

**CONSULTANCY REPORT FOR STUDY ON THE THREAT AND RISKS
OF THE SEED LEGAL AND POLICY FRAMEWORKS IN TANZANIA IN
RELATION TO THE RIGHTS OF SMALL-SCALE FARMERS**

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List of Acronyms and Abbreviations

AATZ	Asylum Access Tanzania
CBD	Convention on Biological Diversity
CAP	Chapter
CAS-IP	Central Advisory Services on Intellectual Property
DUS	Distinctness, Uniformity and Stability
ISTA	International Seed Testing Association
LDCs	Least Developed Countries
MVIWATA	Mtandao wa Vikundi Vya Wakulima Tanzania
NAP	National Agricultural Policy
NEP	National Environmental Policy
NPI	National Partners Initiative
NPTC	National Performance Trial Committee
NVRC	National Variety Release Committee
NO	Number
PBR	Plant Breeders Rights
PVP	Plant Variety Protection
UPOV	International Union for the Protection of New Plant Varieties
OAU	Organization of African Unity
QDS	Quality Declared Seed
R.E	Revised Edition
SADC	Southern African Development Community
TOSCI	Tanzania Official Seeds Certification Institute

List of Statutes, Policies and Regulations

The Constitution of the United Republic of Tanzania, Cap 2 R.E. 2002

The Environmental Management Act, Cap 191 R.E. 2002

The Plant Breeders' Rights Act, No. 9 of 2012

The Seeds Act, No. 18 of 2003

The Protection of New Plant Varieties (Plant Breeders' Rights) Act, No 22 of 2002

The Plant Protection Act, No. 13 of 1997

The Basic Rights and Duties Enforcement Act, Cap 3 R.E.2002

The Copyright and Neighboring Rights Act, Cap 218 R.E. 2002

The Patents (Registration) Act, Cap 217 R.E. 2002.

Policies

The National Agricultural Policy, 2013

The National Agricultural and Livestock Policy, 1997

The National Environmental Policy, 1997

The National Science and Technology Policy for Tanzania, 1996

Regulations

The Seed Regulations, 2006

The Protection of New Plant Variety (Plant Breeders Rights) Regulations, 2008

International Instruments

Berne Declaration, 2013

Convention on Biological Diversity, 1992

Treaty for the Establishment of the East African University, 1999

Vienna Convention on the Law of Treaties, 1969.

OAU Model Law, 2000

International Treaty on Plant Genetic Resources for Food and Agriculture, 2009

International Convention the for Protection of new Varieties of Plants (UPOV),
1991

Contents

Acknowledgment	2
List of Acronyms and Abbreviations	3
List of Statutes, Policies and Regulations.....	4
Policies	4
Regulations	4
International Instruments.....	4
Executive Summary.....	7
1. Introduction: General Overview of the Seed Legal and Policy Frameworks in Tanzania	10
2. The Seed Act, 2003 and its 2007 Seed Regulations	11
2.1 Institutions Established Under the Seed Act, 2003.....	12
2.1.1 The National Seeds Committee	12
2.1.2 Tanzania Official Seeds Certification Institute	13
3. The Plant Breeders Rights Act of 2012 and the 2008 Plants Breeders Rights Regulations	15
3.1 Institutions established under the Plant Breeders Rights Act of 2012	15
3.1.1 Plant Breeders Rights Office	15
3.1.2 Plant Breeders Rights Advisory Committee	16
3.1.3 Plant Breeders Rights Development Fund	16
3.2 Varieties Eligible for Protection	17
4. Criminalization of Small Scale Farmers Under the Law in Tanzania	18
5. Tanzania’s Obligations in International Law Relating to the Protection of Small Holder Farmers Rights.	20
5.1 International Treaty on Plant Genetic Resources for Food and Agriculture	21
5.2 Convention On Biological Diversity.....	22
5.3 The OAU Model Law	22
6. Tanzania Policies Relevant to Small Holder Farmers Rights	23
6.1 The National Environmental Policy 1997.....	23
6.2 The Agricultural and Livestock Policy of 1997	23
6.3 The National Agricultural Policy of 2013.....	24
7. Analysis of the Threats and Risks Under The Current Seed Legal and Policy Regime in Relation to Small Holder Farmers in Tanzania.	24
8. Recommendations	26

9. Conclusion.....	30
References	31

Executive Summary

This consultancy report seeks to provide a detailed analysis of the current seed legal and policy frameworks in Tanzania especially in relation to the Seed Act of 2003 and its 2006 Regulations and the 2012 UPOV compliant Plant Breeders Rights Act and the 2008 regulations that were under the old regime of the 2002 Protection of New Plant Variety (Plant Breeders Rights) Act which was repealed by the 2012 Act. In addition to these main laws the report has drawn reflections from other laws, policies and international instruments which have a bearing on the rights of small scale farmers in Tanzania.

The writing of this report is informed of the contemporary tug of war between multinational seed corporations like Syngenta and Monsanto and small holder farmers and farmers' organizations particularly in the least developed countries (LDCs) for the monopoly of the seed market. It is basically war over the control of the seed market.

Multinational seed corporations have been pushing for enactment of legislation in developing countries that would give them seed rights at the expense of small holder farmers. Some of these legislation criminalize small scale farmers and deny them of their rights to sell, save and use their farm saved seeds. Contemporary international laws such as those relating to intellectual property rights were engineered to meet the interests of those multinationals.

With the recent enactment of the 2012 Plant Breeders Rights Act those multinationals have gained an upper hand in their desire to monopolize the seed market at the expense of small scale farmers. This therefore calls for an urgent need to look at the gaps and missing links in the law where the interests of small holders farmers are affected and look for best options and strategies that would address the risks and threats that small holder farmers would likely face following these legal developments.

