SUBMISSION ON THE COMESA DRAFT HARMONISATION OF SEED TRADE REGULATIONS

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1. **Introduction: Regulations binding on COMESA member states**

The Common Market of Eastern and Southern Africa (COMESA) was created in 1994 and currently has 20 member states: Angola, Burundi, Comoros, DR Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, South Sudan, Swaziland, Uganda, Zambia and Zimbabwe. It originated as a preferential trade area (PTA) at a meeting convened in Lusaka in 1981. The PTA was established with the ultimate objective of creating an economic community. The PTA Treaty transformed into a Common Market, and the Treaty establishing the Common Market for Eastern and Southern Africa was signed in 1993 in Kampala, Uganda and ratified in Lilongwe, Malawi in 1994.

The COMESA Treaty establishes in Art. 7, as organs of the Common Market:
(a) the Authority;
(b) the Council of Ministers;
(c) the Court of Justice;
(d) the Committee of Governors of Central Banks;
(e) the Intergovernmental Committee;
(f) the Technical Committees;
(g) the Secretariat; and
(h) the Consultative Committee.

The supreme decision making organ is the "Authority" integrated with the Heads of State from each member country (Art. 8).

The Council of Ministers is comprised of one representative of each Member State. Its responsibilities are to "make regulations, issue directives, take decisions, make recommendations and give opinions in accordance with the provisions of this Treaty"; (Art. 9) Subject to the provisions of the Treaty, "the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of this Treaty shall be binding on the Member States, on all subordinate organs of the Common Market other than the Court in the exercise of its jurisdiction and on those to whom they may under this Treaty, be addressed".(Art. 9) It is thus our understanding that the COMESA draft Seed Trade Regulations ("Regulations") will become binding on all 20 member states of COMESA once these regulations are finalised and signed off by the Council of Ministers. According to the information at our disposal, the Council of Ministers is set to meet in Mauritius during June/July 2013 to sign off on the Regulations.

2. Background

The COMESA Council of Ministers signed a Declaration in 2008 to rationalise and harmonise seed regulations and policies in its member States. Four areas regarding seed trade were identified for harmonisation:

i) variety evaluation, release and registration process;
ii) seed certification process;

iii) phytosanitary measures; and
iv) import/export documentation.

Harmonisation of plant variety protection has also been identified, but this component does not seem to have been fully initiated as yet. Although there have been reports that COMESA is busy drafting an IP policy.[i]

In 2010, the Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA)[ii] began working to implement the seed harmonisation project through the COMESA regional agro-inputs programme (COMRAP). COMRAP was a 20 million euro 2-year project funded by the European Union targeting eight landlocked COMESA countries: Burundi, Ethiopia, Malawi, Rwanda, Swaziland, Uganda, Zambia and Zimbabwe. One of its components is Seed Sector Development: harmonisation and rationalisation of seed policies and regulations and the other, is aimed at improving national seed value chains. COMRAP Indicators are: Variety evaluation, Release and Registration; Seed Certification Standards; Phytosanitary Regulations; Plant Variety Protection; and Seed laws and Regulations (imports and exports). COMRAP has been working towards harmonising seed trade for the following 12 crops: beans, cassava, cotton, groundnuts, maize, millet, potato, rice, sorghum, soya beans, sunflower and wheat. The two-year project was characterised by well-funded programmes, workshops and meetings.

ACTESA identified the following as constituting the challenges facing small-holder farmers:

- Over-reliance on rain-fed agriculture
- Low use of agricultural inputs like fertiliser and low availability and access of quality declared seed
- High marketing costs brought about by poor infra-structure
- Insect pests and diseases
- Lack of harmonised and rationalised seed trade[iii]

The rationale for the harmonisation of the seed trade laws is that it will improve seed quality available to small-scale farmers, save time and resources when seed is being traded and facilitate farmers' access to improved seed varieties. "Without quality seed, use of inorganic fertilizer, small-scale farmer irrigation, use of plant protection products, good agricultural practice will be rendered useless.[iv] The justification is that in the COMESA countries, farmers access to seed is constrained by restrictive trade regimes such as inconclusive trade harmonisation measures, un-harmonized varietal release regulations, proliferation of certification requirements, sanitary and phytosanitary measures, inspection requirements and cumbersome customs procedures.

