Agricultural Policy Reforms in Tanzania

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1 Executive Summary

1.1. This Report delves into an examination of the agricultural regulatory framework in Tanzania, featuring the key areas as identified by AGRA (the Client) in the Terms of Reference. The underlying objective centered on the examination of the ineptness of the existing regulatory framework on the four key areas that require reform in order to boost agro-investment and trade in Tanzania. Theyare the new seed propagation, registration and access; fertilizers registration and supply; contract farming in selected crops, and marketing of agricultural commodities with a view to easing the process of securing export permits.

1.2. In order to effectively collect and interpret the information from documentary sources and field interviews, our line of enquiry was primarily based on qualitative methodology through in-depth enquiry of the relevant policies, laws, and circular on agriculture in Tanzania and in other selected countries for comparative assessment.

1.3. On contract framing we found that the existing laws are providing for contract farming. However, the contract farming arrangement provided for each crop is the same and there are no specific models from which parties can choose, depending on the type of arrangement that parties may desire for review and identification of the contract farming models. Thus, we have identified the contract models and recommend that Tanzania should adopt and incorporate into the laws the centralized, nucleus estate, multipartite, informal and intermediary models which in one way or another have been practiced in Tanzania. In the review of the Draft Contract Farming Act (Draft) obtained from the Legal Unit of the Ministry responsible for Agriculture, we identified a number of issues that need to be addressed in order to improve the draft for purposes of achieving the desired objectives. We have recommended the regulatory framework of contract farming, some technical aspects of legislative drafting as well as for the legislation of regulations on contract farming for purposes of providing guidelines to the stakeholders about how to enter and regulate contract farming.

1.4. On agricultural marketing we identified the general procedures and challenges faced by the traders in obtaining export permits. Some of these challenges are based on the institutional framework whereby the trader would require permits from institutions such as the Ministry responsible for Agriculture, the Crop Boards, Local Government Authorities, Ministry responsible for Trade, Tanzania Revenue Authority, Tanzania Bureau of Standards, Tanzania Foods and Drugs Authority and the Tanzania Atomic Energy Commission (TAEC). Most of the institutions are located in Dar es Salaam leading to delays and higher travel costs. We also found that the procedures for obtaining permits are not legislated. Based on these findings we have recommended the enactment of the law to regulate marketing, and in particular the export of agricultural commodities. We have further recommended a regulatory framework in which the Ministry should not issue permits, but rather maintain responsibility for legislating regulations based on the policies of the Government and be an appellate body for complaints from the relevant Boards. We have also recommended for the inclusion of the Local Government in the issuance of permits in order to bring services closer to the traders and the export points.

1.5. With regard to fertilizers, the study found that prior to January, 2017 the fertilizer registration regime in Tanzania was saddled with many problems. In January, 2017, the government took several measures to simplify the registration process by a) reducing the testing period for new fertilizer to one cropping season, b) removing registration fees for fertilizers, and c) dispensing with the requirement of separate registration for blends. Despite the above improvements, the challenges persist, namely: Short duration of registration certificate – maximum 2-year requirement for presentation of application for registration by a resident person or signed by a permanent resident; wide discretion to refuse registration of fertilizer even where the applicant has met all conditions, the absence of timelines within which the Minister of Agriculture can appoint members to the Appeals Board, and the absence of a stipulated duration for handling appeals from TFRA on registration issues or any other issues arising, the multiplicity of institutions with conflicting roles dealing with fertilizers etc. In view of the above findings, we recommend amendment of the law with a view to remove discretion to refuse registration where an application has satisfied all conditions, extension of validity period of certificate of registration, consolidate fertilizers related powers and inspection to one body only, that is TFRA, and or review fees charged by all the institutions, developing a specific fertilizer policy, and sharing and recognition of test results from neighboring countries if the same emanates from similar climatic and soil conditions.

1.6. With regard to Seed, we found that national regulatory mechanisms and structures for access to the Registered Public Varieties, seed certification and release and quality assurance involved multiple processes among different organs of the government. Consequently, it hinders the growth and expansion of investments in the Seed Sector. We also found that the controlling legislation and national policy on Seeds requires immediate review to conform to international and regional commitments to which Tanzania is a signatory to; such as those under the SADC Seed Harmonization Policy, EAC Protocol on UPOV, and OECD Seed Scheme. Based on the findings, we have recommended among other things, that the Plant Breeders Rights Act, 2012, the Seed Act and its attendant regulations be amended to simplify the certification procedures and to reflect and accommodate Tanzania's regional and international commitments on Seed certification and access such as those contemplated under the SADC Seed Harmonization Framework, the EAC Protocol on Sanitary Phytosanitary (SPS) Measures, 2013 and WTO Agreement on Sanitary and Phytosanitary Measures, 1994.

2 Background

2.1. This report is submitted in compliance with an Agreement for Consultancy Services that was signed on March 2, 2017 between the Alliance for a Green Revolution in Africa (AGRA) and NexLaw Advocates, who were engaged as Consultants. The Report is also submitted in line with the Inception Report dated 20 March 2017.

2.2. The Terms of of Reference clearly indicate that the Alliance for a Green Revolution in Africa (AGRA), a not-for-profit organization, is implementing five-year Micro Reforms for African Agribusiness (MIRA) projects in a number of countries, including Tanzania. The MIRA project aims at providing the Government with access to high quality local and international technical assistance for identifying, prioritizing and reforming specific agricultural regulations that currently deter or limit private investments in agribusinesses operating in smallholder agricultural value chains.

2.3. The specific priority areas for reform that have been identified by AGRA are:

First, the regulations governing authorization and access to Breeder Seed of registered public varieties by private seed companies and the quality of publicly-produced early generation seed.

Second, the regulations governing the fertilizer industry so as to ease registration of new fertilizer products.

Third, facilitation of the development, enactment and passage of legislation for contract farming; and

Fourth, regulations governing institutional set-up, arrangements and export permits to lessen the barriers to obtaining export permits.

2.4. As part of the process of implementing five-year Micro Reforms for African Agribusiness (MIRA) projects on highlighted specific priority areas, AGRA engaged NexLaw Advocates, the Consultant to support and advise the Ministry of Agriculture, Livestock and Fisheries (MALF) through the Directorate of Policy and Planning on agribusiness reforms in Tanzania on areas identified as “specific priority areas”, among them, access to Breeder Seeds; ease the registration of new fertilizer products; contract farming legislation and reform on institutional arrangements and regulations governing export permits.

2.5. Based on the above background, this report provides the general and specific objectives (purpose) of the project in terms of the scope of the assignment, methods and methodology, key findings and the implementation framework of the findings.

3 The Purpose and Scope of the Assignment

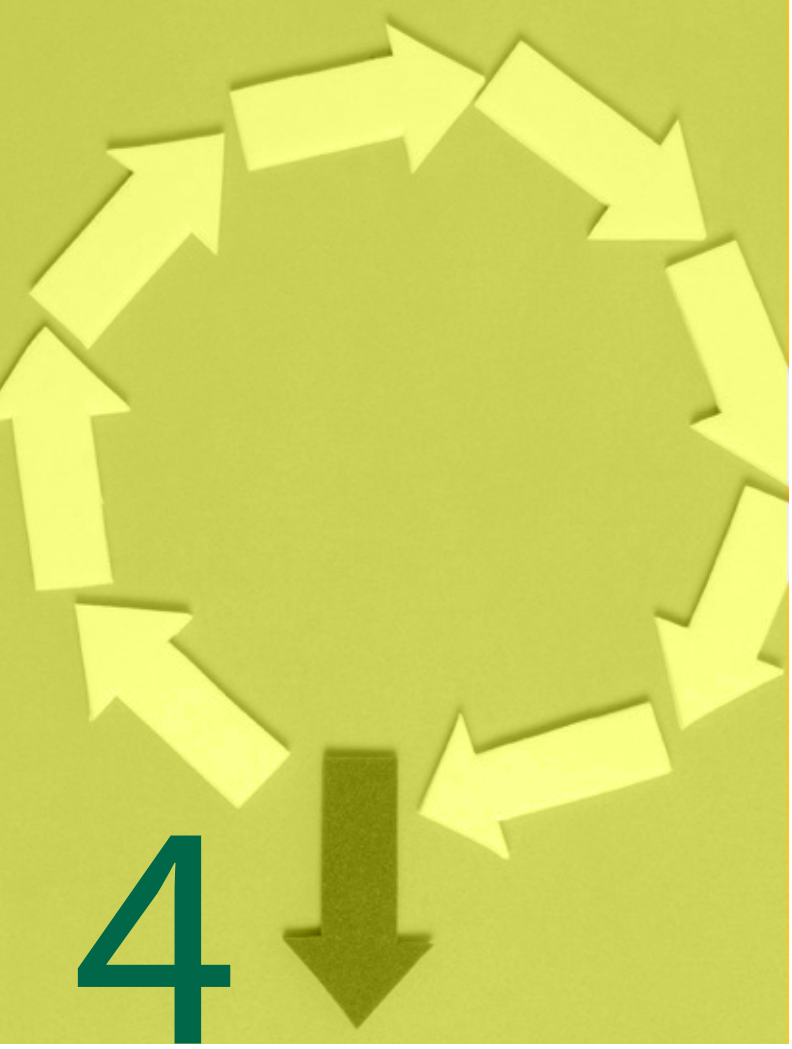
3.1. The ultimate purpose of the assignment is to achieve MIRA's objective by providing the government of Tanzania with access to high quality local technical assistance in identifying, prioritizing and reforming specific agricultural regulations that deter or limit private investments in agribusinesses operating in smallholder agricultural value chains. In addition to this Report, NexLaw Advocates, in the course of undertaking this assignment, provided support and advice to the Ministry of Agriculture, Livestock, and Fisheries (MALF) through the Directorate of Policy and Planning on agribusiness reforms in Tanzania. In particular:

(i) A review of the consistency or otherwise of the proposed regulations with existing regulations, national legislation, East Africa Community (EAC) and Southern African Development Community (SADC) requirements and other international instruments to which Tanzania is a signatory;

(ii) Reviewing the draft regulations by MALF to ensure legal consistency; and

(iii) Providing additional drafting capacity to MALF when requested.

3.2. Based on the Terms of the Agreement, the focus of this Report is on four (4) key reform areas, namely: reform on registration and access for new seed propagation, fertilizer industry regulations on registration and supply, contract farming and agricultural marketing.



4

Our Approach and Methodology in Undertaking the Assignment

4.1. From inception, our approach to this assignment focused on a close collaboration with the staff of AGRA, the Ministry of Agriculture, Livestock and Fisheries, the relevant regulatory authorities and other key stakeholders. Based on our professional experience in the field of law and the agricultural sector, we ensured that we met AGRA's expectations in the MIRA project.

4.2. The chosen methodology is reflective of the nature of the subject under investigation and the context of the assignment, that is, legal analysis. Therefore, our methodology is primarily qualitative; yet it is a hybrid of documentary reviews and field interviews. The documentary enquiry/desk research focuses on and an in-depth research of the relevant policies, laws, and circulars on agriculture in Tanzania and in other selected countries for comparative assessment. The line of enquiry earmarks the following key benchmarks:

a) The existing substantive provisions on seed, fertilizer, contract farming, and marketing of agricultural produce;
b) The statutory role and functions of various institutions and organs that have a direct or indirect bearing on the thematic areas of the assignment.
c) The applicable regulatory processes, particularly in accessing publicly registered varieties, seed and fertilizer verification and certification with a view to identifying the inhibitive nature or otherwise of the process.
d) Drawing inferences from relevant regional and international frameworks to which Tanzania is a signatory.
e) Drawing up a comparative analysis of the existing systems in other countries with similar socio-economic set-ups to Tanzania's.

4.3. To ensure that the assignment was carried out to expectation, the following specific tasks were undertaken:

Task One: After the kick-off meeting, we carried out thorough reading and evaluation of the instructions from AGRA to determine the scope of the assignment after which an Inception Report was prepared and presented to AGRA.

Task Two: Extensive legal research: we also undertook the examination of various legislations, regulations, and policy instruments on seed, fertilizer registration, contract framing, and marketing. We have also reviewed the existing regional and international legal instruments relevant to the subject under investigation. In addition, by way of comparative analysis, we have examined the structure and set-up of similar legislation in other countries, with a special focus on countries whose economies and history are similar to Tanzania.

Task Three: In close consultation with the AGRA and the Ministry of Agriculture, the Team embarked on setting up the key benchmarks for the amendments of the laws and regulations as well as the supporting rationale.

Task four: Having identified the key areas that require amendments, we prepared a tabular summary listing down the laws proposed for amendment and to fit the general and specific recommendations in each area of reform.

4.4. Key Assumptions

We embarked on undertaking this assignment with the following key assumptions:

4.4.1. That, the relevant laws and regulations on the thematic areas of the assignment will remain unchanged up to the completion of the assignment;

4.4.2. That all the statutory organs enshrined in the various laws and regulations are functional and are in full operation as per the statutory mandate spelt out in the laws, regulations and government circulars.