Against this background this consultancy report has been prepared with a view to proposing recommendations and actions that MVIWATA and other farmers organizations could take to address the risks and threats identified in the report.

It first discusses the main institutions established under the Act and goes on to show how farmers in Tanzania and other parts of the world have been criminalized by draconian and barbaric seeds legislation. The paper then tries to identify some missing links and gaps in relation to small scale farmers in Tanzania. Finally, the paper

provides some recommendations on what should be done to empower smallholders' farmers in Tanzania and concludes by calling upon stakeholders in the seed industry, particularly peasant organizations, to engage the government through lobbying and advocacy to push for reforms in the law, policy and institutions that would best serve their interests.

1. Introduction: General Overview of the Seed Legal and Policy Frameworks in Tanzania

Seed Industry in Tanzania is one of the most important sectors for agricultural development. Just like any other sector, this industry is regulated by the laws enacted by the parliament, policies adopted by relevant ministries and regulations made under the Acts. There are also institutions which have been established with a view to regulating this sector.

Currently, seed industry in Tanzania is governed by the Seed Act of 2003 and its regulations of 2007. There is also the Plant Breeders Rights Act of 2012¹ which is UPOV 1991 compliant which repealed the 2002 Protection of New Plant Varieties (Plant Breeders Rights) Act² which was supplemented by its 2008 regulations which however remain in force until new regulations under the new 2012 Act have been made by the minister.

Apart from the laws and the regulations above, other laws and policies that in one way or another affect the rights of small holder farmers in Tanzania include The Environmental Management Act³, the Constitution of the United Republic of Tanzania⁴, the Plant Protection Act⁵, The Basic Rights and Duties Enforcement Act⁶, The Copyright and Neighboring Rights Act⁷ and The Patents (Registration) Act⁸ to mention but a few.

Policies which have a bearing on the rights of small scale farmers in Tanzania include the National Agricultural Policy of 2013, the National Agricultural and Livestock Policy of 1997, the National Environmental Policy of 1997 and the National Science and Technology Policy of 1996 to mention but a few.

With the exception of the Seed Act and its regulations and the Plant Breeders Rights Act of 2012 and its regulations, the remaining statutes and policies mentioned above impliedly affect the rights of small holders' farmers and may be construed to have a bearing on small scale farmers.

¹ No. 9 of 2012

² No. 22 of 2002

³ CAP. 191 2004

⁴ 1977 as amended

⁵ No. 13 of 1997

⁶ CAP 3 R.E. 2002

⁷ CAP 218 R.E. 2002

⁸ CAP 217 R.E. 2002.

Tanzania is not an isolated state from the International community. It has signed and ratified a number of international instruments that relate to the rights of small scale farmers. Tanzania is therefore bound by the principle of *Pacta sunti servanta* which is a celebrated fundamental norm of international law that requires state parties to fulfill their international obligations.⁹Therefore on the basis of this principle Tanzania is required to domesticate these international instruments and give them the force of law. Some international instruments that Tanzania has signed and ratified include the Convention on Biological Diversity, The OAU Model Law and the International Treaty for Plant Genetic Resources for Food and Agriculture.

For the sake of this consultancy report main reference will be made to the 2003 Seed Act and its 2007 regulations and the 2012 Plant Breeders Rights Act and its 2008 regulations. Reflections will also be drawn from the Tanzania's commitments in International instruments which have a bearing on the rights of small scale farmers.

2. The Seed Act, 2003 and its 2007 Seed Regulations

Tanzania has two types of seed systems namely the formal seed system and the informal seed system. The formal seed system is regulated and contributes between 4 to 10 percent of seed supply in Tanzania. Quality Declared Seeds (QDS)¹⁰ are regarded as being part of the formal seed sector but are less regulated. In most cases the formal seed sector produces hybrid seeds. The informal seed sector contributes between 75 to 90 percent of the seed supply in Tanzania and is not regulated.¹¹

As said in the introduction above, the seed Industry in Tanzania is regulated by the Seed Act of 2003.¹²This Act was enacted to make provisions for the control and regulation of the standards of Agricultural Seeds and for related matters. The 2003 Seed Act repealed the Seeds (Regulation of Standards) Act of 1973.¹³The 2003 Act is

⁹ Article 26 of the Vienna Convention on the Law of Treaties of 1969.

¹⁰ These refer to seeds produced by a registered small holder farmer which conforms to the specified standard for crop species concerned and which has been subject to the quality control measures prescribed in the regulations made under the Seed Act, 2003.

¹¹ Ngwediagi, P. 2009. Establishment of a Plant Breeders' Rights Systems in Tanzania: Achievements and Challenges. In CAS-IP NPI. 2009. Institutionalization of Intellectual Property Management: Case Studies from Four Agricultural Research Institutions in Developing Countries, Rome-Italy. CAS-IP: p. 6

¹² Act no. 18 of 2003.

¹³ Act no. 29 of 1973.

supplemented by the Seed Regulations, 2006.¹⁴The minister responsible for Agriculture is empowered to make these regulations after consultations with the National Seeds Committee.¹⁵

While the object of this law is to regulate the standards of agricultural seeds, as the analysis will show, the interests of small holder farmers have not been taken on-board. It mainly deals with regulation of the formal seed sector and imposes limits on the dealers of the commercial seed sector.

