



EASTERN CAPE PROVINCIAL LEGISLATURE

OFFICE OF THE CHAIRPERSON: PORTFOLIO COMMITTEE ON RURAL
DEVELOPMENT AND AGRARIAN REFORM

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Date: 05 October 2017

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Reference:



NEGOTIATING MANDATE

To: The Chairperson:
Select Committee on Agriculture & Rural Development

Name of Bill: Plant Breeders Rights Bill

Number of Bill: → [B11B-2015]

Date of Deliberation 05 October 2017

Vote of the Legislature

The province rejects the Bill and mandates the Eastern Cape delegate to the NCOP to vote against the Bill based on the following reasons.

1. *Terms of reference*

The terms of reference of the Committee were to conduct public hearings within the Eastern Cape Province on the Plant Improvement [B8B-2015] and Plant Breeders Rights [B11B-2015] Bills so as to obtain public inputs and formulate negotiating and final mandates.

2. *Method of work*

On receipt of the two Bills, the Committee was briefed by the Permanent Delegate, Hon. Neitha Z and the Department of Agriculture officials on 28 February 2017. The Committee conducted public hearings in the following places Raymond Mhlaba Chamber, Eastern Cape Provincial Legislature on 08 May 2017, Nelson Mandela Metro, Chris Hani District and OR Tambo District on 22 September 2017 in order to solicit inputs from the public before the amendments are implemented. The Committee also invited written submissions for comments on the two Bills.

3. *Plant Breeder's Rights Bill*

- The Bill should make provisions for the traceability of the source of genetic materials used in the breeding and development of varieties.
- The Bill does not cater for the community seed banks and community nurseries.
- Community based seed production schemes might deserve special mention and provisions. Mechanisms should be put in place to ensure that inspections, seed sampling and testing of germination percentage is easily accessible and not expensive for farmers.

A People's Assembly for Good Governance

Independence Avenue, Bhisho, 5600 / Private Bag X0051, Bhisho, 5605

Website: www.eclegislature.gov.za

- **Section 22** of the Bill should be modified, change 'Denomination' to 'Description' of plant variety.
- Farmers should be allowed to sell their own landrace varieties, such as open pollinated indigenous seed (Gastyketye) and German Yellow Seed without being bound by provision of this Act.
- There is a concern that the seeds can be easily stolen from their owners and be registered by the commercial farmers as their own.
- The Bill talks about old variety where breeders cannot be traced, in such cases, the Registrar should obtain as much information as possible about the source of such variety, where communities might have been involved in its development, they should be entitled to Breeders rights and accompanying royalties.

4. General Submissions

- The word '**description**' must be used in the place of '**denomination**' throughout the two Bills as it is a scientifically used word by plant breeders and geneticists when describing the important and relevant attributes of plant varieties.
- The language used in the Bills is difficult and cannot be easily understood by an ordinary farmer.
- The words '**sell**' and '**new**' are not properly defined in the Bills and are confusing.
- Misgivings regarding the use of genetically modified varieties should be addressed by national government, such that GMO products are not promoted to the detriment of open pollinated varieties, traditional varieties and the environment at large.
- Ensure that the Bills where appropriate are well aligned with the provisions of the national policy and regulation on intellectual property and indigenous knowledge property rights as per the **Intellectual Property Laws Amendment Act, 2013(Act No.28 of 2013)** and the **Biodiversity Act 10 of 2004**.
- The definition of "**sell**" in **clause 1** is too wide; the small scale farmers who have been bartering, trading and sharing seeds for decades, will now have to exchange money to procure their seeds to enable them to feed their families.
- The inclusion of protected varieties in **clause 7** amounts to uncompetitive behavior.
- There should be a provision for the protection of indigenous plants as these may end by being owned by big companies to the exclusion of the communities from which those indigenous plants originate.
- A provision protecting subsistence farmers should be included in the Bill.
- It does not appear that nature conservators were consulted in the formulation of the Bill.
- The Bill is unconstitutional and in direct conflict with Chapter 2 of the Bill of Rights in the Constitution in that it restricts the sharing of seeds between farmers.

- The Bill does not take into consideration expenses associated with breeding and further registration of the varieties.
- The unintentional infringement of a plant breeder's right should not be criminalized and changing weather conditions may result in a variety being unintentionally carried through wind (pollination) to another farmer's property.
- The over-regulation in the Bill will result in the creation of hybrids, which would in turn compromise the quality of seeds, diversity of seeds and ultimately food.
- There is a risk losing indigenous seed varieties when big corporations push for farmers to use one variety only so that they can make money out of their owned seed.
- The bill, with all of its currently overly complicated rules and conventions limits small farmers from achieving a fully independent and sustainable agricultural system which we can use to feed and support South Africans.
- It is unclear why there is a need to register seeds which have until now been readily available and very easily distributed from farmer, to gardener to plant breeder. It seems like a thinly disguised attempt to monetize a system that is already working quite well and to implement some sort of control.
- It should not be a criminal offence if breeder's rights are infringed.
- The Bill protects the commercial industry not the people or small farmers.
- After the farmer has caught seeds from the protected variety they should be allowed to sell, give and share without paying royalties.
- There is a concern that the government has a duty to keep some crops in an 'open source' or public interest space and must not extend breeder's rights over all crops.
- Smallholders must continue to have the freedom to reuse farm saved seed from protected varieties.
- The Bill restricts the exchange of seeds amongst the farmers.
- **Section 7(2) (b)**, which extends breeder's rights to harvested materials must be deleted.
- It appears that there has been a participative approach from the beginning on both Bills.
- The Bills are written in jargon, complicated language.
- The financial gain for a chosen few beneficiaries appears to be a primary objective of these new bills.

The two Bills were rejected by the community of Port Elizabeth.

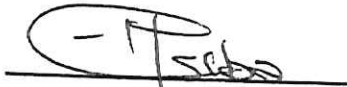
- The language used in the Bill is technical and not easy to understand and therefore should be translated to other official languages.

- There is a concern that the Bill is silent on indigenous plants.
- The registration process must be efficient and the registration fees must be reasonable and affordable.

5. *Plant Improvement Bill and Plant Breeder's Rights Bill*

- Concerns were raised about the prescriptive nature of the Bill with respect to the establishment of nurseries.
- The requirement for individuals and cooperatives to hold licenses needs to be made clear.
- The proposed laws aren't equitable because the cost of licensing appears to cater for established agricultural corporations and the Bill seeks to advance commercial farming interests over that of subsistence farmers. The registration fees are seen as a tax that will limit the growth of small scale agricultural enterprises.
- The right to farm and distribute seeds is important. Farmers must be able to share their seeds as they see fit without restrictions that are foreign to communal and traditional farming practices. Restrictions on seeds distribution will entrench commercial farming entities at the expense of small scale farmers.
- Registration fees are expensive and meant for multinational companies as rural people can't afford to have seed patents. This means seed rights fees must be affordable.
- Sustainable organic farming system must be encouraged instead of the industrial chemicals based agriculture. The Bill only caters for industrial farming. Organic farming must be catered for because the law limits organic farming in rural areas.
- Plant breeding requires special apparatus and will be expensive. The government must provide facilities that will assist farmers with plant breeding and introduce means of protecting people's intellectual property from theft.
- The bills aren't acceptable as there is no socio- economic impact assessment that has been done on how they will affect rural farming communities.
- On behalf the farmers present, farmers and farmer organisations under its ambit; O R Tambo Farmers Association (ORTAFA) rejected the two bills based on the following:
 - The Bill limits seeds sharing and reduced the rights of seed owners.
 - The threat of fines, arrests and related penalties associated with the bills will create an inequitable farming system where commercial farmers and industry will pay the standardized industry penalties while individual small scale farmers and cooperatives won't be able to pay the fines.
 - ORTAFA rejects the proposed laws as they seek to over regulate indigenous farming practices and will bring agricultural practices that entrench commercial farmers at the expense of small scale rural farming communities.

- Government agricultural policy promotes inorganic farming, increases the scale of mono cropping, works against the strengths of subsistence farmers and creates dependence on commercial farming systems which rely heavily on industrial chemicals and fertilizers.

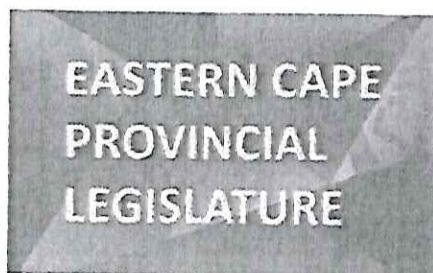


HON. N. GQIBA (MPL)

**CHAIRPERSON: PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT &
AGRARIAN REFORM**

2017-10-05

DATE



Oversight Section
Pc on Agriculture & Rural Development
Eastern Cape Provincial Legislature
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MINUTE: PORTFOLIO COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT MEETING:

Date: 28 February 2017
Time: 14h00- 16h30
Venue: Magdeline Resha

1. Present

- Hon. Gqiba N (Chairperson)
- Hon. Mvana N (Whip)
- Hon. Mtitshana N
- Hon. Komose D
- Hon. Nyusile M
- Hon. Ngcolomba T
- Hon. Mvenya V
- Hon. Tsengwa DT
- Hon. Sharples LK

2. Apologies

Hon. Tunyiswa N

3. Without Apology

Hon Zibula L

4. NCOP Delegation

- Hon. Ncitha Z
- Nkoana N
- Ramashala T

5. Committee Support Staff Present

- Mr. Mafuya Q
- Mr. Makeleni M
- Mr. Mahobe S
- Miss Sturman N

- Mr. Filtane LS

6. Opening & Welcome

The Chairperson opened the meeting and welcomed the delegation from the NCOP led by Hon. Ncitha Z, the Hon. Members and officials.

7. Apologies

Apologies were read and accepted. Members and officials were requested to introduce themselves. The presence of the communication and Public Participation and Petitions section was acknowledged and the purpose for their presence was explained.

8. Adoption of the Agenda

The agenda was read and adopted.

The Chairperson explained the purpose of the meeting which basically was to get briefing on the Plant Improvement Bill and the Plant Breeder's Rights Bill from the NCOP in preparation for the public hearings.

9. Briefing by the NCOP

The issue of the public hearings was emphasized and reflections were made to the Bill that was turned down due to the public hearings that were not properly conducted. It was stated that the two Bills were developed together because they are inter-related and they were tabled to the select committee of the NCOP and it was agreed that they must be presented in all the provinces.

9.1 The Plant Breeder's Bill

It was stated that the Plant Breeder's Right Bill is not that popular. The purpose of the plant breeding was explained which among others is for good yield and due to the high demand. This variety is evident in the apples, grapes potatoes etc. The differences between modern varieties and traditional varieties were explained and how this Bill seeks to address them. It was clearly stated that when one wants to present a new variety, he/she must apply and provide the name for the new variety and if it's a new breed, it must be distinct.

