

Farmers' seed systems and legislation in Malawi – DRAFT VERSION – for consultance only,  
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## **AN OVERVIEW OF FARMERS' SEED SYSTEMS POLICY AND LEGISLATION IN MALAWI**

**Report submitted to Development Fund, Norway**

**Draft version**

### **Executive Summary**

Small scale farmers are responsible for the bulk of Malawi's food security. Although maize is the main staple food, these farmers grow other crops either as cash crops or for food. These include tobacco, groundnuts, beans, soya, cassava, potatoes, just to name but a few. Apart from tobacco and maize whose seed is readily available on the market (formal seed sector), for most of the other crops farmers have to rely on local seed or planting materials (informal seed sector). Despite the availability of seed for maize and tobacco, it is difficult for small-scale farmers to access seed due to high prices, logistical issues and in some cases inability of the market to supply seed that small scale farmers prefer. Hence small-scale farmers often have to rely on farm saved seed that they conserve, exchange or barter with other farmers.

Farmers' seed systems are however not promoted and/or regulated in policy and legislation. It is improved seed varieties, which the private sector champions, which enjoys policy space and promoted in agriculture extension methods. Farmers' seed systems are by some actors perceived as backward, not productive, difficult to conserve and therefore not given official recognition as seed. The best they have been recognised is being a source for developing seed. Malawi's regulatory framework for seed consists of the National Seed Policy 1993 and the Seed Act 1988 as amended in 1996. These instruments essentially promote the formal seed industry. There is no attempt to promote local technologies either in the policy instrument or extension messages. The Seed Act consequently only has provision for production, testing, certification of formal seed. This continues to be Government policy and no change is envisaged under the draft National Seed Policy 2017 or the draft Seed Bill. The country also prepared a draft Plant Variety Protection (PVP) Bill which focusses on the formal seed system and efforts to incorporate farmers rights provisions into the PVP have been unsuccessful for same reason that informal seed systems remains on the margin of Government policy.

The brief case study of the Chivala Agriculture Extension Planning Area highlighted some of the challenges outlined above. Small-scale farmers are too poor to access formal seed unless subsidized by Government. However, the subsidy programme is unsustainable and many are still unable to benefit for many reasons. Even where farmers can afford formal seed, the quality cannot be guaranteed, essentially agro-dealers, vendors, even reputable seed companies have managed to sell fake seed to unsuspecting small-scale farmers. Enforcement and monitoring of the seed industry is not effective and agro-dealers have taken advantage of this. Informal seed is also difficult to conserve, the available indigenous technologies are considered cumbersome. Farmers, therefore, complain of germination challenges. In addition, with climate change concerns, local seed is considered non-responsive and unreliable as it matures late. Thus, despite advantages such as being readily accessible, nutritious and adapted to local climate, informal seed has not been promoted leading small-scale farmers to turn to the very formal seed market they can hardly afford.

In the circumstances, it is important for the draft policy and legislation not only to make an explicit recognition of the role of informal seed systems in agriculture in general and food security in particular but also the need to promote and protect these. A key concern is the neglect and denial of the role of local crops in the formal market which affects policy investment in technologies that can contribute to conservation and quality control of informal seed. The draft National Seed Policy 2017 and the draft Seed Bill need to make specific provisions for extension messages and provide for farmer-to- farmer learning and exchange programmes so that available indigenous technologies do not die out but can be brought to bear to promote informal seed. Quality control can be enhanced by development of community seed

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banks across communities which can act as learning centres for small-scale farmers as well. In addition, the draft Seed Bill needs to provide quality control for farmers' seed systems that can be managed within existing local circumstances and therefore less stringent than the formal seed sector. It should also promote partnership and encourage diffusion of knowledge between plant breeders in the formal seed sector and farmers' seed systems, making sure that innovations are protected and where knowledge is shared, benefits should also be shared. This would require the drafting of a new Plant Variety Protection bill based on a Suis Generis Systems to ensure it provides guarantees for the promotion and realisation of farmers' rights.

#### LIST OF ACRONYMS

CEPA	Centre for Environmental Policy and Advocacy
EPA	Extension Planning Area
FISP	Fertilizer Input Subsidy Programme
IFDC	International Centre for Soil Fertility and Agriculture Development
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
PGRFA	Plant Genetic Resources for Food and Agriculture
PVP	Plant Variety Protection
NBSAP	National Biodiversity Strategy and Action Plan
TA	Traditional Authority
UPOV	International Union for Plant Variety Protection
WTO	World Trade Organization

## **1. Introduction and Background**

Farmers' seed systems comprise local or informal seed systems that are the core of conservation and basis of plant genetic resources. In Malawi studies have shown that 70 per cent of the seed used by small scale farmers is farm saved<sup>1</sup>. It is through these informal systems that a large variety of plant genetic resources have been conserved and developed for food and agriculture. As they have developed and been conserved in specific local climates, they have attained specific adaptive capacity in light of climate change and emerging challenges in agriculture. Farmers' seed systems are also an integral part of local traditions and culture embedded in farmers' identity and customs. However, farmers' seed systems are facing increasing pressure from commercialization of agriculture and climate change. Unlike formal seed systems and despite their importance for agricultural production and food security, they are often neglected in national seed policy and legislation. Increasingly, policy and practice promotes the formal seed system. This has also affected how consumers perceive traditional foods, often despised in favour of those from the formal system.