4.4.3. The information obtained through the web-based sources is accurate and up to date. When need arises, and subject to practicality, this information will be independently verified through interviews with key personnel in the relevant organs.

5

The Findings and Recommendations on Contract Farming Reform

5.1. Introduction:

5.1.1. The main objective of this assignment under this this reform area (contract farming) is to support the MALF by carrying out a review of best-practice models of contract farming laws and recommend the model best suited for Tanzania; obtaining current drafts of contract farming legislation from legal unit of MALF, reviewing and suggesting improvements and the inputs needed to bring the drafting exercise to a conclusion; reviewing the current MALF's draft based on findings on best practice models and in consultation and collaboration with the legal unit at MALF, finalize a comprehensive draft of contract farming legislation for Tanzania.

5.1.2. For purposes of achieving the main objectives, specific goals have been addressed:

i) In identifying the best-practice or models of contract farming laws as highlighted above, due regard is placed on ensuring that there is a balance of interest between farmers who have limited bargaining power, and those of the sponsors who may either be multiple in the specific crop or are monopolistic.

ii) In the analysis and review of the draft contract farming legislation obtained from the MALF, the focus has been on understanding if the legislation addresses the challenges such as how to accommodate a large number of smallholder farmers at a time within the contract farming models, the absence of mechanisms to ensure contracts are registered, lack of dispute resolution mechanisms, legal personality of farming groups, village councils and other issues arising from the existing provisions of the contract farming laws.

iii) In the process of concluding the drafting, our input to the draft contract farming legislation obtained from the MALF places an emphasis on ensuring that the draft law addresses and guarantees farmers' concerns, such as the provision of inputs and extension services; access to credit; introduction of appropriate technology; skills transfer; pricing structures and access to reliable markets. Other tnan the interests of the farmers, it was important to ensure that the laws also addressed issues of concern to the private sector. Among them are guarantees against political interference and bias; reliable production and shared risk; quality control; confidentiality; unfair competition and unnecessary compliance costs and the costs of production.

5.2. Statutes, documents and reports reviewed

5.2.1. In writing this report the following have been reviewed: Draft Farming Contract Act obtained from Legal Unit of the MALF; the Crop Laws (Miscellaneous Amendments) Act 2009; the Cereals and Other Produce Act, 2009; the Cashewnut Industry Act 2009; the Tobacco Industry Act 2001; the Pyrethrum Industry Act 1997; the Sisal Industry Act 1996; the Sugar Industry Act 2001; the Cotton Industry Act 2001; the Coffee Industry Act 2001; the Tea Industry Act 2001, the Punjab Contract Farming Act, 2013 and the National Agriculture Policy, Dar es Salaam, October 2013.

5.2.2. We have also read and relied on the following reports: Contract Farming: Status and Prospects for Tanzania, September 2006 commissioned by the MAFC and PADED; Contract Farming in Tanzania's Central Corridor. Lessons from Rural Livelihood Development Programme Tanzania which was commissioned by Swiss Agency For Development and Cooperation SDC; Contract Farming and Out-growers schemes, March 2015 by ActionAid International; FAO Contract Farming Guide, 2001; UNIDROIT, FAO and IFAD - Legal Guide on Contract Farming, July 2015 and the Bank of Tanzania.

5.3. Report and recommendations in line with the Terms of Reference

5.3.1. Contract Farming Models.

i) In the review and identification of the contract farming models as one of the objectives of the assignment, we note that the contract farming arrangements are provided under the Crop Laws (Miscellaneous Amendments) Act 2009 to cover crops such as Cashewnuts, Tobacco, Pyrethrum, Sisal, Sugar, Coffee, Cotton and Tea. The wording of the contract farming arrangement provided for each crop is the same and there are no specific models from which parties can choose depending on the type of arrangement that parties may desire.

ii) Contract farming is also provided under the Cereals and Other Produce Act, 2009 to cover cereal crops which are defined under that Act as "edible grains such as maize, oat, wheat, rice, millet and sorghum". However, much as the Act covers all crops falling under cereals, the wordings of the provisions covering contract farming are the same as those under Crop Laws (Miscellaneous Amendments) Act 2009. This implies that all crops are governed by the same arrangement regardless of their differences.

iii) Based on the reports and guidelines referred above, we learn that there are different model contracts such as the centralized, nucleus estate multipartite, informal and intermediary that in one way or another have been practiced in Tanzania by stakeholders. However, the laws governing contract farming have not been able to capture those models, and as such create a gap between what is in the field and what is found in the law. Based on the same readings, we recommend the following models as being suitable for Tanzania.

a) Centralized Model:

- According to studies, under the Centralized Model a company provides support to smallholder production, purchases the crop, and then processes it. Also, the buyer closely controls the quality of what is produced. Studies indicate that the sponsor may purchase from tens of thousands of small-scale farmers within a single project and that since in this model the buyers/sponsors in a way have a control on the quality, buyers who rely on stringent processing standards rely largely on centralized model.

- This model is suitable for Tanzania due to the nature of assistance which the sponsor may provide to the farmer and the sponsor's involvement in the process of production. The assistance may depend on the specific needs of the farmers on issues such as provision of quality seeds, seedlings agrochemicals, technology transfer etc. This will address some of the key challenges facing the farmers and which are mentioned above.

b) The Nucleus Estate Model

- Under the Nucleus Estate Model, the sponsor also manages a plantation in order to supplement smallholder production. The estate which is owned by the Sponsor is built close to the processing plant and provides minimum raw materials for the processing plant. In this model, the sponsor introduces to farmers the technology which is used at his own plantation or estate.

- This model is also suited to Tanzania because it is one of such models that the sponsor directs the farmers of good agricultural practices because the success of farmers who experience the challenges of technical knowhow, access to markets is directly linked to the success of the sponsor's processing factory in the sense that the raw materials obtained from the estate are not sufficient to meet the demand of the factory so the sponsor will do everything to make sure the farmer is happy to produce for the factory.

c) The Multipartite Model

- The Multipartite Model usually involves a partnership between government bodies, private companies and farmers. Multipartite contract farming may have separate organizations for financing, production management, processing and marketing. Farmers are expected to be responsible for cultivation in this model.

- The model is suitable for Tanzania for purposes of promoting Public Private Partnerships in Agriculture, in as much as studies indicate that partnerships are likely to collapse if proper coordination is not put in place.

d) The Informal Model

- The Informal Model involves small and medium enterprises making simple contracts with farmers on a seasonal basis. In this model, crops require a minimum amount of processing. Inputs from the sponsor are restricted to the provision of seeds and fertilizers, as well as technical advice on matters of grading and quality control.

- This model is also suitable for Tanzania because it covers individuals and small companies as sponsors and also puts seasonal crops in the net of contract farming.

e) The Intermediary Model

- The Intermediary Model involves sub-contracting by companies to intermediaries who have their own (informal) arrangements with farmers. Intermediaries collect produce from farmers and supply to the processing companies. In this model there is no direct link between the farmer and the company as the company/sponsor purchases crops from individuals who have their own arrangements with farmers.

- Studies indicate that the danger of this model is that the sponsor may lose control over production, farmers may be overpaid or underpaid, the technical policies and management of inputs from the sponsor may be diluted. Also production data may be distorted. Despite these challenges, we recommend this model to be adopted because it provides an alternative option for contract farming. The challenges mentioned earlier may be mitigated by specific provisions in the farming contract which in a way addresses those challenges.

iv) Generally, the identified and recommended models of contract farming provide optional arrangements to the stakeholders when they are put together under one law. The stakeholders will have a wide range of choices according to the model that best suits their specific requirements.

5.3.2. General findings and recommendations on the appropriate contract farming legislation for Tanzania.

i) The studies indicate that farmers in Tanzania lack adequate knowledge about contract farming and that they do not have skills required to understand the contract. Yet, the problems facing farmers also exists among other players in crop industries, including the supervisory or regulatory authorities. Based on those challenges, we recommend that it is appropriate to have a simple and straightforward law that is easily comprehended by the stakeholders. This is what shaped our specific comments below on the draft contract farming legislation obtained from the Legal Unit of the Ministry responsible for Agriculture.

ii) The National Agricultural Policy, 2013, points out the following problems, and in our view we recommend that the same should shape the legislation process of the farming contract law in terms of institutional framework, clarity of words, defining clear roles in the approval and registration processes etc. These challenges include; "Inadequate manpower and skills for policy formulation, analysis, monitoring, evaluation, enforcement of policies, standards, laws and regulations; Inadequate performance standards and a framework for assessing the performance of service providers; Lack of facilities for enforcing standards and regulations; Erosion of institutional culture for good governance; Inadequate mechanisms for institutional coordination among various ministries, and between central ministries and Local Government Authorities (LGAs); and Shortage of financial, human and technical capacity to generate, manage and disseminate accurate information on agriculture."

iii) The National Agricultural Policy, 2013 is clear that "the Agricultural Sector Lead Ministries which constitute the ministries responsible for Agriculture, Livestock, Fisheries, Industries, Trade and Marketing; and the Ministry responsible for Local Government shall oversee the implementation of the National Agricultural Policy at various levels of Government." This policy statement needs to be reflected in the law and in particular within the institutional framework of the contract farming law so as to share the resources in managing contracts etc. However, in so doing there has to be a clear demarcation of the roles of each ministry to avoid suffocating the industry with a range of supervisions from the Government due to micromanagement which in most cases add unnecessary costs to the Government or the industry.

iv) From the readings and the law, we note that the main purpose or advantage of contract farming is the provision of inputs (i.e. planting materials, agrochemicals, fertilizers, farm implements, packaging materials etc.) to the farmer. We also note that under the Crop Laws (Miscellaneous Amendments) Act 2009 and the Cereals and Other Produce Act, 2009, there are "shared functions" in which the stakeholders of a respective crop may agree among other things to solve the problem of input supply. The key issue is to make sure the role of stakeholders and parties to the contract are clearly indicated in the law to avoid conflict of laws, duplicity of input supply and overburdening the stakeholders including parties to the contract farming.

v) On the legal framework, we note that the contract should comply with the minimum legal requirements of the country, local practice must be taken into account and arrangements for dispute resolution must be addressed. Reading the laws highlighted above, they are silent on the dispute mechanisms available in contract farming.

5.3.3. The Draft Contract Farming Act (Draft) obtained from the Legal Unit of the Ministry responsible for Agriculture: This section provides both general and specific comments on the Draft Contract Farming Act (Draft) obtained from the Legal Unit of the Ministry responsible for Agriculture. For ease of reference the Draft is attached herewith as Appendix I.

i) The Contract Farming Act is still at draft stage and has not reached the stage of becoming a Bill. More legislative technicalities must be observed when it arrives at the Bill stage. Despite being at the draft stage it is important to note the following on the preliminary provisions of the Draft. First, as a general rule, an Act of Parliament must have a "Short Title" ending with the year in which it is passed. The short title is the name by which the legislation is known or identified. The name of the law in itself as it appears in the Draft is fine; however, the form in which it is written doesn't follow the rule in legislative drafting. The short title should read "This Act may

be cited as the Contract Farming Act, (year)" this will be in compliance with Section 20 of the Interpretation of Laws Act, Cap. 1. Secondly, as rule, an Act of Parliament must have a "Long Title". Normally this appears before the short title. The long title "sets out the purpose or scope of the Act, it indicates the central features of the Act and gives a general idea of what the Act is all about" (DT Adem: 2014). It is based on this rule, there may be no need of having a section, as the Draft does, explaining the purpose of the Act. All the wording under the marginal notes "objectives of the law" may be summarized in the long title with the wording like 'an Act to regulate contract farming with a view to….'

ii) The enacting formula will have to be inserted in the Draft before it becomes the Bill. The enacting formula which are words such as "Enacted by the Parliament of Tanzania" gives the Act its jurisdictional identity and constitutional authority (DT Adem: 2014).

iii) The Application and scope of the Act seems to cover to crop farming, livestock farming, agro-forest farming and fisheries farming. However, the content indicates that the Act will be for Crops. It has to be clear whether the Act will apply to the crops only or to other sectors as well. If it will apply to other fields, the contents of the legislation must reflect that the definition section must also reflect the inclusion of other sectors.

iv) The definition section needs further review. One of the terms to be reviewed is "contract farming". As currently defined in the Draft, the term, "contract farming" is "farming under an agreement between a farmer or producer on the one hand, and sponsor on the other hand which establishes conditions for the production and marketing of a farm product." This sounds like another type of contract farming model other than those which are provided under the Draft law since the definition does not represent all the models. Since the term contract farming carries with it all the models of contract farming, an appropriate definition would be to define the term in general terms such as "any contract farming model provided under the Act and agreed upon by the Parties."