We have taken note that ACTESA has signed a Memorandum of Understanding with the Iowa State University's Seed Science Center to work together in the seed development and biotechnology sectors. Several US universities have been playing a huge role in advancing US interests by providing 'expert' influence both in biosafety and seed policy in Africa. The Seed Science Centre at Iowa State University is one such example. Situated in the centre of the US Corn Belt, it has over the past 12 years facilitated seed and biosafety policies in more than 70 countries worldwide. USAID, AGRA, Monsanto, Cargill and Pioneer Hi-Bred fund it.

Joe Cortes, Global Seed Program Leader at the Seed Science Centre, shifted his focus to Africa after his success in facilitating the harmonisation of PVP legislation in Central America. He is the technical advisor to a number of regional bodies and national governments in Africa. He has greatly influenced the harmonisation of seed policies for SADC and COMESA and has established the West Africa Seed Alliance (WASA). Cortes has been facilitating the adoption of PVP laws in Zambia, Mozambique, Ghana and Malawi. With the help of the Alliance for a Green Revolution in Africa (AGRA) funding, Cortes is implementing the Seed Enterprise Management Institute (SEMIS) in Nairobi. USAID acts on behalf of, and in synergy with, the American Seed Trade Association (ASTA), with both ASTA and USAID enlisting Joe Cortes as their technical advisor in Africa. With an additional grant from the Bill and Melinda Gates Foundation, the Seed Science Centre is implementing the Seed Policy Enhancement in African Regions (SPEAR) project. It claims to host the biggest public seed laboratory in the world. A 2011 press release arrogantly announced: 'Iowa State University's Seed Science Center to steer eastern and southern Africa seed policy'. [v]

3. Consultation with farmers and civil society organisations

We are on record as stating that there is no evidence to demonstrate the involvement of and consultation with the citizens in COMESA countries, particularly small - scale farmers in the drafting and formulation of the draft Regulations. These concerns were raised by small-scale farmers and civil society organisation (CSO) representatives who attended a two-day workshop organised by the ACTESA at Protea Hotel on 27 and 28 March, 2013 in Lusaka, Zambia.

It is our view that a technical group from COMESA countries in collaboration with the African Seed Trade Association (AFSTA) and ACTESA and funded by the USAID, deliberated on the issues and drafted regulations that are now said to be ready for submission to COMESA member state government for endorsement during June 2013, when they will become binding on all 20 member states of the COMESA region.

In a meeting held on Friday, April 5, 2013 with representatives from CSOs promoting ecologically sound agriculture and biological diversity, COMESA gave these groups an assurance that the draft Regulations will be subject to wider consultations with the citizens and relevant stakeholders in the member states before the regulations are finalised.

Submissions made by CSOs and small-scale farmer representatives, contained in a statement to the workshop highlighted the need for the process to involve key stakeholders from the farming community so that they can also have their input taken into account as they would be directly impacted by the Regulations. The CSO representatives called for transparency and an inclusive process with regard to the drafting of the Regulations.

To this end, ACTESA informed the participating CSOs that it is organising a stakeholders meeting due to take place in Lusaka in April 2013 as part of the efforts to engage stakeholders at national level. The Lusaka meeting is designed to offer an opportunity for key seed stakeholders to submit their views and perspectives on the draft Regulations. However, it has subsequently emerged that the April 2013 meeting is a national consultation for Zambian groups.

While the Secretary General of COMESA, Mr. Sindiso Ngwenya is on record for saying that small-scale farmers would be provided with a chance to express their views on the Regulations, to date, no arrangements have been made to host a regional consultation and invite key stakeholders to such a consultation.