2.1 Institutions Established Under the Seed Act, 2003

Any Act would establish a mechanism for its implementation. This could be a committee under the Act or any other institution which is vested with powers to implement provisions of the Act. Under the Seed Act of 2003 there are two main institutions established. These include the National Seeds Committee¹⁶ and its sub-committees¹⁷ and the Tanzania Official Seeds Certification Institute¹⁸.The power to establish sub-committees is vested in the National Seeds Committee as it deems fit when needs arise. Currently there are two sub-committees established by the National Seeds Committee namely the National Variety Release Committee (NVRC) and National Performance Trial Committee (NPTTC) established under the 2006 Seeds Regulations.¹⁹ The National Variety Release Committee is responsible for reviewing recommendations from the National Performance Trial Committee and recommends variety release to the National Seeds Committee.²⁰

2.1.1 The National Seeds Committee

Members of the National Seeds Committee, among others, include the permanent secretary of the ministry responsible for Agriculture who shall be the chairperson of the committee, the officer responsible for co-ordination and supervision of the seed industry in the ministry who shall be the secretary to the committee, head of the crop

¹⁴ Made under Section 33 of the Seed Act and became operational on 09/02/2007 under Government Notice No. 37

¹⁵ Section 33 of the Act.

¹⁶ Established under Section 3 of the Act

¹⁷ Established under Section 7 of the Act

¹⁸ Established under Section 10(1) of the Act

¹⁹ Regulation 5(1)

²⁰ Regulation 5(2)

research section of the ministry, head of the crop development division of the ministry, the chief seed quality controller and the registrar of plant varieties.²¹

The minister responsible for Agriculture is required to appoint other members to the National Seeds Committee. These members shall include a representative from Tanzania Seed Trade Association, a representative from higher learning institution responsible for agriculture and a representative from seed consumers association.²² The chairperson of the committee, after consultation with other members of the committee, may decide to co-opt other members to attend and speak at any meeting of the committee but such members shall not have the right to vote.²³

The National Seeds Committee is regarded as a stakeholders' forum responsible for advising the government on all matters related to the development of Tanzania seed industry²⁴.The committee has the following functions; advising the Ministry on formulation and implementation of the seed industry policy and implementation of guidelines; advising the Ministry on the implementation and amendment of the seed legislation, advising the Minister on all matters relating to seeds; giving general advice on the co-ordination and supervision of the seed industry and advising the Minister on approval of plant varieties.²⁵

2.1.2 Tanzania Official Seeds Certification Institute

Tanzania Official Seeds Certification Institute is another key entity established by the Act.²⁶This is a body corporate with a common seal and perpetual succession. It is capable of entering contracts in its own name and capable of purchasing and acquiring property whether movable or immovable.²⁷

The affairs relating to official business of the institute are vested under the management committee of the institute.²⁸The committee is comprised of members from the following groups; one member from the Crop Development Division of the Ministry of Agriculture responsible for seed issues; the Head of the National Post-entry Plant Quarantine Station; one member from the Research and Development

²¹ Section 4(1)(a-f)

²² Section 4(2)

²³ Section 4(3)

²⁴ Section 5(1)

²⁵ Section 5(2)

²⁶ Section 10

²⁷ Ibid

²⁸ Section 1 of the schedule to the Act.

Division of the Ministry of Agriculture responsible for biotechnology issues; the Chief Seed Certification Officer who is the head of the Tanzania Official Seed Certification Institute.²⁹The minister is vested with powers under the Act to appoint chairperson of the committee and one member from the Tanzania Seed Trade Association to be a member of the management committee.³⁰

Tanzania Official Seeds Certification Institute has the following functions under the Act; to conduct seed field inspections; to effect sampling and testing; to conduct seed inspections; to accredit seed sampling and seed testing laboratories; to charge fees or otherwise generate revenue from the services rendered; to ensure that the revenue accruing from the fees or any other charge guarantees sustainable and quality services; to train seed producers, seed inspectors and seed analysts; to liaise with other International Organizations such as the International Seed Testing Association (ISTA) on seed related issues; to carry out variety performance tests; and to carry out pre and post control tests.³¹

As shown above, under the National Seeds Committee there are two sub committees namely the National Variety Release Committee (NVRC) and the National Performance Trial Technical Committee (NPT-TC). Each of the above sub committees has a representative from the Tanzania Seed Trade Association appointed by the permanent secretary upon recommendation from the association.³²For the NPT-TC, membership, as said above, includes one member from Tanzania Seed Trade Association appointed by the permanent secretary upon consultation with the respective associations³³.The word used here is “Associations” which is the plural form for “Association” and it is not clear whether reference here is made to the Tanzania Seeds Trade Association or any other relevant associations in the Seed Industry.

²⁹ Section 2(1)(a-d) of the Schedule to the Act

³⁰ Section 2(2) of the Schedule to the Act.

³¹ Section 7(1)(a-j) of the Schedule to the Act

³² Regulation 6(k) of the Seed Regulations for the NVRC.

³³ Regulation 6(2)(h) of the 2006 Seeds Regulations

3. The Plant Breeders Rights Act of 2012³⁴ and the 2008 Plants Breeders Rights Regulations³⁵

The Plant Breeders Rights Act which is UPOV- compliant was enacted by the parliament of Tanzania on 05th November 2012 in order to provide for the grant and protection of plant breeders' rights, for establishment of plant breeders rights and for related matters. The law came into force on 01st June 2013. The law, among other things, aims at promoting plant-breeding activities that will stimulate, facilitate and improve agricultural research in the country through grant and regulation of plant breeders rights, establishing a plant breeders rights office that will be responsible for granting the grant breeders' rights. This Act repealed and replaced the Protection of New Plant Varieties (Plant Breeders Rights) Act of 2002. However the regulations, decisions, rules and directions under the old PVP law have remained intact and all decisions made under the old law are still binding as if they were made under the new law. This represents an absurd scenario where regulations used to implement the law precede the law itself. In most cases regulations succeed the law.

