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On 7 April 2015 the African Centre for Biosafety officially changed its name to the African Centre for Biodiversity (ACB). This name change was agreed by consultation within the ACB to reflect the expanded scope of our work over the past few years. All ACB publications prior to this date will remain under our old name of African Centre for Biosafety and should continue to be referenced as such.

We remain committed to dismantling inequalities in the food and agriculture systems in Africa and our belief in people’s right to healthy and culturally appropriate food, produced through ecologically sound and sustainable methods, and their right to define their own food and agricultural systems.

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Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version

In this preliminary analysis, we outline serious concerns with the available draft East African Communities (EAC) Seed and Plant Varieties Bill, dated September 2018 and regulations. The Bill and its draft regulations are part of ongoing efforts to bring about regional harmonisation of seed and PVP laws through regional blocs or economic communities. All Partner States in the EAC except South Sudan have national seed and PVP laws in place and thus the EAC will further institutionalise these seed laws at the regional level. Due to the legally binding obligations of the Treaty for the Establishment of the East African Community, also known as the “EAC Treaty”, Partner States in the EAC will be legally bound to conform their differing national seed legislation to the EAC harmonised framework.

Unlike other regional harmonisation processes the EAC Bill includes seed trade and plant variety protection (PVP) under the same piece of legislation. Our analysis covers mainly two broad areas of the draft EAC bill and regulations, on seed law and harmonisation: plant variety evaluation, release and registration, seed certification and phytosanitary measures (Parts III to IV of the Bill) and (Parts II, III, IV, V, VI of the Regulations); and plant variety protection (Part VI of the Bill) and (Parts VII of the Regulations) with reference to any relevant sections and regulations related to these policy issues. The document heavily draws on previous critiques, submissions and papers done by the African Centre for Biodiversity and the Third World Network (TWN) on seed harmonisation and international property rights for plant variety protection processes.

This report is endorsed by the following organisations:

Kenya:
- African Biodiversity Network
- Biodiversity and Biosafety Association of Kenya
- Fahamu
- Growth Partners Africa
- Kenya Agricultural Policy Network
- Kenya Food Rights Alliance
- Organic Consumers Alliance

Tanzania:
- Tanzania Alliance for Biodiversity – Tanzania
Introduction

The process for developing a legislative framework for the EAC on seed officially began in 2015, when experts from EAC Partner States met to analyse seed laws and regulations in the community. The result was a guidance document on the development of a draft harmonised EAC seed regulatory framework that was approved in February 2018 by the 36th Council of Ministers.

In May 2018, a consultant was engaged by the EAC Secretariat, with support from USAID Kenya, to draft harmonised EAC seed legislation and regulations. In June 2018, the EAC Secretariat also convened a meeting of experts and regional stakeholders to generate technical and legal inputs to inform and guide the process of developing the EAC seed Bill and Regulations. A consultant was hired by the EAC Secretariat to draft the EAC Seed and Plant Varieties Bill and the EAC Seed and Plant Varieties Regulations (July 2018). These were discussed in a validation meeting, 31 August-1 September 2018, at the New Africa Hotel in Dar es Salaam, Tanzania.

The revised draft EAC Seed and Plant Varieties Bill (hereafter, “EAC Bill”) and its regulations were to be shared with Partner States by 30 September 2018 for national consultations. It is to be noted that farmer organisation and CSOs made numerous attempts to gain access to the latest draft but have been pointedly ignored and national consultations did in fact not take place in all of the EAC countries as far as we are aware. Further, concerns raised as to the untransparency of the process – flouting the EAC treaty – and requests for postponement of any further work on the Bills until CSOs and farmer organisations from the EAC had been consulted were also ignored.

Further discussions on the draft EAC Bill took place during the 12th Sectoral Council on Agriculture and Food Security (3-7 December) in Arusha, Tanzania and adopted at the meeting.

The EAC Sectoral Council adopted the Bill and, at the time of writing, the EAC Secretariat had already submitted the EAC Seed Bill to the Council of Ministers of the EAC for adoption. Under the provisions of the EAC Treaty, the procedure for the enactment of legislation in the EAC is through bills being passed by the East Africa Legislative Assembly (EALA). It is thus anticipated that, once the Bill is adopted by the Council of Ministers, it will be taken to the EALA, where, once passed, the Heads of States will assent to it as an EAC law. Currently the draft EAC Bill (September 2018) is the only publicly available document.

The draft EAC Bill of September 2018 is quite unusual compared to other regional harmonised seed legislation developed in the Southern African Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA) regions. It incorporates seed registration, variety release, seed certification and marketing, and phytosanitary measures with plant variety protection (PVP), all in one law. SADC, on the other hand, has two separate harmonised regional frameworks on seed regulations and PVP, that is, SADC technical agreements on the harmonisation of seed regulations and the Protocol for the Protection of New Varieties of Plants (Plant Breeders’ Rights) in the SADC Region. COMESA developed the COMESA Seed Trade Harmonisation Regulations but, to date, no PVP legislation has been developed for the COMESA region. That said, COMESA has signed a Memorandum of Understanding with the African Regional Intellectual Property Organisation (ARIPO), which already has a regional legal PVP framework in place (the Arusha PVP Protocol).

Draft regulations have already been developed alongside the EAC Bill. In other seed development processes, regulations were only drafted once the
The EAC all in one bill combining both seed and PVP legal frameworks as well as the regulations indicates an expedited process, conveying the EAC’s urgency to put in place a harmonised regional seed framework. It is important to note that under Article 8 of the EAC Treaty, laws and regulations agreed to by partner states are automatically binding and take precedence over the Partner States’ laws.

Over the last few years, serious concerns have already been raised by African farmer organisations and CSOs regarding seed harmonisation processes in Africa, particularly in the COMESA and SADC regions. Similarly, concerns have been raised regarding the conformity of both national and regional PVP laws to the 1991 Union for the Protection of New Varieties of Plants (UPOV), particularly the SADC and Arusha PVP Protocols and the centralised system that poses a threat to national sovereignty. Further, these groups have continuously and vehemently objected to being deliberately excluded from participating in decision-making processes.

The EAC process too, has been untransparent, with limited or no participation of smallholder farmers and CSOs from within the EAC. As stated, despite numerous efforts on the part of CSOs to obtain the most recent version of the Bill and its regulations, these important documents are still not available in the public domain. There was extremely limited involvement of farmer organisations and CSOs in the validation meeting, with only one representative from a farmers’ organisation being present and no other representation from civil society, whereas there was prominent representation from the seed industry, including Africa Seed Trade Association (AFSTA), Eastern Africa Grain Council (EAGC), and the Tanzania Seed Trade Association (TASTA).

Flouting the EAC Treaty

The Treaty for the Establishment of the East African Community, also known as the “EAC Treaty” has outlined several provisions for public participation and transparency:

1. Article 5 (g), being one of the Objectives of the EAC Treaty, provides for “enhancement and strengthening of partnerships within the private sector and civil society in order to achieve sustainable socio-economic and political development”.

2. Article 6 (d) of the EAC Treaty states: “The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include; good governance including adherence to the principles of democracy, the rule of law, accountability transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the Africa Charter on Human and People’s Rights.”


7. UPOV is the French acronym for the International Union for the Protection of New Varieties of Plants. UPOV was developed by industrialised countries to address their own plant breeding and development needs.
3. Article 127 (3) (4) of the EAC Treaty, also provide for the following;
   a) The Partner States agree to promote an enabling environment for the participation of civil society in the development activities within the Community.
   b) The Secretary General shall provide the forum for consultations between the private sector, civil society organisations, other interest groups and appropriate institutions of the Community.

By excluding farmers and CSOs from effective participation in the decision-making, the process of developing the EAC Bill has not adhered to the very objectives, fundamental principles and provisions of Article 5, 6 and 127 of the EAC Treaty. To this end, several CSOs and farmer organisations have written a letter to the Secretary General of the East African Community, dated 1 December 2018, to raise concerns about the lack of effective participation in the process of development of the EAC Bill, as well as about the draft Bill itself. CSOs and farmers have requested that the decisions on the Bill be postponed until there have been inclusive, transparent and fair national consultations, and relevant documents related to the draft EAC Bill have been made available. (See Annex 1.) To date, there has been no response from the Secretary General.

It is crucial that the EAC Secretariat and Partner States abide by the principles of national, regional and international law-making that provide for effective public participation and consultation, including the EAC Treaty, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women, and ensure compliance with other key international agreements, notably the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) and the Conventional for Biological Diversity (CBD), amongst others. East African farmer and civil society organisations continue to urge EAC Partner States to conduct proper national consultations based on the revised EAC Bill. We further request the Council of Ministers, the EALA and the Heads of States in the EAC not to commit to passing the EAC Bill until issues pertaining to farmers’ rights are captured and addressed adequately in the draft EAC Bill and its regulations.

The East African Community and regional harmonisation

The EAC is a regional intergovernmental organisation founded in 1967 and currently comprised of six Partner States, namely Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda. It has a legal and policy framework for agricultural development, which is provided under several key legal instruments aimed at expediting intra-regional trade. These include:
   a) The Treaty for the Establishment of the EAC;
   a) The EAC Customs Union, where Article 38 (c) provides for cooperation in other areas, including sanitary and phytosanitary measures, and;
   a) The EAC Common Market Protocol, where Article 45 (3) (b) and (c), stipulate cooperation in agriculture and food security, especially in plant breeding and promotion of production and distribution of quality seeds (EAC, 2015).