9.2 The Plant Improvement Bill

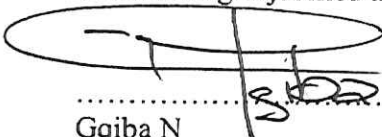
The purpose of this Bill is to regulate the quality of plants; basically it is about the protection of varieties. The Bills are rather technical and need advocacy so as to be understood by the ordinary farmers. There were some concerns about the applications which will be considered in Pretoria which will be too far for ordinary small farmers. It was also stated that the NCOP will inform the province with regard to the public hearings. The Committee was told that costs have been kept very low and they cannot be the limiting factor to those interested. The need for awareness programmes for these Bills was emphasized. It was suggested that

farmers can come together as cooperatives to plant seed and produce certified seed. These two Bills seek to replace the Act that was passed in 1976. It was emphasized that public hearings be properly conducted and must be publicized in the newspapers and radio stations and an allowance of 7 days should be given in between. It was also requested that supporting details should be attached to the submission to the NCOP. The submissions to the NCOP be done on the 24 May 2017 and the final mandate would be 30 May 2017. The communication section was tasked to publicize the Bills.

10. Closure

The Chairperson thanked the delegation from the NCOP for the briefing, the Hon. Members for their inputs and the support staff.

The meeting adjourned at 16h30.


.....
Gqiba N

Date 2017-02-28

Chairperson: Portfolio Committee on Agriculture & Rural Development



FREE STATE LEGISLATURE

PORTFOLIO COMMITTEE ON ECONOMIC DEVELOPMENT NEGOTIATING MANDATE

TO: Chairperson of the Select Committee on Land and Mineral Resources

NAME OF BILL: Plant Breeder Rights Bill

NUMBER OF BILL: [B11B-2015]

DATE OF DELIBERATION: 14 September 2017

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Economic Development as designated by the Free State Legislature:

In the definition of "**Sell**" to omit "(c) to exchange or to otherwise dispose of to any person in any manner" The Bill criminalizes the exchange of farm-saved seed from protected varieties.

It is proposed that "**Non-commercial**" be defined to as "a person not making or attempting to make profit from the activity contemplated in section 7(1), "**commercial**" has a corresponding meaning.

Clause 10(1)(a) provides for "**private and non-commercial**". Clause 10(1)(a) in its current form only exempt an act done in respect of that variety for private purposes provided that it is done for non-commercial purposes. It is proposed that in order to benefit emerging farmers, after "**private**" to omit "**and**" and to substitute "**or**" to allow "**private**" use of seeds, whether for commercial or non-commercial purposes.

Clause 10(2) of the Bill should expressly recognize the right of farmers to reuse and exchange farm-saved seed of a protected variety.

It is proposed to insert after clause "10(2)(iv)", the following- "(b) The Minister shall, by notice in the *Gazette* and on such conditions as he or she may specify in the notice, exempt any type of business from the provisions of section 7(1) of the Act."

The Department must create market for emerging farmers so that they can compete with the commercial farmers.

The Department must consider providing emerging farmers with products inspectors for quality of their products before they can be taken to the market.

The Department must allow the emerging farmers to package their own products for job creation, poverty alleviation and create a stable economic development in rural areas.

The Department must make sure that immediately after the implementation of the Bill emerging farmer that specializes on planting of crops are provided with training that will assist them to comply with the regulations.

The Department must make sure that imported plants are checked and tested before they can be distributed to the farmers and the public.

The Bill must provide a regulation that will prohibit individuals to cutting or cultivate registered plants.

The Bill must also regulate import and export pricing on plants.

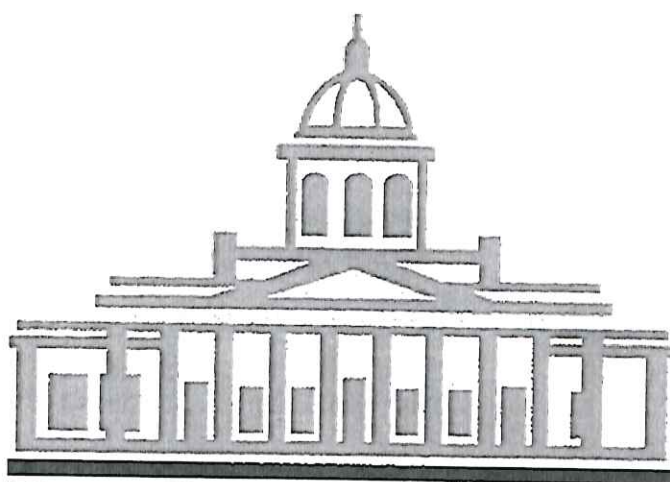
The Portfolio Committee votes in favour of the Bill.



HON. T.P. MEEKO
CHAIRPERSON OF PORTFOLIO COMMITTEE ON ECONOMIC
DEVELOPMENT
FREE STATE LEGISLATURE

14 September 2017

FREE STATE PROVINCIAL LEGISLATURE



Free State Legislature

**REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL,
ECONOMIC DEVELOPMENT, SMALL BUSINESS, SPORT, ARTS AND CULTURE
WITH REGARD TO THE PUBLIC HEARINGS CONDUCTED ON PLANT BREEDERS
RIGHTS BILL [B11B-2015]**

DRAFT REPORT

REPORT PROFILE

Title of Report: Report of the Portfolio Committee on Agriculture and Rural Development, Economic Development, Small Business, Sports, Arts and Culture with regard to public hearings conducted on Plant Breeders Rights bill

Status of Report: For submission to the Office of the Speaker and tabling in the Free State Legislature.

Responsible Committee: Portfolio Committee on Agriculture and Rural Development, Economic Development, Small Business, Sports, Arts and Culture.

Chairperson and Members of the Portfolio Committee:

MEEKO, T.P.
(COMMITTEE CHAIRPERSON)

BUTI, M.P.

MAPENA, L.N.

MOLELEKI, M.S.

MORAPELA, K.Z .

JANKIELSOHN, R.

WESSELS, W.W.

VAN ROOYEN, C.J.

**TO THE HONOURABLE SPEAKER AND HONOURABLE MEMBERS OF THE FREE
STATE LEGISLATURE**

The Portfolio Committee on Agriculture and Rural Development, Economic Development, Small Business, Sports Arts and Culture herewith submits the report and recommendations with regard to Plant Breeders Rights Bill [B11B-2015] to the Free State Legislature.

Public hearings were conducted in compliance and commitment to section 118 of the Constitution of the Republic of South Africa, which enjoins the Legislature to facilitate public involvement in the legislative and other processes of the legislature and its committees as well as to conduct its business in an open manner and hold its sittings and those of its committees in public.

The Portfolio Committee extends its acknowledgement to the following stakeholders: Hon. Members for their active participation during the process of consideration of the Bill, Officials from Department of Agriculture and Rural Development for their insight and assistance during consideration of the Bill, Officials from the Free State Legislature for their sterling work during consideration of the Bill. All stakeholders for their inputs and effective participation during consideration of the Bill.

Report Compiled by: Kgathatso Nkeane and Sebetlela Mokhesi

Report checked and edited by: Sylvester Thahane

Report for tabling in the Legislature on: 2017

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1. INTRODUCTION

Plant Breeders Rights Bill [B15B-2013] was referred to the Portfolio Committee on Agriculture, Rural Development, Economic Development, Small Business, Sport, Arts and Culture Portfolio Committee for consideration and report back.

2. MEMBERS OF THE PORTFOLIO COMMITTEE

The Portfolio Committee comprises the following Members:

Buti, M.P.	(Member)
Jankielsohn, R.	(Member)
Morapela, K.Z.	(Member)
Mapena, L.N.	(Member)
Meeko, T.P.	(Chairperson)
Moleleki, M.S.	(Member)
Van Rooyen, C.J.	(Member)
Wessels, W.W.	(Member)

3. PROCEDURE OF THE PORTFOLIO COMMITTEE

To provide for the registration of certain types of business relating to plants and propagating material intended for cultivation and sale and the registration of premises on or from which that business is conducted; quality standards for plants and propagating material intended for cultivation and sale and conditions of sale of plants and propagating material; a system for national listing of plant varieties; the evaluation of plant varieties in

order to ensure value if there is doubt in respect of the value for cultivation and use of plant varieties intended for cultivation and sale; import and export control of plants and propagating material; and a system for different types of schemes for plants and propagating material; and to provide for matters connected therewith.

Adverts of public hearings in the newspapers (copies thereof are attached)

NAME OF THE NEWSPAPER	DATE OF THE ADVERT
1. THE WEEKLY	17 – 23 February 2017
2. DUMELANG NEWS	17 February 2017
3. CUORANT NEWS	23 February 2017
4. THE MAIL	17 – 23 February 2017
5. ZOOM	17 February 2017
6. NEW AGE	24 February 2017

The oversight Public Hearing were conducted as follows:

Date	Name of Venue	Name of the Area
06 March 2017	Bothaville Town Hall	Nala Municipality
08 March 2017	Ficksburg Town Hall	Setsoto Municipality
09 March 2017	Hielbron Town Hall	Ngwathe Municipality
10 March 2017	Springfontein Town Hall	Kopanong Municipality

4. OVERVIEW OF THE PUBLIC HEARINGS

The following inputs were submitted by stakeholders:

- That the Department must protect plants that are damaged by chemical water that is coming from mine through legislation.

- The Department must also regulate the issue of air pollution from the mines because it has a negative impact on the plants.
- It be regulated that plant breeders are provided with training that qualified them to be professional plant breeders. To make sure that they understand the process and procedure of plant breeding.
- The Department must provide pests control assistance to emerging farmers because this is a major challenge that affect the quality of plants.
- During drought season, there are no alternatives for emerging farmers to water their plants to keep their quality. It will be important if they can be provided with the windmills so that they can be used as contingency during dry seasons.
- There is only one Agricultural College in the province and it has no capacity to cater for people who want to study Agriculture or farmers who want to improve their knowledge in agricultural sector. Therefore they request the Department to consider opening more Agricultural Institutions to better their skills and knowledge in the field of agriculture.
- The department must assist emerging farmers with testing of soil before they can plant. If empowered they can be able to compete with commercial farmers in terms of producing quality products.
- The main challenge that is faced by most of emerging farmers is the issue of land. They lease the land from the traditional Chiefs or Commercial farmers and when they succeed it is taken back by owners.
- The main challenge for the growth of emerging farmers in Xhariep District is a lack of land, water, fencing to protect plants and the market to sell their products.

5. RECOMMENDATIONS

The Committee recommends that:

- 5.1. The Committee support the Bill
- 5.2. The department must take note of the issues raised during the public Hearings.



NEGOTIATING MANDATE

TO: The Chairperson of the Select Committee on Land and Mineral Resources

Hon. O Sefako

NAME OF BILL: Plant Breeder's Rights Bill

NUMBER OF BILL: [B11B-2015]

DATE OF DELIBERATION: 26 October 2017

VOTE OF THE LEGISLATURE:

The Gauteng Provincial Legislature supports the principle and the detail of the bill with the proposed amendments.

- Plant Breeder's Rights Bill

HON. E Magerman

Chairperson of Economic Development, Environment, Agriculture and Rural Development Portfolio Committee

GAUTENG PROVINCIAL LEGISLATURE

Date: 27 October 2017





**ECONOMIC DEVELOPMENT, ENVIRONMENT, AGRICULTURE AND RURAL
DEVELOPMENT PORTFOLIO COMMITTEE**

**COMMITTEE REPORT ON THE NEGOTIATING MANDATE
ON THE:
PLANT BREEDER'S RIGHTS BILL [B11B-2015]**

26th October 2017

1. INTRODUCTION

The Chairperson of the Economic Development, Environment, Agriculture and Rural Development Portfolio Committee, Mr. Errol Magerman, tabled the Committee's report on the Negotiating Mandate on the Plant Breeder's Rights Bill [B11B-2015].