v) In the definition section the words "means" is used if the definition is exhaustive and "includes" is used when the intention is to extend the defined terms beyond the usual meaning. The drafter is not supposed to use both words in the same definition because doing so gives rise to a logical contradiction as they cannot be used to achieve the same purpose (DT Adem: 2014). Based on this rule in legislative drafting, the definition of "sponsor' means and includes crop financiers, buyers, sellers, processors, exporters, marketing firms and any other person interested in crops under contract farming" which appears in the Draft to be reviewed.

vi) The definition of the term "input" which is central in the farming contract should not be limited to "planting material, agrochemical, fertilizer, packing material and farm implements" as provided in the Draft, the term may also include land and know how.

vii) The types of farming contracts (models) are not clearly defined, the drafting may adopt a system where the contents or elements of the contracts are clearly spelt out in the main piece of legislation and the definition section simply cites or uses "road-map clauses" to refer the reader to the relevant section for a better understanding of what each model means.

viii) The contract models provided in the Draft under the heading "Types of contract farming arrangements" together with the definition section which define all the models need to be redefined and/or redrafted for purposes of providing more clear and defined models. The models need to be provided in a simple and understandable way for all the stakeholders and be able to differentiate one model from another.

ix) Generally, the draft complies with the minimum legal requirements (essential elements) of the Law of Contract Act which is applicable in Tanzania and also incorporates a number of recommendations from studies and guidelines referred to in this assignment. However, we recommend the wording of the elements of contract in the Draft be redrafted to be clearer on issues such a price determination, dispute resolution, breach and termination of contract etc. In addition, there is need to work on the technical aspects to ensure that the Draft is expressed in a legislative language.

x) The wording of most provisions in the Draft suggests the law to be in the form of a guideline to the parties on how to prepare and enter into the contract of farming. With a few guidelines, there is a need to make adjustments for the law to be in compliance with a few guidelines. The Draft Legislation is intended to be a Principal Legislation, and as such, the language in the form of guidelines should not dominate the legislation. Thus, a separate subsidiary legislation in the form of guidelines should be legislated. Technically speaking, an "Act (the principal legislation) does not express desire, wishes or justification. It orders, authorizes, prohibits, governs or impose penalties" (D.T Adem 2014).

xi) The Contract Farming Act needs to reflect all the comments given in this section including institutional set up, whether or not there is need to register contracts given personnel limitation, the recognition of individuals and groups as entities capable of entering into contracts, as well as the role of supervision on issues of quality by the regulators. While the contract may give the same duties to the parties, a need exists to have schedules of contacts for different types of crops and contact models that are simplified to cater for the understanding and negotiation of challenges faced by the farmers.

xii) The legislation should take into account the guidelines issued by proposed by UNIDROIT, FAO and IFAD - Legal Guide on Contract Farming, July 2015. Using this guideline, much as farming contracts are supposed to abide by the general principles of the laws of contract in the country, farming contracts must be treated as "special contracts" that are "regulated by particular sets of rules including both mandatory and default rules, which may differ from those that apply generally to contracts". Typically, deviations from general contract rules relate, for example, to contract form requirements, the scope of the parties' obligations, price determination, or time limits. They may also involve consequences regarding aspects outside the contractual agreement. It is based on this proposition that the contract farming legislation will have special provisions on the legal personalities of the farming groups that are not registered and other provisions which typically deviate from the contract law applicable in Tanzania.

xiii) Based on the guideline and reasoning given by UNIDROIT, FAO and IFAD as highlighted above, the Draft should include a special provision on Capacity to Contract. Due to the large number of small farmers and other players in the agricultural sector, it becomes a challenge to enter into contract with each of the smallholder farmers. That being the case, the Draft should have a section that recognizes a group of farmers, associations, cooperatives as having the capacity to enter into binding farming contracts. The group of farmers may have an introduction letter from the village council. By recognizing farmers' groups, their bargaining power will increase and the farmers may not be subjected to administration costs that are charged by cooperatives.

xiv) The section with marginal notes "General Principles of Contract Farming" and "negotiation of contract farming arrangement" are more of guidelines which need to appear in the subsidiary legislation as guidelines. These guidelines will monitor whether or not the process of entering into agreements was fair. Also given the challenges mentioned in the Agricultural Policy of 2013, the guidelines will help the regulatory authorities to understand and enforce the Contract Farming Act which will be complemented with the simplified guidelines.

xv) **The Regulatory Framework:** A section with "marginal notes, use of standard form contract and applicable language" mentions the relevant regulatory authorities to be responsible for approving standard contract forms to be used by the parties. The role of registration of contracts is placed under and termed as designated authorities. The Draft also mentions the National Committee, the Minister responsible for Agriculture and the Local Government Authorities as regulatory institutions under the Draft. We have the following comments on the setup of institutions in the Draft.

a) The Draft is not clear on the meaning and composition of most of those institutions, neither is there reference to any law, if any, which establishes those institutions for a better understanding of them. It needs to be clear, for example, when referring to relevant regulatory authorities: for instance is it the same as designated authorities?

b) The roles placed in the institutions are not clear and may lead to a conflict of roles. For example, the "relevant regulatory authorities" in the Draft have the role of approving Standard Form Contracts while the Local Government Authorities have the role of making by-laws to facilitate a smooth implementation of farming contracts while the same Draft, gives the Minister power to make regulations for purposes of giving effect to the provisions of the law. In our opinion all the roles highlighted are legislative in nature and may lead to conflicting legislations, inconsistencies and uncertainty in the agricultural industry.

c) The terms such as "authority", "designated" and, "committee" have not been defined and are also not within the context of the legislative language. For example, the term "authority" is used to refer to "an entity, especially an expert body, with the right to reach final decisions, and usually to make policy and subsidiary legislation on major matters within a specialist area" (D.T Adem 2014).

xvi) **The recommended regulatory framework:**

a) The regulatory framework must be covered by the provisions of the law that assign primary responsibility as well as the authority to a particular body for the registration of contracts, monitoring the implementation of contracts, receiving complaints, handling appeals, collection, processing, and dissemination of information. It also includes arrangements or procedures to facilitate registration of contracts and all the above responsibilities.

b) The recommended regulatory framework must comprise the following: (i) Minister responsible for Agriculture (Minister); (ii) Board (all Boards of all crops); (iii) The District Council; and (iv) the Village Council.

c) **The Minister:** It is recommended that the role of the Minister in the Draft be that of making Regulations and handling appeals emanating from Boards. For purposes of consistency and certainty which is very key in any industry, no other body should be making Rules, guidelines or forms other than the Minister, The Section giving power to the Minister to make Regulations and guidelines has to state clearly that in making those Regulations, the Minister shall consult the relevant Crop Boards and other stakeholders.

d) The Draft provides that "the Minister may give policy directions of a general or specific nature with respect

to the implementation of contract farming". In our view, the policy if any, should be reflected in the Regulations. That is why we are proposing the Minister as the one responsible for making Regulations. Secondly, policies are not laws to be enforced, so the Minister cannot regulate the industry by using policy directions. Laws are made after consultations as such it is dangerous for one person to issue policy directions as a tool to regulate the industry, doing so may lead to uncertainty. If there is any policy change, the same must be reduced into laws after proper consultation.

e) **The Board:** It is understood that the Contract Farming law will govern or cover all crops that are currently under different Boards. This being the case, the roles of the Boards are as provided under the laws establishing them, such as ensuring quality of crops, coordinating crop production, licensing and other similar roles. However, with the recommendation of introducing the District Council and the Village Council into the Contract Farming law, their roles will be slightly amended to avoid conflict of roles. Whatever will be done by the District Council and the Village Council will be overseen or coordinated by the Boards.

f) In view of the fact that the Boards are many and are also covered in the Contract Farming law, there is a need to define the term "Board" which will cover all Boards such that whenever the functions and powers of the Board are mentioned, it means each Board has the same powers and functions on its respective crop. In addition, this definition would include the Authority which has been established under the Cereals and Other Produce Act, 2009 which has similar roles with other crops Boards.

g) **The District Council:** Unlike Boards that do not have offices all over the country, District Councils are to be found over the country and are located closer to the farmers than the Boards. Through the District Agricultural Officers, the District Council will have the role of monitoring the implementation of Contract Farming in collaboration with the Board, collect all information with regard to contract farming in the relevant district, ensure that the buyers are not violating the contract farming agreements by intruding into areas that are subject to contracts by other buyers, receiving complaints from players and from the Village Council on issues related to contract farming and forwarding the same to the Board for action. In the registration of contracts, the District Council may be responsible for registering contracts where farms cover an area that extends beyond more than one village.

h) **The Village Council:** The Village Council is closer to the farmers. This being the case, the role of the Village Council will be to register farmers groups that thereafter will be recognized as capable of entering a farming group, register contracts in the areas falling within the jurisdiction of their villages, collecting information and disseminating the same to the District Council.

i) In setting up an effective regulatory framework, the roles and responsibilities of different bodies recommended above are analyzed and defined so that, on the one hand, overlapping or conflicting roles are minimized and, on the other, there are no important issues for which there is not a responsible institution or body.

5.3.4. Specific provisions of the laws, comments and recommended changes are provided under Appendix II titled "contract farming".

6 The Findings and Recommendations on Agricultural Marketing Reform Area

6.1. Introduction

6.1.1. The main objectives of this assignment under Agricultural Marketing reform is to assess and make recommendations on the institutional arrangements and regulations governing export permits. The main purpose of the review is to simplify the process of obtaining export permits.

6.1.2. In achieving the above objectives, the specific instructions as per the terms of reference requires us to carry out a legal analysis of the Export Control Act and its regulations, as well as the Food Security Act. Having analyzed them, we are required to suggest the best approach to achieving the institutional framework for issuing export permits for agricultural commodities.

6.1.3. As a specific approach to this section, we first explored the general procedures and challenges found in the process of securing export permits and licenses of agricultural commodities. We have also identified institutions that are involved in the process. Based on the findings, we have recommended the best approach to achieving the institutional framework for issuing export permits and how to eliminate some of the procedures so as to simplify the issuance of permits. The analysis of the Export Control Act, Cap 381 is made while recommending the best institutional approach.

6.2. Documents reviewed

6.2.1. In writing this report the following have been reviewed: Export Control Act, Cap 381; The Food Security Act Cap 249 as amended by the Cereals and Other Produce Act, 2009; The Crop Laws (Miscellaneous Amendments) Act 2009; East African Community Customs Management Act, 2004; and other Acts and Regulations touching crops such as Cotton, Coffee, Sisal, Sugar Cane, Cashewnuts and Pyrethrum.

6.2.2. In addition, we read the OECD (2013), "Overview of progress and policy challenges in Tanzania", in OECD Investment Policy Reviews: Tanzania 2013, OECD Publishing and a Report on "Agricultural Trade Policies Tanzania" by Economic and Social Research Foundation, Dar Es Salaam, Tanzania; Tanzania 2016 Diagnostic Trade Integration Study: Agriculture Chapter by the World Bank (Tanzania DTIS 2016)

6.3. Findings and Recommendations

6.3.1. General procedures and challenges in obtaining export permits.

6.3.1.1. The procedure for obtaining export permit for purposes of exporting agricultural commodities starts with registration of the trader. There is a requirement of the exporter to be registered with BRELA and TRA and thereafter with the regulatory authority of the crop sought for export.

6.3.1.2. Other than registration, the exporter must have a General Export License which is obtained from the Ministry of Trade and the General Export License from the relevant Board for traditional crops such as Sisal, Coffee, Pyrethrum, Cotton and Cashewnuts. For cereals, the export license is issued from the Authority which is established under the Cereals and Other Produce Act, 2009 read together with the Food Security Act, Cap 249. Apart from the general export licenses, the crop Boards and the Authority under the Cereals and Other Produce Act, 2009 issues an export permit on each consignment

being exported by a holder of a general export license. In addition, the exporter must comply with export requirements administered by TRA which is governed by the East African Community Customs Management Act, 2004.

6.3.1.3. On the number of permits and institutions involved, something which represents a cumbersome process, the Tanzania DTIS 2016 Report indicates that "Export licenses are issued for each transaction and that when exporting any agricultural product, the trader has to show the, the Business license (issued by the local Government authority); Import/export license issued by the Ministry of Industry and Trade, Tax Clearance certificate (issued by TRA), TFDA certification of safety of food and drugs, Mark of Origin (issued by TBS), Quality Standard Certification (issued by TBS), Export Permit (for food crops issued by the Ministry of Agriculture), Phytosanitary Certificate (required for raw agricultural produce issued by the Ministry of Agriculture), and the radiation certificate".

6.3.1.4. Based on the above, it is clear that various institutions are involved in the issuance of permits before exporters attempt to export agricultural commodities. The institutions include the Ministry responsible for Agriculture, the crop Boards, Local Government Authorities, Ministry responsible for Trade, Tanzania Revenue Authority, Tanzania Bureau of Standards, Tanzania Foods and Drugs Authority and the Tanzania Atomic Energy Commission (TAEC). All these bodies are involved in one way or another in the issuance of the permits and there is no single law with a set of requirements that bind those bodies together in issuing permits.