It is the formal seed systems that is recognised and regulated through the national seed policy and legislation framework. Thus, plant breeders have utilised farmers' seed systems to improve the genetic make-up of the seed systems and have used their respective policy spaces either as Government employees or through lobbying as private sector investors to protect the varieties they promote. There is no protection for farmers' seed systems or their associated knowledge systems leading to their neglect and demise or acquisition by the formal system without benefits accruing to the informal system. However, in most developing countries like Malawi, formal seed systems are not accessible to poor smallholder farmers. These farmers have limited incomes to buy seed each year; in addition, seeds regulated under the formal systems are often put under a series of restrictions for the use, exchange, saving and sale. The threat to rural food security and incomes is real.

The policy gap between the informal and formal seed systems poses several challenges for both the informal and the formal systems. Small-scale farmers, who are mostly dependent on the informal systems, are often deprived of access to improved varieties that have been designed to address certain challenges in agricultural production such as climate change. On the other hand, the formal sector may be unable to access plant genetic resources that are in the field and benefitting from farmers' knowledge about the characteristics of a large variety of crops plant genetic resources. In this way, the established frontier between formal and informal seed systems may constitute a challenge for agricultural production and food security in the future.

The International Treaty on Plant Genetic Resources (ITPGRFA) promotes and protects farmers' rights (FRs) to use, save, exchange and sell seeds as well as to participate in decision making regarding plant genetic resources for food and agriculture. The implementation of farmers' rights is still inadequate and weak/lacking in many countries that are signatory to the treaty, either because of weaknesses in national seed legislation or policies on intellectual property rights that are not consistent with farmers' rights. In Malawi, the implementation of farmers' rights has been hampered not least by the refusal by the Ministry of Agriculture to

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<sup>1</sup> Mloza-Banda *et al*, Mloza-Banda, H.R., Kaudzu, G., Benesi, I. (2010). *Evaluation of the Malawi seed sector for Common Market for eastern and Southern Africa (COMESA) Harmonized Seed Regulations and Policies*

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embrace these rights because of the preference for commercialization of agriculture that is perceived to be inconsistent with FRs<sup>2</sup>.

This study seeks to review policies and legislation on plant genetic resources, focussing on seed laws and strategies and any plant variety protection laws in order to identify concrete policies that support farmers' seed systems. The study will also identify policies and practices that undermine farmers' seed systems, as well as gaps in the existing legislation. The study will establish recommendations for policies and strategies that support the functioning of farmers' seed systems and that contribute to the implementation of FRs to seeds.

## **2. The Context: Chivala Agriculture Extension Planning Area (EPA), Dowa District<sup>3</sup>**

Small-scale farmers are responsible for food security in Malawi. In a country where over 70% of the population lives in rural areas and is entirely dependent on agriculture, almost everyone in the rural areas is a 'farmer' - they live off the land. There is hardly any employment here and, apart from fishing and vending, very limited alternative incomes sources exist in the rural economy.

Chivala EPA is situated in Dowa District which borders Malawi's capital Lilongwe. The EPA is one of the four agriculture extension areas in the district and serves three traditional authorities, namely, Mponela, Msakambewa and Nkunika. We met the farmers on 14 September 2017. They were a mixture of Lead Farmers and Follower Farmers drawn from the various sections in the EPA, mainly from Traditional Authority Nkunika. They informed us that they grow crops such as maize, tobacco, potatoes, soya, cassava, tomatoes and other vegetables. As the main staple food, maize is the dominant crop and the question of seed mostly centred around maize seed.

Since the liberalization of the agriculture market in the early 1990s as part of structural adjustment programme and the subsequent downsizing and essentially demise of the social role of the Agriculture Development and Marketing Corporation (ADMARC), farmers buy seed from agro-dealers, vendors and through the Fertilizer and Input Subsidy Programme (FISP). The experience of farmers in accessing seed has not been a happy one. Below is a summary of the main challenges in accessing seed:

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<sup>2</sup> CEPA, 2007, 'Implementation of Farmers Rights in Malawi'. CEPA, Blantyre. See also CEPA, 2012, Farmers Rights, Sustainable Agriculture and Development in Malawi: Exploring Policy Options and Approaches'. CEPA, Blantyre.

