

Undermining farmers' rights and seed systems:

Why the EAC Seed and Plant Varieties Bill must be disbanded



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



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Introduction

The East African Community (EAC), a regional intergovernmental organisation consisting of six Partner States: Burundi, Kenya, Rwanda, South Sudan, Tanzania and Uganda,¹ has developed a legislative framework for the regulation of the commercial seed sector in the EAC region. This framework is known as the EAC Seed and Plant Varieties Bill, 2018 (“draft Bill”). The draft Bill of September 2018 incorporates seed registration, variety release, seed certification and marketing, and phytosanitary measures, with plant variety protection (PVP) into an all-in-one regional seed draft law that focus exclusively on the formal or commercial seed sectors. Draft regulations have already been developed along with the Bill, indicating a hasty and expedited process, conveying the EAC’s urgency to put in place a harmonised regional seed framework. In terms of the seed in the EAC region, approximately 60%-80% is provided through farmer managed seed systems (FMSS) (CTA, 2014). The Bill has been formulated for the benefit of corporate seed producers and breeders, paving the way for the private sector’s domination of seed production and the free trade in corporate so-called “improved seed” across borders, by doing away with the need to comply with national seed regulatory systems. With its sole focus on the formal or commercial seed sector, the EAC Bill will have significant long-term implications for the seed, agricultural and food landscape. It will further entrench inequalities and corporate capture of food and seed systems, displacing local seed systems, and marginalising the rural poor, especially women.

At the time of writing, the EAC Seed Bill had already been submitted to the Council of Ministers of the EAC for adoption.² Once the Bill is adopted by the Council of Ministers, it will be submitted to the East African Legislative Assembly (EALA),³ where, once

passed, the Heads of States will assent to it as an EAC law. It should be noted that Acts assented to by the EAC Heads of State are legally binding for all member states of the EAC. Thus, if passed, the EAC Seed Bill will require conformity of national seed and PVP laws to the regional law and the harmonised framework will be highly problematic for EAC countries that want flexibility at a national level in both seed and PVP laws. At the moment, the September draft Bill, and its regulations, is the only version that is publicly available. In this summary, we highlight the main concerns of the EAC Seed and Plant Varieties Bill development process and several provisions. Please refer to the **full report**⁴ for more detail and the full list of references.

EAC CSO Engagement

The drafting of the EAC Seed and Plant Varieties Bill (EAC Seed Bill) and its regulations was done by a consultant engaged by the EAC Secretariat, with support from the United States Agency for International Development (USAID) Kenya, signalling the financial backing of this process by USAID. EAC civil society organisations (CSOs) are on record for publicly raising concerns about the EAC Seed Bill, through a press release⁵ and addressing the members of the East African Legislative Assembly (EALA) who are on the Committee on Agriculture, Natural Resources and Tourism (ATNR), during a series of consultation meetings that took place from 18 to 22 March 2019, in the six EAC Partner States. In addition, correspondence and detailed submissions on the previous draft of the EAC Seed Bill (July 2018 version) were also submitted to members of the EALA ATNR committee, Council of Ministers, the EAC Secretariat and the permanent secretaries of the respective ministries of agriculture in the EAC Partner States. Due to the multitude

1. <https://www.eac.int/overview-of-eac>

2. See <https://www.eac.int/press-releases/141-agriculture-food-security/1318-12th-meeting-of-the-sectoral-council-on-agriculture-on-agriculture-and-food-security-concludes-in-arusha>

3. See Article 62 of the EAC Treaty

4. See https://www.acbio.org.za/sites/default/files/documents/Concerns_with_the_draft_EAC_Seed_and_PlantVarieties_Bill.pdf

5. Press release: East African farmer and civil society organisations criticise EAC Seed Bill – demand transparency, participation and inclusion of farmers’ rights <https://acbio.org.za/en/press-release-east-african-farmer-civil-society-organisations-criticise-eac-seed-bill-demand>

of concerns regarding the Bill, EAC CSOs and farmer organisations have rejected the EAC Seed Bill, calling for a halt of the adoption process, and its disbandment, and urging for the concerns raised to be taken into consideration.