6.3.1.5. To demonstrate that there are no clear laws on export permits, the Tanzania DTIS 2016 Report indicates that in October 2014, the Government of Tanzania allowed each region to issue export permits. However, upon finding that the process continued to be time-consuming, the Government reversed the decision thus forcing traders to travel to Dar es Salaam to obtain a permit.

6.3.1.6. The absence of rules and institutions that are close to the traders has increased transaction costs which effectively discriminate against small-scale traders, and also "makes the rules unpredictable and non- transparent, further creating opportunities to elicit illegal payments."

6.3.1.7. Apart from the above institutions, we noted that there is yet another institution which is established under the Export Control Act, Cap. 381. In this Act, the President may appoint an Export Controller who issues Export Licenses in respect of goods which have been declared by the President in the Gazette as export-controlled goods. This means if any of the crops fall in the list of goods that have been declared to be export-controlled, the transaction will be subject of the export license issued by the Controller. The Export Controller may refuse to issue the license or grant for a specific period of time. However, the Controller cannot refuse to issue a license for the goods which were in possession of the applicant before the declaration and for which the applicant had contract of sale outside Tanzania.

6.3.1.8. Studies have confirmed that the institutions named above which are responsible in one way or another in the export of crops are not that coherent and friendly.

6.3.1.9. Apart from the above hindrances, studies also indicate that "agricultural trade is also hindered across borders because of time-consuming goods clearance procedures at customs offices and periodic export bans on maize and rice which can prohibit access to larger and closer regional markets". In so doing, the farmers' incentive in the industry is reduced.

6.3.1.10. Based on the above constraints, we find recommendations from researchers for a need "to assess the costs and benefits of regulatory restrictions to trade and of produce." Similarly, as "the regulatory restrictions to trade imposed by some crop Boards as well as the imposition of export bans on maize and rice may increase the costs and uncertainty for investors, existing restrictions to trade should thus be closely analyzed and monitored to ensure that they do not undermine investment and competitiveness in the sector."

6.3.2. Approach to achieving the institutional framework for issuing export permits of agricultural commodities.

6.3.2.1. The recommended approach towards achieving institutional framework for the issuance of export permits for agricultural commodities commences with enacting the law to provide for the legal framework of marketing of agricultural commodities in Tanzania. The law must recognize institutions established under different laws and harmonize all necessary and important requirements for the export of agricultural commodities. Having a clear law will simplify the process as the rules are known and it encourages the promotion of transparency and certainty.

6.3.2.2. For purposes of simplifying the process of securing the export permit and marketing in general, the regulatory framework in the law specifically for marketing of agricultural crops comprises of the following: (i) Minister responsible for Agriculture (Minister); (ii) Board (all Boards of all crops); and (iii) The Local Government. These are the key institutions for issuing of export permits.

6.3.2.3. The Minister: It is recommended that the role of the Minister be that of making Regulations and handling appeals emanating from Boards. The Minister or the Ministry should not issue permits since they do not have offices all over the country. The crop Board, established under different laws and an Authority which is established under the Cereals and Other Produce Act, 2009 and the Food Security Act, Cap 249 have a clear mandate on the issuance of general export licenses. If the Ministry is concerned with the Boards issuing export licenses, it should provide proper guidelines in the Regulations to address all the concerns.

6.3.2.4. The Board: The laws of specific crops as amended by the Crop Laws (Miscellaneous Amendments) Act 2009, the Cereals and Other Produce Act, 2009 and the Food Security Act, Cap 249 together with their Regulations have provisions which vest the power of issuing general export licenses to the traders willing to export crops. This being the case, the roles of the Boards (which are also not located all over the country) should be limited to issuing the general export license for purposes of record and ensuring that those who engage in the export of crops are in good standing. However, the export permits for each consignment about to be shipped be issued by the Local Government which are closer to the farmers, or the export points. This will reduce the costs of exporters travelling to Dar es Salaam or specific zones. All provisions of the law and regulations providing for the Board to issue permits for specific consignments that are ready for shipment should be amended to enable the Local Government issue the permits and the Board will have the role of coordinating.

6.3.2.5. The Local Government: Unlike Boards which do not have offices all over the country, Local Governments are to be found all over the country and are closer to the farmers and traders than the Boards. Through the Regional and District Agricultural officers, the Local Government will have the role of issuing export permits in collaboration with the Board.

6.3.2.6. The other Institutions: Other institutions such as Tanzania Bureau of Standards, Tanzania Foods and Drugs Authority and the Tanzania Atomic Energy Commission (TAEC) should appear in the Act or regulations as optional processes for the exporters. The necessity to obtain their permits should only arise in situations where it is a requirement of an importing country of agricultural products that are exported from Tanzania.

6.3.2.7. Clear Provisions in the law. All the requirements for securing permits should be clearly provided for in the law, including the requirements from Tanzania Bureau of Standards, Tanzania Foods and Drugs Authority and the Tanzania Atomic Energy Commission (TAEC) which will be optional. The application forms should accommodate all information required by all institutions to avoid duplicity and the overlap of functions by the Government agencies.

6.3.2.8. Export License from the Ministry of Trade. The Ministry of Trade should not issue export licenses in as much as the export of crops is also a trade. The Ministry should issue export licenses for commodities that have no export licenses from their specific industries. To illustrate how this license is unnecessary and only adds more problems, the Tanzania DTIS 2016 Report indicates that “Local traders are also required to have a general export license. This is license is required for all exporters at approximately $300 annually. For the small trader who wishes to export goods to neighboring countries, this represents a major hurdle. Furthermore, the license is only issued by the Ministry of Trade and Industry in Dar e Salaam. Given the size of the country some traders may have to travel more than 1,200 km to to obtain the license.

Only the larger traders bother to obtain an export license the smaller traders pay a fee to the license holder and uses their license to move the goods across the border.”

6.3.3. Digitization of applications for export permit and one-stop center:

6.3.3.1. The principle behind digitalization of the application process for the permits ensures that the process of obtaining export permits is easy, convenient, efficient and cost-effective. Digitization of the process is one such avenue for efficiency.

6.3.3.2. As proposed in the above section, another key aspect is to have standard requirements for qualifying for an export permit and that all applications to multiple Government Agencies are provided under one roof and submitted digitally. Where an importing country does not place demand on a specific requirement, such a requirement must not be made compulsory to the applicant in Tanzania at the time of making applications.

6.3.4. The list of laws and regulations which will have to be amended are attached as Appendix III titled “Agricultural Marketing”

7 The Findings and Recommendations on Fertilizer Reform

7.1. Introduction:

7.1.1. The main objectives of the assignment under this particular area of reform sought to review the laws and regulations affecting the fertilizer industry for purposes of easing registration proceudres of new fertilizer products.

7.1.2. For purposes of achieving the main objectives, the consultant was expected to dothe following:

i) Carry out a legal analysis of the Fertilizers Act, 2009, the Fertilizers Regulations 2011 and any recent regulations for purposes of establishing whether the registration procedure for fertilizers, the requirement to register fertilizers' blends, application fees and the testing requirements are viable in terms of allowing investment in agribusinesses operating in smallholder agricultural value chains. Having so analyzed we recommend best route to achieving the reform.

ii) Carry out an analysis of existing regulations in EAC, SADC, and other countries across the region and in particular, establish the registration processes for fertilizers in those countries, based on the regulations in those countries and recommend an international best practice in fertilizer registration.

7.2. Statutes, documents and reports reviewed

7.2.1. In writing this report we have reviewed the Fertilizer Act, Cap. 378; The Fertilizer Regulations, 2011; The Fertilizer (Amendment) Regulations, 2017; The Fertilizer (Bulk Procurement) Regulations 2017; The Environment Management Act, Cap.119; The Standard Act, Cap 130; Weights and Measures Act, Cap 340; Fertilizers Bulk Procurement Guidelines, 2017; National Agricultural Policy, 20137.2.2. We have also read the following reports: Robert Tripp and David Gisselquist, "A Fresh Look at Agricultural Input Regulation" published in ODI Natural Resources Perspectives, Number 8, March,1996; ABT (2014), Certifying inputs: Documenting Key Constraints and Developing a Blueprint for Change; IFDC (2012), Tanzania Fertilizer Assessment; AFAP (2015), AFAP in Tanzania; Phumzile Ncube, Simon Roberts and Thando Vilakazi, "Study Of Competition In The Road Freight Sector In The SADC Region - Case Study Of Fertilizer Transport And Trading In Zambia, Tanzania And Malawi."

7.3. Findings on Fertilizers Registration

7.3.1. Reform of the fertilizer law is required: A review of the fertilizer laws unveils a number of weaknesses and challenges in the laws, specifically on the fertilizer registration process. The problematic arrears are shown below:

i) Previously, the Fertilizer Regulation, 2011 provided for three consecutive seasons of testing the product before a new fertilizer or fertilizer supplement is registered. This position discouraged fertilizer investors/importers because the period was considered to be too long. Now, through Government Notice No 50 of 2017, the testing period has been reduced to one cropping season. The Director of TFRA or a person authorized by him shall carry out laboratory and field test for one cropping season in at least two agro-ecological zones so as to determine the suitability for use of the fertilizer or fertilizer supplement.

ii) Registration fees agitate stakeholders as being substantial. Previously, fees for submitting an application for registration of fertilizer was US $50 per single application. Laboratory test and field visit per season for new fertilizer cost US $10,000 USD per season. See the 2nd Schedule to the Fertilizers Regulations, 2011. For three seasons, it used to be US $30,000. Now, vide Government No-

tice No 50 of 2017 registration fees have been abandoned, and the testing period has now been reduced from three to one season. Thus the testing fee will be US $10,000 in total. Some stakeholders still view this fee as being substantial, but the advantage is that it is restricted to one season.

iii) The law requires registration of fertilizers and blends. Each blend risks being treated separately, hence increasing the fees. Section 9(4) of the Fertilizers Act, 2019 says: "Any change of particulars of a registered fertilizer, fertilizer supplement or sterilizing plant shall be notified to the Director for registration."

iv) Strictly put, the TFRA is supposed to receive the notification of the change and proceed to register the changes without much ado. However, this section may easily be interpreted to mean that the applicant has to comply with registration formalities afresh. The latter interpretation translates into increased costs and attrition of time. We note that the above requirement is restated in regulation 4(2) of the Fertilizers Regulation, 2011 as amended by Government Notice No 50 of 2017. The latter try to clear the confusion in providing that no validation of blends is required, and there are exceptions. Regulation 4(4) provides:

"Without prejudice to sub-regulation (2), the Authority shall register a blend of registered fertilizer or fertilizer supplement without carrying out a field test, provided that; (a) in case of dry blending, there is uniformity of particle sizes and that the results of the laboratory test and soil analysis show that the blend is suitable for use and; (b) in case of wet blending, the results of the laboratory test and soil analysis show that the blend is suitable for use."

v) The requirement under Regulation 3(3) of the Fertilizers Regulation, 2011 that an application for registration of fertilizer lodged by a non-resident applicant shall not be entertained unless the application is signed by an agent who is permanently resident in Tanzania is also an unnecessary and dispensable hurdle in this age of significant advances in Information Technology. This requirement adds costs to registration in terms of agency fees payable to local resident agents. In the end, these costs will be loaded onto the consumer - the farmer.

vi) According to the law, the life span of a certificate of registration is not later than two years. This is too short a period, and may entail additional costs for renewal. It is not clear if the renewal requires fresh field testing, in which case, the testing costs will come into the picture. We recommend an extended validity period of 5 years.

vii) The requirement for too much information may cause delay of registration. Form number 1 (application for registration) requires applicants to fill a lot of information pertaining to the fertilizer to be registered. The filling of forms is time-consuming. However, the Director's power to call for additional information may be misused and further delay the registration process.

viii) The decision on whether or not to accept registration of fertilizers seems to be a discretionary matter on the part of the Director of TFRA, and this is unhealthy and poses uncertainty to prospective applicants for registration. As far as the TFRA, is concerned, they view this discretion as a tool which may assist the Director to refuse registration in cases where circumstances permit in the interest of the country/farmers. Section 9(2) of the Fertilizers Act, 2009 provides: "The Director may, after receiving an application for registration, grant registration and issue registration certificate if he is satisfied that the required conditions are met."