3.1 Institutions established under the Plant Breeders Rights Act of 2012

Law making in most cases involves institution making. Institutions established under a particular law are meant to implement and enforce the law and in this case the Plant Breeders Rights Act of 2012 is not an exception. This part will therefore analyze some key institutions established under the Plant Breeders Rights Act of 2012.

3.1.1 Plant Breeders Rights Office

This is established under S.3 of the Act and is headed by the registrar³⁶ who is to be assisted by deputy registrars³⁷ also appointed by the minister responsible for agriculture. The functions of the registrar include granting of breeders rights, maintaining a register and providing information on plant breeders rights issued in Tanzania, facilitating transfer and licensing of plant breeders rights, collaborating with local and international bodies whose functions relate with plant breeders rights

³⁴ No. 9 of 2012

³⁵ These were regulations used under the former Plant Variety Protection Act of 2002 which will continue being in force until the new regulations have been made by the minister.

³⁶ Section 4(1)

³⁷ Ibid Subsection 2

matters and performing any other functions which are necessary for furthering the objects of the Act.³⁸

3.1.2 Plant Breeders Rights Advisory Committee

This is established under section 9 of the Act and its composition must take into consideration gender balance. Members of this committee are appointed by the minister and they include the following; one representative from the ministry who shall be the chairman of the committee, one representative from plant breeders association, one representative from registered farmers association, one representative from seed traders association, one representative of a University offering a course on plant breeding, one representative of an authority responsible for registration of intellectual property rights, one representative of the attorney general and finally a person responsible for granting plant breeders rights in Tanzania Zanzibar.³⁹The registrar is the secretary of the committee.⁴⁰

The powers of the committee include the following; making its own rules of procedure, giving the registrar directives of specific and general nature, calling the applicants and other interested persons for hearing before the approval by the registrar of plant breeders rights application.⁴¹The powers of the committee also relate with the legal functions of the committee which include the following; advising the minister on efficient enforcement of the Act, receiving reports of plant breeders rights applications from the registrar, making expert consideration on the plant breeders rights applications and the registrars test results and managing the operations of plant breeders rights development fund⁴².

3.1.3 Plant Breeders Rights Development Fund

This is established by the minister responsible for agriculture after consultation with the minister for finance.⁴³All monies realized under the Act shall be kept in this fund. The sources of money for the fund include fees payable under the Act, donations and grants from the government or any person. The purposes of the fund include development and promotion of plant breeders rights, training of plants breeders on

³⁸ Section 5

³⁹ Section 9(2)

⁴⁰ Section 9(3)

⁴¹ Section 11

⁴² Section 10

⁴³ Section 46(1) of the Act

matters related to plant breeders rights, establishment and maintenance of the variety collections and database⁴⁴

The advisory committee shall constitute itself as the fund committee and the registrar shall be secretary to the fund.⁴⁵The fund committee shall develop rules and procedures to be used in the operations of the fund. Such rules and procedures however have to be approved by the minister.⁴⁶

3.2 Varieties Eligible for Protection

As a general rule the protection of varieties under the Act applies to all plant genre and species under the Act.⁴⁷However that plant variety is to be subjected to the distinctness, uniformity and stability test.⁴⁸A variety under the Act is deemed distinct where it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filling of the application.⁴⁹A variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.⁵⁰

A variety shall be deemed to be stable where it's relevant characteristics remain unchanged after repeated period of propagation or at the end of cycle in case of a particular period of propagation.

The requirements above therefore have to pass through the national trial committee, the national variety release committee and the Tanzania Official Seeds Certification Institute as provided for under the Seed Act procedural regime.

Throughout the Act the minister has immense powers to establish, appoint members and control the operations of each of the above institutions established under the Act.

Therefore, under the Plant Breeders Rights Act these are the main institutions established with a view to enforcing the Act and realizing the objectives of the Act.

⁴⁴ Section 46(2 and 3)

⁴⁵ Section 46(4)(a and b)

⁴⁶ Ibid.

⁴⁷ Section 12(1)

⁴⁸ Section 13(1)

⁴⁹ Section 15(1)

⁵⁰ Section 16

4. Criminalization of Small Scale Farmers Under the Law in Tanzania

Apart from establishing the substantive standard setting and regulatory regime for Agricultural seeds in Tanzania, the Seed Act and the Plant Breeders Rights Act have also established a punitive regime for offences committed by small scale farmers or other stakeholders involved in the seed business industry.

Since the main object of these laws is to impose limits and standards on the production of agricultural seeds, they have established very lengthy procedural processes of compliance which both official seed dealers and informal seed producers are required to comply before their seeds permeate the market. Failure to observe this amounts to offences under the Acts. Testing and certification of seeds is also a costly process that small scale farmers cannot afford.

According to the Seed Act, any person, who contravenes a provision of this Act or of any offences established under the subsidiary legislation of this Act commits, an offence and shall be liable on conviction to a fine of penalties not less than one million shillings but not exceeding five million shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.⁵¹

A more or less similar provision is echoed in the Seed Regulations of 2006 which, among other things, provides that any person who contravenes provisions of these regulations is liable to an offence and upon conviction shall pay a fine of not less than one million shillings but not exceeding five million shillings or to imprisonment for a term not exceeding one year or to both.⁵²

The effect of such general legal provisions is to catch all fish into the net, both commercial seed dealers and seed producers in the informal sector. Though the object of the law, *prima facie*, seems to target commercial seed dealers, the literal interpretation of the phrase "Any person" as used both in the Act and the Regulations, indicates a broader meaning which includes all producers of seeds in the formal and informal sectors.

