

MODEL SEED ACT FOR SOUTHERN AFRICA COUNTRIES



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Southern African Seed Systems Development Initiative
USAID/RCSA



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MODEL SEED ACT FOR SOUTHERN AFRICA COUNTRIES

PREAMBLE

Recognizing needs to:

- Improve agricultural productivity and crop production
- Ensure food security and facilitate food resources diversification
- Conserve natural resources through efficient utilization and prevent genetic erosion
- Seed trade is essential for both agricultural growth and seed security
- Ensure the farmer access to high quality improved seed varieties

Considering that:

- Seed is a key input in agricultural production.
- Seed has the greatest potential of increasing on-farm productivity and enhancing food security.
- Seed determines the upper limit of crop yields and the productivity of all other agricultural inputs in farming systems.

PART I GENERAL PROVISIONS AND DEFINITIONS

Article 1

This Act may be cited as a Seed Act and shall come into force the date of publishing in the Official Gazette.

Article 2

This Act provides the legal framework for the establishment of the seed system of country XX, including the provisions to ensure the quality of the seed delivered to farmers, and the growth of the seed industry.

Article 3

This act shall apply to all seeds and new plant varieties used for planting.

Article 4

For the purpose of this Act the following definitions shall apply.

- **Accreditation/ authorization/ licensing:** means the procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.

- **Breeder:** The person or legal entity who bred, or discovered and developed a variety.
- **Certification:** The process of generational control of a variety to ensure the genetic purity of said variety.
- **Certified seed:** The progeny of Breeder, Foundation, or Basic seed handled to maintain satisfactory genetic purity and identity, and which has been acceptable to the NSA.
- **DUS:** Distinctness, uniformity and stability
- **Entity:** A person or organization with legal status in the country.
- **Inspector:** A person appointed or designated as an inspector pursuant to section---
- **ISTA:** International Seed Testing Association.
- **Seed grower/producer:** A farmer growing seed under contract for a seed company.
- **Label:** Any document visibly displaying specific information in readable manner on a container, bag, etc. to facilitate seed identification or traceability.
- **MA:** Ministry of Agricultural and -----
- **Maintainer:** The person or institution responsible for the maintenance of a variety included in the national list and/or in the SADC Catalogue. The maintainer shall ensure that the variety remains true to type.
- **NARS:** National Agricultural Research System (include country name and abbreviation).
- **NSA:** National Seed Agency authority responsible for this Seed Act (include country name and abbreviation).
- **NVRC:** National Variety Release Committee is a technical committee responsible for advising in varieties release and registration.
- **Noxious weed seed:** Means any seed potentially injurious to agriculture so declared by the Minister by notice published in the Gazette to be noxious weed seed for the purposes of this Act.
- **NSC:** National Seed Council is a stakeholders forum with the responsibility of advice the government in all seed related matters; (include country name and abbreviation).
- **National Variety List:** A list of varieties that can be marketed at the national level.
- **Package:** Any container notably sack, bags, barrel, case made of a variety of materials such as cotton, paper, aluminium, and polyethylene in which seeds are packaged.

- **Pre-basic or breeder seed:** Any generation G1, G2, or G3 seed situated between parent material and basic seed. Pre-basic seed is produced directly by the breeder of the variety or his authorized agent.
- **Quality declared seed:** Seed produced by a registered smallholder farmer that conforms to the specified standards.
- **SADC:** Southern Africa Development Community
- **SADC Variety Catalogue:** Regional catalogue where are included all the varieties that can be marketed at SADC Region.
- **Seed Company:** Any person or group of persons legally established, willing, and able to produce high-quality of improved varieties under their own responsibility.
- **Seed:** All seed, plants, and parts of plants such as cuttings, roots, tubers, bulbs, which are or are intended to be used for propagation.
- **Sell:** Includes offer for sale, expose for sale, or have in possession for sale and distribution.
- **Variety:** Any plant grouping within a single botanical taxon of the lowest known classification, which grouping can be
 - Defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
 - Distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
 - Considered as a unit with regard to its suitability for being propagated unchanged.
- **VCU:** Value for cultivation and/or use.
- **Weed seed:** Any plant injurious to agriculture, which is declared so by the Minister for the purpose of the Seed Act.