<sup>3</sup> This brief case study was undertaken on 14 September 2017. We interviewed a total of over 20 farmers from villages and traditional authorities around Chivala EPA. We also interviewed Mr. Patrick Taulo, Assistant Agriculture Extension Coordinator for the EPA. We have also considered existing literature, especially position papers and reports prepared by the Centre for Environmental Policy and Advocacy (CEPA) on the subject. These are cited in footnotes 2 and 35 below.

- There is no seed certification system such that agro-dealers and vendors are able to sell seed whose quality is not checked.
- Farmers have been sold fake seed by seed vendors including reputable agro-dealers: in a number of cases farmers have purchased seed packaged and labelled with the reputable companies' logos which turns out to be local seed that's is painted and sold as hybrid maize.
- Farmers are unable to conserve local maize varieties or Open Pollinating Varieties (OPVs) in the same way that good hybrid maize varieties are.
- The quality of local seed is a major issue: due to conservation challenges the germination rate is low.
- Hybrid seed is very expensive and beyond the reach of most rural poor and without the subsidy farmers cannot access
- Agro-dealers often sell seed that they want to sell and not necessarily that which farmers prefer.

It is clear from the foregoing observation from farmers that both the formal and informal seed systems have serious challenges that have significant impact on agriculture production in general and food security in particular. In essence, there is an overwhelming demand for improved varieties. This is not surprising considering the policy investment in the formal seed sector including the many promotional activities through extension and FISP. It has also been accompanied by the disdain towards local food varieties on the formal market<sup>4</sup>.

According to the farmers, improved varieties from the formal seed market are perceived to respond better to climate change than traditional ones, mainly because the latter take long to mature. In addition, improved varieties respond better to fertilisers than local varieties and where soils are degraded, as is the case in a number of areas of the country due to deforestation, improved varieties provide better yields.

However, Chivala EPA farmers complained of high prices in the formal seed market that are beyond the means of most small-scale farmers. Most of the farmers are only able to access these improved varieties under the FISP which provides a package of inputs to enable poor small-scale farmers achieve food security. FISP has had its own challenges, including skewed access to inputs resulting in deserving poor people failing to have access, and its sustainability is also in serious doubt<sup>5</sup>.

Local seeds on the other hand are easy to access and affordable. They have better taste and proven nutritional value than most improved varieties. "Not only do traditional crops provide food security to extended families, but they also lead to better nutrition and improved immune systems, both which are critical in areas with high HIV infection"<sup>6</sup> In addition it has been rightly observed that the value of traditional crops transcends food security issues. These crops form "an integral part of culture, heritage, identity and sense of community."<sup>7</sup>

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<sup>4</sup> See CEPA, 2007, 'Implementation of Farmers Rights in Malawi'. CEPA, Blantyre. See also CEPA, 2012, Farmers Rights, Sustainable Agriculture and Development in Malawi: Exploring Policy Options and Approaches'. CEPA, Blantyre.

<sup>5</sup> See Ephraim Chirwa and Andrew Doward (2013) *Agriculture Input Subsidies: The Recent Malawi Experiences* (New York, Oxford University Press) New York). See also Karl Pauw and James Thurlow (2014) *Malawi's Farm Input Subsidy Program: Where Do We Go from Here?* ([www.ifpgr.org](http://www.ifpgr.org))

<sup>6</sup> Rachael Wynberg, Jaci Van Niekerk, Rose Williams and Lawrence Mkhaphi (2012), Policy Brief: Securing Farmers' Rights and Seed Sovereignty in South Africa, (Biowatch, University of Cape Town, Environmental Evaluation Unit, p4.

<sup>7</sup> Ibid.

But conservation of traditional varieties is a major challenge, fuelled not least by the proliferation of improved varieties from the formal seed sector. Thus, although farmers in Chivala EPA pointed out a number of conservation techniques such as mixing the maize seed with soil or with ashes, they pointed out that these methods are cumbersome and given a choice they would rather go for improved maize seed on the formal seed market. In any case, farmers pointed out, that the germination rate of informal seed is not as good. These observations speak more about the lack of policy support for the informal seed sector than a lack of conservation technology to ensure that local seed has the quality attributes needed to ensure good yields. There has been very limited research into conservation and utilization of local varieties, the little that which exists is location and crop specific and inadequate to provide generalized policy options<sup>8</sup>.

The key question therefore is how to improve access to seed for poor small-scale farmers taking into account the quality, conservation and price concerns in both formal and informal seed.