⁵¹ Article 26(1) of the Act

⁵² Regulations 46 of the Seed Regulations

The only consoling provision for small scale farmers is on Quality Declared Seeds which are recognized but limited to very narrow boundaries of circulation among farmers.⁵³

Any production and multiplication of seeds under the Act requires authorization and approval by duly recognized agents and non-compliance amounts to offences under the Act.⁵⁴

Under the Plant Breeders Rights Act as well a number of offences are created by the Act and penalties imposed on those who commit them.⁵⁵ Such offences include the following; knowingly making a false entry in the register, knowingly making a writing which falsely purports to be a copy of an entry in the register or of a document lodged with the registrar or knowingly producing or tendering a false copy of entry as evidence to mention but a few scenarios⁵⁶. In any of these incidents under the Act a person is deemed to have committed an offence. Any person who commits an offence under this Act shall be, upon conviction, liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding one year or to both fine and imprisonment.⁵⁷

For plant variety protection under Intellectual Property Rights infringement of the same amounts to offences under the Copyright and Neighboring Rights Act⁵⁸, the Patents Act⁵⁹ which cater for imposition of criminal law sanctions for patent infringers.

Criminalization of small scale farmers is considered to be a strategy by global seed breeding multinationals who want to benefit at the expense of small scale farmers. It is therefore a tug of war between the haves and the have not in the seed sector.

In one article published by Grain⁶⁰, Seed laws that discriminate have been cited as a subject of controversy in different parts of the world. According to this article such laws are constantly evolving and becoming more aggressive, market oriented and

⁵³ S 19(2) of the Act

⁵⁴ S 19(1)(a-b)

⁵⁵ Section 46(1)

⁵⁶ Ibid, more offences are provided for under the Act.

⁵⁷ Section 49(20)

⁵⁸ Cap 218 R.E. 2002

⁵⁹ Cap 217 R.E. 2002.

⁶⁰ Green, March 2015, Seed Laws That Criminalize Farmers: Resistance and Fight back, part a to c of the introduction.

patented, in disregard of the basic principles of justice and freedom and directly violate the universal declaration of human rights as they are crafted in such a way that everyone accused of not respecting property rights over seeds is assumed to be guilty. This violates the fundamental principle of administration of justice, that is, presumption of innocence. Seed laws are also regarded as being drafted in vague, incomprehensible and contradictory language, leaving much room for interpretation. In most cases, the laws are being moved through legislative chambers in secrecy or by means of international agreements that can not be debated nationally or locally.⁶¹

This is in fact true of the Seed Act of Tanzania and other Acts such as the Plant Breeders Rights Act.⁶² All these laws sought to empower and protect the rights of commercial seed dealers and not small scale seed producers whose seeds are not certified and approved by the certifying agents. They have therefore not been subjected to the DUS test which is fundamental requirement for their legal protection.⁶³

Tanzania is specifically mentioned in this Article and criticized for enacting the 2012 Plant Breeders Rights Act which is UPOV compliant and which favors the interests of commercial seed dealers and small holder farmers.⁶⁴

Therefore one can simply argue that small scale farmers are not very safe within the purview of these draconian laws because the informal seed sector, fake seeds and other uncertified seeds constitute the main grounds upon which the seed legislation were enacted basically with a view to controlling the quality of agricultural seeds and bringing to justice those who violate the law. As it may be recalled, the informal seed sector constitutes more than 75 percent of the total supply of seed in the market.

5. Tanzania's Obligations in International Law Relating to the Protection of Small Holder Farmers Rights.

As said before, Tanzania is a member of the International community and has signed and ratified a number of international instruments which are relevant to the protection of small holders' farmers in Tanzania. For example, under the Treaty for the establishment of the East African Community one of the areas for co-operation

⁶¹ Ibid, part d

⁶² Supra.

⁶³ Distinctness, Uniformity and Stability.

⁶⁴ Ibid, page 18 and 19 of the article

include Agriculture and Food Security.⁶⁵ Under this area of co-operation Tanzania has an obligation to do the following; strengthen co-operation in quality seed development and production through research and plant breeding; enhance capacity in seed technology; initiate and maintain strategic seed reserves, support co-operation in the establishment of gene banks, harmonise quarantine policies, legislation and regulations to ease trade in seeds and create an enabling environment for private sector seed multiplication and distribution.⁶⁶ Tanzania has similar obligations in other sub regional frameworks such as SADC where there have been initiatives to harmonise seed regulations in the region.⁶⁷ This part seeks therefore to provide a brief analysis of those international instruments most relevant to the context of small scale farmers' rights in Tanzania.

5.1 International Treaty on Plant Genetic Resources for Food and Agriculture⁶⁸

With particular attention to smallholder farmers the treaty calls for need to protect the rights of farmers in order to ensure their continued conservation and development of genetic resources. The Treaty recognizes obligations of national governments to ensure that they take measures to protect and promote Farmers' Rights, including: protection of traditional knowledge relevant to plant genetic resources for food and agriculture; the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and the right to participate in making decisions on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture. Moreover, the farmers' rights to continue enjoying their right to save, use, exchange and sell farm-saved seed/propagating material is covered within the ambit of this treaty. As such the treaty takes into account the roles of smallholder farmers in the sustainable conservation and utilization of genetic resources for improving agriculture and food productivity. It is on that account Berne Declaration⁶⁹ observes that "...to ensure that the safety of food supplies is not jeopardized and to enable the conservation of

⁶⁵ Chapter 18

⁶⁶ Article 106(a-f) of the Treaty

⁶⁷ This regulation is under the auspices of SADC Technical Agreements on Harmonization of Seed Regulations in the SADC region. See SADC.2008. Technical Agreements on Harmonization of Seed Regulations in the SADC Region: Seed Varieties Release, Seed Certification and Quality Assurance, Quarantine and Phytosanitary Measures for the Seed. Gaborone. SADC Secretariat: pp.vivii.