2. PROCESS FOLLOWED

The Speaker, on 29 November 2016, formally referred the Plant Breeder's Rights Bill [B11B-2015] Section 76, to the Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development referred to as the Committee, for consideration in terms of Rule 248 (1)(a) read with 250 (1) and 251.

On the 28th February 2017, the Permanent Delegate from the National Council of Provinces (NCOP), Honourable R M Mlambo gave a briefing to the Committee on the Bill. This was followed by a presentation by the National Department of Agriculture, Forestry and Fisheries on the detail of the Plant Breeder's Rights Bill [B11B-2015]. Subsequent to that, the Gauteng Department of Agriculture and Rural Development (GDARD) made a presentation on the views of the Executive on matters related to the Plant Breeder's Rights Bill [B11B-2015].

On the 19th October 2017, a legal opinion on the Bill was presented by the NCOP and Legal Unit from the Gauteng Provincial Legislature.

In fulfilling its constitutional mandate, the Committee published adverts in the following newspapers;

- City press - Sunday 6th August 2017;
- Sowetan - Thursday 3rd August 2017; and
- Beeld - Friday 4th August 2017.

This was to enable the Committee to request members of the public and stakeholders to make comments on the Bill. Following that, the Committee convened three public hearings in the following areas:

- Friday, 26th May 2017 - Mogale City Municipality at the Nelson Mandela Community Hall
- Saturday, 27th May 2017 – Midvaal Local Municipality at the Sicelo Community Hall
- Saturday, 12th August 2017 - Ekurhuleni Metropolitan at the Bronkhorstspuit Sports Centre

The Portfolio Committee deliberated and adopted the draft report on the Negotiating Mandate of the Plant Breeder's Rights Bill [B11B-2015] in a meeting that convened on Thursday, 26th October 2017.

3. PRINCIPLES AND DETAILS OF THE BILL

The principle of the Bill is to provide for a system where under plant breeders' rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be complied with for the grant of such rights; for the scope and protection of such rights; and for the grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith.

4. OBJECTIVES OF THE BILL

The Bill seeks to give protection to the holder of a plant breeder's right by requiring prior authorisation for the duration of the plant breeder's right from that holder, by way of a licence granted or issued in terms of clause 34 or clause 36, by any person intending to undertake—

- The production or reproduction (multiplication) of the protected variety;
- The conditioning for the purposes of propagation of the protected variety;
- The sale or any other form of marketing of the protected variety;
- The exporting of the protected variety;
- The importing of the protected variety; or
- The stocking of the protected variety for any of the purposes referred to above.

The Bill also provides that 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 variety under certain circumstances as regulated under the Bill (the farmers' privilege provision). "Agriculture" and "Trade" are functional areas of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution. Since the provisions of the Bill in substantial measure fall within concurrent provincial legislative competences, the Department and the Office of the Chief State Law Adviser are therefore of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution.

5. OVERVIEW OF THE PUBLIC HEARINGS

Public hearings were attended by stakeholders and members of the public who engaged on all matters related to the Bill. Various sentiments were echoed by all who attended and a summary of all inputs are highlighted below.

6. SUMMARY OF STAKEHOLDERS SUBMISSIONS MADE DURING THE PUBLIC HEARING

As part of its functions and obligation in line with the Constitution, the Committee held public hearings where written and oral submissions were made for possible consideration. The Committee received oral and written submissions from the following Institutions: African Centre for Biodiversity and various individuals supporting its submissions; South African National Seed Organisation; and iZindaba Zokudla & Anthropology and Development Studies – University of Johannesburg; South African Institute of Intellectual Property Law, Biowatch South Africa.

The summary of the proposals states that:

- a) Paragraph (b) of the proposed definition of “sell” must be deleted in its entirety and that paragraph (a) is sufficient on its own. The reasoning for this assertion is that “there is no good purpose to widen the definition of sell beyond clearly defined commercial boundaries” and further, that this goes against long-held practices of sharing of sharing and exchanging materials in one’s possession with others. Inclusion of any kind of exchange in the definition of sell goes against long held practices of sharing and exchange of plant and seeds.
- b) The lack of a clear definition of the words “business” or “commercial” makes it difficult to ascertain who may qualify for exemptions.
- c) The Distinct, Uniform and Stable criteria for listing plant on the National Varietal list is too rigid and is inappropriate for accommodating farmer varieties. The criteria are too inflexible and exclusive bearing in mind the need to maintain and protect agricultural biodiversity, respond adequately to climate change, and diffuse risk. The Bill must extend the space for consideration of non-DUS varieties throughout the Bill to allow for a diversity of agricultural practice.
- d) The criminalisation of infringements of plant breeder’s rights under clause 55(1) be removed. The general sentiment is that plant breeder’s rights are private rights and the civil remedies provided for in clause 33 of the Bill are sufficient to address any infringements thereof; and thus here is no further need for the imposition of criminal sanctions. There is further a need, at the very least, to reduce the penalties for offences — the proposed 10-year sentence is too excessive.

7. POSITION BY THE GAUTENG DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

In line with the GPL Rule 248 (1) (b) the Committee sought the views of the relevant Member of the Executive on the Bill. The Gauteng Department of Agriculture and Rural Development supports the Plant Breeder’s Rights Bill [B11B-2015] Section 76.

- The Department supports the promulgation of the Bill;

- GDARD does not interact much or if at all with the Bill as it is entrusted to DAFF;
- DAFF must ensure it has the required capacity to enforce and administer the Bill effectively;
- GDARD will continue to be guided by DAFF

8. SOCIO-ECONOMIC FINANCIAL IMPLICATIONS

The Committee observed that the Bill will have negative socio-economic impact on the farming community. These were viewed as not yielding positive socio-economic impacts for the farming community:

- The Bill does not acknowledge the seed systems that farmers have used for generations and seems to infringe on an inalienable right for farmers to plant and exchange seed
- The Bill seeks to transfer the rights of farmers to save and exchange seeds to multinationals yet this practice has been going on for centuries
- The Bill does not balance the rights of the farmers against those that have been conferred to breeding companies.

9. COMMITTEE'S RECOMMENDATIONS

The Portfolio Committee recommends that –

It is recommended that the Bill be passed subject to the following conditions/amendments:

- a) The definition of "sell" be amended by deleting paragraph (b) thereof.
- b) The definition of "persons" be amended to include natural and juristic persons.
- c) Clause 30 (3) be amended to extend grace period from three months to six months.
- d) Clause 41 be amended to include a sub-clause making provision for the staying of criminal proceedings against an infringer pending an internal appeal.
- e) Clause 42 be amended by the rectification of the reference to section 41 instead of section 43(1)
- f) Clause 59(3): Insertion of a new subsection under section 59(3) to deal with the issue of regulating new applications made after the commencement date.
- g) Clause 55(1) be amended to address the concern of imprisonment raised by various stakeholders.
- h) Rectification of clerical errors be effected.

10. NEGOTIATING POSITION ADOPTED BY THE COMMITTEE

The Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development supports the principle and details of the Plant Breeder's Rights Bill [B11B-2015] Section 76 with the proposed amendments.

**ECONOMIC DEVELOPMENT, ENVIRONMENT, AGRICULTURE AND RURAL
DEVELOPMENT PORTFOLIO COMMITTEE**

PROGRESS REPORT ON THE CONSIDERATION OF THE PLANT BILLS

31st October 2017

1. INTRODUCTION

The Chairperson of the Economic Development, Environment, Agriculture and Rural Development Portfolio Committee, Mr. Errol Magerman, tabled the Committee's report on the Negotiating Mandate on the Plant Improvement Bill [B 8B-2015] and Plant Breeder's Rights Bill [B 11B – 2015].

2. PROCESS FOLLOWED

The Speaker, on 29 November 2016, formally referred the Plant Improvement Bill [B 8B-2015] and Plant Breeder's Rights Bill [B 11B – 2015] Section 76, to the Portfolio Committee on Economic Development, Environment, Agriculture and Rural Development referred to as the Committee, for consideration in terms of Rule 248 (1)(a) read with 250 (1) and 251.

On the 28th February 2017, the Permanent Delegate from the National Council of Provinces (NCOP), Honourable R M Mlambo gave a briefing to the Committee on the Bills. This was followed by a presentation by the National Department of Agriculture, Forestry and Fisheries on the detail of the Plant Improvement Bill [B 8B-2015] and Plant Breeder's Rights Bill [B 11B – 2015]. Subsequent to that, the Gauteng Department of Agriculture and Rural Development (GDARD) made a presentation on the views of the Executive on matters related to the Plant Improvement Bill [B 8B-2015] and Plant Breeder's Rights Bill [B 11B – 2015].

3. LEGAL OPINIONS

On the 19th October 2017, a legal opinion on the Bills was presented by the NCOP and Legal Unit from the Gauteng Provincial Legislature.

4. ADVERTORIAL

In fulfilling its constitutional mandate, the Committee published adverts in the following newspapers; The advert for the Public Hearing held on Saturday, 26th & 27th May 2017 were issued on the following newspapers;

- Sowetan - Friday, 19th May 2017
- Beeld - Friday 19th May 2017
- City Press - Sunday, 21st May 2017
- Business Day - Monday 22nd May 2017

The advert for the Public Hearing held on Saturday, 12th August 2017 were issued on the following newspapers;

- City press - Sunday, 6th August 2017
- Sowetan - Thursday, 3rd August 2017
- Beeld – Friday, 4th August 2017

This was to enable the Committee to request members of the public and stakeholders to make comments on the Bill.

5. PUBLIC HEARINGS

The Committee convened three public hearings in the following areas:

- Friday, 26th May 2017 - Mogale City Municipality at the Nelson Mandela Community Hall
- Saturday, 27th May 2017 – Midvaal Local Municipality at the Sicelo Community Hall
- Saturday, 12th August 2017 - Ekurhuleni Metropolitan at the Bronkhorstspuit Sports Centre

OVERVIEW OF THE PUBLIC HEARINGS

On the public hearings held on the 26 and 27 May 2017, officials from the National Department of Forestry and Fisheries did not attend. This resulted in the Legal Advisor from the Gauteng Provincial Legislature making presentations to the public on the Bills, on behalf of the National Department of Forestry and Fisheries.

Public hearings were attended by stakeholders and members of the public who engaged on all matters related to the Bills. Various sentiments were echoed by all who attended and a summary of all inputs have been captured on the negotiating mandates.

The Committee received oral and written submissions on the **Plant Improvement Bill** from the following Institutions: African Centre for Biodiversity and various individuals supporting its submissions; South African National Seed Organisation; and iZindaba Zokudla & Anthropology and Development Studies – University of Johannesburg

The Committee received oral and written submissions on the **Plant Breeder's Rights Bill** from the following Institutions: African Centre for Biodiversity and various individuals supporting its submissions; South African National Seed Organisation; and iZindaba Zokudla & Anthropology and Development Studies – University of Johannesburg; South African Institute of Intellectual Property Law, Biowatch South Africa.

