

# **SEED LAWS AND REGULATIONS-Kenyan Case**

**SEMIS UoN**

University of Nairobi

Seed Enterprise Management Course (SEMIS) Short Course on : National Plant  
Protection Organizations (NPPOS) and Seed Quality Regulations Course

Seed Enterprises Management Institute

By Duncan Ochieng' Onduu

Executive Officer, Seed Trade Association of Kenya

University of Nairobi

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# Outline of the Presentation

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## 1. Introduction

- + Background
- + Seed Policy and Seed Industry reforms

## 2. Legal and Regulatory Frameworks Governing the Seed Industry

- + Overview of the Seeds and Plant Varieties 2013 amendments

### + The Seed Industry Regulations

- × Overview
- × Focus on the review of Seed Industry Regulations
- × Progress made in the review
- × Next steps

# BACKGROUND

- ✘ Seed is one of the most critical inputs in agricultural production and has the greatest potential of increasing on-farm productivity and enhancing food security.
- ✘ The current national certified seed production is estimated at 40,000 metric tons.
- ✘ It is also estimated that about 80% of the seeds are still supplied by the informal seed sector
- ✘ There has been a shortage of quality seed for crops like potatoes, wheat and some pulses, and even certain varieties of seed maize, especially those suited for arid and semi-arid areas (ASALs).
- ✘ Over the last years, there has been observed a steady increase in volume of imported seed, particularly of horticultural crops which cannot be produced locally.



# MAJOR CHALLENGES IN THE SEED INDUSTRY

- ✘ **Insufficient certified seed material**
  - + Apart from seed for the major grain cereals like maize and wheat, the country still experiences shortage of seeds e.g. legumes and vegetables
- ✘ **Low adoption of improved seed and complementary technologies**
  - + It is estimated that apart from maize and vegetables the informal seed sector accounts for about 80% of total seed used.
- ✘ **Inconsistent legal and regulatory framework**
  - + Though this has largely been addressed
  - + Lack of harmonized seed policies and standards in the region
- ✘ **Inadequate suitable varieties for marginal areas**
- ✘ **Prevalence of adulterated seed in the market**
  - + The reviewed Seed and Plant Varieties Act provides for more deterrent penalties; enforcement and persecution still remain weak

# MAJOR CHALLENGES IN THE SEED INDUSTRY

- ✘ High cost of seed
- ✘ Insufficient technical skills and infrastructure for new technologies
- ✘ Low funding of seed research
- ✘ Lack of centralized germplasm conservation and utilization centre
  - + This is to be partially addressed by the Plant Genetic Resources for Food and Agriculture guarantee for Food Security and Conservation (PGRFA) Regulations

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# SEED INDUSTRY POLICY FOCUS :

## POLICY OBJECTIVES

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- ✘ Provision of a sustainable financing system for research and development, germplasm conservation, extension, quality control and capacity building to fully exploit the potential of improved varieties and technologies for increased agricultural and forestry productivity
- ✘ To establish an effective regulation, coordination and management of all activities within the seed industry in order to tap synergies and maximise resources for enhanced efficiency, including eradication of prevalence of adulterated seed.
- ✘ To build capacity and infrastructure within the seed industry to handle research and development, quality control, technology transfer, and other emerging technologies such as GMOs, and ICT.



# SEED INDUSTRY POLICY FOCUS :

## POLICY OBJECTIVES (CONT)

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- ✘ To create an enabling environment, through legal and policy reforms, for effective participation of both public and private sectors in the production of cost effective and quality planting material.
- ✘ To harmonise regional seed policies and regulations to enhance cross border trade in seed.
- ✘ To monitor seed supply situation in order to ensure adequate strategic seed reserves.

# LEGAL AND REGULATORY FRAMEWORKS GOVERNING THE SEED INDUSTRY

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- ✘ The formal seed industry is governed by the following Legal and regulatory frameworks;
  
- + **Seeds and Plant Varieties Act, Cap 326.** This is the parent Act governing the sector and has three sets of regulations;
  - ✘ **Seeds and Plant Varieties (Seeds) Regulations,**
  - ✘ **Seeds and Plant Varieties (National Performance Trial ) Regulations, 2007**
  - ✘ **Seeds and Plant Varieties (Plant Breeders Rights) Regulations**

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# LEGAL AND REGULATORY FRAMEWORKS GOVERNING THE SEED INDUSTRY

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## × Other Legal Frameworks ...