4. Concerns with COMESA seed trade regulations

4.1 Privatisation of seed and seed monopolies

The underlying imperative of the draft Regulations is the creation a free trade zone for the proliferation of improved seed. To replace 'low-yielding' traditional farmers' varieties with 'high-yielding' varieties developed by international agricultural research centres, their national counterparts and the seed industry. The draft Regulations create a COMESA Variety Release System for new and existing varieties. Implicit in this seed registration mechanism is the granting of exclusive proprietary and marketing rights irrespective of whether the breeder registers plant breeder's rights over the seed. While we fully support farmers having access to good quality seeds, our view is that the proposed legislation is not oriented towards the small farmers; but has been formulated for the benefit of corporate seed producers that seek to control the seed and food markets in the COMESA region. Small farmers will not be able to afford the cost of purchasing registered seeds, despite the anticipated increased availability of such seeds on the regional market. Currently, despite the presence of commercial seed companies and certified seed available on the COMESA market, the majority of farmers are unable to afford this seed unless they are given support through government farmer input subsidy programmes. This is already a huge cost for governments who are struggling to restructure their subsidy programmes and save limited tax payer funds.

The draft regulations are part of the bigger strategic plan aimed at transformation of Africa's agricultural systems, based on the following blueprint:

Step 1: Strong international support for National seed systems in African countries that include: 'improved' seeds, public breeding and multiplication programmes, state seed companies, seed regulations, loans and subsidies.

Step 2: Creation of a potential seed market willing to adopt "improved" seeds.

Step 3: Governments' institutional capacities are diminished; public breeding programmes are dismantled, new legislation and regulations such as the COMESA seed trade regulations to remove trade barriers are enacted, encouraging or forcing farmers to buy certified seed every year to attract private investment in the seed industry; granting of extremely strong intellectual property protection for commercial seed breeders; severely restricting the rights of farmers to freely use, exchange and sell farm-saved seeds.

Result: The private sector takes over the African seed system.

This is already a reality in some African countries such as South Africa where the entire maize sector is now totally controlled only by two companies namely Monsanto and DuPont/Pioneer Hi

Bred. We are extremely concerned that these Regulations will facilitate not only a free seed trade area within the COMESA region but will also eventually lead to the buy out of smaller African seed companies. We require safeguards that the social, environmental, food security and food sovereignty impact of the implementation of these Regulations will be avoided.

Seed monopolies mean that where there are few players on the regional market, the price of seed will be high and will affect accessibility of seeds. High price of seeds compel farmers to turn to low quality seeds especially spurious seeds. Availability of seeds at affordable price is essential to curb a spurious seed market. (suicides in India are also linked to spurious seed sales). **The regulations are silent on the price control mechanism, which is absolutely necessary to ensure access to seeds and to protect foods security in the COMESA region.**

4.2 **Impacts on small-scale farmers and the protection of farmers' rights**

The FAO estimates that the formal seed sector, public and private combined, accounts for only 5-10% of the seed used in Sub-Saharan Africa, with a similar situation in North Africa. This means that as much as 90-95 % of the seeds used in Africa-including in the COMESA countries come from the informal system, namely from peasants, smallholder farmers, rural communities and indigenous communities.

The objectives of the Regulations set its sights on commercially traded seeds – the seeds developed and released by the formal system, although this is not explicitly stated anywhere in its provisions. This does not mean, however, that the implementation of the Regulations at the national level will not affect the informal seed supply system, particularly farmers' seeds conservation and development efforts. Farmers generally do not make any distinction between seeds from the formal system and traditional/local varieties as long as these are useful for their needs and adapted to their farm conditions. Farmers are rarely content to use the same variety every season, fully aware of the constantly changing agro-climatic conditions and also in a constant effort to spread the risks of failure due to pests, diseases and weather patterns. Thus, on-farm experimentation is a constant feature of farmer's crop improvement and selection practices, in the same way that seed exchange and sharing are is lifeblood of traditional crop breeding.

Our primary concern is that the draft Regulations will impede, inhibit or restrict farmers from continuing their seeds conservation and development efforts and we need assurances that farmers' efforts in seeds conservation and development will not be adversely affected.

The draft Regulations do not recognize the invaluable contribution of farmers in the continuous conservation, development and utilization of plant genetic resources that is responsible for the rich diversity that we have today. It should be the obligation of the State to protect these resources and to ensure and promote farmers' conservation, development and utilization practices.