Summary of our Key Concerns

1. There has been a lack of transparency and limited involvement of farmer groups and CSOs in the development of the EAC Seed and Plant Varieties Bill and regulations, and no wider consultations at either regional or national levels, yet member states of the EAC are obliged to undertake consultative processes, in terms of the EAC Treaty. This raises questions about the credibility and legitimacy of the entire process, and the EAC Bill and regulations in particular. Despite numerous efforts on the part of CSOs to obtain the most recent version of the Bill and its regulations, these important documents are still not in the public domain. The process for the development of the EAC Seed Bill has thus flouted the very objectives and fundamental principles of the Treaty for the Establishment of the East African Community, also known as the “EAC Treaty”, which has several provisions for public participation and transparency, as outlined in Article 5(g), 6(d) and 127(3) and (4).

2. The Bill provides for stringent, expensive and onerous variety release, registration and certification processes, and requirements⁶ that marginalise and ultimately criminalise farmers’ seed and farmers’ seed systems, preventing them from forming part of national and regional seed sectors. These requirements make it unlikely that smallholder farmers and their varieties and small-scale seed enterprises will be able to participate – as only seed that is registered and released in the formal seed sector, and that meet standardised certification requirements, will be allowed to be produced, imported, sold or distributed within the EAC. Thus, farmers’ seeds and farmer-managed

seed systems continue to be sorely neglected, despite their pivotal role in the maintenance, development and production of agricultural biodiversity.

3. The PVP Section of the draft EAC Seed and Plant Varieties Bill 2018 is modelled on the heavily criticised and controversial International Union for the Protection of New Varieties of Plants (UPOV) 1991 Act, which is not suitable for the EAC region. UPOV was conceived and established by industrialised and highly commercialised countries in Europe to cater for commercial breeding interests. UPOV 1991 imposes an inflexible and restrictive “one-size-fits-all” PVP legal framework, as compared with previous versions – particularly that of 1978. It limits the ability of countries to design national PVP systems appropriate to their individual country needs and priorities, particularly taking into account that all the Partner States in the EAC are categorised as least developed countries (LDCs), except for Kenya. LDCs do not currently have any obligation to put in place any form of PVP law as they have been granted an extension period until July 2021 to do so. Currently in the EAC, Kenya, Tanzania and Rwanda have PVP laws based on UPOV 1991. Furthermore, Kenya and Tanzania are members of UPOV 1991, whereas Uganda’s PVP law is based on UPOV 1978. Thus, if the EAC Seed Bill is passed, Uganda, Burundi and South Sudan will have to bring their national PVP laws in line with UPOV 1991, as provided for under the EAC Seed Bill. This offers no flexibility to the EAC countries that have not joined UPOV 1991 to address specific agricultural needs including, and especially, those of the many millions of smallholder farmers in their countries whose farmer seed systems need support and strengthening.

4. The EAC Bill undermines the national sovereignty of EAC Partner States through a centralised PVP system and will vest enormous decision-making powers in a centralised PVP office, namely the EAC Seed Coordination Office.⁷ Such an office would have no experience of the examination, granting, or handling of the effect, of PBRs. Partner States will not even have

6. See Sections 8, 9 and 10 of the EAC Seed Bill, September Version 2018

7. See Section 5 (2)(o) and Regulations 21, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 37, and 40; Section 38 and Regulation 43 on Compulsory Licenses; and Sections 42 and 43 on the nullification and cancellation of plant breeder’s rights of the EAC Seed Bill, September Version, 2018

the right to issue a compulsory license in the national public interest – particularly in situations of national disasters and emergencies – where, under the Bill, all such rights have been given away to the EAC Seed Office. Such a centralised and inexperienced body will grant PBRs without any national oversight and decision making, and thereby totally undermine the sovereignty of member states to regulate plant breeder's rights. These provisions are particularly concerning since domestication of the EAC Seed Law will supersede the national seed and PVP laws in the region due to the legally binding obligations of the EAC Treaty⁸ provisions in the EAC Bill.⁹ Agriculture is a core economic activity of countries in the EAC region and decisions relevant to this sector cannot simply be handed over to a regional seed office.