- + **The Kenya Plant Health Inspectorate Act, 2012;** - This is the successor of the Legal Notice No. 305 of 1996 which established KEPHIS under the State Corporations Act
- + **Plant Protection Act, Cap 324;**
- + **The Agriculture Fish and Food Authority Act, 2013;**
- + **the Crops Act, 2013 and ,**
- + **the KALRO Act, 2013**
- + **The Pest Control Products Act, Cap 346,**

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# LEGAL AND REGULATORY REFORMS

Policy and Law/Regulations	Issues addressed
i) National Seed Policy	<ol style="list-style-type: none"> <li>1. Deepen liberalization of the seed industry               <ul style="list-style-type: none"> <li>• Address Research and extension; Seed production; processing and quality control; Seed marketing and distribution</li> </ul> </li> <li>2. Institutional and legal framework for the industry</li> <li>3. Conform to international conventions protocols and schemes</li> <li>4. Review and update the Seeds and Plant Varieties Act, Cap 326</li> <li>5. Provide for the establishment of biodiversity Centre for Plant genetic resources conservation centre</li> </ol>
ii) Kenya Plant Health Inspectorate Act, 2012	<ol style="list-style-type: none"> <li>1. Entrench KEPHIS under a principal Statute</li> <li>2. Enhance KEPHIS role to cover related Regulatory Acts e.g.               <ul style="list-style-type: none"> <li>• The Plant protection Act</li> <li>• The Noxious weeds Act</li> <li>• The Seeds and Plant Varieties Act etc</li> </ul> </li> </ol>



# LEGAL AND REGULATORY REFORMS

<b>Policy and Law/Regulations</b>	<b>Issues addressed</b>
<p>(iii) Seeds and Plant Varieties (Amendment) Act, 2013</p>	<p>The object and purpose of the amendments to the Seeds Law</p> <ul style="list-style-type: none"><li>• introduce reforms in the seeds sub-sector in line with the current policy of liberalized economic environment</li><li>• harmonize and update the Act with local, regional and international legal frameworks in order to promote a modern and competitive seed industry</li></ul> <p><b>Specific amendments</b></p> <ol style="list-style-type: none"><li>1. Naming KEPHIS the administrator of the Act/designated authority (L. N. 305/96). and strengthen the powers of KEPHIS,<ul style="list-style-type: none"><li>• particularly in surveillance of seed malpractices</li><li>• appointment of inspectors for the purposes of enforcing the provisions of the Act and the gazettelement of inspectors by minister</li><li>• conflict of interest by inspectors and analysts e.g. restriction of disclosure of confidential information</li><li>• Seizure and disposal of seed and seed processing facilities on contravention of the Act.</li></ul></li><li>2. Allow for authorization industry players by KEPHIS of certain regulatory functions</li></ol>



# LEGAL AND REGULATORY REFORMS

Policy and Law/Regulations	Issues addressed
(iii) Seeds and Plant Varieties (Amendment) Act, 2013	<p>3. Review of offences and penalties</p> <ul style="list-style-type: none"> <li>• civil liabilities and untruthful labeling of seed packing materials,</li> <li>• tempering with seed samples</li> <li>• Giving false information and defining penalties for such offences</li> <li>• providing and enhancing penalties for general offences under the Act</li> </ul> <p>4 Conformity to the International Union for the Protection of New Varieties of Plants (UPOV) rules/standards (to which Kenya is a signatory) esp. the period between the testing of new varieties and their release; extending the period of grant of plant breeder's rights</p> <p>5. Empower the Minister to maintain and update a National Plant Varieties in line with international practice</p> <p>6. Remove exemptions to compelling the holders of Plant Breeders Rights to avail reproductive material specified under the Act.</p> <p>7. Broadening the attributes of crops to be granted plant breeders rights in line with the UPOV 1978 convention.</p>