'Seed trade' is not defined in the Regulations as being restricted to only the commercial seed sector. In this regard, we are concerned that the Regulations do not provide any safeguards that small farmers will be allowed to freely use, exchange, sell and barter varieties of seed. We are extremely concerned that the lack of these safeguards will open the door for the criminalising of the customary

practises of small farmers to exchange, sell and other **use of traditional and other seed** within the COMESA region. We require explicit provisions to the following effect:

"These Regulations shall apply to seed varieties developed and released by the commercial/formal seed sector, including those released for commercial use by public institutions and the private sector. Nothing in these Regulations shall preclude, prohibit or inhibit farmers from sharing, exchanging, saving and replanting seeds for the conservation and development of plant genetic resources."

Several international instruments and laws recognize farmers' and community rights, see Appendix A hereto. The Ethiopian Proclamation on Seed (draft of 2012) specifically excludes the use of farm-saved seed by any person; the exchange or sale of farm-saved seed among small-holder farmers; seed to be used for research purposes and forestry seed, from the scope of its law.

4.3 **DUS and VCU testing for new and existing varieties**

The draft regulations establish a COMESA Variety Release System for the release of new and existing varieties. Varieties shall be released once it statisfies the DUS (distinctiveness, uniformity, stability) requirements-tests to be carried out in accordance with the UPOV guidelines. Furthermore, varieties shall be released subject to the Value for Cultivation or Use (VCU) or National Perforance Tests (NPT).

A plant variety is distinct "if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application."

- Distinctiveness means that the variety is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application.
- Uniformity in relation to the variety means being sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation.
- Stability in relation to the variety means that its relevant characteristics remain unchanged after repeated propagation, or in the case of a cycle of propagation, at the end of each such cycle.

VCU testing is defined as the performance data that is typically established through multi-location testing to show that a new variety has value to be released for cultivation.

Farmers' seeds cannot meet the DUS criteria because by the nature of farmers' breeding practices, variability (vs. stable) and diversity (vs. uniformity) are key to farmer's crop improvement practices to cope with changing conditions (i.e., water availability, weather, etc.) and abiotic stresses (i.e., pests, diseases) and needs. Diversity (e.g., crops, varieties, seeds) is the farmer's insurance in a general situation where he/she is left to fend for himself/herself without support from the government and institutions. Farmers observe variability in their fields and select desirable traits from the genetic pool in his farm throughout the season, from planting to harvesting. Farmers' varieties are locally-adapted to specific conditions. It must be borne in mind that small-scale farmers have been involved in local trade, selling and exchanging affordable local seeds amongst themselves and they have been producing food to feed their families as well as selling surplus from

locally produced seeds. Small farmers might well be of the opinion that the DUS requirements are discriminatory and punitive in that they are calculated to exclude small farmers from participating in the seed market.

In practise, DUS is an expensive process that small farmers cannot afford. The process and requirements inherently exclude small farmers from even contemplating applying for registration/certification. Also, since farmers' seeds are generally locally-adapted in terms of agro-climatic conditions and farming practices, aiming for regional wide commercialization is antithetical.

Under the DUS requirements, the definition of *distinctiveness* has potential to lend itself to misappropriation of farmer varieties for instance, what does "common knowledge" mean? How will this be decided? Will this be indicated in the Variety Catalogue? Will a variety used by a group in a remote area of one COMESA country but not in the rest of the member states be considered as a variety whose existence is a matter of common knowledge?

Similarly, the Regulations do not adequately describe how the Regional Variety Release mechanism will operate and what exactly the criteria would entrial for the VCU testing. For instance, will the testing be limited to yield and pest control or will they also be tested for local adaptation, climate change resilience? How much will the VCU testing cost?

We question the rationale for testing a seed variety in two COMESA countries for subsequent release in the entire region as set out in section 27 of the Regulations. Countries do not have the same agro-ecological conditions. What is the ecological and agronomic soundness of this method of testing? Any seed legislation should regulate the efficacy (quality) and safety of new seeds introduced in the market. This cannot be guaranteed through the 2 member state testing system and then released into 18 other countries. Furthemore, we insist strongly that the regulations should not undermine the sovereignty of COMESA member states. National governments must retain their sovereign rights and responsibility to require national testing before any variety is released onto the commercial market at the national level.