The EAC is implementing an Agricultural Inputs System Development Programme, which aims to facilitate policies and regulations for agricultural inputs such as seed, fertiliser and pesticides, with the objective to enhance agricultural productivity, food and nutrition security, and intra-regional trade. The rationale is that regional seed harmonisation will create a conducive environment to improve regional availability of seed and planting materials.
Efforts to harmonise seed and PVP laws are taking place across the African continent, through varying Regional Economic Communities (RECs) such as COMESA, SADC, ARIPO, Organisation Africaine de la Propriété Intellectuelle (OAPI – the African Intellectual Property Organisation) and the Economic Community of West African States (ECOWAS). However, while there are many similarities between these harmonisation efforts there are also significant differences, which will create many anomalies and result in confusion, particularly in countries that are member states of multiple economic blocs. All these harmonised seed laws neglect and, in fact, prohibit the historical and current role played by farmer-managed seed systems in providing the most accessible, affordable and sustainable source of seed in the region (ACB, 2018a). The Tripartite Free Trade Area, a mechanism to rationalise harmonisation efforts across SADC, EAC and COMESA, has yet to agree on issues of seed harmonisation.

The EAC’s work on seed harmonisation began in 1999. This has included regional agreements on variety evaluation release and registration process, seed certification process, phytosanitary measures, PVP, and import and export documentation. This has taken place largely under the auspices of the Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA). Following harmonisation laws elsewhere in Africa, the EAC’s regional harmonised seed legislation focuses exclusively on the formal seed sector in a bid to facilitate trade in seed across national borders and thereby expand regional seed markets.

With the combined efforts of EAC Partner States, ASARECA and the private sector, a comprehensive draft framework to guide the development of harmonised seed legislation and regulatory frameworks was developed in December 2015 (ACB, 2018a) with the final guidance document being approved in 2018. Its specific objectives were to:

a) harmonise variety evaluation, release procedures and registration protocols in the region;

b) harmonise seed certification;

c) harmonise phytosanitary measures, including import and export documentation;

d) prevent spread of pests of quarantine and non-quarantine importance; and

e) harmonise plant variety protection.

The available draft EAC Bill 2018 makes provision for:

• the designation of systems for plant variety introduction, registration and commercialisation; production, certification, processing, distribution and marketing of seed within and into the EAC region;

• the establishment of an EAC seed coordination structure, designation of national seed authorities, phytosanitary measures on seed import and export documentation;

• and plant variety protection systems, as well as other related matters. (EAC, 2018:5).
The overarching objectives of the Bill are to expedite trade in the region specifically by:

a) promoting production and trade in certified seed within the Community and with other trading partners, as provided for in the East African Common Market Protocol;

b) eliminating the restrictions on regional and international seed trade;

c) promoting the implementation of harmonised procedures for plant variety registration, seed certification, phytosanitary measures on seeds, import and export, and PVP systems; and

d) strengthening cooperation and coordination of seed production and marketing at national and regional level. (EAC, 2018:7)

Harmonised East African seed standards, regulations and procedures were agreed upon in 2002 (ECAPAPA, 2002). A Seed Regional Working Group was developed, involving members of both the public and private sectors, including breeders, regulators, policymakers and public representatives from each country (CTA, 2014). The working group was later transformed into the Eastern Africa Seed Committee (EASCOM)9 and became a sub-committee of the EAC’s Committee on Agriculture and Food Security. EASCOM’s role is to spearhead the review of policies, laws and regulations; strengthen national seed and plant breeders’ associations; operationalise harmonised agreements and the development and maintenance of databases; and build capacity and representation in both the EAC and COMESA.

Through ASARECA seed harmonisation processes that began in 2002, and EASCOM, EAC has agreed to harmonised certification standards covering 42 staple foods, including grains, pulses, edible oil and tubers (ASI, 2018). EASCOM’s scope has expanded to include eight ASARECA countries: Burundi, Ethiopia, Kenya, Madagascar, Rwanda, Sudan, Tanzania and Uganda. As a result of harmonisation procedures, member states’ seed policies, legislation and institutional frameworks have been under review. Almost all the EAC countries have seed policies, legislation and institutional frameworks in place.10 An exception, South Sudan, presently has no principal legislation to govern the seed industry and relies on subsidiary regulations based on the Harmonised East African Seeds Standards and Regulations.

Key concerns and implications of the draft EAC Seed and Plant Varieties Bill

As mentioned above, throughout the development of the draft EAC Bill, there was very limited involvement of farmer organisations and CSOs. Furthermore, proper national consultation processes in the EAC countries were neither conducted before nor after the validation meeting. The failure to ensure the inclusion of diverse opinions of different stakeholders working on seed – particularly smallholder farmers, women, youth and indigenous

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9. EASCOM was formed in 2004 and consists of a public and private partnership to spearhead the harmonisation of seed policies and regulations.
10. See Annex 3.
communities – throws into question the credibility and legitimacy of the entire process. Only two countries, Kenya and Tanzania, managed to conduct one or two national consultations but it is not known who participated in these consultations.

According to the EAC, the draft EAC Bill is based on inputs from other regional bodies such as SADC, COMESA and the Arusha Protocol for Protection of Plant Varieties,11 all of which focus exclusively on the formal seed system. These will have significant long-term implications on the seed, agricultural and food landscape in the region, displacing local seed systems, and further entrenching inequalities and marginalising the rural poor.

Despite that, in the EAC all Partner States are contracting members to the ITPGRFA, except for South Sudan. The EAC fails to make provisions for the recognition and protection of farmers’ rights, as provided for in the 2015 draft framework to guide the development of harmonised EAC Seed Regulations. The ITPGRFA – also known as the “International Seed Treaty” – is an international agreement between states on the equitable conservation and maintenance of agricultural biodiversity as a shared resource. However, the implementation of farmers’ rights rests solely on the contracting member states, which has led to little or no domestication of the Treaty. To date, among the EAC Partner States, only Uganda has draft legislation for domestication of the International Seed Treaty while Kenya provides for a Section on the conservation and utilisation of plant biodiversity but falls short in providing for crucial elements on farmers rights.12

Article 9 of the ITPGRFA outlines farmers’ rights, recognising the historical and ongoing role of farmers and local and indigenous communities in conservation and development of the ITPGRFA, and reaffirming the primacy of farmers’ rights to save, use, exchange and sell farm-saved seed or propagating material, “subject to national law” (ACB, 2018e). Farmers’ rights in the Treaty are related to:

a) Recognition of the enormous contribution that local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources, which constitute the basis of food and agriculture production throughout the world (Article 9.1);

b) Protection of traditional knowledge relevant to plant genetic resources for food and agriculture (Article 9.2.a);

c) Equitable participation in sharing benefits arising from the utilisation of plant genetic resources for food and agriculture (Article 9.2.b);

d) Participation in decision-making at the national level on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture (Article 9.2.c); and

e) Rights to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate (Article 9.3).

Critique of the draft EAC Seed and Plant Varieties Bill and Regulations

General overview of the EAC Bill

As previously mentioned, the draft EAC Bill is an unusual piece of legislation as it constitutes a one-size-fits-all seed harmonisation process, including seed variety release, registration, certification and marketing and phytosanitary measures, as well as including harmonised PVP. The draft EAC Bill is categorised into seven main parts:

• PART I (Sections 1–4) – Preliminary
• PART II (Sections 5–6) – Administrative Arrangements
• PART III (Sections 7–12) – Plant Variety Evaluation, Release and Registration

11. Brief note: Regional Meeting on East African Community (EAC) Draft Seed Bill and Regulations (confidential)
• PART IV (Sections 13–15) – Phytosanitary Measures
• PART V (Sections 16–49) – Plant Variety Protection
• PART VI (Sections 50–53) – General Provisions
• PART VII (Sections 54–56) – Miscellaneous Provisions.

Although these sections in the draft EAC Bill provide for different legal requirements for different seed policy processes, they are all interlocked. As the policy process addresses only the formal/commercial seed sector and has been formulated for the benefit of corporate seed producers and breeders only, this paves the way for the private sector’s market stronghold in the region. By doing away with national regulatory systems for the purposes of regional trade, there is an emphasis on the movement of “quality” improved seed across borders (ACB, 2018a). Regional coordination on seed matters will be done by an EAC Seed Coordination Office designated by the Council of Ministers. This means that important administrative decisions will have to be made by both national seed authorities and the EAC regional seed office.

The PVP section of the EAC Bill is modelled on the controversial, and heavily criticised, 1991 UPOV Act, which, once adopted, will establish a centralised plant variety protection regime. UPOV 1991 was conceived by industrialised countries in Europe to cater for commercial breeding interests. Since its adoption in 1961, it has undergone revisions in 1972, 1978 and 1991. The 1991 UPOV regime is the most rigid and inflexible, compared with its previous versions, particularly its immediate predecessor, UPOV 1978. UPOV 1991 imposes a “one-size-fits-all”, inflexible and restrictive legal framework, which limits the ability of countries to design national PVP systems appropriate to their individual country needs and priorities (in a context where most of the countries are least developed). It fails to balance private breeders’ rights with the protection and enforcement of farmers’ rights. The adoption of UPOV 1991 fails to reflect and represent the unified position African countries have taken at international fora, such as the World Trade Organization (WTO) and the Convention of Biodiversity (CBD) on genetic resources, access and benefit-sharing, indigenous knowledge, and farmers’ rights. PVP models based on UPOV 1991 undermine farmers’ rights to freely save, use, exchange and sell all farm seed; stifle innovation; raise input costs for farmers; and ultimately allow commercial breeders to appropriate and privatise historical social and community knowledge and the natural ecological processes embedded in plant genetic resources (ACB, 2018b).