Our view is that this section should be amended. Once an applicant has met all the conditions for registration as stipulated in the law, the Director should, (as opposed to may) register the fertilizer. This recommendation takes into account the fact that, in the words of Tripps et al, "Regulatory systems may fall prey to bureaucratic prerogatives and may be driven by paternalistic attitudes." Admittedly, regulation 4(6) of the Fertilizers Regulation, 2011 seems to "cure" this problem by providing that "the director shall within 14 days … register the fertilizer and fertilizer supplement and issue a registration certificate … upon being satisfied that the product has passed laboratory and field tests and the applicant has paid the prescribed registration fee." Clearly there is a conflict here. in that the parent legislation (the Fertilzsers Act) clothes the Director with discretion which seems to be "taken away" by a subsidiary legislation (Fertilizers Regulation). Our submission is that it is a trite position of the law that a subsidiary legislation cannot override the parent legislation.

ix) In the event an application for registration of fertilizer is refused, the applicant may appeal to the Minister for Agriculture within 30 days. The Minister shall then appoint three members of the Appeals Board to hear and decide the appeal. Since the law does not give a time limit for the Minister to make the appointments, he could sit on the appeal indefinitely without making appointments. This silence in the law is unhealthy. We recommend that the Minister be obliged to make the appointment within a 14-day period, and the Appeals Board also be given a timeframe to hear and finalize the appeal.

Further, TFRA appears to be very much a part of the Ministry, despite the fact that it has a separate legal personality, thus members of the Appeals Board may need to be independent from the Ministry to ensure impartiality.

x) There is a gap between existing laws and regulations and their implementation. Sealing this gap is essential, so that there is a more strident enforcement of existing laws and regulations. In order to be able to do testing, inspections,

registration of fertilizers, agents, premises etc, TFRA, which is understaffed and needs more inspectors, should be enabled to carry out its mandate.

7.3.2. Lack of Specific Fertilizer Policy: Tanzania does not have a specific policy dealing with fertilizers. Fertilizer issues are generally incorporated in the National Agricultural Policy. Consequently, various issues relating to governance and roles to be played by the bodies in the subsector are not specifically and uniformly addressed.

7.3.3. Procurement through middlemen and incapable suppliers: Procurement through middlemen and incapable suppliers with no track record or experience in the fertilizer business is a burden on the industry. These middlemen cum suppliers end up failing to deliver at a time when alternative options are expensive, or end up buying from established companies within the country and who happen to have lost the tenders previously, leading to the appointment of the middlemen. Unions or government would save a lot of money by buying directly from the established companies. The solution is to encourage direct procurement through well-known and credible suppliers. A chain of middle-men suppliers, without capacity, tend to increase costs and cause delays in the delivery of fertilizers.

7.3.4. Management Fees and Transport Fees: Management fees and transport fees imposed by unions and other stakeholders are excessive and prone to abuse. These are usually factored into the final price of fertilizers. There are a lot of hidden and undeserved costs there. Review and control of these fees is crucial. There is a lot of gold-plating in this area, and all the costs are in the end dumped to the consumer, i.e. the farmer. Thando Vilakani et al argues in a study involving Tanzania that:

"High relative prices of fertilizer result not only from high costs of transportation, but from possible anti- competitive arrangements and inefficiencies along the value chain. It is important for SADC and other regional bodies to facilitate the monitoring of the levels and composition of prices continuously in order to detect patterns that emerge in the main factors which affect those prices. This should be done on an on-going basis."

7.3.5. Multiplicity of Government Institutions, laboratories, inspectors: There are multiple institutions involved during the process of testing, and clearing on importation of fertilizers. Consequently, time taken is long for the process and the costs involved fall in the retail price of the fertilizers. Institutions such as the Tanzania Fertilizer Regulatory Authority (TFRA), Tanzania Bureau of Standard (TBS), Inspectors commissioned by TBS abroad, Certification authority in the country of origin, Radiation Commission, Weight & Measure Agency, SUMATRA, Tanzania Revenue Authority (TRA), and Port Authority are involved at various stages, which results in increased costs, delay of works, lack of coordination and conflicting roles within the sector.

Government should harmonize various laws governing clearing of fertilizer and let the handling of all fertilizer issues be designated to a fully capacitated TFRA.

7.3.6. Human Resource and Structural Limitations: The number of fertilizer inspectors is inadequate. The leading fertilizer institution-TFRA is understaffed with only 16 staff at the headquarters. It has a total of 116 employees - if one includes inspectors in the region. To be able to work efficiently well, they need to reach a count of 200. In addition, TFRA has no laboratory of its own. It uses other institutions, namely: ARI Mhangali - Tanga, ARI Uyole - Mbeya, SUA Morogoro, TBS - Dar es Salaam, and TPRI Arusha. The laboratories and equipment for testing are inadequate and the human capacity to manage and utilize them effectively is too low.

Reduction of testing period for fertilizers to one cropping season as opposed to three is a welcome development.

Remove the element of discretion embedded in section 9(2) of the Act in the registration process

Oblige the Minister to make appointment of members of the Appeals Board within 14 days period counting from the date of the appeal,

Streamline and reduce involvement of institutions dealing with fertilizers

Increase the life span of a certificate of registration from “not later than two years” to five years.

7.4. Recommendations on Fertilizers Registration:

We propose a number of amendments of the law (Fertilizers Registration Act, 2009 and its regulations of 2011, and 2017) as shown below:

7.4.1.Reduction of testing period for fertilizers to one cropping season as opposed to three is a welcome development.

7.4.2. Remove the element of discretion embedded in section 9(2) of the Act in the registration process and mandate the Director of TFRA to accept applications for registration of fertilizers once all the legal conditions are met as wisely provided in the regulation 4(6) of the Regulations, 2011.

7.4.3. Oblige the Minister to make appointment of members of the Appeals Board within 14 days period counting from the date of the appeal, or have a panel readily available/appointed to sit on case to case basis and impose a timeframe for the Appeals Board to determine appeals and make a decision.

7.4.4. Abolish the restriction of having a permanent resident agent signs an application for registration of fertilizers.

The provision to the effect that an application for registration shall not be registered unless it is signed by an agent of the applicant who is permanently resident in Tanzania needs to be amended. Nonresident applicants should be able to file applications for registration without them being signed by permanent residents. TFRA can send notices abroad by DHL or email.

7.4.5. Streamline and reduce involvement of institutions dealing with fertilizers. Eg TFRA, TBS, SGS and similar bodies appear to be doing the same job yet only one would be sufficient. Further, such bodies like SUMATRA, Radiation Commission and the Weight and Measures can reconsider their fees downwards when dealing with fertilizer imports.

7.4.6. Capacitate the TFRA to do the registration and inspection quickly and efficiently.

7.4.7. Increase the life span of a certificate of registration from “not later than two years” to five years.

7.4.8. Simplify the registration process and information needed for registration.

7.4.9. Develop a specific policy for fertilizers, then the law will be tailored to achieve the broad and specific objectives stated in the policy, and not vice versa.

7.5. Conclusion

7.5.1. The Government must ensure that the fertilizer registration process is simplified and affordable to the dealers/importers. This does not mean that the Government should endorse substandard or inappropriate products.

7.5.2. The Government must endeavor to balance and steer clear between the need of traders to secure quick and affordable registration of their fertilizers, and the need of the farmers to get quality fertilizers on demand. The changes recommended above strikes that balance quite well.

7.5.3. The list of laws and regulations that will have to be amended in line with the above recommendations are attached as Appendix IV titled “Fertilizers”.

8 The Findings and Recommendations on Seed Reform/Access to Registered Public Varieties

8.1. Introduction

8.1.1. In response to the terms of reference and the objective of the assignment, the Report has assessed the policies, laws, regulations, and circular governing authorization and access to Breeder Seed of registered public varieties by private seed companies; and quality of publicly-produced early generation seed. In addition, we have examined the regional frameworks on mutual recognition of crop variety testing, registration and release systems, Seed certification and quality assurance systems.

8.1.2. For purposes of achieving the main objectives there are specific goals which have been addressed:

i) Identifying the ineptness or otherwise of the underlying regulatory systems on Seeds in Tanzania by examining the efficacy of the regulatory authorization and access processes to Breeder Seeds of public varieties by private seed companies and how these may have an impact on the Seed business and investments. Specifically, the focus is on the Seed Act of 2003 and its attendant Regulations of 2007; the Plant Breeders Rights Act, 2012, and the Government Circular on Authorization of Publicly Owned New Varieties of Plants of 2016.

ii) Examination of the quality control systems of publicly produced early generation Seed in the context of plant breeding and the registration process and access rights under the legislation governing plant breeders' rights and the government circular on access to new publicly owned Seed varieties. Specifically, an assessment of the appropriateness of the underlying framework when benchmarked against the regional frameworks such as those under SADC Seed Harmonization Scheme.

iii) Reflection on the regional commitments to which Tanzania is party to, by drawing inferences from existing obligations on sanitary and phytosanitary measures under East African Community (EAC) and the Word Trade Organization; and the existing frameworks on mutual recognition of certification of new seed varieties under OECD and SADC.

8.2. Policies, Statutes, documents and reports reviewed

8.2.1. Issues related to access to registered public varieties, seed certification, authorization and access attract interests from diverse sectors – as it touches on a very sensitive public policy issue on food security. Hence, the underlying policy coverage is undoubtedly broad. In writing this part of the report the following documents have been examined and reviewed: The National Agricultural Policy, 2013, The National Environmental Policy, 1997, The Food and Nutritional Policy, 1992, Public Private Partnership Policy, 2009, and the Agricultural Sector Development Strategy, 2001.

8.2.2. We have also examined the following laws and regulations: the Seeds Act, 2003, Plant Protection Act, 1997, Plant Breeders' Rights Act, 2012, the Environmental Management Act, 2004, the Cereals and Other Produce Act, 2009, the Public Private Partnership Act, 2010; the Government Circular on Authorization of Publicly Owned New Varieties of Plants, 2016, the Seed Regulations of 2007 [GN No. 37/2007].

8.2.3. In terms of Regional and International Policies/Guidelines on Seed Regulation to which Tanzania has assumed commitments, we examined: the SADC Seed Harmonization Policy; the Memorandum of Understanding (MoU) to establish the SADC Seed Centre (SCC), the Technical Agreements on Harmonization of Seed Regulations in the SADC Region, the EAC Protocol on Sanitary Phytosanitary (SPS) Measures 2013; the ARIPO Protocol on Protection of New Varieties of Plants, 2015; the COMESA Seed Harmonization Implementation Plan (COM-SHIP); the International Plant Protection Convention, 1997, the International Union for the Protection of New Varieties of Plants (UPOV), 1991.

8.2.4. Stakeholders in the Seed Sector: There is a broad array of stakeholders in the Seed Sector in Tanzania. These include seed propagators, seed suppliers, seed regulators, and farmers (smallholders and large scale). We identified the following stakeholders for interview purposes: The Ministry of Agriculture, Livestock and Fisheries, the Ministry of Industry, Trade and Investments; Tanzania Official Seed Certification Institute (TOSCI); Tanzania Seed Trade Association (TASTA), Agricultural Seed Agency (ASA); Tanzania Seed Cooperative Alliance, and 2Seeds Network. At the International Level: International Seed Federation, Africa Seed; International Seed Testing Association (ISTA); Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA), and UPOV Office.

8.3. The Findings:

8.3.1. We have noted that while the Government Circular on Authorization of Publicly Owned New Varieties of Plants, 2016 has opened up a new platform through which private seed companies may access publicly owned seed varieties, there are a few areas in the circular that need to be revisited. Specifically,:

i) The broad scope of reserved rights that remain with government institutions as spelt out under Article 4 of the Circular;

ii) The documentary requirement to be submitted by the applicants for authorization pre-supposes that all applicants are in the formal sector in the form of corporate commercial entities. For instance, a requirement for the applicant to submit a business license under Article 5. 4 of the Circular will have the effect of excluding agricultural community-based organizations (CBOs) that might be operating privately on a non-profit basis.

iii) The procedure for authorization is unnecessarily cumbersome as it requires the involvement of the Evaluation Committee, that is required to submit the recommendations to the Permanent Secretary of MALF for the final decision.

There are no set timelines for the Evaluation Committee to meet for deliberation of the applications or the PS to make a final decision. The Circular is not expressly clear on whether the PS is bound by the recommendations of the Committee.

iv) The composition of the Evaluation Committee is quite diverse under Article 6.2 of the Circular which may in turn make it complicated to get the required quorum for the meetings. This may result in delays and inefficiency of the process.

8.3.2. Under the Seeds Act, 2003 and the Plant Breeders Rights Act, 2012 there is a well-established national regulatory mechanism and structures for Seed production, Seed certification, variety release, Seed marketing, packaging, labeling, plant property rights, and the general institutional arrangements. However, in view of the recent developments introduced by the Government Circular on Authorization of Publicly Owned New Varieties of Plants, 2016, we have noted that several amendments ought to be introduced to the two legislations mentioned above in order to create regulatory uniformity on authorization and access to new varieties of Seed in a manner that is administratively coherent and self-supportive. These specific amendments have been mentioned below in the recommendations.