### **3. Policy and legislation in Seed Regulation**

#### **3.1 The National Seed Policy 1993 and Draft National Seed Policy 2017**

The National Seed Policy 1993 acknowledges the role played by a sustainable seed industry in ensuring increased agricultural production and diversification. Government commits, “through appropriate policies and programmes, an environment conducive to the development of the seed industry.”<sup>9</sup> Among other matters the Policy makes provision for key institutions and operational linkages, variety research and development, seed production and quality control. The policy stresses the critical role played by both the public and private sector in the seed industry and highlights the need for these sectors to be prioritized. It outlines principles and practices geared at developing the local seed industry, including “public and private investment, research, training, fair competition and the provision of supporting services such as seed certification and testing.”<sup>10</sup>

One of the issues highlighted as a weakness in the National Seed Policy 1993 is the lack of definition of seed which according to the draft National Seed Policy 2017<sup>11</sup> led to the exclusion of some propagating material from the ambit of the 1993 Policy. For instance, it is not clear whether forestry, horticultural and other special seed systems fall under the ambit of seed policy. The inclusion of the definition of ‘seed’ in the draft National Seed Policy 2017 therefore seeks to clarify the scope of the material that seed policy covers. The failure of the National Seed Policy 1993 to make explicit reference to biotechnology and related issues is also highlighted as one of the major gaps.

The National Seed Policy 1993 Policy also does not make reference to farmers’ rights<sup>12</sup> or farmers seed systems. It however makes explicit reference to plant breeders’ rights. This omission has been repeated under the draft National Seed Policy 2017. However, it now has become clear based on statements made by some government officials that farmers’ rights and

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<sup>8</sup> See for example Malawi Government (2005) *Draft Report on Evaluation of Best Practices for the Conservation of Sorghum and Cowpea Landraces in the Shire Valley in Malawi* (Malawi Plant Genetic Resources Centre, Lilongwe).

<sup>9</sup> The draft National Seed Policy 2017.

<sup>10</sup> IFDC and Ministry of Agriculture and Food Security (2004), *An Assessment of the Requirements for Establishing A Seed Regulatory System in Malawi*, IFDC-Managed Project: A Market Driven Approach to Improving Smallholder Access to Agricultural Inputs in Malawi, p 8.

<sup>11</sup> The latest draft is July 2017; this is awaiting Cabinet approval for adoption.

<sup>12</sup> Of course farmers rights as we know them today only became prominent following the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture, which was adopted in 2001.

informal seed systems have no policy space and were deliberately removed from the draft National Seed Policy 2017<sup>13</sup>. This observation is strengthened when one considers the main objectives of the draft National Seed Policy 2017 as well as the key issues addressed thereunder. None of them mentions either farmers' rights or informal seed sector.

Interestingly, the draft National Seed Policy 2017 acknowledges the role of the formal and informal sectors and that the informal system is a major source of seed for the “majority of small-holder farmers.” It also recognizes that the informal sector services many farmers who cannot be reached by the formal sector, a substantial majority of the farming population.<sup>14</sup> And as observed by the farmers in Chivala, it is not easy to access seed in the formal sector because of price and other logistical hurdles. The situation is even more daunting for many crops such as potatoes, tomatoes, millet, beans, groundnuts in which the private sector has not invested due to a limited market. Commentators have similarly noted that apart from improved maize varieties and tobacco seed, it is very difficult to access seed in the formal sector. Mloza-Banda *et al* has attributed this to the fact that the production of such seeds is neglected by the formal industry.<sup>15</sup> Consequently, farmers have no choice but to source the ‘neglected seeds’ from the informal sector or from other institutions that produce such seeds.

Some of these claims and assumptions have, however, been contradicted by emerging literature to the contrary.<sup>16</sup> According to Almekinders, the assumption that the informal sector invariably produces poor quality seeds is debatable. ‘Farmers seed production is based on experimentation and experience that farmers have acquired over a long period of time.’<sup>17</sup> These farmers consciously engage in the conservation of traditional varieties by identifying seeds with positive characteristics including “hardiness, drought resistance, good storage qualities, and taste,” using seed selection, preservation and storage techniques that have been passed on time immemorial.<sup>18</sup> Local farmers have traditional knowledge and insights into a wide range of ecologically sound farming practices including natural pests and diseases control.<sup>19</sup> Although the insights from Chivala EPA provides limited data to make conclusions, it is clear there are traditional practices for conserving seed that have worked for generations. The fact that these are not widely practiced or preferred is more about government policy which has not encouraged traditional knowledge but instead has promoted so called modern agriculture methods.

Notwithstanding these concerns, the draft National Seed Policy 2017 recognizes the importance of the informal sector in the seed system and highlights the important role of this sector in promoting agro-biodiversity. The draft Policy regards the informal sector as a useful

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<sup>13</sup> This has prompted some commentators to observe that the draft Policy seems to have been written by the private sector, considering that aside from the fact that a Monsanto official sat in the drafting committee, the overwhelming perception one get from reading the draft Policy is that it promotes private sector interests. See Timothy A Wise, 2017, ‘Did Monsanto write Malawi’s Seed Policy’ in *Food Tank*, 23 August 2017.