For the EAC, such a PVP regime will vest enormous decision-making powers in a centralised PVP office i.e. the EAC Seed Coordination Office, which has no experience with examination, granting or handling the effect of PBRs. Such a centralised and inexperienced body will grant PBRs without any national oversight and decision-making, thereby totally undermining the sovereignty of member states to regulate plant breeders’ rights. This is due to the lack of provisions for partner states to object to, revoke or nullify the grant of PBRs even if it affects national interests. Partner states will not even have the right to issue a compulsory license in the national public interest, particularly in situations of national disasters and emergencies, where under the Bill all such rights have been ceded to the EAC Seed Office.

Similar provisions from a previous draft of the ARIPO PVP Protocol also undermined national sovereignty of ARIPO member states. However, during the Arusha deliberations, several government delegations raised serious concerns that the Draft ARIPO PVP Protocol eroded national sovereignty by vesting extensive decision-making powers in the regional ARIPO Plant Breeders Rights Office (PBRO). After long hours of negotiation, changes were made giving contracting states explicit rights to object to any Plant Breeders’ Right (PBR) granted by the regional ARIPO PBRO — in which event the PBR will not be awarded national protection. Furthermore, a previous version of the draft Regulations failed to provide appropriate mechanisms to operationalise the right of member states to object to the grant, as contemplated in Article 4 (i) of the Protocol. After further advocacy work by CSOs, Rule 12 (i) of the ARIPO Regulations now provide mechanisms to enable a contracting party to object to a PBR granted by the ARIPO PBRO from
It is important to note that many experts have recommended that developing countries should not join UPOV 1991, as its requirements are inconsistent with national realities and undermine farmer seed systems and farmers’ rights. UPOV 1991 was developed by a few wealthy nations to promote their commercial seed systems and interests and is unsuitable for countries in the EAC region. Moreover, agriculture is a core economic activity of countries in the region, and decisions relevant to this sector cannot simply be handed over to a regional seed office, and an inexperienced one at that.

applying in its territory. Although this is a crucial amendment, it would be preferred for countries to opt in rather than opt out because, due to limited capacity, countries may seldom make such objections.

Also among the small gains made by CSOs, contracting states and not the ARIPO PBRO now have the right to issue compulsory licenses in the public interest.

Currently in the EAC, Kenya, Uganda, Tanzania and Rwanda have PVP laws in place. Burundi also has legislation for PVP. Kenya, Tanzania and Rwanda have PVP laws based on UPOV 1991. Furthermore, Kenya and Tanzania are members of UPOV 1991, whereas Uganda’s PVP law is based on UPOV 1978. The EAC Bill will have implications for Uganda and Burundi, when it comes to their PVP laws, since they will have to bring their national PVP laws in line with UPOV 1991, as provided for under the EAC Seed Bill, which offers no flexibility to address specific agricultural needs including, and especially, those of the many millions of smallholder farmers in their countries.

All these countries, however, except for South Sudan, no longer have this privilege under the TRIPs agreement because they have PVP systems in place. Thus, it is quite unfortunate and unacceptable that the EAC is currently institutionalising UPOV 1991 at the regional level, rather than fully utilising the extension period and taking the time to conduct the necessary human rights and socio-economic assessments and studies to guide its seed law-making. It is important to note that many experts have recommended that developing countries should not join UPOV 1991, as its requirements are inconsistent with national realities and undermine farmer seed systems and farmers’ rights. UPOV 1991 was developed by a few wealthy nations to promote their commercial seed systems and interests and is unsuitable for countries in the EAC region. Moreover, agriculture is a core economic activity of countries in the region, and decisions relevant to this sector cannot simply be handed over to a regional seed office, and an inexperienced one at that.

Specific Provisions of the EAC Bill

Parts III–V of the EAC Bill: Plant variety evaluation, release and registration, certification, and marketing

This section deals with provisions on plant variety evaluation, release and registration, certification and marketing, and phytosanitary procedures as provided for in the draft EAC Bill.

Requirements for variety registration, release and regional catalogue

As outlined in Section 8 of the EAC Seed Bill and Regulations 4 and 5 of the EAC Seed and PVP Regulations, a variety can be released in the EAC region under the following conditions:

The EAC Partner States are members of the WTO and thus are bound by its provisions. Article 27 (3) (b) of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement of the WTO creates mandatory obligations on its members to provide for the protection of plant varieties, either by patents or by an effective sui generis system, or a combination of both. However, this does not apply to WTO members categorised as least developed countries (LDCs), which enjoy a transitional period until 1 July 2021 (and that can also be extended). Currently, except for Kenya, all the EAC Partner States are LDCs: Tanzania, Rwanda, Burundi and South Sudan.
- After examining the Distinctness, Uniformity, and Stability (DUS) of the variety;
- Value for Cultivation and Use (VCU) tests or National Performance Tests (NPTs) must also be carried out for two seasons in two Partner States; or
- If the variety has already been released in one Partner State, carried out for one season in one other Partner State with similar agroecological conditions.
- A variety may be automatically released in the region if already released in two Partner States. Following this, a variety will be added to the EAC Regional Plant Variety Catalogue as per Section 9 of the EAC Seed Bill. This also applies to existing varieties before the EAC Variety Catalogue so long as the application for release is accompanied by data on DUS and VCU.

According to the regulations, National Seed Authorities (NSAs) will be responsible for conducting the DUS and VCU tests in accordance with prescribed EAC Protocols. This also applies to varieties to be tested and released at the national level and in this event will be done according to agreed upon EAC protocols and partner state laws and regulations.

No variety shall be listed on the EAC Catalogue unless it conforms to the requirements of DUS and VCU.

The regional catalogues of SADC and COMESA are dominated by foreign multinational seed companies with registered varieties from Syngenta, Monsanto, DuPont Pioneer, Pannar, HZPC and Seed Co, and consist of only a few commercially lucrative crops (ACB, 2018a). The EAC catalogue, which will need to be updated, resembles these regional catalogues and, through the same instructive nature, is exclusively for the benefit and in the interest of large foreign companies. This threatens the existence of local seed companies and may limit their participation in regional trade.

There are serious concerns about DUS tests generally, as there is a trend towards narrowing of the genetic and agricultural biodiversity available on the market, and hence on the fields. The DUS criteria for variety registration are inappropriate for smallholder farmers’ seed, as these criteria are oriented towards genetically uniform, commercially bred varieties for standardised agricultural production and processing (ACB, 2018b). Farmers’ fields are sites of genetic variability, as opposed to the genetic uniformity that is being promoted and instituted by harmonisation efforts. Smallholder farmers in Africa avoid the risk of total crop failure by mixing cultivars in the field.

In any event, DUS tests are extremely expensive, out of the reach of small-scale farmers and inappropriate to their needs. Small farmers in Africa are cultivating, developing and maintaining varieties that have been adapted to local environmental conditions over many years, and many of the varieties would be unable to fulfil the DUS criteria. These requirements effectively exclude and ultimately criminalise farmers’ seed and farmers’ seed systems, preventing them from forming part of national and regional seed policy and practice – as only seed that is registered and released in the formal seed sector will be allowed to be produced, imported, sold or distributed within the EAC. For farmer varieties to be included in the catalogue, special criteria would have to be developed that are flexible and able to accommodate a range of associated genotypes and identifiability, rather than conforming to DUS criteria (ACB, 2018b).

The SADC is the only regional economic community (REC) so far that has provided for the registration of landrace varieties, under its technical agreements for harmonised seed regulations, that is not based on the DUS criteria. However, despite CSO attempts to participate in developing this provision, it is unknown at what stage this process is currently. This provision opens new avenues for farmers’ varieties to become part of the commercial seed sector and eligible for regional trade. It therefore provides the opportunity for recognition of farmer varieties and the role played by farmers in maintaining such varieties, as well as contributing to agricultural biodiversity and food availability. However, it remains to be seen how this system will be operationalised and who will ultimately benefit from this process.
The EAC has incredibly diverse climatic and biophysical conditions. It is thus questionable how VCU and NPT tests can accurately determine the suitability of a variety’s performance across the EAC. Further, the criteria for testing suitability across diverse climatic and biophysical conditions have not yet been stipulated in the Bill. Further to this, the Bill is silent on who will be liable for losses and damages as a result of non-performance of EAC certified seed, and does not provide mechanisms for redress and compensation in the case of such crop failure.

Requirements for labelling, marketing and certification of seed in the EAC

Sections 10 and 11 of the draft EAC Bill restricts seed multiplication, labelling and marketing to only seed classes defined in the Regulation 7 (3) as set out in the Second Schedule, which are yet to be stipulated. In addition, Regulation 7 (1) under seed certification further elaborate that all prescribed seed set out in the First Schedule shall be eligible for certification, while 7 (2) goes on to say that seed of crops set out in the First Schedule shall be under compulsory certification and shall be of crop varieties officially released in the Partner States. At the time of writing the First Schedule was not available, for the purposes of examining these prescribed seed and crops.