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⁶⁹

biodiversity in agriculture, there should be respect for farmers' rights: they should be freely able to reproduce exchange and sell seeds and propagating materials. “Tanzania acceded to this Treaty since 30th April 2004. As such it has an obligation to ensure that its policies and legislation accommodate fully the FRs as enumerated within the convention.

5.2 Convention on Biological Diversity⁷⁰

The Convention on Biological Diversity (CBD) is very pronounced on the roles of the local communities and indigenous people. For instance, Article 8(j) relates to traditional knowledge of the local communities and indigenous peoples. The State Parties are required to ‘respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.’ Lifestyles of the local communities including smallholder farmers entail the traditional farming systems, save, use and exchange seed within these communities and selection of plant varieties that are beneficial to use by the community members. The importance of biological diversity to smallholder farmers is well documented and involves lifestyles of these farmers. The farming systems of the smallholder farmers form part of the lifestyle of those particular farmers.

Tanzania is a Member State to CBD since 8th March 1996 when it ratified the Convention. It is evident that Tanzania is under a mandatory duty to implement obligations entrenched in the CBD in relation to biological diversity.

5.3 The OAU Model Law

This law is called the African Model Legislation for the protection of the rights of local communities, farmers and breeders and for regulation of access to biological resources,2000.This law provides for farmers rights including protection of traditional knowledge relevant to plant and animal genetic resources, the right to equitable share of benefit of the use of genetic resources, the right to participate in decision making processes related to conservation, exchange, sale of on-farm saved seeds or

70

propagating material and the right to use a commercial breeders variety to develop other varieties. As such OAU model affirms local communities' inalienable right to keep, exchange, use, share and share their biological resources (seeds) that sustain their livelihood

6. Tanzania Policies Relevant to Small Holder Farmers Rights

Although there are no specific policies adopted by the government under the Seed Act or the Plant Breeders Rights Act in relation to the rights of small holder farmers in Tanzania yet other policies impliedly accommodate the interests of small holder farmers in Tanzania. This part very briefly seeks to provide an outline of such policies.

6.1 The National Environmental Policy 1997

The aim of having NEP in place is to satisfy the basic needs and calls for channeling resources towards targeting address of poverty- related environmental problems. It aims at eradicating communicable diseases, guaranteeing food, shelter, safe water for all, employment and income generation in rural and urban areas, particularly to combat poverty. Poverty eradication or reduction entails addressing the concerns, interests and rights of the local communities including small holder farmers in rural areas of Tanzania. This policy recognizes that economic transformation in Tanzania is dependent on the agricultural and industrial sectors, among others, as the main impetus to economic growth. This promotion of agriculture as the engine of growth may bring forth significant adverse impacts on natural resources and the environment, in turn undermining further agricultural growth. The agriculture development must take into account the need for sustainable environmental management. One of the best ways of doing so would be through the use of traditional knowledge of smallholder farmers by applying their customary and informal practices in seed industry that in turn promote the small holder farm-based seeds.

6.2 The Agricultural and Livestock Policy of 1997

This policy contains a number of objectives; one of them being to ensure basic food security for the nation and to improve national standards of nutrition by increasing output, quality and availability of food commodities.

The second objective pertinent to smallholder farmers' rights is to improve standards of living in rural areas through increased income generation from agricultural production, processing and marketing. We are of the opinion that it is envisaged that

addressing this objective entails use of the seeds managed by these farmers in their farm holds.

6.3 The National Agricultural Policy of 2013

The NAP is very articulate on various issues pertaining to smallholder farmers in Tanzania. It recognizes the imperative need to ensure that Tanzanian smallholder farmers are accommodated in the processes of agricultural development. For instance, NAP states that subsistence farming is very dominant in agriculture sector within Tanzania where smallholder farmers are cultivating between 0.2 to 2.0 hectares per household, a production scale that is too low to generate sufficient income streams to farmers for effective poverty reduction and agricultural development.

This is the requirement of the policy that there should be involvement of smallholder farmers but laws that are to implement the policy did not heed to it.

7. Analysis of the Threats and Risks Under The Current Seed Legal and Policy Regime in Relation to Small Holder Farmers in Tanzania.

Just like any other group or association in the society, smallholder's farmers have a right to be represented in bodies or decision making organs that affect or regulate their industry, seed industry in this context. This is a constitutional right in Tanzania and other democracies.⁷¹The constitution further provides that every person has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation.⁷²Very unfortunately, in all the decision making organs established under the Seed Act small holders' farmers are not represented. This means that their rights could be jeopardized for lack of representation. The only people – centred association represented in the institutions mentioned under the Act is the Tanzania Seeds Trade Association which unfortunately represents interests of the commercial seed dealers and not small holders farmers rights. However, the permanent secretary, after consultation with the committees, may co-opt any person to attend and speak in meetings of the committees and such person shall not have the right to vote. This option is discretionary and ineffective in realizing the rights of small holder's farmers.

⁷¹ Article 8(d) of the Constitution of the United Republic of Tanzania.

⁷² Article 21(2)

In the Plant Breeders Rights Act as well small holder farmers are not represented in the Plant Breeders Advisory Committee. Once again they have been sidelined as in the institutions under the Seed Act. In essence the law in Tanzania does not take on board the interests of small holders farmers rights.