IPHALAMENDE LAKWAZULU-NATALI



KWAZULU-NATAL PROVINSIALE PARLEMENT

KWAZULU-NATAL PROVINCIAL PARLIAMENT

NEGOTIATING MANDATE

TO: HON OJ SEFAKO, MP
CHAIRPERSON OF SELECT COMMITTEE ON LAND
AND MINERAL RESOURCES

NAME OF BILL: PLANT BREEDERS' RIGHTS BILL

NUMBER OF BILL: B11B-2015

DATE OF DELIBERATION: 27 OCTOBER 2017

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Agriculture and Rural Development met today, Friday the 27th of October 2017, and agreed to mandate the KwaZulu-Natal delegation to **support** the **Plant Breeders' Rights Bill [B11B-2015]**; with the following proposed amendments as outlined in the Committee Report, attached hereto.

HON N SIMELANE-ZULU, MPL
CHAIRPERSON: PORTFOLIO COMMITTEE
ON AGRICULTURE AND RURAL DEVELOPMENT

27/10/2017

DATE

MEMORANDUM

RE: AGRICULTURE AND RURAL DEVELOPMENT PORTFOLIO COMMITTEE REPORT ON PUBLIC HEARINGS ON THE PLANT BREEDERS' RIGHTS AND PLANT IMPROVEMENT BILLS

Background

1.

The Plant Breeders' Rights and Plant Improvement Bills were allocated on the Agriculture and Rural Development Portfolio Committee and in terms of the constitution of the Republic are described as the section 76 bills. A special meeting of the Agriculture and Rural Development Portfolio Committee was convened and after deliberations resolved to conduct Public Hearings on three districts namely Harry Gwala, UMzinyathi and King Cetshwayo. There was a need for a Portfolio committee to conduct an education workshop due to the technical nature of the bills. The Public hearings were advertised on the local newspapers such as The Mercury, Isolezwe and ilanga inviting the relevant stakeholders and the public to attend the hearings. The Public hearings were reasonably attended by the relevant stakeholders and members of the public, the copies of the attendance registers are attached herewith for ease of reference. The stakeholders who were present during the Public Hearings made comments and questions of clarities which were responded to by the officials of the provincial Department of Agriculture and Rural Development and the legal advisor who was the presenter of the bills. The stakeholders present during the public hearings were afforded an opportunity to submit their written submissions not later than the 15th of May 2017 as advertised on the local newspapers. The deadline for written submissions to be submitted was further extended up until the 13th September 2017.

Proposed Amendments

2.

Plant Breeders' Rights and Plant Improvement Bills, 2017

The following are the proposals which emanate from the written submissions received from the relevant stakeholders for the portfolio committee to consider:

- Section 7(2) (b), which extends breeders' rights to harvested materials must be deleted.
- The right of a farmer to reuse saved seed of a protected variety for purposes of propagation on his/her own holdings available in Section 23(6) (f) of the existing Act has been replaced with section 10(2) in the bill, which require the minister to prescribe who might use the protected variety, for what purpose, and under which conditions.
- The proposed section 10(2) of the Bill is simply inadequate to address this critical activity on the part of farmers, as it does not expressly recognise the right of farmers to reuse and exchange farm saved seed of a protected variety, and its operation is at the discretion of the minister and may be subject to conditions and payment of remuneration to the rights holder.
- Section 10(1) (a) – "private and non-commercial" – is new. The original wording "private or non- commercial" should be retained and be properly defined to allow for the reuse by a farmer of a protected variety including exchange.
- Royalties/compensation can be claimed in addition to section 55(1) (b).
- It is proposed that part (b) of the definition "Sell" is removed in its entirety (b) to exchange or to otherwise dispose of to any person in any manner'

3. PLANT BREEDERS' RIGHTS AND PLANT IMPROVEMENT BILLS, 2017

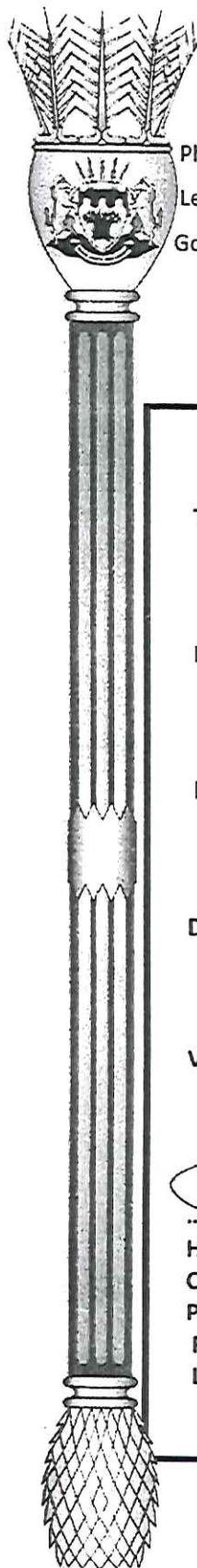
ANALYSIS OF SUBMISSIONS

PARTY MAKING COMMENT	CLAUSE	COMMENT	DEPARTMENT OF AGRICULTURE FOREST AND FISHERIES RESPONSE, INCLUDING PROPOSED NEW/AMENDMENTS
Bio Watch South Africa	1	<p>Plant Breeders' Rights Bill</p> <p>Definitions</p> <p>The definition of "breeder" is very narrowly defined as a person or employer, which excludes the notion that communities of people may jointly develop new varieties or that partnerships may exist between scientists and communities to develop new varieties. In effect then, this definition will mean that new varieties develop through participatory breeding between farmers and scientists will be registered with the research institution, nullifying the role of farmers in the process.</p>	<p>The term person refers to one or more persons. Section 12 provides for joint holders of plant breeder's right which precisely addresses the concern raised. Definition of person legally does not exclude communities and/or group of persons. Application forms further provide for all persons who participated in the breeding to be listed and all of them become co-holders of that plant breeder's right.</p>
Bio Watch South Africa	7(1)	<p>Plant Breeders' Right</p> <p>Protection given to the holder of Plant Breeders' Rights</p> <p>We strongly object to Plant Breeders' Rights that limits the right to produce, condition, and stock seeds, to breeders only. These are activities all farmers undertake in the process of farming. This definition therefore limits the rights of farmers to save, plant and exchange seed.</p>	<p>Section 10 provides for exceptions to 7(1) and 10(1) (d) read with 10(2) aims to address the concern raised.</p> <p>It is worth noting that the current Plant Breeders' Rights Act, 1976 (Act No.15 of 1976) prohibits all farmers to continue with their ancient practice of exchanging and sharing seed. The current bill aims to precisely correct this by allowing the Minister to prescribe that certain farmers be allowed to continue with this practice, on crops that they have been doing so over the years. These details will be under regulations because it will be easier to amend the regulations should it become necessary to include/exclude more farmers/crops under this provision. If this Bill were not to be supported, this would mean that the majority of farmers who continue to exchange and share seed</p>

3. PLANT BREEDERS' RIGHTS AND PLANT IMPROVEMENT BILLS, 2017

ANALYSIS OF SUBMISSIONS

PARTY MAKING COMMENT	CLAUSE	COMMENT	DEPARTMENT OF AGRICULTURE FOREST AND FISHERIES RESPONSE, INCLUDING PROPOSED NEW AMENDMENTS
Bio Watch South Africa	7 (2)	We strongly object to Plant Breeders' Rights being extended to harvested material and the products of harvested material as this effectively gives corporations ownership of the resulting food value chain through ownership of the germplasm. It can also mean that the breeder or company can claim royalties on the farmer's harvest at any time during the entire length of the royalty period, which this Act proposes to be 30 years.	of protected varieties remain unprotected in terms of the current Act. 7(2) (a) clearly states that this provision only kicks in if the holder did not have reasonable opportunity to exercise his right in respect of the propagating material. This section must be read with section 11 on the exhaustion of plant breeder's right.
Bio Watch South Africa	10(2) (b)	This clause needs to define what the 'legitimate interests' of a breeder may include, and how these interests are balanced against the right to food and the interest of the country in ensuring that we maintain adequate agri-diversity both in the varieties and types of crops grown to have a sovereign and adaptable agriculture. Additional clause Companies are already requiring farmers to sign contracts that prohibit the saving of seed from open pollinated varieties. To ensure that the right of smallholder farmers from possible contracts with seed companies that attempt to undermine exceptions to Plant Breeders' Rights. This could say: "Any agreement which restricts or annuls the exceptions to the right to protection for varieties referred to in Article 10. (2) shall be deemed to be null and void."	The proposal is acceptable to the Department
Bio Watch South Africa	46(1) (b)	Appointment of members of the advisory committee and termination of membership One of the 2 representatives for farmers should specifically represent the smallholder farming sector.	That was the intention of the Department



LIMPOPO LEGISLATURE

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0700

NEGOTIATING MANDATE

To : The Chairperson: SC on Land and Mineral Resources

Name of Bill : Plant Breeders' Rights Bill

Number of the Bill : [B11B - 2015]

Date of Deliberation : 18 May 2017

Vote of the Legislature : Provincial NCOP Permanent Delegates to consider inputs by stakeholders and to negotiate in favour of the Bill.

HON. MASEKOAMENG M.I.
CHAIRPERSON
PORTFOLIO COMMITTEE ON AGRICULTURE AND
RURAL DEVELOPMENT
LIMPOPO LEGISLATURE

18/05/2017
DATE

**NEGOTIATING MANDATE OF THE LIMPOPO LEGISLATURE
PORTFOLIO COMMITTEE ON AGRICULTURE AND RURAL
DEVELOPMENT ON THE PLANT BREEDERS' RIGHTS BILL
[B 11B – 2015]**

1. INTRODUCTION

The Plant Breeders' Rights Bill [B 11B – 2015] was referred to the Limpopo Legislature by the National Council of Provinces (NCOP) and the Limpopo Legislature in turn referred the Bill to the Portfolio Committee on Agriculture and Rural Development for consideration and report back to the House for conferral of mandate to the NCOP.

2. PURPOSE OF THE BILL

The Plant Breeders' Rights Bill seeks to provide for a system whereunder plant breeders' rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be complied with for the grant of such rights; for the scope and protection of such rights, and for grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith.

3. CONSIDERATION OF THE BILL

The NCOP Member, Honourable Smith F. B, and the National Department of Agriculture, Forestry and Fisheries briefed the Portfolio Committee on Agriculture and Rural Development on the principles, objectives and provisions of the Plant Breeders' Rights Bill on Friday, 10 March 2017 at Parliamentary Village at 10:00.

After the briefing session, the Portfolio Committee resolved to embark on one central public hearing in which all stakeholders throughout all the four districts and all local municipalities in the Province will converge and deliberate on the Bill. The public

hearing was held at Protea Land Mark Lodge on Friday, 07 April 2017. Over 200 relevant and affected stakeholders were invited.

The Portfolio Committee on Agriculture and Rural Development further met on 18 May 2017 for consideration and scrutinizing of the input made by the stakeholders. The Portfolio Committee having considered the input by the stakeholders, adopted this report.

4. STAKEHOLDERS INVITED

Stakeholders invited included amongst others the provincial departments dealing with plant breeding matters, nurseries and nurseries organizations, legal and academic institutions, districts and local municipalities, farmers, interested communities and individuals, organized structures interested in plant breeding matters, prospective plant improvement stakeholders; etc.