8.3.3. In terms of institutional/regulatory layout for Seed certification, authorization and access, we have noted under the Seeds Act, that the regulatory framework involves multiple layers of public institutions/organs such as:

i) **The Minister:** Is vested with the overall mandates to administer the Seed Act. Under section 11(3) the Minister may enter into contracts with competent institutions or individuals under such terms and conditions as he may determine;

ii) **The Permanent Secretary (PS) to the Ministry of Agriculture**: Is vested with the appointing authority of the members to various Committees under the Seed Act;

iii) **The Director of Agricultural Development: I**s established under Section 8(2) of the Seed Act as the head of national seed quality control service. He is also, under section 13 and 15 of the Seed Act, vested with powers to register Seeds and issue license or permits for exports, imports, sales and advertisement of eSeeds.

iv) **National Seeds Committee:** This is one of the key organs in the Seed regulation in Tanzania. Under section 5 of the Seeds Act, the Committee has a number of roles including advisory, regulatory and adjudicatory functions. The Committee operates through the sub-committees such as:

a) the National Variety Release Committee (NVRC) established under regulation 6(1) of the Seed Regulations, 2007

b) National Performance Trial Technical Committee established under regulation 6(2) of the Seed Regulations, 2007

v) **Tanzania Official Seed Certification Institute (TOSCI) i**s established under section 10 of the Seed Act as a regulatory seed quality control organ to undertake all issues of seed certification and seed quality control.

vi) **Agricultural Seed Agency (ASA):** Agricultural Seed Agency (ASA) was established under the Executive Agencies Act No 30 of 1997. The Agency was launched in June 2006 as a semi-autonomous body under the Ministry of Agriculture. The function of ASA includes producing, processing and marketing sufficient high-quality agricultural seeds for the local and export market. In addition, it is mandated to promote increased private sector participation in the seed industry development through the establishment of public-private partnerships or joint ventures in Seed production and distribution.

N.B.: For comparative purposes, we have noted that the institutional framework for Seed certification and approval of new varieties of Seeds in Uganda is more simplified. For instance, under the Seed and Plants Act of 2006 of Uganda, the overall mandate is vested in the National Seed Board which implements Seed policies through technical committees as per section 4(1) (d) of the Act. The only Committee which is mentioned in the Act is the National Variety Release Committee established under section 6(1). Otherwise matters related to seed certification are handled by the National Seed Certification Committee. While we do not have the statistics on the comparative efficiency of the two systems obtaining in Tanzania and Uganda, it is worth noting that in Uganda there is no involvement of multiple institutions.

8.3.4. Under the Plant Breeders' Rights Act, 2012, we have noted that the underlying regulatory framework is based on the standard regulatory processes and set ups inspired from the UPOV Convention, 1991. For instance, under section 6 of the Act, it provides the kind of information which the applicant will be required to submit while applying for registration of a new variety. These requirements are also reflected in the UPOV Convention.

8.3.5. Section 10 of the Plant Breeders' Rights Act, establishes the Plant Breeders Rights Advisory Committee, with the mandate to approve request for registration of New Plant Varieties. The composition of the Committee suggests that there is appropriate representation from all stakeholders in the Seed industry, ranging from growers, farmers, research institutions as well as seed associations. Therefore, it is hoped that the committee will be objective enough to address all the pertinent issues in the Seed sector.

8.3.6. In terms of statutory benchmarks for registration of new Seeds under the Act, we have noted that the applicable criteria for designation of a new variety are stated under section 14 of the Act, which provides that the variety must be New, Distinct, Uniform and Stable. Generally, these requirements are based on international standards under Article 5 to 9 of the UPOV Convention.

8.3.7. However, our analysis of Article 3 of the Government Circular of 2016 on exclusive rights and the Section 31 of the Plant Breeders' Rights Act on exception to the exclusive rights informs us that there is a need to amend the wording of Article 3 of the Circular such that it reflects the fact that the rights granted under the Plant Breeders Rights Act are not absolute. Therefore, the authorization under the Circular should also factor in a possibility of third parties using the protected varieties owned by the public institutions in the context of Section 31 of the PBR Act.

8.3.8. Apart from the local standards of seed testing, trials and release of Seed varieties as provided under the Seed Act, 2003 and its attendant regulations, Tanzania has commitments under the SADC MoU of 2010 on mutual recognition of seed variety release, certification and quality assurance systems.

8.3.9. We have noted that the aim of the SADC MoU is to create a common legal framework through which Seeds can be easily traded across the borders within the SADC membership. We have further noted that under SADC jurisprudence, even though the MoU may not have an effective legal force (as compared to the Treaty and the attendant Protocols), it is pertinent to appreciate the fact that SADC gives cognizance to these types of instruments the legal forces, albeit of subsidiary nature. The SADC MoU became operational in Tanzania effectively from January 2017 following the amendment of the Seed Regulations in 2017. The implications of the legalization of SADC MoU are listed here:

i) It makes it cheaper and convenient for new Seed varieties registered in at least two member states of SADC to gain access to the Seed market in Tanzania without being subjected to the rigorous performance trials as provided under the Seed Act.

ii) For Seed varieties that have been registered in two or more SADC countries and are in the SADC Varieties Catalogue and SADC Variety Database, there will be no need to carry out the verification and performance trials in Tanzania. Registration and release of such seed variety is done by way of notification to the National Seed Committee by the SADC Seed Committee.

iii) The easy way in which new Seed variety may enter, be verified and approved in Tanzania through the SADC route means an expanded dimension of the Seed market in Tanzania.

8.3.10. Tanzania is a member to the African Regional Intellectual Property Organization (ARIPO). In 2015, members of ARIPO adopted the Arusha Protocol on Protection of New Varieties of Plants. The Protocol, among other things, vests to ARIPO the mandate to register new varieties of plants through centralized registration system. Tanzania is yet to domesticate the legal and institutional obligations enshrined under the Protocol.

8.3.11. On the National Policy frontier: We noted that the overall policy relevant to Seed regulations is the National Agricultural Policy of 2013. The Policy covers wide range of issues related to agriculture in Tanzania. Though it is drafted in general terms, the Policy addresses a number of broader issues which, once they are demystified, may be relevant to seed regulation and market access. We have noted the following:

i) One of the specific objectives of the Policy is to strengthen the inter-sectoral coordination and linkages to increase efficiency and effectiveness. In view of various layers of organs and authorities that are involved in Seed verification and issuance of import and export permits, the inter-sectoral coordination may boost the efficiency by removing unnecessary bureaucracy in obtaining the approvals and permits.

ii) There are special provisions regarding the development of new plant varieties with a view to encouraging the participation of local and international bodies shall be facilitated to participate in breeding and Seed production. Once these policy objectives are fully explored, they could form a foundation for further review and improvement of the seed industry in Tanzania.

8.4. Recommendations

Based on the above findings, we recommend the following:

8.4.1. The wording under Article 3 of the Government Circular on Authorization of Publicly Owned New Varieties of Plants, 2016 should be amended to accommodate the spirit of the Section 31 of the Plant Breeders Rights Act of 2012 which sets exceptions to the exclusive rights granted under the same Act. Therefore, it means that even publicly-owned varieties are given qualified rights; it follows that the powers of authorization of use by private entities under the Circular may not be needed in certain cases.

8.4.2. The foregoing notwithstanding, and as acknowledged above that the provisions in the Circular have created an important breakthrough through which private seed companies may benefit from research and subsequent innovation in Seed done by the public institutions through a formal authorization process. In the same spirit, it is pertinent that the Plant Breeders Rights Act, 2012 and the Seed Act 2003 should be amended to accommodate the ideals reflected in the Circular.

8.4.3. Under the Plant Breeders' Rights Act, 2012 we recommend the following amendments immediately after section 32 of the Act. A new section should be added to reflect the fact that the government undertake to facilitate easy and coordinated access to protected varieties owned by the public institutions through the central system under the auspices of MALF. The rationale of this recommendation centers on the fact that with amendment, the ideals of the Circular will have the statutory force/status. It creates a sense of permanence and express government commitment.

8.4.4. On the regulatory framework on Seed certification and access; we are proposing that in order to simplify the process of certification, the Minister should delegate the mandate of final approval of a new seed variety to Tanzania Seeds Official Certification Institute (TOSCI). This is well within the statutory mandate of the Minister under section 11 of the Seeds Act, 2003. In this way the delays in the approval of seed certification will be minimized.

8.4.5. The Seed Act should be amended to reflect the following:

i) Under Section 2 of the Act, the definition of the designation of a Director should be clarified. The Act defines a "Director" as "a person responsible for Agricultural Development". During the interviews with responsible officers at MALF, it was clear that this position is non-existent. However, under the Act, there are so many powers that are vested in the Director. For instance, under Section 13 the Director is vested with the powers to issue import and export permits; section 15 of the Act - registration of Seed Dealers in Tanzania.

ii) Furthermore, section 13, 15, 16 and 17 of the Seed Act should be amended such that the vast powers which are vested in the Director of Agricultural Development should be exercised by a defined institution with branches all over the country. The current situation where all the powers are domiciled with one person is a recipe for perpetuating bureaucracy. Given the geographical size of Tanzania, it is ideal and appropriate to have these powers delegated to representatives of the MALF in specific regions.

8.4.6. In terms of Tanzania's obligations under the SADC MoU, we are proposing that the framework of mutual recognition of certification and approval of new Seed varieties be incorporated into the Seed Act. This recommendation is based on the fact that the legal system in Tanzania requires that for international obligations to have legal force at the municipal level there must be an implementing legislation. In as much as Tanzania is a signatory to SADC MoU, there is no implementing legislation in place. MALF should initiate the process of amending the Seeds Act to incorporate the provisions that reflect the framework of mutual recognition under SADC.

8.4.7. In terms of obligations of Tanzania under EAC Protocol on Sanitary Phytosanitary (SPS) Measures 2013, the following should be done:

i) The Seed Act and the New Plant Variety Act should be amended to incorporate the harmonization of inspection and certification procedures of plants and plants products as stated under Article 4 (2) (a) of the Protocol;
ii) National Guidelines should be developed to cater for the harmonized system of import requirements for food;
iii) Regarding smooth movement of agricultural commodities as contemplated under Article 8, a simplified system should be set and put in place to allow joint approvals of agricultural products with EAC.
iv) Finally, in the spirit of cooperation as stated under Article 11, concerted efforts should be adopted by Tanzania in harmonizing the registration, certification and approval process on agricultural products within EAC.

8.4.8. In terms of obligations of Tanzania under the WTO Agreement on Agriculture, the following should be done:

i) Tanzania should review the applicable procedures under the Seed Act so as to remove the processes which are equivalent to impediments to agri -trade as required under Article 5 (4).

ii) Tanzania should also adopt the equivalence approach contemplated under article 4 of the WTO Agreement on Sanitary and Phytosanitary Measures which among others, calls upon member states to recognize the procedures and processes of certification that are applicable to WTO in other members' states, as long as the applicant is able to demonstrate that the process used in another member state would achieve the results which are equivalent to the results that would be achieved in Tanzania.

8.4.9. In terms of obligations of Tanzania under UPOV Convention, 1991, we are recommending that Tanzania continues to closely follow the developments under the UPOV system so that, to the extent necessary, the new approaches in registration and approval of pew plant varieties may be incorporated under the Plant Breeders' Rights Act 2012, to the extent the circumstances and national interests may so demand.