Section 10 (1) clearly states that for a variety to be eligible for production, import and export within the EAC, it must fulfil requirements for variety registration and meet phytosanitary requirements specified under the Act and Regulations. Sub-section (3) requires that only certified seed shall be traded under the EAC system. Current national seed laws, such as the Tanzania Seed Law Amendment of 2014, Section 14 (6), do not allow the sale of any seed that is not certified. Although governments insist that they will not regulate activities relating to farmer managed seed systems and farmers varieties, there is concern that such a provision could restrict the sale of uncertified seed, which may eventually criminalise the sale of farmers’ seed and varieties that haven’t gone through the variety release and certification procedures. Furthermore, the lack of exemptions for smallholder farmers that would allow them to freely use, save, sell and exchange farmer-managed seed, traditional seed, varieties and landraces is largely missing from the EAC Bill and opens the door to criminalise customary practices of smallholder farmers.

The draft EAC Bill requires that seed traded within the EAC is tested, labelled and sealed in accordance with EAC seed certification procedures and standards according to Section 12 (2) and Regulations 10 (1) and 12 (1). The sampling of seed lots shall be conducted in accordance to International Seed Testing Association (ISTA) procedures as per Section 12 (1) and Regulation 10 (2) under established and designated existing entities to function as official seed testing laboratories. As in other regional harmonisation and national seed legislation these classes are based on international standards by the ISTA and OECD seed schemes, oriented solely towards the formal/commercial seed sector. This further excludes farmer varieties and most farmers and traders, due to the standardised rules and procedures associated with quality control in the formal seed sector. The draft version of the Bill and Regulations also doesn’t provide for quality declared seed (QDS), a system that is already operational in Tanzania and Uganda and used by smallholder farmers to multiply and distribute seed to their fellow farmers within a given geographical setting.

It is important that the EAC Seed Bill and Regulations provide various means to ensure an equitable and accessible seed trade sector for smallholder farmers. Although there are cautions around QDS, as it is still linked to seed that has been officially released through the formal system and also requires formal registration, this system is widely used by smallholder farmers and provides access to seed as well as means of livelihood. The QDS system, tied with provisions to allow the registration of farmer varieties, may offer avenues for providing affordable, local seed to be made available, which would be suitable for the local context of smallholder farmers.

Section 14 of the draft Bill provides an avenue for Partner States to apply to the EAC Seed Coordination office to prohibit the use of a variety in its territory, based on technical issues such as unsuitability for cultivation or risk to other seed varieties, human health, animal health and the...
environment. There is no timeframe provided for this to take place. This section is a positive addition to the EAC Bill, as it upholds national sovereignty over what seed may be marketed in a Partner State.

It is a concern that Section 16 (2) on genetically modified organisms (GMOs) mentions that import and export documentation should only declare the GMO status of the variety and does not state clearly that all trade in GMOs must abide by national biosafety legislation.

In summary, the Bill outlines the plant variety release, registration and certification processes, which are administratively complex, onerous and expensive, making it unlikely that smallholder farmers and their varieties and small-scale seed enterprises will be able to participate. We are thus witnessing the exclusion, neglect and criminalisation of farmers’ seeds and farmer-managed seed systems, despite their role in the maintenance and production of agricultural biodiversity. These farmers use, and are demanding continued access to, their own varieties, which have been adapted over the years to their local agro-ecological conditions (ACB, 2018a).

Part VI of the EAC Bill: Plant Variety Protection
This section deals with the PVP component of the draft EAC Bill. In terms of the scope, duration, and exceptions of breeders’ rights, these are taken directly from UPOV 1991, and are exactly what may be found in ARIPPO’s Arusha Protocol, which is a highly restrictive and incompatible PVP system for the region that in some cases even goes beyond UPOV 1991.

Genera and species
Section 19 of the Bill provides that the Bill, “shall be applied to all plant genera and species in the Partner States”. This provision goes beyond UPOV 1991, which requires new members to provide protection to at least fifteen plant genera and species and only requires them to extend to all plant genera and species after 10 years. This means that as soon as the Bill is enacted Partner States will have to immediately extend plant breeders rights (PBRs) to all plant genera and species. In more specific terms, no transition period for the protection of genera and species is provided to EAC states. The lack of a transition period grants no flexibility to Partner States to determine what genera or species should be included and what should be excluded in their respective territories.

Since PBRs are a novel concept in much of the region, with Kenya dominating in terms of PVP applications and grants, it is irrational to extend them to all genera and species. As PBRs also tend to be relevant only to crops with a certain (and captured) commercial market, the Bill should include the flexibility to limit PBR to a few genera and species, for example, and to exclude indigenous plant genera and species and those of interest to specific communities. This flexibility is also necessary to protect public interests, local seed variety and food security, which is crucial for national sovereignty. Exclusions will go a long way towards guarding against misappropriation, private ownership and more generally, the erosion of genetic diversity and marginalisation of local varieties and farmer-managed seed systems.

Centralised PVP System, uniform effect of breeders’ rights and the threat to national sovereignty
The main thrust of the EAC Seed Bill on PVP is about creating a centralised PVP system in the region. The EAC Seed Bill has vested enormous decision making powers in the EAC Seed Office, which will be responsible for the administration of PBRs in the region, even though such an office has no experience with examination, granting or handling the effect of PBRs. Section 5 (2) (o) of the EAC Seed Bill states that the EAC Seed Office...
will "manage procedures for application,\textsuperscript{13} granting,\textsuperscript{14} cancellation,\textsuperscript{15} nullification,\textsuperscript{16} surrender, issuance of compulsory licenses\textsuperscript{17} and extension of duration of plant breeders' rights as provided by this Act". Such a centralised and inexperienced body will grant PBRs without any national oversight and decision making, thereby totally undermining the sovereignty of member states to regulate plant breeders' rights.

Section 20 of the EAC Seed Bill states that breeders' rights granted under the EAC law shall on the basis of "one application be protected within the territories of the Partner States". Additionally, sub-section 20 (2) states that, "the Breeders' rights shall have uniform effect within the territories of the Partner States". This is a drastic change for the worse from the previous July version of the Bill, where it was stated that a breeder's right shall "be protected in all Partner States unless a Partner has refused the grant".\textsuperscript{18} The previous provision provided for flexibility and allowed Partner States to refuse the grant of a PBR in its territory although it was up to member states to take the initiative to object.

The current provisions pose huge threats to national sovereignty for EAC Partner States as they fail to provide provisions to object to the grant of PBRs even if it affects national interests. Article 4 (1) of the Arusha PVP Protocol and Rule 12 of its Regulations allow contracting parties to object to a PBR being extended to its territory within six months on whether or not the breeder's right shall have effect in its territory. This is after the ARIPo office has notified all the designated States of the intention to grant a breeder's right.

Objection of an application for breeders' rights: pre-grant objection

Any person may lodge an objection within a period of ninety days after the publication of an application for breeders' rights under Section 30 (i) and Regulation 26 (i) (a). The objection can also be lodged at any time prior to the refusal or the grant of rights in respect of the conditions for the granting of breeder's rights, under Regulation 26 (i) (b). Objectors will be required to submit a written and well-reasoned objection upon payment of a prescribed (not specified) fee (Section 30). The objection must also be submitted within sixty days after the publication of the proposed variety denomination under Section 41. The sixty-day period is insufficient for small-scale farmers who may wish to object but who have serious resource constraints to submit written and reasoned objections. Beyond this, the regulation should waive the payment of fees for certain sectors and groups of people, such as local communities, farmers, and public interest groups, which are unable to afford the costs and will otherwise be excluded from decision making. We propose that the draft Bill provide a timeframe of "at least nine months after publication of the application for a written objection to be made with regard to published application" (ACB, et al. 2012).

There is also no mention of the objector's right to access relevant and pertinent documentation concerning the application in respect of which an objection may be lodged, including the results of analyses or examination in relation to new, distinct, uniform, stable (NDUS) criteria and variety denomination. Instead, stringent confidentiality provisions (Section 29 (2)) in the EAC Bill put pre-grant opposition procedures beyond the scope of farmers and public interest actors.

It is recommended that the following provisions should be added to Section 30 or its Regulations 26:

\begin{enumerate}
\item See Section 27 of the EAC Seed Bill
\item See Section 33 of the EAC Seed Bill
\item See Section 43 of the EAC Seed Bill
\item See Section 42 of the EAC Seed Bill
\item See Section 38 of the EAC Seed Bill
\item See Section 17 of the EAC Seed Bill (July Version)
\end{enumerate}
• On request, the objectors shall have access to all documentation concerning the application to which the objection is lodged, including the results of analyses or examination in relation to novelty, distinctness, uniformity and stability.

• The National Authorities shall make available all documentation in relation to the application to which the objection is lodged, within 14 days of receipt of the request or as soon as the relevant documentation is available.

• The National Authorities shall ensure that the objectors have adequate time but at least 60 days to review the results of analysis and examination reports in relation to novelty, distinctness, uniformity, stability, variety denomination and submit comments on the same to the National Authorities, before a decision is taken on the application in relation to which the objection was filed.

Conditions of protection
As Section 22 of the Bill describes, a breeder’s right shall be granted where a variety is NDUS and shall not be subject to any further or different conditions, under Section 22 (2). The NDUS criteria combine criteria for intellectual property (IP) rights and breeding standards geared for uniform and standardised agricultural production and processing (ACB, 2018a).

