

## Plant breeders' rights key for climate change adaptation

Advances in the sphere of biotechnology has tremendous potential to assist farmers in South Africa in adapting to the effects of climate change. Projections indicate that rainfall patterns will become more sporadic across the country with the frequency of extreme climate events such as droughts and floods increasing. Irrespective of these events, the mean temperature is set to rise which increases evapotranspiration and can lead to water stress.

One of the principle ways to adapt is by breeding cultivars that are drought-resistant and many multi-national companies operating in South Africa have already made significant strides in this regard. With that being said, one cannot expect companies to invest large sums of money into research and development unless they have confidence that their intellectual property will be protected so that they can reap the benefits of this investment. South Africa has traditionally managed to secure investment by providing strong recognition for intellectual property in line with international conventions.

The International Convention for the Protection of New Varieties of Plants (of which South Africa is a member) may be more than 20 years old but its relevance is only increasing in light of an increasingly unstable climate. The convention makes provision for 20, 25 and 30-year protection for plant breeder's rights but also contains provisions that guard against the creation of monopolies or unaffordability. Article 15 of the convention introduced the concept of farm-saved seeds whereby a farmer who uses protected varieties may save some of his crop and replant it next year for his own use, provided it is not sold or exchanged. This provides an efficient system of checks and balances to ensure that seed companies receive a benefit for their investment without placing an undue burden on farmers.

The Plant Breeder's Rights Act of 1976 incorporated this international standard and provided a platform for the agricultural sector to increase its total output whilst using less resources. This Act, however, was replaced in March 2019 with legislation which does not provide for the same balance. The new Act also makes provision for a 'farmer's privilege' but does not include the same qualifications. The new Act simply includes a provision whereby Regulations can be published to exempt categories of farmers and categories of seed from the same limitations. Worryingly, it is an open-ended discretion which does not limit the farmer's privilege to farm-saved seeds for own use.

Whilst we will only know the full extent of farmer's privilege once draft regulations are published for public comment, it would be advisable to limit the scope to prevent the unrestricted use and resale of seeds that took substantial capital to develop. If the focus tilts too much in either direction, it could affect the

12 September 2019

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competitiveness of farmers through increased input costs or act as a disincentive to invest in research and development respectively. Either situation would be detrimental as it could lead to a reduced up-take of biotechnology in agriculture, a situation which we can hardly afford in the face of climate change challenges. One therefore hopes that draft regulations will continue to place an emphasis on finding an equitable balance, as provided for in South Africa's international obligations.

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