8.4.10. A list of laws to be amended is attached herewith Marked Appendix V

Appendix I. Draft Contract Farming Law from the Legal Unit of Ministry of Agriculture

DRAFTING INSTRUCTIONS FOR CONTRACT FARMING LEGISLATION FOR TANZANIA
PREPARED BY
LEGAL UNIT, MINISTRY OF AGRICULTURE FOOD SECURITY AND COOPERATIVES

KEY ISSUE:	DESCRIPTION
Citation	Name of the Law: Contract Farming Act
Scope and application.	The law is proposed to apply to crop farming, livestock farming, agro-forest farming and fisheries farming.
Interpretation	Definition of words used: "contract farming" means farming under an agreement between a farmer or producer on one part and sponsor on the other part which establishes conditions for the production and marketing of a farm product; "sponsor' means and includes crop financier, buyer, sellers, processor, exporter, marketing firm and any other person who is interested in crop under contract farming; "crop" means the produce of what is planted or a part of plant which is harvested after cropping, cut, or gathered from a plant or agricultural field, or of a single kind of grain, legume or fruit gathered in a single season; "crop dealer" means any person engaged in production, marketing, storage, processing, importation or exportation of crops; "input" means planting material, agrochemical, fertilizer, packing material and farm implements; "farmer" means any person doing the activity of growing crops under contract farming; "factory" means a plant or an industrial unit used for processing crops;
	"grower" means an individual grower, association, cooperative society, company or any other entity producing crops under contract farming; "local government" means district authority established under Local Government (Districts Authorities) Act or urban authority established under the Local Government (Urban Authorities) Act. "Minister" means the Minister responsible for agriculture; "Premises" includes land, building, factory, erection, vehicle, article, or receptacle used for the purpose of growing, sorting, processing, transporting or in any activity connected with the handling of crops; "processor" means a person who converts or transforms on a commercial scale, any crop into a finished or semi-finished product; "centralized model contract farming" means the contract farming arrangement whereby the sponsor provides support to the farmer at any stage of value chain in the agricultural production including quality control with the view of enabling the sponsor to purchase the produce or product or get compensated out of the sale proceeds where the farmer sells the produce or product to a third party;
	"nucleus estate model" means contract farming arrangement whereby the sponsor also owns and manages an estate plantation and processing plant, enters into arrangement to outsources raw materials from a farmer to guarantee throughput for the plant; "multipartite model" means contract farming arrangement which involves several organizations jointly engaging with farmers in the provision of support at various stages of the value chain in the agricultural production; "simple model" means contract farming arrangement run by individual entrepreneurs or small companies who make simple, informal production contracts with farmers on a seasonal basis and the crops usually require a minimal amount of processing or packaging for resale to the retail trade or local markets; "intermediary model" means a contract farming arrangement that is formal subcontracting by companies to intermediaries and the intermediaries who have simple contract farming arrangements with farmers;
	"producer" means a person who grows crops; "intermediary model" means a contract farming arrangement that is formal subcontracting by companies to intermediaries and the intermediaries who have simple contract farming arrangements with farmers; "producer" means a person who grows crops; "trader" means a person who, as a broker, dealer, marketing company, or other purchaser, acquires any crops or other produce from a producer or any other person through purchases or otherwise, for the purpose of resale;

Objective of the Law	The objective of law is to provide for the legal framework to regulate contract farming with a view to:
	(a) promote agricultural production and guarantee a secure market for the agricultural commodities, thereby allowing farmers to earn increased revenue and sponsors to obtain a return on their investments in a in-win situation;
	(b) promote and protect relationship in the contract farming arrangement between the farmers and sponsors; and
	(c) provide farmers with access to a wide range of managerial, technical and extension services, farm credit, inputs, appropriate technology, skill transfer, reliable markets, fixed pricing structures and production services;
Compliance	• Any person undertaking any agricultural production or business through contract farming arrangement will be required to comply with the provisions of the law. • The law is to prevail in case of any conflict or inconsistencies with any other written law dealing with contract farming arrangement
General principles of contract farming.	Every person engaged in contract farming or exercising powers under the Law shall observe the principle that:
	(a) contracting is fundamentally a way of allocating risk between farmer and sponsor by protecting the parties from risks that may occur during the fulfilment of duties under the contract;
	(b) farmers and sponsors should have a common purpose when engaging in contract farming;
	(c) when they agree to enter into a contract, farmers and sponsors should adhere to this legal framework and to make their contract valid, they must comply with essential requirements as follows: (i) parties must have the legal capacity to contract and provide free and informed consent; (ii) there should be freedom or liberty of farmer and sponsor to enter into contract and to determine its contents without any external interference; (iii) in cases where a group or association enters into a contract, it must be made clear whether responsibility lies with the individual member or with the group; (iv) contract should be concluded by the acceptance of an offer that one party makes to the other; (v) contract should clearly specify the parties' responsibilities; (vi) contract must be based on specific consideration by detailing the farmer's and the sponsor's duties and responsibilities which includes the price and the method of payment; (vii) contract must be based on an object or the good or service that constitutes the obligation of farmer and sponsor such as the sale of a designated crop by the farmer and the payment by the sponsor; (viii) consideration of the contract should be lawful and not be illegal, immoral or contrary to public policy.
	(d) contract should be stated in writing by documenting the terms that the parties have agreed and should be written in clear and coherent language, using a legible typeface and words that are understandable by a both parties and in case of either of the parties is illiterate or incapable of comprehending the contents, the text of the contract should be in a form which can be understood easily or read aloud by a third party as the case may be;
	(e) there should be due attention and review of the contract between the parties as follows: (i) a sponsor should grant a farmer a sufficient period of time, depending on the case, to review the draft contract and seek legal or other advice before signing; (ii) contract should be concluded well in advance of the commencement of an agricultural season and farmers should not be pressured to agree to a contract without having first taken necessary advice; (iii) parties should have the right to cancel the contract within a designated period; and (iv) once the agreement is concluded, both parties must have copies in their custody.

	(f)) farmers and sponsor should make full disclosure of all information necessary for and be transparent in all their dealings as follows: (i) contract should clearly indicate the quantity of the commodity to be supplied by the farmer over a period of time, the quality standards required and the means of assessing these on delivery and any other conditions including the time when farmers is required deliver or the sponsor responsibility to collect the commodity as well as the responsibility for transportation; (ii) terms and conditions for the supply of production inputs to farmers clearly outlined in the contract if any; (iii) criteria for product price determination and their means of verification be specified unequivocally; and (iv) contract should establish the duration, conditions for termination and conditions governing service of notice of termination;
	(g) contract should involve transparency in price and payment method as follows, that: (i) all necessary information to ensure clarity in the performance of contractual clauses needs to be clearly understood and agreed upon between farmer and sponsor.; (ii) parties need to negotiate in order to agree on a price that is mutually satisfactory, and that both sides strictly honor the agreement; (iii) the price and payment methods should be carefully determined in the contract by specifying when and where payments to farmers shall be made; (iv) complex formulas or measurements of quantity and quality unlikely to be fully understood by either of the parties should not be used; (v) contract should clearly disclose any charge or deduction that may affect the net amount paid or delivery of the commodity to the farmer or sponsor under the terms of the contract as the case may be; (vi) contracts should provide transparency on information regarding the costs of any inputs and services to be supplied; and (vii) contract should allow provision for prices to be renegotiated in the event of unforeseen circumstances, such as substantial changes in market conditions leading to large differences in price with respect to the contracted terms;
	(h) the contract should involve transparency and fairness in clauses relating to quality of the of products by providing clear procedures and mechanisms to be followed in the management and maintenance of hygienic conditions for the agreed products; (i) the contract should stipulate clear provisions regarding supply and application of inputs as follows: (i) which party shall be responsible for supplying and applying farming inputs and where a contract envisages the supply of inputs before the start of each season all inputs should be identified and ordered well in advance of farming operations. (ii) where a farmer requires inputs for the crops under contract, the parties may consider an acceptable mechanism for supply of such inputs and deduction of the cost upon delivery of the contracted product; (iii) if provided by sponsor or any other supplier in that respect, inputs defined in the contract should meet necessary quality standards and be supplied at prices that are no higher than prevailing commercial prices and be delivered on time; (iv) where the sponsor undertakes to provide the farmer with inputs and other advances, the farmer should not use the said inputs or advances for purposes other than those for which they were intended and should follow recommended practices in order to meet specifications and maximize returns from the use of the sponsor's supplied inputs;
	(j) there should be fairness in risk sharing mechanisms and contractual flexibility in case of force majure events as follows: (i) in cases where natural disasters such as weather related or man-made disasters including war, civil conflict, strikes, which can be classified as force majeure, cause farmers or sponsor to be unable to meet the conditions of the contract, neither party should be considered liable for the non-performance and, in these circumstances, the contract should have a provision for renegotiation based on the principle of equal sharing of the costs, or benefits, arising from the event classified as force majeure; (ii) a contract should envisage the possibility of renegotiation and should specify the issue of sharing of production and market risks among parties; (iii) in cases of controllable plant or animal disease risks that may impede production from reaching the contracted agreement, distribution of the resulting financial burden should be assigned in a way that is commensurate with each party's responsibility for the event. (iv) in case of the problems caused by inadequate inputs or technical advice provided by sponsor, a farmer should not be penalized and in case of the problems caused by mismanagement, inadequate use of inputs or failure to comply with the technical advice supplied by the sponsor, the contract should not penalize the sponsor; (v) parties may agree on adopting risk management mechanisms in case of produce or product losses;

	(k) prevention of unfair practices in contractual relations should be adopted by the parties as follows: (i) a contract shall not prohibit or discourage farmers from associating with other farmers to compare contractual clauses or to address concerns or problems and not to prohibit or discourage farmers from discussing contracts with business partners or seeking professional, legal, financial or agricultural production advice related to the contract's terms, obligations, and responsibilities; (ii) sponsors shall not engage in retaliatory or discriminatory practices against farmers who exercise their rights against them such as by filing a complaint against a sponsor's perceived unlawful conduct; (iii) sponsors should not misrepresent contract terms as an inducement to a farmer to sign the agreement; (iv) sponsors should avoid situations that can lead to farmer dissatisfaction, such as discriminatory buying or unequal treatment of farmers, late payments, inefficient services, poor technical advice and unreliable transportation for commodities; (v) sponsor should not unilaterally change pre-agreed production quotas in the event of changing market conditions in an attempt to avoid purchasing contracted production; (vi) sponsor should not refuse delivery of produce when farmers are ready to supply in accordance with the contract; and (vii) to maintain trust and respect, parties should ensure transparency and fairness during the buying process.
	(l) farmers and sponsors should be loyal to each other by mutual trust and respect to avoid disagreements in the following aspects: (i) sponsor's commitment to share all necessary information to enable the farmers to produce and deliver the required commodity; (ii) sponsor's guarantee to purchase the product from farmers as scheduled.; (iii) farmer's commitment to supply the produce, meeting the quality standards specified in the contract and respect the commitment agreed in the contract to deliver items produced by using inputs and financing supplied by the sponsor exclusively to that specific sponsor, unless alternative arrangements are specified in the contract; (iv) farmer's commitment not sell all or part of their produce or product to a different sponsor by way of side-selling if such other sponsor offers a higher price unless the previous sponsor disagrees to raise the price to the higher price contract provides mechanisms for compensating the original sponsor who supplied inputs and financing to that farmer; (v) farmers or their representatives be present when the product is collected from the farm or delivered to the sponsor's premises and in the event of product rejection, sponsor should notify a farmer of the reasons and offer them the chance to inspect the rejected consignment or have it inspected by a third party;
	(m)there should be open dialogue between farmers or their representatives and sponsors in order to avoid misunderstandings and conflict and this may include the possibility of the parties to meet at the beginning of each season in order to share management program, clarifying the duties of both parties as set out in the contract and addressing any emerging problems; and
	(n) farmers and sponsor must agree in the contract on amicable dispute resolution mechanisms and where not possible, dispute resolution may include resolution through a neutral third party.
	(2) To ensure legitimacy and enforcement, all the contracts under contract farming shall be registered by the designated authority.
	(3) the designated authority shall not register a contract farming which does not comply with the principles set forth under sub-section (1).
Essential elements of contract farming	As in other contracts, contract farming arrangements should contain the following essential elements:

	(a) particulars of the parties, including the names of the farmer and sponsor, address, telephone and registration numbers; (b) description of the agricultural commodity that farmers commit to sell or the service for agricultural production that they commit to provide to the sponsor; (c) number of acres and geographic location of the land on which production shall take place; (d) the duration of the contract which may vary depending on the production cycle of the agricultural goods that are the object of the contract; (e) a clear and transparent method for price determination indicating when the sponsor shall remit payment to farmer as well as the acceptable method of payment; (f)) a clear description of quantity and quality standards including procedures for quality control by an independent third-party expert to be appointed in that respect; (g) provisions regarding a party who is responsible for the supply of production inputs and a list of agreed inputs to be supplied; (h) risk sharing mechanism in case of the produce or product losses caused by force majeure events; (i) commodity delivery logistics which may include delivery schedule, place of delivery, a responsible party for arranging transportation and payment of related costs; (j) factors which may lead to termination of the contract; (k) a mechanism for disputes settlement; and (l) signification of commitment by the parties including date, place and witnesses thereof.
Negotiation of contract farming arrangement.	• No person shall enter into contract farming unless the same is negotiated to ensure fairness and consensus between the parties. • Where contract farming arrangement involves a party who is incapable of understanding technical and legal aspect of the subject matter, such negotiation may involve a third party appointed to that effect to represent the interest of such party. • Negotiation of contract farming arrangements between the parties shall consider principles and essential elements as provided for in the law.
Use of standard form contract and applicable language	• Parties entering into contract farming arrangements shall use a standard form contract as approved by relevant regulatory authorities from time to time • The language of contract farming shall well understood by both parties
Types of contract farming arrangements	The following are types of contract farming arrangements to be recognized under the Law: (a) centralized model contract farming; (b) nucleus estate model contract farming; (c) multipartite model contract farming; (d) simple model contract farming; and(e) intermediary model contract farming.
	Parties entering into contract farming shall be required to clearly describe in their contract the type of the contract farming arrangement entered between them.
Preconditions for contract farming arrangements	No contract farming venture shall be initiated unless the following basic preconditions are met: (a) the sponsor must have identified market for the planned production which can be supplied with the produce and product profitably on a long-term basis; (b) there must be a proof of potential returns to the farmer demonstrated on the basis of realistic yield estimates, that are more attractive than returns from alternative activities; (c) the level of risk involved must be acceptable to the farmer; (d) the physical environment must be suitable for the agricultural production; and (e) availability of essential farming support services including extension services.
Recovery of loans and advances given to the farmer	No sponsor shall provide loans or advances to the farmer with a view to recover the said loans or advances by sale of his land in case of the default by the said farmer.\
Registration of contract	The parties to the contract farming shall, within a specified time, submit a duly signed and witnessed contract to the relevant regulatory authority for in for registration. In approval of the contract farming, the designated authority shall among others verify
	(a) whether negotiation has been conducted fairly;
	(b) whether the contract complies with the provisions of this Act; (c) supporting documents with the contracts;(d) any other information regarding legal status of the parties and enforceability of the contract which the authority thinks fit.
	(2) The designated Authority shall evaluate the application for registration submitted before it and after evaluation, shall register the contract within time limit stipulated in the relevant law.
	(3) The designated authority shall keep or cause to be kept and maintained a register for all contracts for farming and other relevant particulars.