The concept of novelty (Section 23) is narrowly defined in that a variety will be regarded as being new if it has not previously been commercialised. A variety is considered novel if the propagating material or harvested material has not been sold or otherwise disposed of to others in the EAC region, by or with the consent of the breeder of the variety, earlier than one year before the date of filing the application. Outside the region, a variety is considered novel if it has not been sold or otherwise disposed of earlier than four years, or earlier than six years in the case of trees or vines, before the date of filing an application. It is not clear what the value is of the distinction between within or outside the EAC region. If the intention is to introduce new varieties into the region, such a provision would in fact further delay the introduction of new varieties, contradicting the central objective of such legislation. The definition further fails to protect against the misappropriation of farmers’ varieties, which are often not commercialised, nor registered (Correa et al., 2015).

According to Section 24 of the Bill, a plant variety shall be deemed distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing the application. A “plant variety of common knowledge” is defined in purely commercial terms in the Bill as a plant variety:

a) for which protection has been applied for or granted;

b) that has been entered on the national variety list or on the variety list of any other country;

c) that is being produced or sold;

d) that is entered in the database of plant varieties that are recognised in a Partner State or elsewhere for research purposes; and

e) that bears any other mark recognised by the law.

Uniformity demands the homogeneity of a variety, thereby preventing farmer breeders from protecting their varieties, because such farmer varieties are inherently heterogeneous, and desirously so. The increasingly uniform and narrow genetic base equates to genetic erosion and crop vulnerability to pests and climatic stress. Uniformity is a threat to food security, as we enter an era of uncertainty and need to rely on the adaptability of our seed and crops. The NDUS criteria are too rigid to accommodate plasticity, that is, constantly adapting genetic materials. Variability in the field can be a way to avoid the very real risk of total crop failure and benefits can be gained from mixing cultivars in the field where local breeding takes place (ACB, 2018a).

Stability requires that the trait in question must be faithfully replicated in the progeny and the seed must breed “true to type”, at least for the first crop planting. With hybrid seed, these characteristics disintegrate with further plantings, rendering them unstable after the first planting yet, ironically, they are afforded IP protection.
Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version

Filing of an application, disclosure of origin and concerns on confidentiality

Lack of disclosure of GM varieties
Section 27 prescribes the procedure for filing applications with Regulations 22 specifying the contents of an application for breeders’ rights. However, under Section 27 and Regulations 22, there is no requirement to specifically indicate whether the variety is genetically modified (GM), mutant or subject to genome editing, or whether it contains gene drive organisms, terminator technology, or any other characteristic produced by modern biotechnology, including synthetic biology. In some countries (such as South Africa) an applicant would have to specify whether the variety is GM or not, as this then serves as a checkpoint that triggers other regulatory safety nets, such as national biosafety laws.

Lack of disclosure of origin and relevant information on development of variety
The breeder’s right shall be granted for a period of 20 years, and 25 years for vines and trees, which can be extended by five years (Section 40). Despite the incredibly long period of protection, no passport data (such as the parental lines of the variety or the best method of developing the protected variety) is required in the granting of PBR. Not only does this set up a double standard, where private interests are given greater protection than farmers’ rights and public interests, but it also fails to ensure compliance with international agreements, which many EAC countries are members of, such as the CBD, the Nagoya Protocol, and the ITPGRFA.

The Bill should, at very least, be consistent with SADC PVP protocol, which includes a clause in Article 13 (5) that part of the application process should include a declaration that the genetic material or parental material acquired for breeding the variety has been lawfully acquired and that, where appropriate, the applicant has complied with prior informed consent and benefit-sharing requirements. This disclosure will help prevent misappropriation and biopiracy of farmers’ varieties and associated traditional knowledge and ensure fair and equitable benefit-sharing. An example of such misappropriation is the infamous “Turkey Purple Carrot” case, where Monsanto’s subsidiary Seminis purchased farmers’ seed of a certain variety of purple carrot at a farmers’ market in southern Turkey and after a simple process of selection obtained PVP in both the United States and the European Union (EU) (TWN, 2014; ACB, 2018c). Since the right holder obtains extensive protection, full disclosure must be mandatory for the benefit of society.

Beyond concerns about biopiracy, member states of EAC should require, in their national PVP laws, that in return for PBRs the applicant must reveal all information on the variety and development of the variety for which IP protection is sought. Requiring full disclosure of information on how the variety is developed in exchange for receiving PVP is critical to transferring technology and knowledge to local researchers and farming communities. Failing this, breeders that apply for PVP can keep their breeding methods (for example, the parental lines of the protected variety) as trade secrets even after expiry of their rights. Moreover, full disclosure of information will enable EAC Partner States to ensure that varieties that are injurious to health and the environment do not receive protection. Thus, we recommend that as part of the information required to be provided under Section 27 and Regulations 22, a provision on disclosure of origin is also included.

Recommendations to be included in Regulations (22) on Contents of an application for plant breeders’ rights.

22 (1) The application will contain [...]

- Evidence that the genetic material or parental material used for breeding, evolving or developing the variety has been lawfully acquired and that, where appropriate, the applicant has complied with prior informed consent and benefit-sharing requirements.
- The pedigree information and associated passport data, as available to the applicant, on the lines from which the variety has been derived, along with all such information available to the applicant relating to the contribution of any farmer, community, institution or organisation upon which the applicant relied to derive the new variety.
- Be supported by documents relating to the compliance of any law regulating activities
involving genetically modified organisms, in cases where the development of the plant variety involves genetic modification.

The first proposed addition is to bring into consistency with the SADC PVP Protocol on the provisions for disclosure of origin, as described above.

The second proposed addition is to require the applicant to disclose the source of the genetic material and for the applicant to declare if any community has contributed to the development of the new variety. This declaration will facilitate fair and equitable benefit-sharing for the relevant communities, as many of the EAC Partner States are also Contracting Parties of the CBD and the ITPGRFA and have a commitment to operationalise fair and equitable benefit sharing. Given that PVP applications are an important checkpoint for the implementation of access and benefit sharing legislation, these two proposed additions are essential.

The final addition is proposed for an applicant to first comply with biosafety laws before a grant of breeders’ rights is obtained for a GMO variety. Some may argue that this provision is not necessary, as developers of GMOs would still need to comply with national biosafety and marketing laws to commercialise a GM variety. However, the grant of breeders’ rights provides a strong incentive for the commercialisation of GMOs in countries where the introduction of the technology is not only contentious but vigorously contested, thus breeders’ rights over GMO varieties should only be accorded in countries that have approved the particular GM variety for commercial growing.

Concerns on confidentiality
Section 29 deals with publication of information in the EAC Gazette following a formal examination of the application by the National Authority or EAC Seed Office (Regulations 25). Section 29 (2) goes on to state: “No confidential information, as indicated in an application form, shall be published without the written consent of the applicant or the holder of a breeder’s right”. This lack of transparency and access to information under the guise of “confidentiality” is totally unjustifiable and unacceptable and goes beyond UPOV 1991. In the patent system, patent holders are given protection for 20 years from the filing date, and in return patent applications must be published and the applications must also disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a skilled person, including the best way of working the invention. This is to ensure that once the protection period expires, others have the technological information necessary to develop the invention. Thus, the same should apply to PBRs.

If a breeder is allowed to hide behind confidentiality, important information may be withheld, making it more difficult – if not impossible – to challenge the application through, for example, pre-grant opposition procedures or to operationalise benefit-sharing arrangements, even if a variety is developed using local germplasm.

Examination for Distinctness, Uniformity and Stability for the grant of breeders’ rights
Section 32 and Regulations 28 provide that the EAC shall arrange for technical examination for DUS, provided there is no objection to the application and subject to payment of the prescribed fee in the Seventh Schedule. Sub-regulation 2 states that the Council may designate any competent institution of a Partner State, or any member of an inter-governmental organisation providing an effective system of plant variety protection, to carry out technical examination for grant of breeder’s right, on advice from the National Seed Authorities. Additionally, Regulation 29 (1) stipulates that the EAC Council, on recommendation from the technical committee, shall approve existing Technical Questionnaire and Test Guidelines of other Competent Institutions and Inter-Governmental Organizations to be used as EAC for conducting technical examination. It is highly questionable how such tests will be conducted, by whom, and how this selection will take place.

As a general principle, all DUS testing should be conducted by individual EAC Partner States. Each Partner State could take responsibility to undertake DUS testing for new plant varieties of critical importance. This is to safeguard and
enforce sovereign rights. It also needs to be acknowledged that there are differences in climatic, soil and other agronomic conditions in the countries that constitute the EAC.

If, for a particular variety, DUS testing is to be undertaken by an external office, there should be a clear rationale provided as to why such testing cannot be undertaken by an EAC Partner State, and such external testing should be done with the approval of the Council.

Provisions under Regulation 29 (1) are extremely concerning as they may result in rubber stamping DUS tests that are conducted abroad or DUS tests that have already been conducted and are purchased and submitted by the applicant and approved by the EAC. If this is the case, then not only are powers and sovereignty taken away from national PBR offices in respect to plant varieties, but these are given to a foreign entity and the EAC functions merely as an office for rubber stamping decisions made by, for example, the European Union’s Community Plant Variety Office (CPVO).