The Limpopo Legislature provided transport for all interested and affected parties that wanted to attend the public hearing. Transport arrangements were made from all the districts and local municipalities. Some stakeholders who were able and interested to use their own transport were allowed to do so and the Legislature offered to reimburse them for kilometers travelled.

5. SUBMISSIONS AND INPUTS BY THE STAKEHOLDERS DURING THE PUBLIC HEARING

5.1 INPUTS DURING PUBLIC HEARING

The public or stakeholders were impressed that the Bill encourages compliance with international standards in terms of the protection of rights, penalties, plant variety protection and in terms of the protection of expiry years.

The stakeholders also submitted that:-

Clause 7 subsection 1

The Bill should have specific provision for the protection of the traditional seed breeders and local farmers.

Clause 55 subsection 1

The Bill must make provision for the prevention of hi-jacking of breeds or stealing trace by other farmers and producers;

Clause 55 subsection 2(e)

the Bill must make provision for prevention of selling of seeds that are unregistered, unlabeled or from unknown breeders.

Registered seed breeders must be held accountable for the performance of their seeds or varieties when planted as determined according to clause 26 (1) on distinctness, uniformity and stability tests; and

Clause 55 subsection 3

Clause 3 (a) (b) (c) and (d) need to specify the adequate Rand value amount, fine and percentage of royalties because as it is it might cause a challenge when implementing or enforcing penalties to the offenders;

6. NEGOTIATING MANDATE

The Committee, having considered the Bill and proposed amendments therefore recommends to the NCOP Permanent Delegates to vote in favour of the Bill as amended.


.....
HON. MASEKOAMENG M. I
CHAIRPERSON: PORTFOLIO COMMITTEE ON AGRICULTURE AND
RURAL DEVELOPMENT

18/05/2017
DATE



Limpopo Legislature

OFFICE OF THE SECRETARY

Physical Address:
Lebowakgomo
Government Complex

Postal Address
Private Bag X9309
Polokwane
0700

AGENDA

MEETING : PORTFOLIO COMMITTEE ON AGRICULTURE
DATE : FRIDAY, 10 MARCH 2017
TIME : 10:00
VENUE : PARLIAMENTARY VILLAGE

1. OPENING AND CHAIRPERSON REMARKS

2. ROLL-CALL AND APOLOGIES

3. INTRODUCTIONS

4. BUSINESS OF THE DAY

**4.1 Briefing by the National Council of Provinces (NCOP) Permanent Delegate
on the following Bills:**

5.1.1 Plant Improvement Bill [B8B-215]

5.1.2 Plant Breeder's rights Bill [B11B-2015]

5. ANNOUNCEMENTS

6. CLOSURE

Tel.: (015) 633 8150 / 082 413 1007– Fax: (086 699 0444) 633 8046 / (015) 633 8119



Limpopo Legislature

OFFICE OF THE SECRETARY

THE MINUTES OF THE MEETING OF THE PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND REFORM HELD AT PARLIAMENTARY VILLAGE ON 10 MARCH 2017: 10H00.

1. OPENING AND WELCOME

The Chairperson welcomed the attendees and declared the meeting officially opened at 10H00. Introductions were made. He remarked that the meeting was about the briefing by the National Council of Provinces (NCOP) Permanent Delegate on Plant Improvement Bill [B8B-2015] and Plant Breeder's rights Bill [B11B-2015].

2. ROLL CALL AND APOLOGIES

Attendees :- Hon. M.I. Masekoameng; Hon. T.E. Ndlovu; Hon. M.L. Ngwenya; Hon. M.S. Chego; Hon. S.V. Mathye; Hon. M.E. Machaka; Hon.J.F. Smalle, and Hon. Smit

Apologies:- Hon. M.J. Aphiri; Hon. N.D. Masemola; and Hon. P. Sikhutshi

3. CONFIRMATION OF THE AGENDA

The agenda was confirmed without alterations.

4. BUSINESS OF THE DAY

4.1. BRIEFING BY THE NATIONAL COUNCIL OF PROVINCES (NCOP) PERMANENT DELEGATE ON THE FOLLOWING BILLS:

4.1.1 Plant Improvement Bill [B8B-2015].

4.1.2 Plant Breeder's rights Bill [B11B-2015].

The NCOP Permanent Delegate briefed the Committee on both Plant Improvement Bill [B8B-2015] and Plant Breeder's rights Bill [B11B-2015]. The committee sought clarity and the NCOP Permanent Delegate responded accordingly.

After the briefing the Committee resolved that a public hearing for the above-mentioned bills be held in a central venue. Furthermore, the secretariat should deal with logistic arrangements.

5. CORRESPONDENCES

None.


6. ANNOUNCEMENTS

None.

7. CLOSURE

The Chairperson declared the meeting closed at 12H45.

COMPILED BY: .



ELLEN NDOU

COMMITTEE COORDINATOR

CERTIFIED CORRECT BY

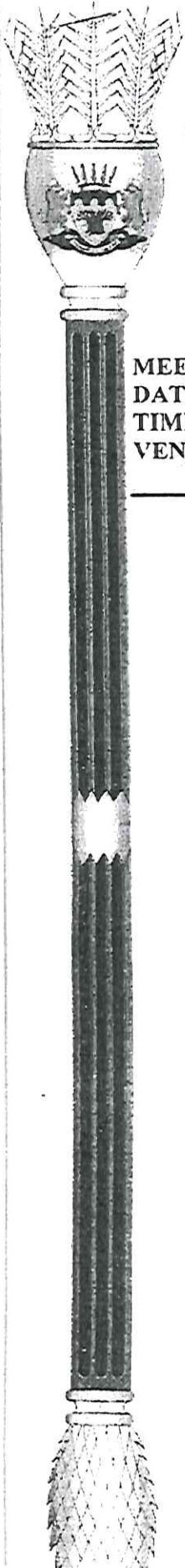


HON. M.I. MASEKOAMENG

CHAIRPERSON: PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND REFORM

18/05/2017

DATE



Limpopo Legislature

OFFICE OF THE SECRETARY

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0700

AGENDA

MEETING : PORTFOLIO COMMITTEE ON AGRICULTURE
DATE : THURSDAY, 18 MAY 2017
TIME : 09:00
VENUE : LEBOWAKGOMO COMMITTEES BOARDROOM

1. OPENING AND CHAIRPERSON REMARKS
2. ROLL-CALL AND APOLOGIES
3. MINUTES
 - 3.1 Consideration and Adoption of the Previous Minutes
 - 3.2 Matters arising from the previous Minutes
4. Committee Resolutions from the Previous meeting
5. BUSINESS OF THE DAY
 - 5.1 Consideration and adoption of the 2016/ 17 Second Quarter Report;
 - 5.2 Consideration and adoption of the 2016/ 17 Third Quarter Report;
 - 5.3 Consideration and adoption of the Negotiating Mandate on Plant Improvement Bill;
 - 5.4 Consideration and adoption of the Negotiating Mandate on Plant Breeders' Rights Bill;
6. RESEARCH ANALYSIS ON:-
 - 6.1 2016/17 Fourth Quarter Financial and Performance Report; and
 - 6.2 2017/18 Annual Performance Plan (APP) and Budget
7. BRIEFING BY THE AUDITOR GENERAL ON INTERIM AUDIT RESULTS

Limpopo Legislature

OFFICE OF THE SECRETARY

Physical Address:
Lebowakgomo
Government Complex

Postal Address
Private Bag X9309
Polokwane
0700

MINUTES

MEETING : PORTFOLIO COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT
DATE : THURSDAY, 18 MAY 2017
TIME : 09:00
VENUE : PARLIAMENTARY VILLAGE

1. OPENING AND CHAIRPERSON REMARKS

The Chairperson, Honourable Masekoameng M.I officially opened the meeting at 09:00 and welcomed Honourable Members for availing themselves for the meeting. He encouraged members to feel free to deliberate on all matters before the Committee.

2. ROLL-CALL AND APOLOGIES

Present:

Honourables Masekoameng M.I; Masemola N.D; Aphiri M. J; Ngwenya M. L; Mathye S. V and Smalle J. F.

Apologies:

Honourables Sikhutshi P and Chego S.

An apology was received from the MEC of the Department of Agriculture and Rural Development, Honourable Mapula Mokaba-Phukwana. The Portfolio Committee noted with regret the continued unavailability of the MEC and the department for accounting before the Committee.

The Portfolio Committee resolve that a letter must be written to the Speaker detailing postponed meetings due to unavailability of the MEC and the department. This unavailability was seen as hindrance for the Portfolio Committee to perform its obligations and constitutional mandate.

3. MINUTES

3.1 Consideration and Adoption of the Previous Minutes

Previous minutes were considered and adopted by the Portfolio Committee

3.2 Matters arising from the previous Minutes

The Portfolio Committee deliberated on the matters arising from the previous minutes

4. COMMITTEE RESOLUTIONS FROM THE PREVIOUS MEETING

Committee resolutions remains a standing item whenever the Portfolio Committee meet with the department.

5. BUSINESS OF THE DAY

5.1 Consideration and adoption of the 2016/ 17 Second Quarter Report;

The Portfolio Committee considered the Committee Report on 2016/17 Second Quarter Financial and Performance Report of the Department of Agriculture and Rural Development. Having considered the Committee Report Honourable Masemola N. D moved for the adoption of the Committee Report and was seconded by Honourable Smalle F. J.

5.2 Consideration and adoption of the 2016/ 17 Third Quarter Report;

The Portfolio Committee considered the Committee Report on 2016/17 Third Quarter Financial and Performance Report of the Department of Agriculture and Rural Development. Having considered the Committee Report, Honourable Masekoameng M. I moved for the adoption of the Committee Report and was seconded by Honourable Mathye S. V.

5.3 Consideration and adoption of the Negotiating Mandate on Plant Improvement Bill;

The Portfolio Committee on Agriculture and Rural Development considered the input and submissions by the stakeholders and the Negotiating Mandate on Plant Improvement Bill item by item. After consideration of the Negotiating Mandate Honourable Smalle F. J moved for the adoption of the negotiating mandate and was seconded by Honourable Masemola N.D. There was no object recorded from the Committee Members.

5.4 Consideration and adoption of the Negotiating Mandate on Plant Breeders' Rights Bill;

The Portfolio Committee on Agriculture and Rural Development considered the input and submissions by the stakeholders and the Negotiating Mandate on Plant Breeders' Rights Bill item by item. After consideration of the Negotiating Mandate, Honourable Smalle F. J moved

6. RESEARCH ANALYSIS ON:-

6.1 2016/17 Fourth Quarter Financial and Performance Report

This item was postponed to the next meeting with the department.

6.2 2017/18 Annual Performance Plan (APP) and Budget

This item was postponed to the next meeting with the department.

7. BRIEFING BY THE AUDITOR GENERAL ON INTERIM AUDIT RESULTS

The Auditor General was offered an opportunity to brief the Portfolio Committee on interim audit opinion on the 2017/18 Annual Performance Plan and Budget of the Department of Agriculture and Rural Development.

After briefing by the Auditor General Committee Members made some input, clarity seeking questions, observations and remarks.

8. ANY OTHER BUSINESS

8.1 Oversight Visits

The Portfolio Committee deliberated on the agricultural fence and bridges projects. The Committee was concerned about different charges for the same quality of job on fence projects and the competency of the department in building bridges. The Committee was further concerned about vandalism of fence and other agricultural projects.