5. The EAC Bill further undermines small-scale farmers' traditional practices and rights to freely reuse, save, exchange and sell seed locally.¹⁰ It provides narrow exemptions¹¹ for farmers to use farm-saved seed for "private and non-commercial use", based on a list of agricultural crops to be specified by the EAC Council, and only to be used on the farmers' own holdings. It should be noted that local rural trade in farmers' seed is a practice that underpins agricultural systems in EAC countries and farmers primarily access seed through farmer-managed seed systems, including saving, exchanging and purchasing from local markets.

With these narrow exceptions, the EAC Seed Bill will severely hamper efforts towards the implementation of farmers' rights as enshrined in Article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).¹² In the EAC, all Partner States are contracting members to the ITPGRFA except for South Sudan. Article 9 recognises the historical and ongoing role of farmers and local and indigenous communities in the conservation and development of plant genetic resources

and reaffirms the primacy of farmers' rights to save, use, exchange and sell farm-saved seed or propagating material, "subject to national law". Such neglect and exclusion not only flouts international law but will have long-term adverse impacts on agricultural biodiversity and food and seed sovereignty in the EAC.

6. The EAC Bill facilitates biopiracy as it fails to provide for disclosure of whether local genetic resources were used in the development of the variety to be protected and whether this has been acquired legally.¹³ Lack of such provisions will enable particularly foreign entities to misappropriate local germplasm to develop varieties, which will then be subject to exclusive private ownership protection through the EAC PVP system.

7. The EAC Bill will create corporate hegemony of the seed sector in the EAC with a few multinational companies having control. At the moment, the largest seed companies operate from Kenya, which has a further developed seed industry sector compared with the rest of the EAC countries. These companies are bound to benefit particularly from this regional seed harmonisation as the EAC Seed Bill aims to ensure regionally seamless and expedited trade and seed production of commercially-bred seed varieties for the benefit of these multinational seed companies. They will also be the main beneficiaries of the centralised PVP system and able to enforce their plant breeders' rights in all EAC member states.

8. We reiterate the importance of transparency and inclusion of farmer and civil society organisations in decision making processes in the EAC. We call upon the EAC Council of Ministers and the East African Legislative Assembly (EALA) members to halt the process of the adoption of the EAC Bill until the Bill has undergone sufficient and adequate consultations, especially in light of the fact that agriculture is the backbone for

8. See Article 8 (4) and (5) of the EAC Treaty

9. See Section 56 of the EAC Bill, September Version 2018

10. See Section 35 of the EAC Bill, September Version, 2018

11. See Section 36 of the EAC Bill, September Version, 2018

12. The ITPGRFA – also known as the "International Seed Treaty" – is an international agreement between states on the equitable conservation and maintenance of agricultural biodiversity as a shared resource.

13. See Section 27 of the EAC Bill, and Regulations 22, September Version, 2018

food security and economic activity in the EAC. Further, we strongly urge that the EAC Seed Bill should be *disbanded* and the issue of national sovereignty and the multitude of concerns raised in this briefing be addressed. We specifically call upon the EAC Partner States to support and adopt a much more balanced and equitable approach, by supporting a comprehensive EAC seed

policy that recognises and supports farmer seed systems, with appropriate farmer-based mechanisms, as well as technical and financial support. This is needed to ensure availability of, and access to, diverse quality seed of farmer and public sector varieties, towards the attainment of seed sovereignty in the region.

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