PART II ADMINISTRATION/AUTHORITY AND ADVISORY BODY

Article 5

There is hereby established an authority responsible for the application of this Seed Act, to be known as “National Seed Agency” NSA (or name selected by country).

Article 6

The NSA shall be a decentralized government institution, in accordance with the government norms, with the capabilities of:

- a) entering into contracts in its own name,
- b) purchasing or acquiring any fixed or movable property, and
- c) managing its financial and human resources.

Article 7

The administrative and operational procedures of the above agency shall be fixed by Ministerial Decree.

Article 8

The Minister of Agriculture shall designate the National Seed Council, responsible for advising the Government on all matters relating to seeds.

Article 9

The National Seed Council shall be composed by proposed representatives of the following areas/sectors:

- Minister of Agriculture (MA) or his/her representative
- The head of NSA who shall act as chairperson
- A representative from the private seed industry (seed association)
- A representative from the public breeding and one from the private breeding (two breeders)
- A representative from the farmers' organization
- A representative from the agro-dealers
- A representative from the agricultural university
- A representative of an agricultural banking institution

Article 10

The functions of the NSC are to:

- (a) Advise the Minister on policies for the development of seed production, inspection, sampling, analysis, processing, and marketing;
- (b) Recommend the crops that are eligible to include in the certification scheme;
- (c) Recommend to the Minister procedures for the registration of cultivars;
- (d) Recommend to the Minister prescribed standards for seeds and procedures for the certification of seeds;
- (e) Recommend to the Minister for publication annually the list of varieties of crops grown in the country;
- (f) Propose to the Minister fees to be established under this Seed Act;
- (g) Recommend the penalties and fines under this Seed Act;
- (h) Monitor the supply of seeds for seed security in the country;
- (i) Perform such other functions as are specified under this Seed Act and as may be assigned by the Minister.

Article 11

The NSC operating procedures shall be established by the members and approved in the first convocation.

PART III VARIETY RELEASE SYSTEM

Article 12

An official list of varieties shall be established to register varieties that can be marketed in the country and in the region following the regional variety release system. The landraces and local varieties will also be registered with special provisions.

Article 13

The Ministry of Agriculture shall appoint the national variety release committees (NVRC) for different crops as an advisory group with the responsibility of reviewing the data and results of the proposed new variety and make a recommendation to release and enter in the list or withdrawn from the register.

- a) The committee shall be composed by qualified persons engaged in variety development and/or related activities,
- b) The Ministry of Agriculture shall appoint the members of the committee in a maximum number of ----- ,
- c) The Head of the NSA shall preside the NVRC,
- d) The NVRC operating procedures shall be established by the members and approved in the first convocation.

Article 14

The functions of the national variety release committee are as follows:

- a) Advise to NSA on procedures for the registration and release of plant varieties,
- b) Advise to NSA for publication of the annual list of varieties of crops grown in the country,
- c) Advise to NSA on fees for registration and maintenance of varieties in the national list, and
- d) Advise to NSA on any other technical matters requested by the Agency

Article 15

The Composition of the national variety release committee shall consist, as a minimum, of:

- a) A representative of the NARS,
- b) A representative of Agricultural Extension Services
- c) A representative of one of the Faculties of Agriculture/Crop Science,
- d) A representative of farmer organization,

- e) A representative of the agro-processing industry,
- f) A technical representative from the private seed sector, and
- g) Any other person related to the seed activity recommended by the NSC and approved by the Minister

Article 16

A new variety may enter into the national variety list when it has passed all the tests prescribed in the regulations in terms of DUS, VCU and an appropriate denomination. A new variety may also enter the national variety list, as a result of regional agreements on variety release and registration.

Article 17

Any public or private agricultural organization may conduct DUS and/or VCU testing following the guidelines established by NSA and based on the SADC technical agreement, in the regulations of this Seed Act. A maintainer of the variety will be necessary at the national level.

Article 18

The NSA shall be responsible for maintaining, updating and publishing the national variety list and for facilitating the implementation of the SADC Variety Catalogue and/or others agreed upon regionally.

Article 19

The requirements and procedures for variety testing, release and registration shall be established in the regulation of this Seed Act.

Article 20

Existing varieties released and available in the market on the date of coming into force of this Seed Act, will automatically be registered in the national variety list with the required information within one year.