We are similarly concerned with the lax requirements for the release in all COMESA countries, of existing varieties. In terms of section 28 of the draft Regulations, varieties already released in one member state before the establishment of the COMESA Variety Catalogue shall be entered into the Catalague where the applicant submits the DUS and VCU data of the first member state and the variety has undergone one season of VCU testing and has been released in the second Member state. Additionally, varieties that have already been released in at least two member states before the establishment of the COMESA Variety Catalogue, will be eligible for release in all the COMESA member states, on the basis of the DUS and VCU testing done in those two member states. Again, we have to question the agronomic and ecological soundness of this appraoch for member states that have vastly different ecosystems, ecological zones, soil types, biodiversity, insect regimes and so forth.

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4.4 Ownership of germplasm

It is our view that the Regulations do not adequately protect farmers from loss of traditional seed varieties and germplasm arising from commercial variety registration. We require the inclusion in the Regulations, of provisions for the compensation to small farmers for the use of traditional knowledge and germplasm. It must be borne in mind that even varieties that are developed and owned by seed companies, public research institutions, and the multinational companies come directly from the common pool of germplasm, which is the product of 10, 000 years of human experimentation.

4.5 The burden of implementation of Regulations

The draft Regulations rely on the functioning of a number of regional and national institutions (a co-ordinating unit; a regional COMESA seed Commitee; member states are also required to set up a national plant protection organisation and a national seed authority). This will imply placing additional burdens on the national governments within the COMESA region to establish relevant institutions and institute expensive legal and policy reforms, and the allocation of scarce resources for monitoring and enforcement.
We are of the view that funds being spent on this process could be more prudently spent on bolstering public research and general support to farmers and agro-ecological systems.

4.6 Post variety release control, liabilty and redress

The draft Regulations are silent on the question of crop failure of a variety after it has been entered in the COMESA Variety Catalogue. Who will be held liable for losses or other damages suffered? The Regulations are similarly silent on the mechanisms for redress and compensation. The regulations do not also provide any mechanism to hold either seed companies or seed dealers liable for selling low quality or spurious seeds. The need for an effective regulatory mechanism is all the more important given the growing presence of seed companies, including MNCs. Implicit in the registration mechanism is the grant of exclusive proprietary and marketing rights irrespective of whether the breeder registers plant breeder's rights over the seed.

4.7 Genetically Modified Organisms and other harmful varieties

The regulations should not deal with genetically modified organsims (GMOs) because these are and should be regulated at the national level. It is noted that in response to concerns by CSOs that the Regulations may pave the way for the proliferation of GMOs in the region, Mr. Ngwenya from COMESA stated that COMESA did not have a policy on GMOs. Hence, we insist that the registration mechanism explicitly exclude GMOs.

In addition, we need a public interest clause dealing with the banning of varieties in order to protect public order or public morality or human, animal or plant life and which is harmful or potentially harmful. E.g terminator technology, synthetic biology and so forth.

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4.8 Strategic Food Security Crops

The Regulations should exclude strategic food security crops, such as maize, millet, cassava, sorghum and others, from the list of seed subject to free trade within the COMESA region. This is because free trade across the region of such seeds and plant material can impact negatively on genetic diversity of traditional crops and lead to loss of sometimes superior traditional varieties.

In addition, whereas farmers have deliberately kept varieties which act as cushions in times of adverse weather and disease or pests events, the drive for regional commercialisation of food security crops will render these even more more vulnerable to potential impacts of climate change.

4.9 **Transparency**

The regulations lack transparent procedures, precluding the possibility of farmers and CSOs from raising objections against any claim for registration. Interested parties should be allowed to raise objections against the regional registration of a particular variety. Similar provisions are to be found in plant breeders' rights legislation why not seed trade legislation? The absence of pre-grant opposition allows seed companies to escape scrutiny. The marketing approval of seed is a matter of public concern. The provision of transparent provisions will be consistent with most country's biodiversity legislation in the COMESA region.

4.10 **Disclosure of information**

We need obligations that an applicant disclose certain pertinent information such as source of material, parental lines and the passport data of the seed at the time of registration. These are usually mandatory under PBR legislation. Non disclosure lends itself to abuse of monopolies since in the case especially of hybrid seed, no one except the person registering the seed can produce the same hybrid seed. Non disclosure will run counter to countries' competition legislation as it indirectly through the registration process, grants exclusive marketing rights. This is further exacerbated by the failure to provide the period of time that seeds will remain on the Variety Catalogue. Will applicants have exclusive marketting rights ad infinitum?