Scope of PBR protection
The scope of breeder’s rights provided in Section 35 of the Bill is based on Article 14 of UPOV 1991. Like UPOV 1991, Section 35 of the Bill vastly extends the protection given to a right holder and severely restricts the scope of what other breeders might do in relation to the protected variety, including farmer breeders, especially further development and innovation. Section 35 prohibits the production for the purposes of commercial marketing and the sale and marketing of propagating material of the variety, as well as “production or reproduction; conditioning for the purpose of propagation; offering for sale; selling or other marketing; exporting; importing; and stocking [for the above purposes]” without the authorisation of the breeder [Section 35 (1)]. These prohibitions extend beyond the reproductive or vegetative propagating material to the harvested material obtained through the unauthorised use of propagating material [Section 35 (3) (a)] and to harvested products obtained through the illegitimate use of harvested material [Section 35 (3) (b)]. These provisions also extend to: (a) varieties that are essentially derived19 from a protected variety, where the protected variety is not itself essentially derived; (b) varieties not clearly distinguishable from a protected variety; and (c) varieties whose production requires the repeated use of the protected variety, under Section 35 (4). An illegitimate use would be in contravention of the provisions of the EAC bill.

Essentially, the extensive scope of breeders’ rights restricts others from using protected varieties for research and breeding purposes. In particular, several restrictions are placed not only on the use of farm-saved seed (propagating material): if farm-saved seed of the protected variety has been used without the breeder’s consent (and therefore if royalties for use of the seed have not been paid to the breeder), breeders’ rights will extend to such farm-saved seed as well as the harvested material (e.g. grain) [Section 35 (3)] and even further, to harvested products (e.g. milled maize) obtained through the use of harvested material [Section 35 (4)]. These extensive restrictions have implications for the entire life-cycle of the product. In the EAC region, farmers access seed from a variety of sources, including purchasing from formal and informal traders, exchanges with family and neighbours, or the development of emergency seed programmes. Farmers do not differentiate between the formal and other systems and/or between protected and unprotected improved varieties (Louwaars & De Boef, 2012; ACB, 2018a). This clause (see below as well on breeders’ exemptions) may have dire consequences for resource-poor, smallholder farmers in the EAC region if farmers were to reuse propagating material

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19. A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when: (a) it is predominantly derived from an initial variety, or from a variety that is itself predominantly derived from an initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety; (b) it is clearly distinguishable from the initial variety; and (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant, or of a soma-clonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.
of protected varieties and breeders decide to enforce their rights to the farm-saved seed, as well as the harvest materials and harvested products.

Breeders’ rights also limit the development of new varieties from the protected varieties, as the PBRs to be granted under the EAC regime, will also extend to essentially derived varieties (see below for more details on EDVs).

In terms of UPOV 1978, Article 5 (3) allows for the use of a protected variety as an initial source of variation for the purposes of creating other varieties or for marketing such varieties. The breeder’s authorisation was only required in cases of repeated use of the protected variety. However, this option is not available under UPOV 1991 and under the current legal framework, and UPOV 1978 is no longer open for new members.

Exceptions to breeder’s rights
Section 36 provides very narrow exemptions regarding the use of farm-saved seed by smallholder and peasant farmers. These are categorised under the use of protected varieties for “private and non-commercial purposes” [36 (1) (a)] and based on a list of agricultural crops [36 (2)].

Lack of definition for Exception – “acts done privately and for non-commercial purposes”
Section 36 (1) (a) provides for the first exemption, the compulsory exemption under UPOV 1991, which allows farmers to save and reuse propagating material for private and non-commercial purposes. However, the Bill does not provide a definition for “private and non-commercial”. UPOV 1991 narrowly interprets “private and non-commercial use” of farm-saved seed of a protected variety to mean, “the propagation of a variety by a farmer and the dependents of the farmer living on that holding”). This means that even acts such as exchange may be outside the scope of the exception.

Yet, on UPOV’s Frequently Asked Questions (FAQs) webpage it states: “UPOV Contracting Parties have the flexibility to consider, where the legitimate interests of the breeders are not significantly affected, in the occasional case of propagating material of protected varieties, allowing subsistence farmers to exchange this against other vital goods within the local community”.

De Jonge et al. (2015) argue that this indicates that countries can decide for themselves which farmer activities (such as exchange, sell, etc.) should fall into this exemption. It is important that these activities (private and non-commercial) on the part of smallholder farmers are broadly defined, in order to provide full exemption to the seed systems that are intricately connected to smallholder production, as well as to include exchange and sale of surplus harvest in local markets, and thereby exclude these from the scope of the breeders’ right.

As things stand, there is no explicit provision in the EAC Bill that allows smallholder farmers to freely exchange and sell farm-saved seed of protected varieties, even for local rural trade – a practice that underpins agricultural systems in EAC countries. Even the limited exception provision is subject to safeguarding the “legitimate interests” of the breeder, meaning royalty payments to the breeder by small- and large-scale commercial farmers – see below.

Recommendation to add onto Regulations 36:

The exception of “acts done privately and for non-commercial purposes” in Section 36 (a) of the EAC Bill shall be understood as allowing small-scale farmers to save, use, exchange and sell to local markets and other small-scale farmers, farm saved seed or propagating material of the protected variety.

List of Agricultural crops with historical use of saving
Section 36 (2) provides for the second exemption, which allows farmers to reuse the product of harvest or EDV’s based on a “list of agricultural crops and vegetables”, for “propagating purposes” and “planting on own holding”, within “reasonable limits” and “subject to safeguarding of legitimate interests of the holder of the breeder’s” rights. Regulations 36 (2) further elaborates that, “the Council shall specify from time

to time a list of agricultural crops and vegetables with historical practice of saving, using, sowing, re-sowing or exchanging seeds and acreage/tonnage that defines a small-scale farmer in each Partner State, based on the criteria established at the national level. The list shall be periodically published by the EAC Seed Office”.

The regulations define “own holding” as, “any holding or part thereof which the farmer actually exploits for growing plants, whether as his or her property or otherwise managed under his or her own responsibility and on his or her own account, in particular in the case of lease holds”, [Regulation 36 (3)].

There is no further clarity or guidance on how a list of agricultural and vegetable crops linked to a historical, common practice of farmers saving seed will be compiled and updated over time. In fact, the exceptions to the breeders’ rights are narrowed down even more, as they apply only to small-scale farmers. There is no definition of “small-scale farmer” in the regulations, and this has been left up to Partner States, which will base their definition on criteria established at the national level, as this term varies from country to country.

The process of compiling a list of exempted agricultural and vegetable crops should be open and transparent, ensuring that farmers participate at all levels. As it is, this process cannot be left up to the Council or member states to develop and finalise, without input from farmers. For crops not on the list, there is no exemption for seed saving and farmers will not be allowed to save seed. As mentioned above, the exception is only for propagating the protected variety for “purposes on their own holdings, the product of their harvest which they have obtained by planting on their own holdings”, subject to safeguarding the breeder’s “legitimate interests”.

Section 36 (3) further states that the implementation of the limit of exemption provision and the different level of remuneration to be paid by commercial farmers, and the information to be provided by the farmer to the breeder shall be stipulated in the regulations.

**Level of remuneration and distinction between small-scale commercial farmers and large-scale commercial farmers**

Regulations 36 (4) goes on to refer to commercial farmers mentioned in Section 36 (3) as small-scale commercial farmers and large-scale commercial farmers. However, there is no definition that distinguishes small- and large-scale commercial farmers in the EAC Seed Bill or in regulations although the Bill and Regulations (see below) speak of different level of remuneration. Regulation 36 (4) further states: “For the purposes of determining the level of remuneration under Section 36 (3) of the Act, it is hereby provided that:

a) Small scale commercial farmers and large scale commercial farmers referred to in Section 36 (3) of the Act who exceed the acreage/tonnage that defines a small-scale farmer provided under paragraph (2) are subject to pay remuneration to the breeder;

b) The level of the equitable remuneration to be paid may form the object of a contract or license between the holder and the small scale commercial farmer and large scale commercial farmer concerned.

The definitions of small-scale farmer and small-scale commercial farmer vary across countries and can be defined either by size of cultivated land, type of crop being planted, or total income or profit from seed/crop sales. Small-scale commercial farmers (with greater acreage than what is defined as small-scale farmer at the national level) will have to pay remuneration when reusing farm-saved seed, even for crops on the list, which may economically disadvantage farmers compared with a region such as Europe, which has broader exemptions. For the list of identified varieties in the EU, small-scale farmers (including small-scale commercial farmers) are exempted from paying remuneration to save and reuse protected seed and propagate this on their own holdings. In Switzerland, a farmer has an average holding of 22 hectares and on their own holdings, all farmers (small or large) are exempted from having to pay remuneration to save and propagate seed of a protected variety (Correa et al., 2015). No similar exemption is found in the EAC bill. Thus, Swiss farmers are in a far better economic situation than African farmers. It is unethical to disadvantage African small-scale farmers.
commercial farmers with respect to their much wealthier European counterparts. At the very least, they should be exempted from paying remuneration, as is the case in Europe (ACB, TWN; AFSA, 2016).