PART IV REGISTRATION OF SEED IMPORTERS, EXPORTERS, PRODUCERS, DEALERS, AND LABORATORIES

Article 21

A register of seed-related entities that deal with seed breeding, production, processing, testing, marketing, selling, importing, and exporting shall be created and maintained by the NSA.

Article 22

Any person or legal entity, who imports, exports, grows, cleans, tests, and/or sells seed in commercial quantities shall be registered under this Seed Act.

Article 23

An application for registration as a seed grower/dealer/importer/exporter/laboratory shall be made on an appropriate form and shall be accompanied with a fee determined by the Minister, under the advice of the National Seed Council.

Article 24

Registration requirements for seed related entities, established in the regulations, should facilitate the growth of the national seed industry, minimizing fees and conditions for seed growers, seed companies, agro-dealers, seed importers and exporters and laboratories.

PART V SEED CERTIFICATION

Article 25

MA, through the official gazette/governmental cabinet, with the advice of NSA/ NSC shall establish a seed certification system.

MA, with the advice of NSC, shall define which crops will be eligible for certification and should be included in a regulation of this Seed Act.

Article 26

The seeds of all species and varieties under the certification system shall include the following classes:

- Pre-basic Seed
- Basic Seed
- Certified Seed (1st generation)
- Certified Seed (2nd generation)
- Standard/ commercial/quality declared seed/ approved/ gov. tested seed/ truth in labeling

Article 27

The requirements and standards for the classes of seeds shall be established in the regulations of this Seed Act, following the regional/international seed schemes.

Article 28

All seed produced under the certification system shall be subject to field inspection, and laboratory testing by the NSA or its authorized/accredited person/entity, in order to verify compliance with standards.

Post-control tests may be established to ascertain that the certification systems are operating satisfactorily and to verify the plant variety identity and purity of the seed lot.

Article 29

The NSA will be responsible for licensing/authorization/accreditation of seed entities and/or persons to perform the different activities within the seed certification system.

- a) NSA with the advice of the NSC will establish the licensing/authorization/accreditation requirements in the regulation of the Seed Act.
- b) The accredited certification system shall allow individuals, third parties, seed laboratories, and/or seed entities to inspect fields, sampling and test seeds, and /or issuance of labels subject to the regulation of this Seed Act.

Article 30

Sampling and testing of seed shall be conducted in accordance with the International Seed Testing Association (ISTA) rules.

Article 31

Certified seed that is offered for sale in any class of container should have an official label with the respective colors:

- a) Blue for certified seed
- b) White for Basic Seed
- c) White with a violet band for Pre-basic seed

Article 32

Certified seed shall be packed in containers, securely closed, and labeled with the certification label. The certification label shall state:

- Species and variety
- Lot number
- Seed class
- Certificate number
- Minimum Purity (% weight)
- Minimum Germination (% number)
- Date of test
- Net weight

- Year of production
- Warning Text/Symbol when seed is treated

Article 33

The NSA shall define in the regulation of the Seed Act, the species of plants, considered weed seeds or noxious weed seeds for each crop seed.

Article 34

The MA may authorize the production and marketing of standard class Quality Declared Seed (QDS), when advised by the NSC. Said class of seed shall have standards established in the regulations. The color of the label used for this QDS shall be green.

PART VI SEED PRODUCTION AND MARKETING

Article 35

Any legal entity willing and able to produce and market high quality seed under their own responsibility must produce seed in accordance to the standards approved in the regulations.

Article 36

Basic seed should be produced and marketed by any entity legally registered and in accordance with the regulations of this Seed Act.

Article 37

NSA shall take the necessary measures to promote the seed industry enhancement and development. These measures will be included in the regulations with the advice of the NSC.

Article 38

Only seeds of the plant varieties registered in the national list and/or in the SADC Variety Catalogue may be marketed in the country. The seed should be packaged and labeled under the requirements established by the regulations of this Seed Act.

PART VII SEED CONTROL

Article 39

- (1) The Minister may designate qualified persons to act as inspectors to inspect, withdraw samples, and analyse seed, and enforce the provisions of this Act.
- (2) Any person designated or appointed a seed inspector under sub-section (1) shall be given an official identity card as a proof of his/her appointment or designation that shall be produced on entering any place in the exercise of his/her powers under this Act.