4.11 **Export of seed**

We need a provision that the export of seeds can be restricted if such exports adversely affect food security or if it fails to meet the reasonable requirement of the public or an other ground in the public interest.

5. **Conclusion**

The COMESA seed trade regulations are tools to lay the groundwork for the commercialisation and commodification of African agriculture. The shadow of Monsanto, DuPont, Syngenta and other seed and agrichemical multinationals, and private investment lie just behind the scenes of the COMESA show. Facilitating new markets for commercial seed in Africa opens the door for future occupation by multinationals, as they have done with all the major seed companies in South Africa

over the past decade and a half (Sensako, Carnia bought up by Monsanto and now Pannar by Pioneer Hi Bred). The focus on private seed company development for the production and dissemination of proprietary (and even public sector) seed is a precursor to potential acquisition at a later stage. Dupont-Pioneer has been in a decades-long relationship with Pannar to the benefit of both, until Dupont decided it was strategically the right time to take over. Small enterprises are a breeding ground for the potential extension of circuits of accumulation. MNCs are known for ongoing absorption of 'organically' developed innovation, initiative and profitability by larger entities.

CSOs from food and seed sovereignty movements and small-scale farmer associations in Africa are not passive bystanders or recipients of the results of these strategies. We are prepared to engage but it must be clearly understood that we are contesting these Regulations on the grounds set out in this submission.

Appendix A

International Instruments and laws recognizing farmers' rights

a) **The International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA)** that entered into force in 2004 is the first legally binding international Agreement that recognizes farmers' rights. The Treaty defines farmers' rights as "rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity"

Article 9 of the Treaty states that:

The Contracting Parties recognize the enormous contribution that the 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.

The Contracting Parties agree that the responsibility for realizing Farmers' Rights as they relate to plant genetic resources for food and agriculture rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including: (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture; (b) the right to equitable participate in sharing benefits arising from the utilization of plant genetic resources of food and agriculture; and (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

According to the IT-PGRFA, the responsibility to realize farmers' rights through measures of protection and promotion rests with national governments. That means governments may or may not implement them. However the Treaty Preamble stresses the need to promote farmers' rights both nationally and internationally.

b) **The Convention on Biological Diversity (CBD)** that entered into force in 1993 in Article 8 (j), recognizes the contribution of local communities and indigenous peoples in conserving biodiversity.

c) **The Organization of African Union (OAU) Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources (African Model Law)**.

The Model Law was thought to guide African countries in the developing of national laws on local community rights, plant breeders' rights and regulation of access to biological resources. It entered into force in 2000.

Its aim is to protect the African local community from predation of its biodiversity, technology and knowledge, and to foster its development towards an appropriate industrialization that does not only have economic growth, but also the steady improvement of the wellbeing of every African as its dictate.[vi]

The African Model Law, Part IV deals with Community Rights.

Article 16 recognizes the rights of local and indigenous communities over:

- their biological resources;
- the right to collectively benefit from the use of their biological resources;
- their innovations, practices, knowledge and technologies acquired through generations;
- the right to collectively benefit from the utilisation of their innovations, practices, knowledge and technologies;
- their rights to use their innovations, practices, knowledge and technologies in the conservation and sustainable use of biological diversity;
- the exercise of collective rights as legitimate custodians and users of their biological resources; (Article 16)

It recognizes and provides protection of the community rights that are specified in Article 16 as they are enshrined and protected under the norms, practices and customary law found in, and recognized by, the concerned local and indigenous communities, whether such law is written or not.(Article 17)

The law also ensures:

- Prior Informed Consent (PIC) of Local Communities (Article 18)
- Right to Refuse Consent and Access (Article 19)
- Right to Withdraw or Place Restrictions on Consent and Access. (Article 20)
- Right to Traditional Access, Use and Exchange: granting local communities their inalienable right to access, use, exchange or share their biological resources in sustaining their livelihood systems as regulated by their customary practices and laws; and stipulating that no legal barriers shall be placed on the traditional exchange system of the local communities in the exercise of their rights as provided for in paragraph (1) above and in other rights that may be provided by the customary practices and laws of the concerned local communities. (Article 21)

- Right to Benefit (Article 22)
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The African Model Law, Part V deals with Farmers Rights.