After deliberations on the matters, the Portfolio Committee resolved to embark on oversight visits to these projects. The Committee further to start preparation and to determine who such oversight visits will take place.


9. ANNOUNCEMENTS

It was announced that the Committee will meet again on Wednesday, 24 May 2017 at Parliamentary Village at 09:00.

10. CLOSURE

The Chairperson thanked all honourable members for robust but constructive desideration during the meeting and officially closed the meeting at 13:00.

COMPILED BY:


.....

MABIJA R. P

COMMITTEE COORDINATOR

CERTIFIED CORRECT BY


.....

HON. M.I. MASEKOAMENG

CHAIRPERSON: PORTFOLIO COMMITTEE ON AGRICULTURE AND RURAL
DEVELOPMENT

24/05/2017
.....

DATE

AGENDA

PUBLIC HEARINGS ON THE PLANT IMPROVEMENT BILL AND PLANT BREEDER'S RIGHTS BILL

DATE : 07 APRIL2017
TIME : 09H00
VENUE : LAND MARK LODGE

AGENDA

1. Opening and Welcoming remarks
2. Roll Call and Apologies
3. Purpose of the Public Hearing
4. Briefing on Plant Improvement Bill

Questions and inputs by the stakeholders

5. Briefing on Plant Breeder's Rights Bill

Questions and inputs by the stakeholders

6. Way forward
7. Vote of thanks
8. Announcements
9. Closure



Rendani Phanuel Mabija <mabijarp@gmail.com>

On the proposed revisions to the Plant Improvement and Plant Breeders' Rights Bills.

1 message

Martijn Smeets Photography <martijnsmeetsphotography@gmail.com>

Sat, Jun 3, 2017 at
12:34 PM

To: mtyiwani@ecleg.gov.za, kgathatson@fsl.gov.za, Dimbad@kznleg.gov.za, mabijarp@limpopoleg.gov.za, mabijarp@gmail.com, prettyma@mpuleg.gov.za, nborchard@ncpg.gov.za, karabo@nwpl.org.za, Karabom1@gmail.com, NMayambela@wcpp.gov.za
Cc: seedhavens@gmail.com, sibusiso@acbio.org, Seed@saoso.org

Dear Sir / Madam,

I object to any revisions if they are against the public interest. The revisions as they are proposed are putting further regulations and restrictions on our farmers, and in a country where we have over 55 million mouths to feed I don't see any sensemaking in this proposal.

Although I understand the complexity of the international trade, and that one has to comply with regulations in the global market, I still think the government's priority should be the people of South Africa. In other words, the government should not embrace regulations which will have a negative impact on the population. In this case regulations are proposed that benefit mainly foreign companies while they have a negative effect on the people of South Africa.

How will these changes have a negative impact? First of all, people need food. As long as it is not for a valid reason like health risks I don't see why a government would want to regulate food production. As a matter of fact, in essential markets like food and healthcare there should not be anything like a patent or breeder's right. These practices only lead to higher prices, which consequently leads to people are going to have limited access to essential resources. I hope the government realizes that they effectively depriving their own people from food by embracing this proposal.



Another point that completely puzzles me is that in the stage wherein we really start realizing the importance of varieties and diversity the government wants to bring in restrictions. It almost looks like plain sabotage. Again we can raise the question who government is actually serving, their people or other parties? I was hoping that after the Gupta debacle government would be more aware of the influence of commercial non-political parties in their decision making. Like I mentioned above, as long as it is not for a valid reason like health risks I don't see why.....

We are still talking food here in a country full of hungry people or people with a non nutritious diet. The fact that government wants to go as far as to criminalize (yes, getting the police involved) breaching these regulations is ridiculous. In a nutshell, government is planning to knowingly deprive their own people from food and damage the eco-system, all under the watchful eye of the SAPS while the farmers are held at gunpoint by the seed supplying industry. There is a word for that, "structural violence", and it is violating human rights.

Taking this all in consideration I truly hope the government takes the right and rational decision to not implement further regulations and restrictions on our agricultural (food producing) industry.

Kind regards,

Martijn Smeets.

 Compose the Plant Im... Compose

Reply



the Plant Improvement and Plant Breeders' Rights Bills

andre dewet

02/06/2017 at 13:28:59

To: <mtyiwani@ecleg.gov.za> and 7 others Details

Dear sir/madam,

I am strongly opposed to these proposed new bills, as it is unconstitutional and takes away the rights of all farmers and growers.

The bills will also degrade the bio-diversity of plants and will result in fewer and fewer varieties of crops. This is a very unwise move as diversity in crops guarantee that all crops are not wiped out by some disease of pest, leaving the country in starvation.

The bills also takes away the power of the people and puts it in the hands of a few rich corporations, which sounds a heck of a lot to me like slavery! Never in the land of the free - South Africa.

Please, do not let these bills get signed into law.

Kind regards,
Andre de Wet.

Mr Mabija RP

From: Nadia Scapin <nadia.scapin@ymail.com>
Sent: Monday, June 19, 2017 10:51 PM
To: Dimbad@kznleg.gov.za; Karabom1@gmail.com; NMayambela@wcpp.gov.za; karabo@nwpl.org.za; kgathatson@fsl.gov.za; lmampe@gpl.gov.za; Mr Mabija RP; mabijarp@gmail.com; mtyiwani@ecleg.gov.za; nborchard@ncpg.gov.za; seedhavens@gmail.com; sibusiso@acbio.org.za
Subject: Plant Breeders and Plant Improvement bills

Good day.

Not being entirely sure who to send this email to, I decided to send to all listed email addresses available.

While I understand that you may or may not be a decision-maker in passing this legislation, I am writing this email to you as a fellow human being.

We all understand that society, as it stands, revolves around money, greed and power. This legislation that plans to be passed ticks all 3 boxes.

As a living, breathing human being, I was born into freedom. Freedom to choose, to breathe, to be fed and to fend for myself. This legislation takes away my right to choose, my right to be fed and my right to fend for myself. You may not see it that way but as soon as you legislate the growing of food, you do exactly that.

The government may have succumb to a promise of profits and taxes, but at what cost? If I am stopped from saving or giving away seeds then I am stopped from fending for myself and become reliant on a corporation to provide for me.

This has never been and will never be a way for humans to live.

I implore you to please think this through, do what is right and halt this process before it is too late.

We need seeds to feed our future generations and ourselves. by taking our right as human beings to keep and trade seeds you will be taking our human rights.

What will we as a society gain by restricting our access to seeds and prohibiting us from keeping seeds? You will not add any benefit to society but taking away from us.

The only thing necessary for the triumph of evil is for good men to do nothing. Edmund Burke

Kind regards
Nadia Scapin
0720737898

Mr Mabija RP

From: Haydn Edwards <haydne@gmail.com>
Sent: Monday, June 19, 2017 8:59 PM
To: Dimbad@kznleg.gov.za; Karabom1@gmail.com; NMayambela@wcpp.gov.za; karabo@nwpl.org.za; kgathatson@fsl.gov.za; Imampe@gpl.gov.za; Mr Mabija RP; mabijarp@gmail.com; mtyiwani@ecleg.gov.za; nborchard@ncpg.gov.za
Cc: seedhavens@gmail.com; sibusiso@acbio.org.za
Subject: RE: Plant Breeders and Plant Improvement bills

Good day,

Not being entirely sure who to send this email to, I decided to send to all listed email addresses available.

While I understand that you may or may not be a decision-maker in passing this legislation, I am writing this email to you as a fellow human being.

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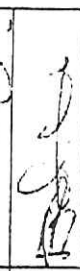


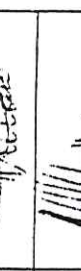


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ATTENDANCE REGISTER 2014/2019

PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND REFORM


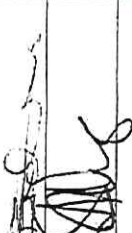


DATE	TIME	CELL NUMBERS	E-MAIL ADDRESS	APOLOGIES	SIGNATURE
18/05/2017	09:00				Patsonnary Village

NO.	NAME	CELL NUMBERS	E-MAIL ADDRESS	APOLOGIES	SIGNATURE
1.	HON. M. I MASEKOAMENG	082 463 2624	Legislature		
2.	HON. N. D MASEMOLA	082 857 5607	Legislature		
3.	HON. M. L NGWENYA	082 253 0339	Legislature		
4.	HON. T. E NDLOVU	082 463 2673	Legislature		
5.	HON. M. S CHEGO	072 749 6339	Legislature	AP	
6.	HON. M. J APHRI	082 463 2654	Legislature		
7.	HON. S. V MATHYE	073 693 6094	Legislature		
8.	HON. M. E MACHAKA	082 598 6707	Legislature		
9.	HON. J. F SMALLE	083 392 3334	Legislature		
10.	HON. P. SIKHUTSHI	076 512 3497	patricksinhutshi70@gmail.com	AP	

Purpose of the meeting Consideration and Adoption of Income Moneys and 2016/17 2nd and 3rd Quarterly Committee Report and Departmental Moneys for Plant and Animal Breeding Rights for

PORTFOLIO COMMITTEE ON AGRICULTURE AND LAND REFORM

DATE	TIME	VENUE	Presentation
10/03/2017	10:00		

NO.	NAME	CELL NUMBERS	E-MAIL ADDRESS	APOLOGIES	SIGNATURE
1.	HON. M. I MASEKOAMENG	082 463 2624	Legislature		
2.	HON. N. D MASEMOLA	082 857 5607	Legislature		
3.	HON M. L NGWENYA	082 253 0339	Legislature		
4.	HON. E. NDLOVU T.E	082 463 2673	Legislature		
5.	HON. M. S CHEGO	072 749 6339	Legislature		
6.	HON. M. J APHIRI	082 463 2654	Legislature		
7.	HON. S. V MATHYE	073 693 6094	Legislature		
8.	HON. M. E MACHAKA	076 496 3176	Legislature		
9.	HON. J. F SMALLIE	083 392 3334	Legislature		
10.	HON. P. SIKHUTSHI	076 512 3497	patrickshutshi70@gmail.com		

1. Purpose of the meeting.




SMITH

ATTENDANCE REGISTER FOR PLANT BREEDERS' RIGHTS AND PLANT IMPROVEMENT BILLS PUBLIC HEARING

DATE : 07 APRIL 2017





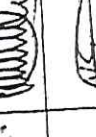







TIME : 09HRS

VENUE : POLOKWANE LAND MARK HOTEL

NAME & SURNAME	ORGANISATION	CONTACT	EMAIL ADDRESS	SIGNATURE
Matombe Titi	LBARD	079365 2077	thmatombe@gmail.com	
Ramulani AM	Farmers	0741552834	—	AmRamulani
NGOBENI DP	GREATER LEA BA MUNICIPALITY	072194266	—	DP Ngoben
Mareus Tshekane	Farm	0828698907	mareus.tshekane@gmail.com	
Hlongwane Letha	QIM CUP	0833719366	motgadi@hlongwane.co.za	
PETRUS M. SEKHU	FARM	0822197316	Ansekhe	Pekhu
LINDA D. MASILELA	FARM.	0791695505	nagagad@pama.i	Masilela
Makasele M. Masana	Nkhumake Farm	0721892833	makasele@pama.i	Masana
Maseela MC	Farm	0793616140	—	MC Maseela
Makgadi Meara	Greater Tzaneen Municipality	0836382500	makgadi.meara@tzeen.gov.za	Meara
Liba Same	Greater Tzaneen Municipality	0763117416	liba@tzeen.gov.za	Liba
Pheketekwa Lucy	Pheketekwa Farm	0789693373	lucy@pheketekwa.co.za	Pheketekwa