<sup>14</sup> Section 1.1 of the draft National Seed Policy 2017.

<sup>15</sup> Mloza-Banda *et al*, Mloza-Banda, H.R., Kaudzu, G., Benesi, I. (2010). *Evaluation of the Malawi seed sector for Common Market for eastern and Southern Africa (COMESA) Harmonized Seed Regulations and Policies*

<sup>16</sup> CIAT, CRS, USAID and Care Practice Brief: Seed aid for seed security: Advice for practitioners- Understanding seed systems used by small farmers in Africa: Focus on markets.

<sup>17</sup> Conny Almekinders (2000), The importance of the informal seed sector and its relation with the legislative framework, Paper presented at GTZ-Eschborn, July 4-5, 2000, p 4.

<sup>18</sup> Rachael Wynberg, Jaci Van Niekerk, Rose Williams and Lawrence Mkhali (2012), Policy Brief: Securing Farmers’ Rights and Seed Sovereignty in South Africa, (BioWatch, University of Cape Town, Environmental Evaluation Unit, p4.

<sup>19</sup> Rachael Wynberg, Jaci Van Niekerk, Rose Williams and Lawrence Mkhali (2012), Policy Brief: Securing Farmers’ Rights and Seed Sovereignty in South Africa, (BioWatch, University of Cape Town, Environmental Evaluation Unit, p5.

source of genetic material for plant breeders. In this regard, the draft Policy observes that the “saving of traditional varieties increases diversity and also provides breeders a resource for genetic material.”<sup>20</sup> The Policy relegates an important system of seed production to a mere source of genetic material for the formal sector.

The draft National Seed Policy further downplays the positive attributes of seed produced in the informal sector which include stability, reliability, crop/genetic diversity, taste, flavour, texture and colour.<sup>21</sup> The formal seed system which the draft Policy seeks to promote has serious limitations, including limited genetic diversity, inability to address the varying needs and preferences of small farmers, incapacity to cater for the ‘varying agro-ecological conditions,’<sup>22</sup> unavailability and high costs.

The draft National Seed Policy 2017 points out some few factors as reasons why farmers resort to the informal sector for seed including the unavailability of formal seed; farmers’ inadequate understanding of the advantages of improved seeds; traditional and cultural values; and high prices associated with formal seeds. Apart from availability and price issues that the draft Policy does not even address, the blame is on poor farmers for failing to understand and take advantage of the formal seed system. The overall thrust of the draft Policy is to ignore the evidence that traditional agricultural knowledge and seed systems play a critical role in promoting food security and helping rural communities adapt to environmental change.<sup>23</sup> It has been rightly pointed out that farmers’ seed systems are a valuable component of food security and “allow for diversity and space for further evolution of plant genetic resources.”<sup>24</sup>

The draft Policy also seems to ignore the fact that some seeds produced by multinational companies are sometimes unattractive to farmers and may not “necessarily be ideal for the local agronomic conditions.”<sup>25</sup> This is supported by evidence from Chivala EPA that agro-dealers and seed companies sell seeds they want rather than what farmers prefer. The draft Policy fails to support the informal sector in harnessing the comparative advantages that seeds produced by the sector have over the formal ones.

There are clear policy choices that undermine the informal formal seed sector. According to the draft National Seed Policy 2017, the informal seed system is unreliable since it produces seeds that are unstable, of non-distinct inferior quality and often vulnerable to common pests and diseases. The draft National Seed Policy 2017 in essence questions the classification of informal seed as seed and claims these are not “genetically pure and selected seed”. The draft National Seed Policy 2017 further alleges that the informal seed system produces crops that are low yielding and are vulnerable to common pests and diseases. As a result, according to the draft Policy, informal seed sector makes a negligible contribution to food security. To

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<sup>20</sup> P3 .

<sup>21</sup> Section 1.1 of the draft National Seed Policy 2017; Almekinders; Rachael Wynberg, Jaci Van Niekerk, Rose Williams and Lawrence Mkhalihi (2012), Policy Brief: Securing Farmers’ Rights and Seed Sovereignty in South Africa, (Biowatch, University of Cape Town, Environmental Evaluation Unit, p1.

<sup>22</sup> GTZ and Centre for Genetic Resources (2000), Support for the informal seed sector in Development Cooperation: Conceptual issues, p8.