**Recommendation to replace Regulations 36 (4) (a) (b):**

For the purposes of determining the level of remuneration under Section 36 (3) of the Act, it is hereby provided that:

a) Small-scale commercial farmers who exceed the acreage/tonnage that defines a small-scale farmer provided under paragraph (2) shall not be required to pay any remuneration to the breeder.

b) The level of the equitable remuneration to be paid may form the object of a contract or license between the holder and the small-scale commercial farmer and large scale commercial farmer concerned;

It is essential to provide for the needs of smallholder farmers, particularly relating to the way they access seed. In fact, a central objective of the Bill is to facilitate access and encourage farmers to adopt new varieties. Farmers primarily access seed through farmer-managed seed systems, including saving, exchanging and purchasing from local markets. Small-scale farmers' traditional practices and rights to freely reuse, save, exchange and sell seed locally are undermined as the Bill fails to provide legal clarity and clear definitions to operationalise the exemptions.

In summary, the EAC Bill completely undermines the implementation of farmers’ rights as enshrined in the ITPGRFA (Article 9, FAO, 2009). It does not recognise farmers’ contributions or give them rights vis-à-vis farm-saved seed, without forcing them to pay royalties. The Bill also does not enable farmers to develop new varieties basis on the protected varieties, or exchange and sell the products of their harvest. The legal framework is premised only on strengthening breeders’ rights and marginalising and exploiting small-scale farmers in EAC Partner States.

**Conclusions and recommendations**

The EAC seed and PVP harmonisation process presents grave concerns as it continues to institutionalise seed laws that focus solely on the formal, private seed sector within the region. Since most seed in the region is provided through farmer-managed seed systems and networks, it is these that should be protected, strengthened and supported, including the development of farmer-led quality control systems. However, there are no commitments to do this; rather, farmer-managed seed systems continue to be marginalised. The EAC Bill also fails to provide safeguards that may prevent the criminalisation of smallholder farmers, allowing them to freely use, save, sell and exchange farmer-managed seed.

Current national seed laws in the EAC that focus exclusively on the formal/commercial seed sector are already having implications for seed and food sectors. This is due to the proliferation of the certified seed of a few commercial crops as a result of the infiltration of the private sector in the region, which is leading to loss of farmers’ varieties and seed diversity. Evidence shows that there is already a diminishing range of genetic and agricultural diversity available on the market and in the fields, and fewer players involved in seed production and trade. Accompanied with the strict registration, release and certification standards set out by the existing national seed laws in the EAC Partner states, and now the draft EAC Bill, further barriers will be created for farmer varieties and small-scale seed producers to enter both the national and regional seed markets.

Evidently the private sector, particularly multi-national seed companies, will benefit from the regional seed legislation. As already seen in SADC and COMESA regional variety release catalogues, registration of varieties has been granted principally to the largest seed companies – Syngenta, Monsanto,

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DuPont Pioneer, Pannar, HZPC and Seed Co – which focus on only a few commercially lucrative crops.

Due to the legally binding obligations of the EAC Treaty, and the compliance and enforcement requirements under the EAC Bill, Partner States in the EAC will be legally bound to conform their national seed legislation to the EAC harmonised framework. This raises further concerns, particularly about forcing UPOV 1991 law on countries whose PVP laws are not UPOV 1991, such as Uganda, Burundi and South Sudan. Furthermore, the proposed centralised PVP system undermines national sovereignty of Partner States, where all decision-making powers on PVP have been given to an EAC Seed Office that has no experience with examination of, granting, or handling the effect of, PBRs.

Partner States are not allowed to object to a grant of plant breeder’s right in applying in its territory and are not allowed to issue compulsory licenses. The “one-size-fits-all” model for PVP proposed in the EAC Bill offers extremely strong IP protection of plant breeders’ rights while threatening farmers’ rights and sustainable agricultural development in the EAC region. Thus, any flexibilities in national laws for smallholder farmers that already exist in Uganda, with regards to plant breeders’ rights and farmers’ rights, will have to be done away with once the EAC Bill is passed. It will further exacerbate corporate concentration of and monopolisation in the EAC seed industry by multinational agrochemical/seed companies. Most commercial seed breeding, production and exporting is undertaken by a handful of multinational and agrochemical companies. At the moment, the largest seed companies reside in Kenya, which has a more developed seed industry sector compared with the rest of the EAC countries. These companies are bound to benefit, particularly from this regional seed harmonisation, as the EAC Seed Bill aims to ensure regionally seamless and expedited trade and seed production of commercially-bred seed varieties for the benefit of these multinational seed companies, which will be the main beneficiaries of PVP. Furthermore the compliance and enforcement mechanisms for the implementation of the EAC Seed Bill can be used by entities to push for their interests. This will pose a further serious threat on national sovereignty and exacerbate monopoly of the seed sector in other EAC countries and in the region. It should be noted that UPOV 1991 poses a threat to the realisation and enjoyment of human rights, particularly the right to food, through restrictions on the use, exchange and sale of protected seeds, which, coupled with high and increasing seed prices and reducing household income may affect access to food, healthcare and education.

It should be noted that UPOV 1991 poses a threat to the realisation and enjoyment of human rights, particularly the right to food, through restrictions on the use, exchange and sale of protected seeds, which, coupled with high and increasing seed prices and reducing household income may affect access to food, healthcare and education.

We urge that the EAC Partner States reflect on the unified position taken by African countries regionally and at international fora around issues concerning community and farmers’ rights and plant breeders’ rights, particularly in relation to the ITPGRFA as well as the African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders and

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23. See Section 47 and 54 (f)

Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version
Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version

for the Regulation of Access to Biological Resources ("OAU Model Law"). These unified positions espouse public policy that ensures food security and preserves the integrity of rural or local communities with respect to non-commercial use of plant varieties, and the system of seed saving and exchange as well as selling among farmers (ACB, 2018c).

It is a matter of urgency and grave importance that the EAC Partner States begin to support and adopt a much more balanced and equitable approach. This entails supporting a comprehensive farmer seed policy that recognises and supports farmer seed systems with appropriate farmer-based mechanisms to ensure availability of and access to diverse quality seed of farmer and public sector varieties, for seed sovereignty.

The urgency to expeditiously pass the EAC Bill, with limited or no public involvement remains questionable and needs much more scrutiny on the push behind this process. It is crucial that the EAC Partner States abide by the principles of national, regional and international law-making procedures, which provide for effective public participation and consultation, including provisions in the EAC Treaty, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and Article 9 (2) (c) of ITPGRFA.

It is important that no further decisions are made and that the adoption process of the Bill is halted until inclusive and participatory consultations are undertaken and issues of farmers’ rights are captured and addressed adequately in the draft EAC Bill. Further to this, with the serious threats posed to national sovereignty of EAC Partner States, it is recommended that the EAC Seed Bill is disbanded until these and other serious issues raised in this briefing are resolved. Failure to do this will present future challenges for Partner States on making pertinent decisions with regards to their agricultural and seed sectors.

Acronyms

ARIPO  African Regional Intellectual Property Organisation
EAC  East African Community
EASCOM  Eastern Africa Seed Committee
CBD  Convention for Biological Biodiversity
COMESA  Common Market for Eastern and Southern Africa
CSOs  civil society organisations
CTA  Technical Centre for Agricultural and Rural Cooperation
DUS  distinct, uniform, stable
EALA  East Africa Legislative Assembly
ECAPAP  Eastern and Central Africa Programme for Agricultural Policy Analysis
GMO  genetically modified organism
IP  intellectual property
ITPGRFA  International Treaty for Plant Genetic Resources for Food and Agriculture
LDC  least developed country
NDUS  new, distinct, uniform, stable
NPT  national performance test
PAAP  Policy Analysis and Advocacy Program
PBR  plant breeders’ right
PVP  plant variety protection
QDS  quality declared seed
SADC  Southern Africa Development Community
UPOV  International Union for the Protection of New Varieties of Plants
VCU  Value for Cultivation and Use
WTO  World Trade Organization

Use of terms

plant variety protection (PVP)
Also known as plant breeders’ rights (PBRs). This is the intellectual property protection given to the right holder over a new plant variety. PVP and PBR are often used interchangeably.

farmer-managed seed systems/farmer seed systems
Also known as the informal seed system, a concept we do not subscribe to. It refers to the historical and traditional practices of farmers regarding the management of seed and propagating material, including the in-situ conservation, maintenance and selection of seed diversity, and the saving, re-using, exchanging and selling of seed amongst family, neighbours and communities.
Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version

References


EAC (East African Communities), 2015. Framework to guide development of harmonised EAC seed regulations framework (final draft 2015)


SADC (Southern African Development Community), 2017. Protocol for the Protection of New Varieties of Plants (Plant Breeders’ Rights) in the Southern African Development Community Region

TWN (Third World Network), 2014; Biopiracy of Turkey’s purple carrot https://www.twn.my/title2/biotk/2014/btk140208.htm
Annex 1: letter addressed to the secretary general of the east african community

1st December 2018

H.E. Amb. Libérat Mfumukeko,
Secretary General,
EAC Secretariat,
P.O Box 1096
Arusha, United Republic of Tanzania

Dear Sir,

REF: Farmer and Civil Society Organisation (CSOs) concerns on the EAC process on development and adoption of an EAC Seed and Plant Varieties Bill, 2018

We write to you on behalf of the undersigned civil society organisations from the East Africa region. We hereby bring to your kind attention, a number of serious concerns we have, with regards to the East Africa Community’s (EAC’s) process on the development of a seed legislative framework and specifically the draft East Africa Seed and Plant Varieties Bill, 2018 with which we would like to raise a few concerns.