ATTENDANCE REGISTER FOR PLANT BREEDERS' RIGHTS AND PLANT IMPROVEMENT BILLS PUBLIC HEARING

DATE : 07 APRIL 2017
 TIME : 09HRS
 VENUE : POLOKWANE LAND MARK HOTEL

NAME & SURNAME	ORGANISATION	CONTACT	EMAIL ADDRESS	SIGNATURE
Jawlene Meyer	ZZZ	0822132432	jawlene@zzzonline.com jawlene.meyer@gmail.com	
Johan van Dyk	ZZZ	0834421677	johand@zzzonline.com	
Sally	Sterkloop Expro	0729965618	stock@sterkloopexpro.co.za	
Maggie Tsebo	Sterkloop Exp	0723112185		
Lina Nphahle	LepelleNKumpi	0714987661	ymatsimelipina@gmail.com	
Bernie Chokoe	Lepelale Local Municipality	0839577833	Moiko.Chokoe@lephalale.gov.za	
Eudy Janyatsi	Tekwane District	0840121587	eudy.express@gmail.com	
Sanie Tsebo	Greater Tzameen Municipality	0763717476	mainwesi@tzameen.gov.za	
Annamie Sepele	Batsalanen	0837660656		
Dr T.S. Kwechedi	Lerekgone (opp)	0734044497		
ASIWE J.A.N	University of Limpopo	0738324692	Joseph.Asiwe@ul.ac.za	
Mokgadi Nkomo	Greater Tzameen Municipality	0836382100	mtgadi@tzameen.gov.za	
Vusani Nkomo	Limpopo Dept of Agre	0760120607	Vusani65@gmail.com	

DATE : 07 APRIL 2017
TIME : 09HRS
VENUE : POLOKWANE LAND OFFICE

DATE : 07 APRIL 2017
TIME : 09HRS
VENUE : POLOKWANE LAND

NAME & SURNAME	ORGANISATION	CONTACT	EMAIL ADDRESS	SIGNATURE
Furthur Olet Singo	Deft Agriculture	0830903502	singofo46@gmail.com singofo46@gmail.com	<i>[Signature]</i>
Baloyi Jane	Farmer	0772093415	-	MJ Baloyi
MABEBA Mafakela	Farmer	0726429640	mabebam@gmail.com	<i>[Signature]</i>
ZATARA Mafakele	Farmer	0824947791	zathara.mafakele@gmail.com	<i>[Signature]</i>
Mzawani Khosha	G.G. du	0765220323	khosha.mzawani@gmail.com	<i>[Signature]</i>
Mahunda En	GGM	0761023545	enmahunda@gmail.com	<i>[Signature]</i>
MATILANGI K.A	Farmer	0835970287	Khumbe@gmail.com	<i>[Signature]</i>
R.S. Mafakele	Farmer	0723333746	Kell Farming	R.S. Mafakele

VENUE : POLOKWANE LAND MARK HOTEL

[illegible]



Office of the Chairperson

PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS

Enquiries: Hon BD Dube / Adv T Mosoetsa Email: ddube@mpuleg.gov.za Tel. No.: 013 766 1034/ 1140

NEGOTIATING MANDATE

To : The Chairperson: Select Committee on
Land and Mineral Resources

Name of the Bill : Plant Breeders' Rights Bill

Number of the Bill : [B11B-2015]

Date of Deliberation : 1 August 2017

Mandate of the Legislature : The Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs, after considering the Plant Breeders Rights Bill, B11B-2015 ("the Bill"), confers on the permanent delegate representing the Mpumalanga Provincial Legislature in the NCOP, the mandate to negotiate in favour of the Bill taking into consideration the views of the community members and stakeholders as contained in the attached report.

The following proposed amendments are submitted to the Select Committee:

CLAUSE 1: Definitions

- On the definition of the "Registrar" to read as follows: "Registrar" means the person contemplated in Section 3(1) and must have regional offices in the provinces

Kind regards,



HON BD DUBE
CHAIRPERSON: PORTFOLIO COMMITTEE
ON AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL AFFAIRS

01/08/17
DATE

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS ON THE PLANT BREEDERS' RIGHTS BILL, [B 11B-2015]

1. INTRODUCTION

The Speaker referred the **Plant Breeders' Rights Bill [B 11B-2015]** to the Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs (the Committee) for consideration and report back to the House in accordance with the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of Section 114 of the Constitution of the Republic of South Africa, 1996, (the Constitution) the Legislature is mandated to consider, pass, amend or reject any Bill referred to it. In considering a Bill, the Legislature is also mandated to facilitate public involvement in the legislative and other processes of the Legislature as per Section 118(1) of the Constitution. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The Bill seeks to provide for a system where-under plant breeders' rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be complied with for the grant of such rights; for the scope and protection of such rights; and for the grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith.

3. METHOD OF WORK

The Committee met with the National Council of Provinces (NCOP) Permanent Delegate, Hon AJ Nyambi, MEC, Hon VR Shongwe, and HOD, Ms. SP Xulu of the Department of Agriculture, Rural Development, Land and Environmental Affairs and officials from the Department of Agriculture, Forestry and Fisheries on the 21 February 2017 for a briefing on the Bill. The public hearings were conducted after publishing an invitation in the print media (Lowvelder, Provincial Media, Thaba Chweu News and Streek Nuus) in order to solicit inputs/comments from interested stakeholders and members of the public. The Public hearings were conducted on Tuesday, 16 May 2017, from 10h00 – 13h00 in the following Districts.

DISTRICT	VENUE
Ehlanzeni	Mashishing Community Hall - Thaba Chweu Local Municipality
Nkangala	Botleng Extension 5 Community Hall – Victor Khanye Local Municipality
Gert Sibande	Thuthukani Community Hall – Msukaligwa Local Municipality

The committee thereafter met on 26 May 2017 and on 01 August 2017 to consider the draft report on the (the Bill).

4. INTERACTION BY THE COMMITTEE WITH THE NCOP DELEGATE AND THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

The Permanent Delegate gave a brief political overview on the Bill, which amongst reported that:

- The Bill had been tagged as a Section 76 Bill, which means it involves provinces.

- He raised a concern on the technicality of the Bill and that it might not be well understood by members of the public.

4.1. Briefing by the Department of Agriculture, Forestry and Fisheries

The Department highlighted that people breed new plant varieties for various reasons, such as higher yields; better product quality; better resistance to plant pests and disease, etc. Therefore; a plant breeder's right (PBR) is a form of intellectual property right and is granted to breeders of newly bred plant varieties.

4.1.1. Development of Plant Breeder's Rights Bill

The development of the Bill took into account the following:

- the principal legislation: The Plant Breeders' Right Act, 1976 (Act 15)
- experiences/ constraints in the implementation of the PBR Act
- other relevant national legislation, policies, strategies & programmes
- relevant international obligations
- available options to protect intellectual property rights concerning plant varieties (patents, plant breeders' rights)

The Bill also recognized the following elements:

- the importance of new plant varieties to support sustainable agricultural production
- the important role of breeders in developing new plant varieties
- the importance of an effective plant variety protection system

According to the department, the Bill acknowledged the following matters:

- the considerable investments needed to develop a new variety
- the need to provide incentives for breeders of new plant varieties

- the importance of balancing the needs of farmers and breeders

4.1.2. Scope of the Bill

Section 7 of the Bill provides for the protection given to the holder of plant breeders' right, wherein:

(1) The protection is given to the holder of a plant breeder's right is that prior authorization has to be obtained for the duration of the plant breeder's right from that holder, by way of a license granted or issued in terms of section 34 or section 35, by any person intending to undertake the following:

- (a) the production or reproduction (multiplication) of the protected variety;*
- (b) the conditioning for the purposes of propagation of the protected variety;*
- (c) the sale or any other form of marketing of the protected variety;*
- (d) the exporting of the protected variety;*
- (e) the importing of the protected variety; or*
- (f) the stocking of the protected variety for any of the purposes referred to in paragraphs (a) to (e).*

4.1.3. The need for Plant Variety Protection

It was indicated that the plant varieties are important for sustainable agricultural production. The consequences of the absence of Plant Variety Protection is resulting to breeders being reluctant to release plant varieties and has had negative impact on farmer competitiveness.

In terms of the economic benefits of new plant varieties; new plant varieties contributes to increased agricultural productivity with higher yields and better product quality, which impact to address the higher demand for food due to increased population numbers higher value products with increased marketability and better

processing properties as well as support publicly-funded research (Royalties can serve as a source of income).

The environmental benefits of new plant varieties are the increased disease and pest resistance, drought tolerance and minimizing harvesting of species from the wild (e.g. Proteaceae family).

4.1.4. Major shortcomings in current legislation

The department reported that the current Act dates from 1976 and does not cater for recent developments and that it has ambiguous administrative procedures. Furthermore, protection is offered to limited number of genera. The current prescribed penalties are inadequate to deter deliberate infringements and also that the act is limiting Farmers' privilege provision. The other shortcomings relate to the lack of advisory body for the registrar as the general structure of the Act.

5. INPUT BY THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS

- The department raised a concern on how the Bill was going to assist farmers in the province;
- The department requested for a meeting with the Department of Agriculture, Forestry and Fisheries in order for the Bill to be explained in simple terms to them.

6. INPUT BY THE COMMITTEE

The Committee made the following inputs on the Bill:

- The introduction of the Bill was welcomed by the Committee.

- The Department of Agriculture, Forestry and Fisheries must explain whether the Bill seeks to redress or protect the breeders rights of the previously disadvantaged.
- A budget must be made available after the Bill has been passed.
- Inspectors must be appointed to assist people with the registration process.
- Inspectors must give feedback to the people.
- The Department of Agriculture, Forestry and Fisheries must invest in the education of ordinary people of Mpumalanga about the Bill, including terminology and technicalities.

7. INPUT BY THE LEGISLATURE LEGAL TEAM

- The Legislature Legal Team raised a concern on the financial implication that the Bill will have when it is being implemented.
- The Legal team wanted to know if the Department of Agriculture, Rural Development, Land and Environmental Affairs will have sufficient budget to implement the Bill.