<sup>23</sup> Rachel Wynberg and Laura Pereira (2013), Whose innovation counts? Exploring the interface between the informal and formal seed development in South Africa, The Business of Social and Environmental Innovation: Graduate School of Business, Cape Town

<sup>24</sup> H.R. Mloza Banda, G Kaudzu and I Benesi (2010), Evaluation of the Malawi Seed Sector for the Common Market for Eastern and Southern Africa (COMESA) Harmonized Seed Regulations and Policies, Study Undertaken for the African Seed Trade Association (AFSTA).

<sup>25</sup> Chinsinga, p8.

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illustrate that indeed this is government policy, the Ministry of Agriculture issued a press release effectively banning farm saved seed from being displayed in seed fairs. According to the Ministry only certified seed can be displayed<sup>26</sup>. Thus farmers' seeds cannot be displayed as effectively none of them are certified.

The approach taken by the draft National Seed Policy 2017 sharply contrasts with the National Biodiversity Strategy and Action Plan II (2015 – 2025) (NBSAP) which devotes considerable attention to promoting the genetic diversity of wild and domesticated plants and animals. It recognizes the contribution agro-biodiversity makes to food security and employment. In this regard the NBSAP outlines a number of actions that need to be taken to ensure that by 2025 wild and domesticated plants and animals are maintained and safeguarded. These include promoting cultivation of indigenous plant species such as fruits and vegetables to enhance their preservation; maintaining and promoting local land races by establishing local community and provincial gene banks; and promoting farmers rights and collaborating on prioritization<sup>27</sup>. In the same vein the Ministry of Agriculture has championed the enactment of a PVP Bill to cater for the protection of formal seed systems and refused to incorporate farmers rights protection<sup>28</sup>.

It is clear from these actions that the core problem with agro-biodiversity and consequently farmers seed systems lies in its being subsumed as a source for commercialization instead of being considered as key to sustainable agriculture. There lies the difference between the draft National Seed Policy 2017 and the NBSAP II. As it happens the NBSAP II is the responsibility of the Minister responsible for natural resources who has little say over agriculture policy. Hence the Minister responsible for agriculture has continued to eschew farmers rights and farmers seed systems, despite the requirement for coordination in NBSAP II<sup>29</sup>. In particular the lack of public research funding, lack of promotion and prioritization have a very negative impact over farmers rights and farmers seed systems.

### **3.2 The Seed Act 1988 as amended in 1996**

The legislation regulating the seed sector in Malawi is the Seed Act<sup>30</sup> which provides for “the regulation and control of the production, sale, importation and exportation of seed for sowing.”<sup>31</sup> The Act also provides for the testing and certification of seed. There are provision for the establishment of seed testing stations, designation and registration of official seed testers and registration of seed producers. It criminalizes the testing of prescribed seed outside seed testing stations. The Act also provides for the licensing of seed inspectors, declaration of prescribed seed, seed certification and inspection, importation of seeds and exportation of seed.

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<sup>26</sup> Ministry of Agriculture, Irrigation and Water Development. ‘Press Release on Organization of Seed Fairs’. *The Daily Times*. 19 July 2017.

<sup>27</sup> See Actions h, I and j of Target 13, National Biodiversity Strategy and Action Plan II (2015 – 2025).

<sup>28</sup> The Plant Variety Protection Bill has been in draft since 1996. One of the contentious that contributed to the delay in its enactment was whether the bill should incorporate farmers rights provisions to cater for the protection of farmers varieties I the same way that breeders' rights are protected. Several versions of the PVP Bill with or without farmers rights are available. For a thorough review see CEPA, 2006, ‘Review of Sui Generis Plant Variety Protection Policy and Legislation’. CEPA, Blantyre.

<sup>29</sup> See Action g of Target 13, NBSAP II.

<sup>30</sup> Act No. 5 of 1988 (Cap 67:06 of the Laws of Malawi). Although Malawi does not have a plant variety legislation, the innovations in the formal seed sector can be protected under the Patents Act 1959. Informal seed cannot satisfy the need for an invention to be new, involve an inventive step and be capable of industrial application as required by the Patents Act. This is because farmers seed systems are based on incremental knowledge which is dispersed and can hardly be attributed to one inventor. See CEPA, 2006, ‘Review of Sui Generis Plant Variety Protection Policy and Legislation’. CEPA, Blantyre.

<sup>31</sup> Long title.

The office of the Controller of Seeds, established under section 3 of the Act, is charged with the responsibility of administering the Act. A number of regulations support the Seed Act. These include the Seed Regulations, 1997, the Seed (Fees and Forms) Regulations, 1997 and the Seed (Declaration of Prescribed Fees) Order.

