

COMESA APPROVAL OF SEED TRADE REGULATIONS SPELLS DISASTER FOR SMALL FARMERS AND FOOD SOVEREIGNTY IN AFRICA

1. The Alliance for Food Sovereignty in Africa¹ strongly condemns the approval during September 2013, by the Council of Ministers of the Common Market for East and Southern Africa (COMESA) of the draft COMESA Seed Trade Harmonization Regulations, 2013 (hereinafter referred to as the “Seed Regulations”).

2. The COMESA seed regulations are binding on all COMESA Member States in terms of article 9 of the COMESA Treaty. Yet, there is no evidence to demonstrate the involvement of and consultation with the citizens in COMESA countries, particularly small - scale farmers, despite numerous pleas to COMESA to consult with small farmers. It is our view that a technical group from COMESA countries in collaboration with the African Seed Trade Association (AFSTA) and Commodity Trade in Eastern and Southern Africa (ACTESA) and well funded by USAID and the EU, deliberated on the issues and drafted regulations that have now been signed off by the Council of Ministers, ready for domestication in the COMESA Member States.

3. Submissions made by CSOs and small-scale farmer representatives, to a COMESA workshop organized by the ACTESA during 27 and 28 March 2013 in Lusaka, Zambia containing concerns both about the flawed nature of the process and the implications of the regulations for small farmers and agricultural biodiversity in Africa, have pointedly been ignored.

Overview of the COMESA Seed Regulations

4. The ostensible rationale for the seed regulations is to increase the diversity, quality and quantity of seed available for farmers in the region and reduce the transaction costs for the seed industry which they currently face, brought about by differing regulatory and trade arrangements across countries in the region. These differing regulatory arrangements are regarded as non-tariff barriers. The envisaged scenario is the free flow- regionally seamless trade of seed across national boundaries in the COMESA region, which in turn will attract improved private investment through the expanded markets.

5. The seed regulations provide for standardized and uniform variety testing procedures for release of seed on a regional variety list as well as increased private sector participation in the seed release process itself.

¹ **The Alliance for Food Sovereignty in Africa** (AFSA) http://www.africanbiodiversity.org/content/alliance_food_sovereignty_afsa represents a continental voice *against* the ongoing imposition of industrial agriculture in Africa and *for* food sovereignty through ecological agriculture. AFSA is a broad based alliance of African regional farmers' networks and African NGO networks along with various other allies. The aim is to bring greater continental cohesion to an already developing food sovereignty movement in Africa.

6. The COMESA Seed Regulations will greatly facilitate agricultural transformation in the COMESA member states² towards industrialization of farming systems based on the logic of the highly controversial, failed and hopelessly doomed Green Revolution model of agriculture. The COMESA Regulations are geared towards creating an enabling environment for massively increased private sector participation in seed trade in the COMESA region as it promotes only one type of seed breeding, namely industrial seed breeding involving the use of advanced breeding technologies.

7. The entire orientation of the seed Regulations is towards genetically uniform, commercially bred varieties in terms of seed quality control and variety registration. What is very clear is that small farmers in Africa, seeking to develop or maintain varieties, create local seed enterprises or cultivate locally adapted varieties are excluded from the proposed COMESA Seed Certification System and Variety Release System, because these varieties will not fulfill the requirements for distinctness, uniformity and stability (DUS). Landraces or farmers' varieties usually display a high degree of genetic heterogeneity and are adapted to the local environment under which they were developed. In addition, such varieties are not necessarily distinct from each other.

8. Eight member states of COMESA³ are also member States of the Southern African Development Community (SADC). SADC itself has a set of Technical Agreements on Harmonisation of Seed Regulations in the SADC Region, that differ from the COMESA regulations in significant aspects, particularly relating to the registration of landraces and other local varieties and the registration of genetically modified varieties. The incompatibility between these regulations is a cause for concern and will no doubt give rise to a great deal of anomalies and confusion.

Overarching concerns

9. The regulations turn a blind eye to small farmers and their traditional seed varieties. It does not contain any measures to safeguard the diversity on-farm and the continued maintenance of heterogeneous crop varieties, which is so vital to ensure food security and resilient food systems for the future. This diversity constitutes an important part of the genetic pool that future generations will need to develop and breed plants able to cope with future crop pests and diseases as well as environmental factors such as climate change.

10. Hence, our primary concerns centre around the extent to which the variety release and seed certification provisions will impact on the conservation of plant genetic diversity of heirloom, traditional, open pollinated varieties and

² COMESA member states are comprised of 20 African countries, namely, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, South Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

³ The Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe are member states of SADC.

landraces. These varieties are typically unregistered plant varieties and those that are not protected by plant breeders' rights, patents and other forms of intellectual property. These varieties will typically not meet the DUS requirements set out in the law and will not qualify for registration on the COMESA regional variety listing. Indeed, there is nothing in the seed regulations that safeguard genetic diversity from being eroded.

11. The regulations are silent on the protection of farmers' rights. Farmers' Rights are those rights arising from the past, present and future contributions of farmers in conserving, improving and making available genetic resources, particularly those in the centres of origin/diversity. The concept of Farmers' Rights is recognised in the United Nation's Food and Agriculture (FAO) International Treaty on Plant Genetic Resources, ("The Seed Treaty"), which entered into force in 2004. The Seed Treaty's objectives include the conservation and sustainable use of plant genetic resources for food and agriculture. Its preamble affirms farmers' rights to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making.

12. Further, Article 9 of the Treaty recognizes the enormous contribution that local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

13. The seed regulations do not promote equal access to the COMESA seed market for all players. In this regard, the legislation has not adopted a fair approach to all players in the sector. The COMESA seed regulations have created only one system, one that favours genetically uniform commercial seed. No thought has gone into the creation of a suitable system for farmers' varieties at all.

14. While we fully support farmers having access to good quality seeds, our view is that these COMESA seed regulations are not oriented towards the needs of small farmers; but have 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.

15. We question the ecological and agronomic rationale for testing a seed variety in two COMESA countries for subsequent release in the entire region as set out in the seed regulations. Countries do not have the same agro-ecological conditions. Seed quality and safety cannot be guaranteed through

the 2 member-state-testing-system, and then released into 17 other countries. Furthermore, the regulations undermine the sovereignty of COMESA member states. National governments appear to have lost their sovereign rights to require national testing before any variety is released onto the commercial market at the national level.

16. We are similarly concerned with the lax requirements for the release in all COMESA countries, of existing varieties. We question the agronomic and ecological soundness of the regulations for member states that have vastly different ecosystems, ecological zones, soil types, biodiversity, insect regimes and so forth.

17. The provisions relating to GMOs in the COMESA seed regulations differ substantially from the SADC seed laws. In terms of the SADC Technical Agreements on Harmonisation of Seed Regulations in the SADC Region, genetically modified seed are not eligible for inclusion in the SADC Variety Catalogue. There are no such corresponding provisions in the COMESA seed regulations and it is entirely possible for a GM seed variety to be placed on the COMESA Variety Catalogue and be released in COMESA member states especially where no biosafety regulations are in place.

18. The COMESA seed trade regulations will most certainly 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 and are now doing in other parts of Africa, for instance in Zambia.

19. We demand that the COMESA Seed regulations be scrapped in their entirety. We call upon donors to desist from supporting the implementation of these regulations, which undermine our national sovereignty and policy space. We call for an open, transparent process, involving small farmers especially, to discuss appropriate seed laws for Africa, where the obligation of protecting biodiversity, farmers' rights and overall ecological productivity is entrenched as a primary objective.

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