# LEGAL AND REGULATORY REFORMS

<b>Policy Law, Regulations</b>	<b>Issues addressed</b>
<p>(iv) Seed and Plant Varieties (Seeds) Regulations</p>	<ol style="list-style-type: none"><li>1. Review of seed certification procedures and processes including<ul style="list-style-type: none"><li>• Authorization</li><li>• Review of list of Crops in 1<sup>st</sup> and 2<sup>nd</sup> Schedule</li></ul></li><li>2. Under COMESA Trade Harmonization Regulations, areas of concern are;<ul style="list-style-type: none"><li>• Eligible varieties registered in the COMESA variety catalogue</li><li>• Import export permit for regional trade on seed</li><li>• Seed classes; (Four under COMESA; 6 in Kenya)</li><li>• Seed class label colours and label content</li><li>• Field and laboratory standards</li><li>• Twelve priority 12 COMESA Crops (Kenya has had to include Cassava and Pearl Millet and the laboratory and field standards (including phytosanitary and quarantine requirements) for the crops harmonized with the COMESA Trade Harmonization Regulations</li></ul></li></ol>



# LEGAL AND REGULATORY REFORMS

Policy Law, Regulations	Issues addressed
<p>v) Seed and Plant Varieties (Variety Evaluation and Release) Regulations</p>	<ol style="list-style-type: none"> <li>1. Provide regulations for the conduct of testing, release, and registration of plant varieties</li> <li>2. Entrench in subsidiary regulations, the committees that oversee testing, release, and registration of plant varieties</li> <li>3. Under Common Markets for Eastern and Southern Africa (COMESA) Trade Harmonization Regulations, harmonized in the following areas;               <ul style="list-style-type: none"> <li>• Require all varieties of crops intended for release into the COMESA member states undergo NPT in accordance with the Variety release Regulations</li> <li>• providing guidelines for variety denomination in line with UPOV and COMESA Regulation</li> <li>• requiring the submission of reference sample that meets specified quality requirements</li> <li>• Variety Catalogue Content harmonization</li> <li>• Registration of an Existing Variety</li> <li>• Prohibition of Access to a Market</li> <li>• Phytosanitary Certificate</li> <li>• Plant Import Permit</li> <li>• Movement of Seeds within Member States</li> </ul> </li> </ol>



# LEGAL AND REGULATORY REFORMS

Policy Law, Regulations	Issues addressed
v) Seed and Plant Varieties (Variety Evaluation and Release) Regulations	1. Under COMESA Trade Harmonization Regulations, harmonized in the following areas ( <b>Cont...</b> ); <ul style="list-style-type: none"> <li>• Equivalency (in recognizing alternative methods of controlling quarantine pests)</li> </ul>
vi) The Seeds and Plant Varieties (Conservation, Access and benefits Sharing) Regulations	1. Domestication of International Treaty on Plant Genetic Resources for Food and Agriculture (International Seed Treaty)(ITPGRFA) 2. Providing for exchange of research/breeding material outside the FAO multilateral system 3. Specific provisions: <ul style="list-style-type: none"> <li>Part I – Preliminary</li> <li>Part II – Membership, Procedures and Operations Of The Plant Genetic Resources Advisory Committee</li> <li>Part III – Conservation of Plant Genetic Resources</li> <li>Part IV- Access to Plant Genetic Resources for Food and Agriculture outside the Multilateral System</li> <li>Part V-Benefit Sharing For Plant Genetic Resources Accessed Outside the Multilateral System and Part VI – Access to Plant Genetic Resources under the Multilateral System</li> </ul>

# PROGRESS AND NEXT STEPS

Permanent Secretary	Ministry of Agriculture	Ministry of Justice	Parliament
<ul style="list-style-type: none"> <li>• PS MoALF-SDA signed the Memo forwarding the draft Regulations to the Cabinet Secretary for endorsement before dispatching to the Office of the Attorney General and Department of Justice on 31st March 2016.</li> <li>• The PS signed the letters dispatching the draft Regulations to the Office of the Attorney General and Department of on 22nd April 2016</li> </ul>	<ul style="list-style-type: none"> <li>• The Cabinet Secretary, MoALF, endorsed the copies of the draft Regulations to the AG's Office on 22<sup>nd</sup> April 2016</li> </ul>	<ul style="list-style-type: none"> <li>• The Office of the Attorney General and Department of Justice MoALF acknowledged receipt of the drafts on 19<sup>th</sup> May 2016</li> <li>• Meeting held on the 3<sup>rd</sup> and 4<sup>th</sup> November to incorporate comments from Government drafts team</li> <li>• Now awaiting publication</li> </ul>	<ul style="list-style-type: none"> <li>• The Seeds Regulations do not need to be subjected to Parliamentary (National Assembly or Senate) approval.</li> </ul>

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*Thank You*

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