The Protection of New Plant Variety (Plant Breeders Rights) Act of 2002 somehow took the interests of small holder farmers on-board by recognizing farm saved seeds and the place of traditional knowledge in the production of such seeds.⁷³

From the onset, the object of the Seed Act is to regulate and control the standards of Agricultural seeds in Tanzania and related matters. However, a detailed study of the Act would reveal one clear missing link; the informal seed sector is left unregulated and therefore does not enjoy protection of the law. Informal seed sector contributes between 75 to 90 of the total seed supply in Tanzania and this is where most small holders' farmers are. The Act only deals with regulation of the formal seed sector which basically involves commercial seed dealers and not small holders' farmers as such. Unfortunately, the Act does not expressly provide for the regulation of seeds that are used by the small holders' farmers. Most of the seeds in the domain of small holders' farmers are not certified and are part of the informal seed sector. This makes small holders farmers vulnerable to committing crimes under S.14 of the Seed Act if for whatever reason their seeds permeate the market knowingly.

Since the informal seed sector is not clearly regulated it enjoys less funding from the government and other institutions. This is unlike the formal seed sector which enjoys more funding and protection from the government and other stakeholders in the seed industry. One of the few provisions in the Seed Act that in one way or another touch on the interests of the small holder's farmers' rights relates with Quality Declared Seeds which somehow are recognized in the formal seed sector. Farmers' seeds which have been inspected and passed the test of quality and standards may be allowed to permeate the market however within the ward where they have been tested.

Even if the Act was meant to cover both commercial seed dealers and small holder's farmers, the costs involved in the seed quality tests would be too high to afford for most small holders farmers. The Distinctness, Uniformity and Stability Test (DUS) is a lengthy, expensive and complex process that involves a number of stakeholders in establishing the quality of the seed. It involves the National Seeds Committee, the two

⁷³ Section 57 of the PBR Act

sub committees under it and approval by the minister when the entire seed testing process has been duly followed. In most cases, except for well-organized research institutions and companies, this process is too demanding to afford for small scale holders farmers. Registration process for seed dealers is also costly and demanding.

7. Recommendations

This part seeks to provide a list of recommendations and action points that will help MVIWATA and other farmers organizations strengthen their advocacy capacity and mechanisms in fighting for improved farmers welfare and rights in Tanzania.

In light of the analysis of the gaps and missing links shown above, the following things are recommended;

- That the rights of the small holders farmers in Tanzania be taken on board and provided for under the Seed Act, 2003 and the Plant Breeders Rights Act of 2012. The object of the Acts should clearly provide that the Acts are meant to regulate the standards of Agricultural seeds both in the formal and informal seed sectors so that farm saved seeds can also enjoy protection under the law. This is the model under the Ethiopian Seed Law where farm saved seeds are protected under the law.⁷⁴
- Small holder's farmers must be represented in the key institutions established under the Acts. The current representative frameworks under the Acts sideline small holders farmers .The Law should be amended to clearly and specifically provide for their representation in the National Seeds Committee, the two sub committees under it and the Tanzania Official Seeds Certification Institute. The only association that features in institutions established under the Act is the Tanzania Seeds Trade Association which basically represents interests of the commercial seed dealers in Tanzania. Leading farmers' umbrella organizations such as MVIWATA⁷⁵ should be invited to attend, speak and form memberships in the above decision making institutions. In the PBR Act the Plant Breeders Rights Advisory committee should also include representatives from small holder farmers. Surprisingly, the PBR Act has considered gender

⁷⁴ Section 3(1 and 2) of the Ethiopian Seed Proclamation, No. 206/2000

⁷⁵ Muungano wa Vikundi vya Wakulima Tanzania

representation in the composition of the advisory committee. For purposes of gender mainstreaming this could make sense but taking the broader interests of the local farming community a broader farmers' representation is needed.

- The scope of Quality Declared Seeds should be expanded to cover districts and not be limited to wards as the situation is currently. More seed inspectors and agricultural extension officers should be deployed in district areas to extend their seed testing, inspection and approval services to small holder's farmers in districts. The National Tanzania Official Seeds Certification Authority should be strengthened to ensure that it has the guts to perform its functions effectively including the ability and resources to perform more Quality Declared Seed Tests in remote parts of the country where majority of the small holder's farmers reside.
- Small holder's farmers' seed varieties in local circulation must be legally recognized and protected. Measures must be taken to ensure that those varieties are tested, approved and certified. This will increase their credibility and circulation in the market.
- Farmers should not be taken to constitute as the end consumer of the seed business. They should as well be allowed to participate in the seed business and be equal partners in the industry. This will help secure their broader interests in the seed industry.
- To protect the rights of small scale farmers there should be no relationship between farmers' rights and intellectual property rights. Farm saved seeds cannot be said to be a product of invention since they are mainly produced through traditional knowledge and introducing intellectual property rights on them would jeopardize the interests of most farmers who depend on the informal seed sectors.
- It is further recommended that farmers' rights should be recognized in laws relating to plant breeders' rights.
- In addition to the recommendation above, a sui generis regime on farmers' rights should be established separately from existing forms of intellectual property rights.
- The existing definitions under the current plant breeders' rights legislation should be extended to protect farmers' varieties.
- The current policy framework should be reviewed to fully and specifically accommodate the interests of small scale farmers. Most agricultural policies

currently obtaining in Tanzania are restrictive and adverse on farmers' rights. They have very scant provisions that promote small holder farmers rights.

- It is further recommended that the law and policies of plant breeder's rights should acknowledge the use of traditional knowledge and farm saved seeds.
- Increased awareness raising and advocacy by farmers' rights organizations such as MVIWATA is necessary to empower their understanding on their rights and inspire them to participate in matters that affect their industry interests.
- Democracy and participation of small holder farmers in hamlets, village and local government authorities at grass roots level should be encouraged for farmers to have a local platform to voice out their concerns.
- Farmer rights organizations should have more vigorous advocacy campaigns at the parliamentary level and ministerial level to push for legal, policy and institutional reforms that would bring in their desired change
- There should be more research conducted on the risks and threats the current seed legal and policy frameworks bring on farmers.