8. INPUTS BY STAKEHOLDERS

8.1. Public Hearing

The following stakeholders were invited by the Committee to attend the public hearing held on 16 May 2017:

- Community Members (including farmers)
- Department of Agriculture, Forestry and Fisheries
- Department of Agriculture, Rural Development, Land and Environmental Affairs
- Mpumalanga House of Traditional Leaders (HTL)
- Thaba Chweu, Msukaligwa and Victor Khanye Local Municipalities

- Ward Committees
- Community Development Workers
- Agricultural Extension Officers

During the public hearings, members of the committee explained the purpose of the Bill thoroughly and presented the intended changes to the bill in local languages. The Committee also reported that the closing date for written submissions on the Bill will be Monday, 22 May 2017. The Committee after receiving a written communication from the NCOP extended the due date for submission of written inputs to 31 July 2017 and also responded to the questions of clarity raised thereafter. The stakeholders who were present at the public hearing raised concerns which were also related to the Bill as follows:

a) Thaba Chweu Local Municipality

- The new improved crops must be given Nguni/ indigenous names.

b) Victor Khanye Local Municipality

- The community stated that they agree with the bill, as there are a lot of people around the Nkangala District who knows traditional medicine and would like to own their product and be protected.
- A concern was raised that the Government implements laws and do not follow them or take ownership. A request was made. Wherein the bill must ensure that the Government have its own scientists to check the products from individuals and ensure that they make the correct decision.
- It was stated that some of the community members are not educated and cannot mention the trees that they use by their name but they can identify them, there should be a clause that enforces the department to help

community members on that issue or educate them about different types of plants.

c) Msukaligwa Local Municipality

- Community members supported the Bill and raised a number of clarity seeking questions that were answered by officials from the Department of Agriculture, Rural Development, Land and Environmental Affairs and the Mpumalanga Legislature (Legal services);
- A concern was raised that the Bill was not addressing the issue of what will happen to the plants that have already been taken by white farmers and were not protected.
- A concern was raised that the working relationship between the DAFF and the DARDLEA needs to be strengthened as the DARDLEA is responsible for agriculture in the province.
- Community members requested for more public engagements on the Bill as it affects more un-educated farmers.

8.2. Written Inputs:

1. African Center for Biodiversity:

- The justification put forward for the proposed changes are often flawed. The proposed changes are not required by the TRIPS Agreement. Many of the new changes goes even beyond the requirements of UPOV 1991.
- The framework favours the extension of control and power of multinational corporations over plant breeding and agriculture at the expense of farmers, especially smallholders, and the broader society.
- It is important for South Africa to invest in the development of diverse seed systems.

- Strengthening private PBRs and expanding already excessive exclusivity periods for PBRs stifle innovation and marginalise other economic actors.
- The extension of breeders' rights to cover all crops and genera including those of no commercial interest does not make sense and unnecessarily restricts farmers' activities to secure diverse seed.
- Cooperation and shared/pooled knowledge and resources are a strong and vibrant source of innovation, and should be encouraged and promoted through protection of Farmers' Rights to freely recycle and exchange plant materials and seed.
- Key Exceptions to PBRs are demolished and/or reduced by the Bill. It is critical to retain Sections 23(6) (e) and (f) of the existing Act to ensure that farmers have adequate freedom to operate in relation to the protected variety.
- Criminal sanctions and procedures Introduced by Section 55 (1) of the Bill are wholly inappropriate for dealing with PBRs. Intellectual Property are private rights that should be enforced by the right holder and not the State.
- The process of making must include broader consultations with small holder farmers and civil society organizations.

2. The following stakeholders also commented on the Bill:

- Stephen Barrow
- Linzi Lewis
- Anthena Mazarakis
- Delia Oosthuizen
- South African Food Sovereignty Campaign
- Delia Oosthuizen
- Zane Lambert
- Lesego Monyai
- Jane Harley
- Lourens Steenkamp

- Alet Van Wyk
- Biodynamic Agricultural Association of South Africa
- Justin Johnson
- Lucia Rodriguez Garcia
- Haydn Edwards
- Andrew Rathbone
- Leon Greef
- Elvorne Palmer
- Kylie Schafer
- Benjamin Pyatt
- Elsie van den Bergh
- Mieke Krynaww
- Katlego Mathibedi
- Polly Anderson
- Anthea Torr
- Helena Paul
- Charl Roux
- Lee Howe
- Andre Shirley
- Daryl Fuchs
- Wendy Stayte
- Louise van Straaten
- Martin Dower
- Johan Blingaut
- Beatriz Tainta

These Stakeholders submitted that:

Plant breeders should not be given rights over harvested materials (grain and milled maize).

- Government has a duty to keep some crops in an “open-source” or public interest space and therefore must not extend breeders’ rights over all crops. Government must consult with small scale farmers with regard to these exceptions.
- Smallholders must continue to have the freedom to reuse farm-saved seed from protected varieties.
- I strongly object to the criminalisation of the exchange of farm-saved seed from protected varieties, and the use of South Africa’s criminal justice system and public resources to police farmers, in order to enforce the rights of breeders.
- We need crop diversity and genetic diversity to face climate change and hunger and create space for smallholders practising agroecology.

The following recommendations are in response to the points made above:

- Section 7(2) (b), which extends breeders’ rights to harvested materials must be deleted.
- The right of a farmer to reuse saved seed of a protected variety for purposes of propagation on his/her own holdings available in Section 23(6) (f) of the existing Act has been replaced with Section 10(2) in the Bill, which requires the Minister to prescribe who might use the protected variety, for what purpose, and under which conditions. Article 23(6) (f) of the existing Act must be retained. The proposed Section 10(2) of the Bill is simply inadequate to address this critical activity on the part of farmers, as it does not expressly recognise the right of farmers to reuse and exchange farm saved seed of a protected variety, and its operation is at the discretion of the Minister and may be subject to conditions and payment of remuneration to the rights holder.
- Section 10(1) (a) - “private and non-commercial” - is new. The original wording “private or non-commercial” should be retained and be properly defined to allow for the reuse by a farmer of a protected variety including exchange.

- Section 55(1) of the Bill provides that any person convicted of an offence is liable to a fine or imprisonment for a period not exceeding 10 years, or both. Royalties/compensation can be claimed in addition to Section 55(1) (b). (Section 45 of the existing Act corresponds to Section 55(2) of the Bill). This section should be deleted, as the state must not spend public money policing and enforcing private rights.
- DUS criteria are dealt with in Clause 15.2 of the Bill, and Chapter 5 Clause 26 deals with tests and trials for DUS. Drafters must extend the space for consideration of non-DUS varieties throughout the Bill to allow for a diversity of agricultural practices.

9. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

Generally, members of the public were in support of the Bill as presented.

10. RECOMMENDATIONS

The Portfolio Committee on Agriculture, Rural Development, Land and Environmental Affairs, after considering the Bill, supports the Bill as presented by the Department of Agriculture, Forestry and Fisheries with proposed amendments.

11. CONCLUSION

The Chairperson wishes to thank the Honourable Members, all members of the public for their worthwhile participation in the public hearings and for the inputs or comments they have made. A word of gratitude to the MEC, Hon VR Shongwe, HOD, Ms. SP Xulu, the Senior Officials of the Department of Agriculture, Rural Development, Land and Environmental Affairs, the Department of Agriculture, Forestry and Fisheries; Executive Mayors and Speakers of the Thaba Chweu, Victor Khanye and Msukaligwa local municipalities; for their efforts in ensuring that the committee meets its obligation and the support staff who contributed to the success of the public hearings and the production of this report.



HON BD DUBE

01 / 08 / 17
DATE

**CHAIRPERSON: PORTFOLIO COMMITTEE
ON AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL AFFAIRS**



Northern Cape
Provincial Legislature

**PORTFOLIO COMMITTEE ON
AGRICULTURE, LAND REFORMED,
RURAL DEVELOPMENT,
ENVIRONMENT & CONSERVATION**

Private Bag X5066
Kimberley 8300
Nobengula Extension
Galeshewe
Kimberley 8300

Fax: Admin (053) 839 8094
Tel: (053) 839 8206

Hon MP OJ Sefako (Mr)

Chairperson: Select Committee on Land and Mineral Resources

NEGOTIATING MANDATE

Name of the Bill: **Plant Breeder's Rights Bill**

Number of the Bill: **B11B - 2015**

Date of deliberation: **Wednesday, 24 May 2017**

Vote of the Legislature: **The legislature vote in favour of the Bill**

Signature:
Chairperson

2017-05-24

Date:

Negotiating Mandate



Postal Address
Private Bag 5066
Physical Address
Kimberley 8300
Fax: Admin (053) 839
8094
Tel: (053) 839 8206

To: Hon MP OJ Sefako
Chairperson of Select Committee on Land and Mineral Resources

From: Hon F Makatong:
Chairperson PC on Agriculture, Land Reform, Environment & Conservation

Date: 2017-10-20

RE: NEGOTIATING MANDATE (PLANT IMPROVEMENT BILL & PLANT BREEDERS' RIGHT BILL)

This communique serves to inform you that the portfolio committee received numerous written submissions via email on the plant improvement bill and plant breeders' right bill after the extension of written submission was granted by NCOP.

The committee on the 20 October 2017 deliberated on these written submissions and took a decision that initial negotiating mandate submitted on May 2017 indicating that the committee received no submissions, should remain unchanged.

The committee took a decision not to include these written submission based on the following:

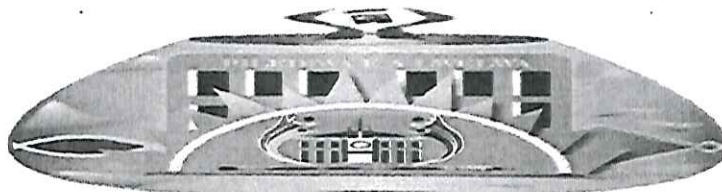
1. There are no submissions from Northern Cape Province amongst submissions received
2. These submissions were sent to all nine legislatures, including Parliament.

Should you require any further information, please do not hesitate to contact Committee Coordinator at ext 8206 / 072 596 3076.

Thank You,

A handwritten signature in black ink, appearing to be "F Makatong", written over a horizontal line.

HON F MAKATONG
CHAIRPERSON: PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL
DEVELOPMENT, LAND REFORM, ENVIRONMENT & CONSERVATION



NORTH WEST PROVINCIAL LEGISLATURE

NEGOTIATING MANDATE

TO : CHAIRPERSON OF THE SELECT COMMITTEE ON LAND AND MINERAL RESOURCES

NAME OF BILL : PLANT BREEDER'S RIGHTS BILL

NUMBER OF BILL : B 11B-2015

DATE OF DELIBERATION : 03 MAY 2017

VOTE OF THE LEGISLATURE:

After deliberations, the Portfolio Committee on Tourism & Agriculture, Rural Development & Environment confers the delegation representing the North West Province with the authority and mandate to negotiate in favour of the Plant Breeder's Rights Bill [B 11B-2015].

J M Maluleke

HON. J M MALULEKE

03/05/2017

DATE

CHAIRPERSON: Tourism & Agriculture, Rural Development & Environment



Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni

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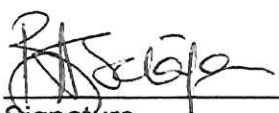
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28 October 2017

Verwysing
Reference
Isalathiso
11/1/3

NEGOTIATING MANDATE

To:	Hon O J Sefako Chairperson of the Select Committee on Land and Mineral Resources
Name of Bill:	Plant Breeders' Rights Bill
Number of Bill:	[B 11B - 2015]
Date of deliberation:	27 September 2017
Vote of Legislature:	The Standing Committee on Economic Opportunities, Tourism and Agriculture reports that it confers on the Western Cape's Permanent Delegate in the NCOP the authority not to support the Bill with the attached committee report.
 Signature	_____ Date
Hon. B Schafer Chairperson: Standing Committee on Economic Opportunities, Tourism and Agriculture	



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.



Ms B. SCHAFER, MPP

CHAIRPERSON: STANDING COMMITTEE ON ECONOMIC OPPORTUNITIES, TOURISM AND AGRICULTURE