There are a number of shortcomings in the Act including the manner it deals with both the formal and informal seed sector. First, according to a study conducted by the International Centre for Soil Fertility and Agriculture Development (IFDC), the Act restricts compulsory variety registration and certification to tobacco, hybrid maize and sunflower and makes seed certification and variety registration voluntary for other crops.<sup>32</sup> Secondly, the Act does not provide for the registration of seed importers, seed cleaners and seed sellers, the authorization of seed sellers, restrictions on the import and export on certain seed, cancellation of the registration of registered seed producers.<sup>33</sup> Thirdly, the Act does not address plant variety protection hence innovation in plant breeding cannot be protected. The IFDC Study highlighted the need for the law to make provision for plant variety protection in accordance with UPOV<sup>34</sup> and WTO and proposed a Plant Breeders' Rights Act.<sup>35</sup> Accordingly, the IFDC Study recommended the enactment of a Plant Breeder's Rights Act for Malawi<sup>36</sup>. The study also highlighted failure to make adequate provision for a Certification Scheme, failure to provide for the registration of seed sellers and failure to make provision for the funding of seed testing laboratories.<sup>37</sup>

Seed inspection also remains a major challenge. In this regard, it has been observed that the main constraints include the dispersed locations of seed multiplication sites; and rampant corruption in seed inspection exercises<sup>38</sup>. In addition, lack of financial resources has been a major challenge to ensure that government seed inspectors come to monitor and inspect seed production, packaging and marketing. As a result certification procedures of seed have often been delayed<sup>39</sup>.

The IFDC study addressed a wide range of issues in the Seed Act; it is clear however that the recommendations are skewed in favour of the formal sector. The report considers the informal seed sector as an obstacle to the development of quality seed in Malawi. It highlights failure to convince the informal sector to accept and appreciate the advantages of using good quality and genetically pure seed as one of the major challenges facing the public and private sector. It stresses the need to generate awareness and acceptance in the informal sector of the benefits of planting quality seed, while simultaneously creating a legal framework that supports the flourishing of the commercial sector.

These sentiments highlight the dominant policy space occupied by the formal seed industry.

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<sup>32</sup> IFDC report, p9.

<sup>33</sup> IFDC Report, p9.

<sup>34</sup> Malawi is not a party to UPOV; the recommendation is to use a UPOV style plant variety protection system, which is more stringent and against informal seed sector.

<sup>35</sup> IFDC and Ministry of Agriculture and Food Security (2004), An Assessment of the Requirements for Establishing A Seed Regulatory System in Malawi, IFDC-Managed Project: A Market Driven Approach to Improving Smallholder Access to Agricultural Inputs in Malawi, p

<sup>36</sup> It is worth noting that Malawi has had a draft Plant Variety Protection Bill since 1996 but this has not been finalised due to several reasons including whether it should address farmers rights.

<sup>37</sup> IFDC Report, p11.

<sup>38</sup> Blessing Chinsinga (2012). Seeds and Subsidies: *The Political Economy of Input Support Programmes in Malawi*. Future Agricultures Policy brief.

<sup>39</sup> Mloza-Banda et al

The Ministry of Agriculture is currently in the process of drafting a new Seed Bill to replace the Seed Act, 1988 as amended in 1996. The draft Seed Bill, which is being developed by government with support from development partners, is likely to reflect this policy position. Hence the hope that the enactment of a new seed law for Malawi will be beneficial to companies and smallholder farmers alike, through improved access to certified seed<sup>40</sup> is not easy to sustain.

### **3.3 Draft Seed Bill**

The Seed Bill, 2013 seeks to implement the National Seed Policy 2017 when adopted. The Bill is essentially addressing the issues raised by the IFDC Study in its critique of the Seed Act 1988 as amended in 1996. The Bill addresses various issues including variety release, certification of seeds, institutional frameworks, seed inspection and testing, registration of seed producers and sellers, offences and penalties. It creates a Seed Services Fund to support the provision of services under the Bill among other matters. To a large extent, the Bill implements the recommendations and proposals in the IFDC Study, which are overwhelmingly in favour of the private sector and hardly deals with the informal seed sector or concerns of small holder farmers.

According to the Food and Agriculture Organization of the United Nations seed legislation must clearly define 'the scope, mandate and compulsory procedures relating to the variety release and registration, field level seed multiplication, seed quality control, marketing, importation and exportation of seeds.'<sup>41</sup> Seed legislation must balance the need to protect farmers from fraudulent practices and provide a conducive environment for innovation and fair market. A fair seed market is one that creates a balance between the interests of innovators and the rights of the farmers to access affordable and good quality seeds of the varieties they require. The Seed Bill 2013 makes provision for minimum standards to regulate and control the production, processing, sale, importation, exportation and testing of seed. It also makes provision for the certification of seed and related matters. These provisions seek to protect the interests of buyers and sellers alike by fostering the production, processing importation, testing and certification of seed. However, the Bill does not explicitly provide for farmers' rights and access to affordable seed. The Bill concentrates on seed quality matters and the formal seed sector.<sup>42</sup>