We are concerned that there has been extremely limited consultation and public participation by farmer and civil society organisations at the national levels from the EAC countries. This has greatly impacted on our ability to participate fully and effectively in the decision-making process that has led to the development of the EAC Seed and Plant Varieties Bill. In addition, there has been extreme limited or lack of transparency thereof in the process, with there being no access and availability of any information on the process and important documentation, including draft versions of the said Bill. An example is the Validation meeting that took place at New Africa, Hotel in Dar es Salaam, Tanzania from the 30th of August to the 2nd of September 2018, which allowed only one representative from a single farmer organisation and then too, only from one of the EAC countries. Thereafter, there were no subsequent follow-up national consultations in the respective EAC countries or sharing of the revised draft EAC Seed and Plant Varieties Bill.

The Treaty for the Establishment of the EAC community, also known as the “EAC Treaty” has outlined several provisions for public participation and transparency, referred to below:-

First, Article 5 (g) being one of the Objectives of the EAC Treaty provides for “enhancement and strengthening of partnerships within the private sector and civil society in order to achieve sustainable socio-economic and political development”.

Second, Article 6 (d) of the EAC Treaty on the fundamental principles of the Community states that, “The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include;

‘good governance including adherence to the principles of democracy, the rule of law, accountability transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the Africa Charter on Human and People’s Rights.’
Additionally, Article 127 (3) (4) of the EAC Treaty, also provide for the following;

3. The Partner States agree to promote an enabling environment for the participation of civil society in the development activities within the Community.

4. The Secretary General shall provide the forum for consultations between the private sector, civil society organisations, other interest groups and appropriate institutions of the Community.

We are of the respectful view that the EAC Seed and Plant Varieties Bill process has flouted the very objectives, fundamental principles and provisions of Article 5, 6 and 127 of the EAC Treaty as mentioned above, by excluding farmers and CSOs from effective participation in the EAC Seed Bill decision making processes.

We are furthermore concerned that the draft EAC Seed and Plant Varieties Bill institutionalises existing national seed laws of its EAC member states. These seed laws have ignored the farmer managed seed systems (usually referred to as ‘informal seed system’). These seed laws provide strict, onerous and expensive certification standards, which create barriers for farmer varieties and small-scale seed producers to enter both national and regional seed markets. Very often the high costs of registration and certification of seed involved together with intensive labour demands based on international standards make it difficult to certify and trade in seed by small seed enterprises and farmers. Farmer and civil society organisations in the EAC have constantly asked national governments to make exemptions and develop laws that recognise and support farmer managed seed systems in the region. Farmer managed seed systems account for 60-80% of the total seed used in the EAC, especially for indigenous vegetables, pulses, vegetatively propagated crops, oil crops and cereals such as millet and sorghum1. We have been consistently requesting that the EAC governments rethink the current trajectory of promoting and supporting only the formal seed system and certified seed and adopt a much more balanced and equitable approach towards also supporting the FMSS. Such support will engender the fairness and equity contemplated and enshrined in the fundamental principles set out in Article 6 of the EAC Treaty.

We are further concerned that the draft EAC Seed and Plant Varieties Bill provides a full section for plant variety protection (PVP) that is similar to UPOV 1991. Although Kenya, Tanzania are members of UPOV 1991, and while Rwanda has a PVP law similar to UPOV 1991, we feel that this will disadvantage other countries in the community whose laws are not UPOV 1991 such as Uganda and Burundi. In this case, for Uganda and Burundi, they will have no option but to bring their PVP laws in line with UPOV 1991, due to the legal binding obligations of EAC laws. As it is, UPOV 1991 is a restrictive and inflexible international legal regime, emanating from industrialised countries in response to the advent of large-scale commercial farming and commercial plant breeding, that grants extremely strong intellectual property rights to commercial breeders and undermines farmers’ rights. UPOV 1991 is focused solely on promoting and protecting industrial seed breeders that develop

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Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version

African farmers and CSOs have a track record of raising serious concerns with regard to the conformity of both national and regional plant variety protection laws with UPOV 1991. This is because, it aims to transform African agriculture from peasant-based to an inherently inequitable, and ecologically unsustainable agriculture model based on an out-dated Green Revolution/industrial agricultural model. Rather than adopt UPOV 1991 African CSOs and farmer organisations have urged that a sui generis plant variety protection system that enables member states to retain their right to adopt and develop measures to encourage and promote farming communities and indigenous peoples’ traditions in innovating and developing new plant varieties and enhancing biological diversity.

Article 9 of the ITPGRFA outlines farmers’ rights, recognising the historical and ongoing role of farmers and local and indigenous communities in the conservation and development of plant genetic resources for food and agriculture (PGRFA) and reaffirms the primacy of rights of farmers to save, use, exchange and sell farm-saved seed/propagating material, “subject to national law”. At the moment, Kenya, Burundi, Rwanda, Uganda and Tanzania are contracting parties to the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) but these critically important provisions on farmers’ rights are nowhere considered or provided for in the EAC Seed and Plant varieties Bill, 2018.

Thus, in the context of there being legally binding provisions in the EAC Treaty as outlined above and based on international principles on human rights, that provide for effective public participation and consultations as well as adherence to social justice, equity and fairness in law making, we appeal to the Sectoral Council on Agriculture and Food Security (SCAFs), the Permanent Secretaries of the Ministries of Agricultures in the EAC Partner states and the Council of Ministers for the following;

1) Postponement of any decision-making by the relevant EAC structures on the EAC Seed and Plant Varieties Bill, 2018 until adequate consultations at the national level have been undertaken with farmer and civil society organisations.

2) These national consultations should be inclusive, transparent and fair and not limited to one or two representatives from farmer and civil society organisation(s).

3) That the EAC Secretariat makes available relevant documents related to the draft EAC Seed and Plant Varieties Bill that will enable effective decision making for participation in the national consultations. Particularly the most recent draft of the EAC Seed and Plant varieties Bill, 2018.

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3 UPOV is the French acronym for the International Union for the Protection of New Varieties of Plants. UPOV was developed by industrialised countries to address their own plant breeding and development needs.
4) That national consultations are meaningful and convey the concerns of CSOs and farmers in the region to the decision-making structures of the EAC, and that these concerns are taken into account in the further development of the Bill.

5) That further development and decision making in regard to the Bill includes full and effective participation by CSOs and farmers’ organisations in the EAC region.

We look forward to hearing from you as a matter of urgency.

Yours sincerely,

1. ACODE- Uganda
2. ActionAid- Uganda
3. African Biodiversity Network (ABN) – Kenya
4. African Centre for Biodiversity (ACB) – Tanzania
5. Biodiversity and Biosafety Coalition of Kenya (BIBA) – Kenya
6. Caritas Uganda – Uganda
7. Central Archdiocesan Province Caritas Association (CAPCA) – Uganda
8. Eastern and Southern African Farmers’ Forum (ESAFF)
10. Fahamu – Kenya
11. Food Rights Alliance (FRA) – Uganda
12. Growth Partners Africa (GPA) – Kenya
13. Kenya Food Alliance (KeFra) – Kenya
17. Mtandao wa Vikundi vya Wakulima Tanzania (MVIWATA) – Tanzania
18. Organic Consumers Alliance (OCA) – Kenya
19. Participatory Ecological Land Use Management (PELUM) – Uganda
20. Sustainable Agriculture Tanzania (SAT) – Tanzania
21. Tanzania Alliance for Biodiversity (TABIO) – Tanzania
22. The Uganda Farmers Common Voice Platform (UFCVP)- Uganda

c.c.

RT. Hon. Dr. A.M Kirunda Kivejinja
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C.c.

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### Annex 2: Status of seed legislation in EAC countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Seed legislation governing the seed industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burundi</td>
<td>1999 Seed Act; 2012 Seed Act No. 1/08; 2012 Decree No. 100/305; 2011 Law No. 1/03; Law Decree No. 1/033 on Plant Protection of 1993 2011 Law No. 1/03 2012 Decree No. 100/251; 1993 Decree Law No. 1/032</td>
</tr>
<tr>
<td>Kenya</td>
<td>2016 Seed and Plant Varieties Act (Cap 326); 2009 National Performance Trials and Regulations; 2012 Seed Policy</td>
</tr>
<tr>
<td>Rwanda</td>
<td>National Seed Policy; Seed and Plant Varieties Law No. 005/2016 Ministerial order No. 002/11.30 of 18/08/2010; Ministerial Order No. 003/11.30 of 18/08/2010; Ministerial Order No. 004/11.30 of 18/08/2010</td>
</tr>
<tr>
<td>South Sudan</td>
<td>Seed regulations based on HESSREP</td>
</tr>
<tr>
<td>Uganda</td>
<td>Draft National Seed Policy (2014a); Seed and Plant Act (2006); Plant Variety Protection Act (2014); Plant Protection and Health Act (2014)</td>
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</table>
### Annex 3: Status on national, regional and international seed legislation

<table>
<thead>
<tr>
<th>Country</th>
<th>ARIPO</th>
<th>SADC</th>
<th>COMESA</th>
<th>ITPGRFA</th>
<th>UPOV member (1978 or 1991)</th>
<th>WTO member</th>
<th>LDC designation</th>
<th>National laws in place</th>
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<td>Burundi</td>
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<td>✓/**</td>
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<td>✓</td>
<td>✓</td>
<td></td>
<td>✓****</td>
</tr>
</tbody>
</table>

* Member of UPOV 1978  
** Neither a member of UPOV 1991 nor 1978 but PVP law conforms to UPOV 1991  
*** Only seed law in place  
**** Both seed and PVP laws in place