According to the International Farmers Rights Movement, success in measuring realization of farmers rights in any jurisdiction is tested against four main components namely; success stories from the realization of Farmers' Rights to save, use, exchange and sell farm-saved seed; success stories on traditional knowledge related to agro-biodiversity; success stories on benefit sharing; and success stories on participation in decision-making⁷⁶. Only and only when such success stories become manifest can we confidently say that Tanzania has a friendly seed legal, policy and institutional framework that fosters realization of farmers rights.

To realize farmers' rights in Tanzania in the context of the International Seed Treaty the following things are recommended;

- That some activities be increased. Such activities include farmer-scientist collaboration, capacity building, community based approaches and participatory approaches are all elements that have proved to be central. There must be networking among farmers' organizations and active involvement of the civil society in fighting for farmers' rights.
- It is also recommended that farmers' organizations such MVIWATA employ lobbying and advocacy strategies to bring change at the desired level of

⁷⁶<http://www.farmersrights.org/bestpractices/index.html>(Accessed on 11/01/2016 at 8:35)

government. As highlighted above, lobbying and advocacy mechanisms should be employed to reach members of parliament who serve in the food and agricultural standing committee of the parliament and influence them to stand for farmers rights. Leading farmers' umbrella organizations such as MVIWATA should target vocal MPs of influence and sometimes request them to table well-crafted private bills that would bring the desired change. Such strategy can also involve MPs who are themselves farmers and who practically know the challenges and impediments farmers face in their industry. At local government levels farmers organizations based in districts, wards and constituencies should target influential councilors and local leaders who can voice out their concerns. This will facilitate the adoption of farmer friendly regulations that will enhance the capacity of local farmers to realize their rights.

According to the International Treaty on Plant Genetic Resources for Food and Agriculture, there are seven steps that should be followed in realizing farmers' rights at the national level in the state. Such steps include i)creating awareness on the importance of farmers rights ii)ensuring farmers participation in the implementation process iii)developing a national consultative process, joining forces and pooling resources iv)establishing an institutional framework for implementation v)Protecting and enhancing legal space for farmers customary practices vi)Protecting traditional knowledge relevant to crop genetic resources vii) Promoting the right to equitably participate in benefit sharing and finally viii)Enabling participation in decision making on genetic resources. In these steps, the first four steps are about how to design a constructive and fruitful implementation process. Particularly with Farmers' Rights, which involve and affect so many stakeholders, the process is crucial to ensuring good and lasting results. The last four steps are about the contents of Farmers' Rights, as derived from the International Treaty, and how they can be realized in practice. They start out with options on how to assess and improve the legislation and regulations in the country with regard to the legal space for farmers to conserve and sustainably use crop genetic diversity.

On awareness creating, it is recommended that focus be put on central organizations and institutions, in and across sectors, through the media and through other means.

On participation on the implementation process, it is recommended that farmers should identify key and competent people among them who would represent their interests in the implementation process.

It is also recommended that a national consultative process be established. This will provide the national forum that brings together all stakeholders in the seed industry including small holders' farmers where issues and matters of concern will be discussed. This is currently the missing link in the seed legal and institutional frameworks where farmers have seriously been marginalized for want of representation in institutions established under the law. The national consultative process should serve as a dialogue.

Lastly, it is strongly recommended that all the punitive provisions of the law be reviewed to protect farmers from ill motives of criminal sanctions and penalties. A lot of innocent small holder farmers may fall victims of such Acts without law breaking intent. The law should be crafted in such a way that farmers' rights are protected and not jeopardized.

8. Conclusion

The analysis and recommendations above reveal a number of missing links in the seed legal and policy frameworks for realizing farmers in Tanzania. This therefore calls for a serious need to review the law and policies analyzed above so that the broader interests of the farmers in Tanzania would be taken on-board. Such review also has to consider reflections from and incorporation of international obligations to which Tanzania is party ranging from the international level, regional and sub-regional levels including obligations under the Southern African Development Community and the East African Community. Looking at the available frameworks now one can conclude that the road to achieving protection of small holder's farmers' rights in Tanzania has been bumpy and slippery because of the gaps and missing links identified above. To counter this, it is high time now the civil society, small holders farmers and other concerned stakeholders in the seed industry pushed for legal, policy and institutional reform agenda that will see the rights of small holders farmers realized in Tanzania. Leading farmers' rights organizations in Tanzania should voice out concerns of the small holders farmers community to the main national decision making organs such as the ministry of Agriculture and the parliamentary standing committee that deals with agriculture to make sure that such concerns are heard and dealt with. There must therefore be intense lobbying and advocacy campaigns within the civil society and government circles to push for the desired reforms.

References

Reports

African Centre for Biosafety and Tanzania Alliance for Bio Diversity, Report on the Seed Legislation in Tanzania, June 2014

Grain, March 2015, Seed Laws that Criminalize Farmers, Resistance and Fight Back

Ngwediagi, P. 2009. Establishment of a Plant Breeders' Rights Systems in Tanzania: Achievements and Challenges. In CAS-IP NPI. 2009. Institutionalization of Intellectual Property Management: Case Studies from Four Agricultural Research Institutions in Developing Countries. Rome, Italy. CAS-IP.

Kabudi, P.J. 2003. Benefits and Risks of Sharing Local and Indigenous Knowledge in Tanzania: The Legal Aspects and Challenges. In Links Project. 2003. Gender, Biodiversity and Local Knowledge Systems for Food Security. Rome-Italy, FAO: pp.10-11.