## **4. Conclusions and Recommendations**

This brief overview has considered the policy and legal framework regulating the seed sector with specific focus on informal seed sector. It has been observed that the seed sector policy is heavily skewed against informal seed, essentially that which is used by small scale farmers. This has become even clearer from the draft National Seed Policy 2017 which will replace the National Seed Policy 1993. In addition, government extension programmes and messages have promoted the formal seed sector and relegated traditional varieties to mere sources of PGRF material for the formal seed sector, mainly private sector companies. Malawi does not have plant variety protection legislation; nevertheless, formal seeds are protected but farmers rights to exchange and save and reuse seed are not encouraged. Thus, farmers have to purchase these seeds annually; yet most small-scale farmers cannot afford these and have to rely on government subsidy.

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<sup>40</sup> FANPAN p.13

<sup>41</sup> Commission on Genetic Resources for Food and Agriculture (2013), Draft Guidelines for National Seed Policy Formulation, p26.

<sup>42</sup> CEPA (2013), 'Review of draft Seed Legislation 2013'. CEPA, Blantyre.

It has also been observed that there is widespread fraud in the seed sector, such that quality assurance is a major challenge, even for the formal seed market. Thus, although the Seed Act 1988 as amended in 1996 provides for certification, implementation is adversely affected by location, financial and human resources. Hence promotion of the formal seed sector is no panacea. On the other hand, the policy neglect for informal seed has denied the sector of the need to promote traditional knowledge for conserving and production of seed. Finally, the promotion of improved varieties that is the core of government policy affects the market for and therefore investment into the informal seed sector. A number of proposals can be made.

4.1 The sentiments expressed by Chivala EPA farmers suggest that small-scale farmers are hooked to formal seed because traditional knowledge does not fully address their needs. On the other hand these farmers are unable to afford improved seed due to logistics and price. ***Small-scale farmers may gain from favourable government policies that provide informal seed with requisite support for indigenous and traditional systems of conservation and production that will promote quality.*** The position taken by the NBSAP II is more favourable to sustainable agriculture than that taken by the draft National Seed Policy 2017.

4.2 It has also been noted that there is more policy emphasis on formal seed sector than is the case with regard to the informal sector; yet a majority of small-scale farmers depend on the informal sector to access seed. The Seed Act, for example, has stringent standards on certification, labelling and packaging ostensibly provided for maintenance of standards and therefore, protection of farmers but which ultimately keep out small-scale seed producers and sellers from entering the market. The lack of implementation of standards has been utilized by vendors, agro dealers to sell substandard seed. ***It is essential for the legislation to provide for exemptions or modifications specifically for small-scale subsistence farmers that may be seed producers and sellers. In addition Local markets should not erect artificial barriers that keep out the informal seed sector and subsidize private gain.***

4.3 The emphasis on formal seed is creating a market for the formal seed sector at the expense of small-scale farmers who cannot afford such seed without government support. In addition, the policy thrust is creating public taste and market that eschews traditional varieties. It is essential that Government must use its policy resources to promote products that will sustainably benefit the people of Malawi. This does not mean the public should endure substandard products, the Consumer Protection Act clearly provides the public protection from substandard products; nevertheless, the lack of clear agriculture policy on promotion of local land races or seed and absence of public awareness initiatives to promote local products stifles local innovation. ***Government should promote pro-diversity labelling and public education campaigns that attract local consumers to local products.***

4.4 A key concern is the erosion of traditional knowledge associated with PGRFA, hence conservation and utilization of farmers seed systems is in decline and overwhelmed by formal seed. The consequence is increasing food insecurity and poverty as most small scale farmers cannot afford to purchase formal seed. There is need for promoting research and collaboration between researchers, breeders and small-scale farmers. Informal cooperation exists between local farmers and public breeders. Local farmers act simultaneously as breeders, growers and primary consumers, their incentives may partly lie in sharing the

research products at no cost to them but where these are commercialised it is necessary to reflect the partnership in any commercial gains that may accrue<sup>43</sup>. There is need to change policy thrust so that local farmers are not just seen as sources of plant genetic resources but also innovators and partners. ***Policies should encourage cooperative research between farmers and public/private breeders and incentives need to be provided to encourage partnerships that are mutually beneficial. While there is evidence that public breeders work with local farmers to promote seed production there is no policy to encourage viable partnerships that promote transfer of skills and knowledge or the equitable sharing of benefits. In this regard, enactment of a Suis Generis PVP law with farmers rights protection alongside breeders' rights, including provision for collaboration access and benefit sharing, would enhance protection and development of farmers varieties.***

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<sup>43</sup> See The Crucible Group (2001) *Seeding Solutions. Volume 2. Options for National Laws Governing Control over Genetic Resources and Biological Innovations* (IDRC/IPGRI, Rome)