As for the rights of farmers the Law stipulates that they have to be recognized and protected as stemming from the enormous contributions that local farming communities, especially their women members, of all regions of the world, particularly those in the centres of origin or diversity of crops and other agro-biodiversity, have made in the conservation, development and sustainable use of plant and animal genetic resources that constitute the basis of breeding for food and agriculture production; and to continue making these achievements. (Article 24)

It recognizes farmers varieties and breeds and provides for their protection under the rules of practice as found in, and recognized by, the customary practices and laws of the concerned local farming communities, whether such laws are written or not.

It creates the Variety Certificate to grant intellectual protection for varieties with specific attributes identified by a community. Varieties do not have to meet the DUS criteria of distinction, uniformity and stability. The variety certificate entitles the community to have the exclusive rights to multiply, cultivate, use or sell the variety, or to license its use without prejudice to the Farmers' Rights set out in this law (Article 25)

Farmers' Rights shall, with due regard for gender equity, include the right to:
a) the protection of their traditional knowledge relevant to plant and animal genetic resources;
b) obtain an equitable share of benefits arising from the use of plant and animal genetic resources;
c) participate in making decisions, including at the national level, on matters related to the conservation and sustainable use of plant and animal genetic resources;
d) save, use, exchange and sell farm-saved seed/propagating material of farmers' varieties;
e) use a new breeders' variety protected under this law to develop farmers' varieties, including material obtained from gene banks or plant genetic resource centres; and f) collectively save, use, multiply and process farm-saved seed of protected varieties.

Ethiopia's Seed Proclamation

The Ethiopian government very recently published its most recent draft for comment of its Seed Proclamation. The Seed Proclamation regulates the entry of improved seed onto the domestic market. Ethiopia is COMESA member but it clearly excludes from the scope of the law, the exchange and selling of farm saved seeds between small scale farmers; research purposes and for forestry and provides as follows:

This Proclamation may not be applicable to:

a) the use of farm-saved seed by any person;

b) the exchange or sale of farm-saved seed among smallholder farmers or agro- pastoralists;

c) seed to be used for research purposes; and

d)forestry seed."

Note: this exception applies to ANY seed.

References

[i] **Common Market For Eastern And Southern Africa (COMESA) Drafts IP Policy** http://www.ip-watch.org/2013/05/07/common-market-for-eastern-and-southern-africa-comesa-drafts-ip-policy/print/> Print This Post <http://www.ip-watch.org/2013/05/07/common-market-for-eastern-and-southern-africa-comesa-drafts-ip-policy/print/>

[ii] The Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA) was launched on September 24 2008 by the Common Market for Eastern and Southern Africa (COMESA)'s Ministers of agriculture. It is a Specialized Agency to integrate small farmers into national, regional and international markets. On March 1, 2010 ACTESA signed an agreement with COMESA on the implementation of agricultural programmes in the region. The agreement is meant to accelerate the implementation of regional initiatives in agriculture, trade and investment. Key areas of focus assigned to ACTESA include the development of regional agricultural policies; promotion of investments in agriculture; promotion of trade in agro commodity products and development of production and marketing structures; development of the agricultural, livestock, pastoral and fisheries sectors and consultation with the private sector and civil society organisations on agricultural development matters especially agro commodities trade. http://www.actesacomesa.org/

[iii] The Harmonization Process ACTESA Prospect for an integrated seed market in Africa: the case of COMESA AFSTA Congress, 5th To 8th March, 2011 John Mukuka, Phd Seed Development Expert

[iv] **allAfrica.com:** ***East Africa*****:** ***COMESA's Seed Strategy*** **http://allafrica.com/stories/201012131578.html**

[v] See further, African Centre for Biosafety. (2102). Harmonisation of seed laws in Africa: Recipe for Disaster. www.acbio.org.za

[vi] Patrick Mulvany **Corporate Control Over Seeds: Limiting Access and Farmers' Rights** http://www.future-agricultures.org/pdf%20files/9559%20IDS%20P68-73.pdf