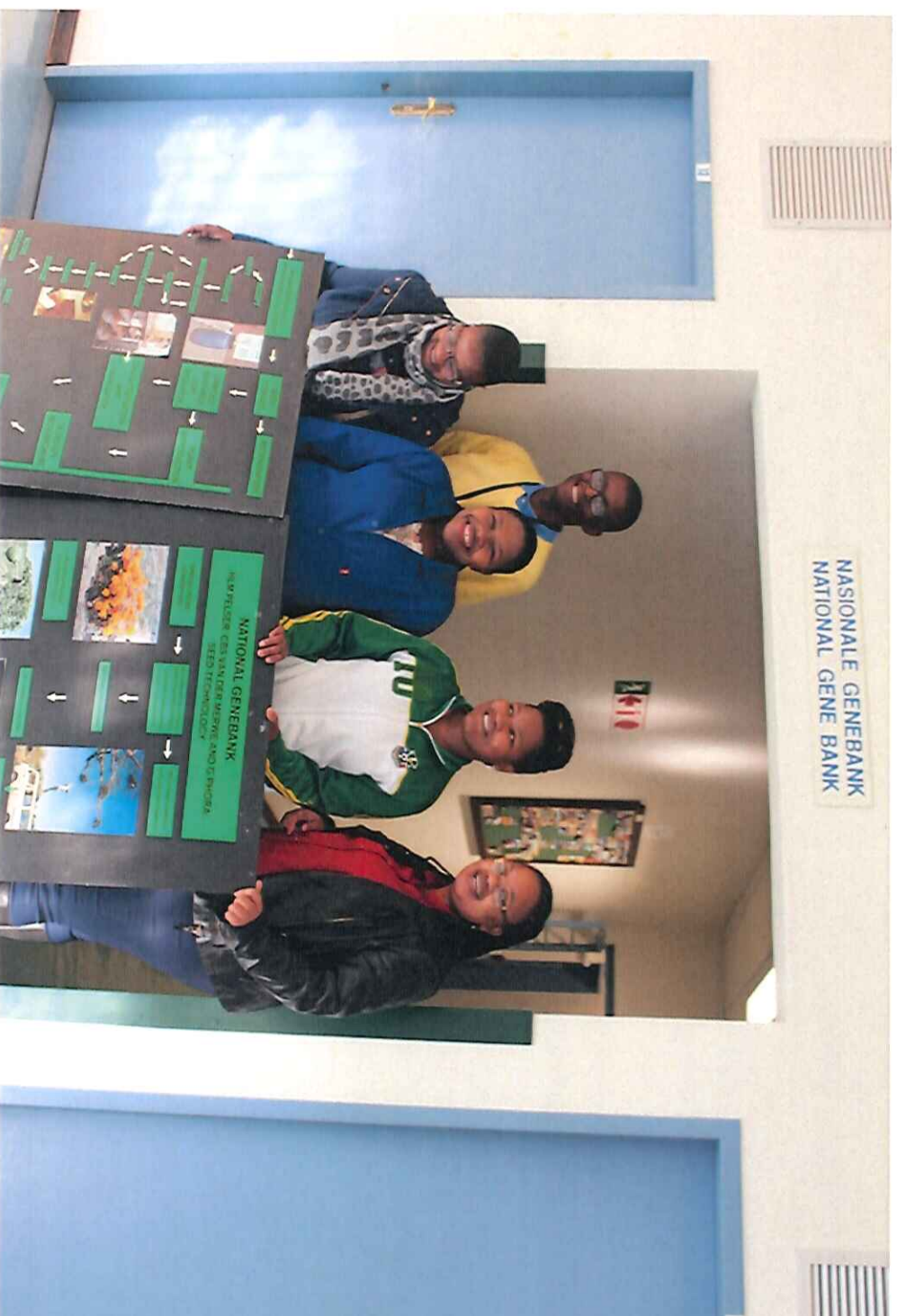
LOCALLY BRED VARIETIES: e.g. CITRUS



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CONSERVATION AND SUSTAINABLE USE OF PGRFA: NATIONAL GENE BANK



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NATIONAL PLAN ON CONSERVATION AND SUSTAINABLE USE OF PGRFA (MARCH, 2017)

Activity	Responsibility	Output
Systematic inventories of farmers'/traditional varieties including underutilized crops	DAFF PDAs	At least one inventory for each province
Facilitate establishment of farmer organizations and/or Community Seed Banks for participation in on-farm activities	DAFF PDAs	At least one in all provinces (except for Eastern Cape and Limpopo where already established)
Develop a strategy for conserving PGRFA <i>in-situ</i> and for managing crop diversity on farm.	DAFF	Strategy on on-farm/in-situ conservation
Facilitate programmes in participatory plant breeding	DAFF PDAs	At least two communities involved in participatory plant breeding
Develop a policy on farmers' rights in relation to conservation and sustainable use of PGRFA	DAFF	National Policy on Farmers' Rights



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Community Seed Bank: Gumbu (Limpopo Province)



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Community Seed Banks: Sterkspruit (Eastern Cape)



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Community Seed Bank: Jericho (North West)



THANK YOU



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