Article 40

An Inspector may,

- a) At any reasonable time, enter any place, premises or vehicles or receptacle where he/she believes there is any seed to which this Act applies, packaged or not, take samples for the purpose of ensuring that the provisions and regulations of this Act, are being complied with.
- b) Conduct the inspection of inventory and equipment for the manufacture, storage, handling, distribution, disposal, or any other process regulated under this Act.
- c) Conduct field inspections and/or take samples of any seed found in any package or place and submit such samples to the official seed testing laboratory for testing;
- d) Conduct the inspection of records related to the manufacture, distribution, storage, handling, or disposal of seeds, plants, products, regulated under this Act.
- e) Require any person to produce for inspection or for the purpose of obtaining copies, any books, shipping bills, bills of lading, or other documents relating to any seed to which this Act applies.
- f) Investigate compliance with this Seed Act, or associated rules; or other purposes necessary to implement the regulations
- g) Enter any public or private premises during or after regular business hours without notice of inspection when a suspected violation of this Seed Act and regulations.
- h) An Inspector shall before inspection of the premises, take steps to allow the owner of any seeds to be present while an inspection under this Act is being carried out.

Article 41

The owner or person in charge of any place, premises or vehicles or receptacle described under this section shall give to an Inspector all reasonable assistance to enable the inspector to carry out his/her duties under this Act.

Article 42

An Inspector, if he/she has reasonable grounds that any of the provisions or regulations of this Act have been violated, may seize, cause to be removed or stop sale of the seeds in question.

PART VIII OFFENCES AND PENALTIES

Article 43

Any person, who contravenes or fails to comply with any of the provisions of this Act or regulations, shall be guilty of an offence.

Article 44

Any person, being the owner or person entrusted with the custody of any seed lot commits an offence if he/she:

- (a) refuses to allow the Inspector to take a sample of the seed from any premises which he is authorized under this Act to take a sample, or who otherwise delays or obstructs the Inspector; or
- (b) willfully makes false or misleading statements either verbally or in writing to the Inspector in carrying out his/her duties under this Act.

Article 45

Any person who,

- 1) Fraudulently tampers with any seed lot sample that is taken or submitted for analysis under this Act, commits an offence,
- 2) Makes a false entry in the variety list information and/or documents,
- 3) Without lawful authority alters or defaces—any certificate, or records, or labels, or other document, prescribed under this Act, shall be guilty of an offence.
- 4) Distributes any seed (plant or propagating material) in contravention of this Seed Act and regulations,

- 5) Imports and exports any plant or propagating material in contravention of this Seed Act and regulations,
- 6) Sells, for sowing, any prescribed seed under a description other than its varietal name shall be guilty of an offence.

Article 46

Any person, who contravenes a provision of this Act or its regulations commits an offence and shall be liable on conviction to a fine ranging from..... to

Article 47

Where an offence has been committed and by reason of that commission a person has suffered a direct damage or loss of his property, the court may, in addition to the penalty provided for under Article ---, order the offender to compensate the person who has suffered such loss or damage.

Article 48

Any seed that is imported, advertised and /or marketed without a label is prohibited and constitutes an offence.

Article 49

NSA may in the case of a persistent offender, order, in addition to penalties provided for under this section, the withdrawal of any permit or, certificate of registration issued to the offender under this Act.

Article 50

The NSA shall be responsible for the disposal of seed forfeited in accordance to the regulations

Article 51

Any person or legal entity that feels aggrieved by any decisions taken by NSA in the terms of this Seed Act, may appeal said decision in accordance with the appeal procedure established on the regulations of the Seed Act and to the court of law.

Article 52

All disciplinary actions taken by the Minister pursuant to this Act shall be deemed final for purposes of judicial review.

**PART IX
MISCELLANEOUS**

Article 53

The Minister may, on recommendation of the NSC, make rules and regulations as he/she may deem necessary for the enforcement of the present Seed Act.

Article 54

The NSA is authorized to assign or delegate some or all of the function given by this Seed Act to any competent designated entity and or person/s for the purpose of the Seed Act

Article 55

A revolving fund shall be established for NSA to finance the activities required to administer and enforce this Seed Act and regulations.

- (1) The NSA Fund will be financed from inspection fees, seed testing fees, certification fees, fines fees and registration fees and from the budget of the Ministry responsible for this Seed Act.
- (2) The administration of the Seed Services Fund shall be prescribed by regulations under this Seed Act.

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