	(4) The register kept or maintained under subsection (4) shall be confidential and shall be accessible to the public upon approval by the parties and payment of prescribed fees.
Monitoring of contracts	The designated authority shall monitor the implementation of the contract farming enter by the parties.
Dispute settlements	• Any dispute arising out of the interpretation and implementation of a farming contract between the parties, will at the first step be solved amicably by the parties themselves through consultation and negotiation. • Where the parties fail to amicably resolve their dispute, either of the parties may submit a dispute to the relevant designated authority for intervention. • Where the parties fail to amicably resolve their dispute through intervention by relevant designated authority, such dispute shall be referred to the formal dispute resolution forums including arbitration and court of law.
No facilitation without contract for farming	Except where such a contract has been approved by the relevant designated authority a person who has entered into contract farming arrangements with a farmer shall not facilitate the farmer in any manner contrary to the law.
Administrative agency.	Minister for Agriculture National Advisory Committee (to be constituted by all key stakeholders from public and private sectors), Regulatory/Crop Bodies Village Councils (extension, Land Officer)
	Roles of Minister: The Minister may give policy directions of a general or specific nature in respect to the implementation of contract farming.
	National Committees: Advising the Ministry on the policy and legal issues pertaining to contract farming, proposing best way to improve relationship between key actors in the contract farming arrangement,
	Role of LGAs: Roles of Crop Board/Designated Authorities: To regulate relevant industry (registering farmers, issuance of permits, licenses, overseeing production and marketing of crops, providing crop standard, publishing indicative prices, supervise negotiations on contract farming, registering contract farming, mediate between the parties in case of disputes, etc) • may make by-laws to facilitate smooth implementation of the contract farming arrangements in their respective jurisdictions. • provisions of extension service or other agricultural services to the farmers in the contract farming arrangement; • creating awareness for the farmers on the importance of contract farming, negotiation skills and compliance; • creating an enabling environment for private sector participation in the agricultural sector.
Offence and penalty	Criminal Liability for violating the law
Regulations	Power of the Minister to make regulations for the purpose of giving effect to the provisions of the law.
Proposed	Amendment It is proposed to amend the provisions of all Crop laws providing for contract farming.

Appendix II. List of laws to be amended - Farming Contract

NO.	LEGISLATION	CURRENT POSITION	PROPOSED AMENDMENT AND REASON FOR THE PROPOSITION.
1 (a)	The Cereals and Other Produce Act, 2009	Section 2 defines the term contract farming as "farming under the agreement between growers, farmers or producers on one part and financiers such as buyers, sellers, processors or bankers on the other part"	The definition is narrow in the sense that it represents one model of contract farming (simple model). With a specific law on contract farming, the definition will have to be deleted and the words appearing in the definition should be rephrased and appear in the Objective Part of the Farming Contract law such as " An Act to regulate the relationship between growers, farmers, financiers, processors and other stakeholders in the farming value chain.." The definition which replaces what was covered in the definition of contract farming will have to be limited to models of contract farming and that will appear in the specific piece of legislation on Contract Farming
(b)		Section 2 defines the term input " includes planting material, agro chemical, fertilizer, farm implement and packaging material"	A list of inputs provided in the definition is not comprehensive taking into account that under contract farming a farmer may benefit from more supplies from other parties than what is in the list. The definition in the specific farming contract law should cover other supplies as will be agreed between the farmer and the other party be it a financier, processor etc.
(c)		Section 16 provides for an option by the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 16	The section will have to be repealed under this law as there will be a specific and general law on contract farming providing on the same things but with more clarity and a few approval requirements which are cumbersome and are not easily fulfilled.
(d)		Section 17 requires a farmer to submit a contract to the authority for perusal and registration.	The section will be moved to the specific contract farming law but it is advised to have the contract registered by the buyer or financier to avoid overburdening a farmer who may not be able to meet the cost of travel to the registration point etc.
2 (a)	The Cashewnut Industry Act, 2009	Section 2 defines the term "contract farming" in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above
(b)		Section 14 provides for an option by the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 14	The proposed amendment to the section and reasons for amendments are the same as under item 1 (c) above
3	The Tobacco Industry Act, 2001 as amended by Part VI of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 57 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term " contract farming " in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above

		Section 7A as inserted by Section 61 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option of the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 7A	The proposed amendment to the section and reasons for amendments are the same as under item 2 (b) above
4	The Pyrethrum Industry Act 1997 as amended by Part VII of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 76 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term "contract farming" in the same way as provided in item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above
		Section 24 as inserted by Section 86 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option by the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 24	The proposed amendment to the section and reasons for amendments are the same as under item 2 (b) above
5 (a)	The Sisal Industry Act; as amended by Part IV of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 31 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term " contract farming" in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above
(b)		Section 19 A as inserted by Section 40 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option of the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 19A	The proposed amendment to the section and reasons for amendments are the same as under item 1 (c) above
6	The Sugar Industry Act, 2001 as amended by Part VIII of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 88 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term " contract farming" in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above

		Section 37 as inserted by Section 99 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option of the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 37	The proposed amendment to the section and reasons for amendments are the same as under item 1 (c) above
7	The Cotton Industry Act,2001 as amended by Part V of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 43 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term " contract farming" in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above
		Section 14A as inserted by Section 48 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option of the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 14A	The proposed amendment to the section and reasons for amendments are the same as under item 2 (b) above
8	The Coffee Industry Act, 2001 as amended by Part III of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 18 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term "contract farming" in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above
		Section 34A as inserted by Section 26 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option by the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 34A	The proposed amendment to the section and reasons for amendments are the same as under item 1 (c) above
9 (a)	The Tea Industry Act, 2001 as amended by Part II of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 2 as amended by Section 5 of the Crop Laws (Miscellaneous Amendments) Act 2009 define the term "contract farming" in the same way as provided on item 1(a) above	The proposed amendment to the section and reasons for amendments are the same as under item 1 (a) above

(b)		Section 25 as inserted by Section 12 of the Crop Laws (Miscellaneous Amendments) Act 2009 provides for an option by the farmer entering into a farming contract with the financier and other parties, the minimum contents of the farming contract, the need to have the contract approved by the authority and the penalties for not complying with section 25	The proposed amendment to the section and reasons for amendments are the same as under item 2 (b) above
10	The Cooperative Societies Act, 2003	Section 53 requires a registered society of which one of its objectives is the disposal of any article which is the produce of agriculture to provide in its by-laws that every member who produces any such articles has entered into an implied contract to dispose of the whole or any specified amount, proportion or description thereof to or through the society. Selling agricultural products to any other person including to those who have signed a contract under contract farming models is illegal. It is mandatory for the member of the society to disclose if he has entered into any contract with any other person.	The law be amended to recognize contract farming under the new law, secondly under the new law cooperatives be recognized as potential parties who may sign an agreement on behalf of the members
11	The Cereals & Other Produce Regulations, 2011	The Regulations are silent on Contract Farming except Regulation 17 (3) which allows parties to the contract farming to be at liberty to negotiate prices above the initial price (minimum price) set by the Board after consultation with the stakeholders.	Regulation 17(3) will need to be deleted as parties that are willing to enter into the contract farming will have a mechanism for crop price setting in the Contract Farming Act and Regulations. A separate Subsidiary legislation (Contract Farming (General) Regulations, 2017 will be drafted to supplement the Contract Farming Act, 2017 which will be prepared. Unlike the Principal legislation that makes general provisions, institutional set up on contract farming, the Regulations which covers all crops, will provide guidelines on how to enter into contract farming for purposes of having a fair process (guidelines to negotiations), will have the forms of contract models, procedures of registering contracts, guidelines on dispute resolution mechanisms price setting etc. The Regulations will also provide guidelines on how institutions set up in the main Act will discharge overlapping functions without duplicity and conflict. The guidelines will be in a simplified form and written in both English and Kiswahili.
12	Pyrethrum Industry Rules, 2014	Part VI of the Regulations, Rule 40 to 46 provide for the option of the parties to enter into the farming contract, the contents of the agreement, restrictions, the need for registration and dispute settlement mechanism	This part needs to be deleted and its provisions reflected in the new Rules as proposed under item 11 above

13	The Tea Regulations, 2010	Part VI, Regulation 40 to 47 provides for the farming contract that is an option to enter into a farming agreement, sale agreements, obligations of the buyer in the sale agreements, the contents of the contract farming, registration requirements and effect of non-registration.	The same as above
14	The Cotton Regulations, 2011	Part VI of the Regulations provide specifically for contact farming. Regulation 31 to 36 provide for the restrictions on contract farming, registration of contracts, dispute settlement mechanism and the need for the financiers to keep records	This part will be deleted as all matters of contract farming will be reflected in the Contact Farming Act and Regulations as proposed above. The Regulations will be more detailed and simpler than the current regulations on Contract Farming
15	The Sisal Industry Regulations, 2011	Part VI of the Regulations is on contract farming. R. 30 provides the contents of contract farming, R. 31 Registration of Contract, R. 33 dispute settlement mechanism and 34 review of the standard form contract	The same as above
16 (a)	The Coffee Industry Regulations, 2013	Regulation 3 defines contract farming in line with the Coffee Act, Regulation 59 provides for the option of parties entering into contract farming in a prescribed form on and Regulation 59 provides for dispute settlement mechanisms in line with the clause in the contract farming.	All the Regulations will have to be deleted and incorporated in the specific regulations on contract farming as suggested above.
17	The Cashewnut Industry Regulations, 2010	Part IV of the Regulations, Rule 20 to 25 provide for the option of the parties to enter into the farming contract, the contents of the agreement, restrictions, the need for registration and dispute settlement	The same as above

Appendix III. List of laws to be amended - Agricultural Marketing

NO.	LEGISLATION	CURRENT POSITION	PROPOSED AMENDMENT AND REASON FOR THE PROPOSITION.
1	The Cereals and Other Produce Act, 2009 read together with the Food Security Act, Cap 249	Section 6 (d) of the Act, one of the functions of the Board is to facilitate Marketing of crops. Apart from the Board there is an Authority which under section 4 (d) of the Food Security Act, Cap 249 licenses persons engaged in the marketing of cereals and under 4 (h) issues import and export permits of cereals and other produce.	The first overall recommendation as per the main report is to have a specific law in the marketing of crops. This being the case, this law needs to be amended by that specific law so as to harmonize marketing in line with our recommendations in the main report. The institutional set up will be stipulated in this law as per our recommendations.
2	The Cashewnut Industry Act, 2009	The Board has powers to issue export licenses under section 15 and regulate marketing as a whole.	The specific law on Marketing of all Crops to amend this law by repealing all those sections but vesting the Board with the role of issuing a general export license and coordinate other permits issued by other institutions named in the specific law on each consignment. It has to be clear that it is the Minister who should be making Regulations as he is in a better position to coordinate with other ministries and Government agencies to avoid issuing conflicting regulations in the agricultural industry
3	The Tobacco Industry Act, 2001 as amended by Part VI of the Crop Laws (Miscellaneous Amendments) Act 2009	Part IV. It is the Board that issues licenses including export licenses and has the power to suspend licenses and permits, save that under Section 43, it is the minister who makes the rules regulation.	Same as above
4	The Pyrethrum Industry Act 1997 as amended by Part VII of the Crop Laws (Miscellaneous Amendments) Act 2009	There is no specific provision on how marketing is to be carried on. However, section 21 empowers the Tanzania Pyrethrum Board to make rules on matters among other things regulating the production, marketing and processing of pyrethrum, prescribing the form of any permit, export or exemption. Also, section 5 as amended by section 78 of the Crop Laws (Miscellaneous Amendments) Act 2009 vests in the Board the regulatory function of issuing licenses to persons engaged in the production, processing and marketing of pyrethrum.	The law should be amended to remove the powers to make rules from the Board to the Minister responsible for Agriculture. Secondly the law should be amended for the Board to coordinate the issuance of export permits where other Government agencies are involved. To avoid multiplicity of permits, the law should state the type of permits needed and in this regard only an export license is enough.
5	The Sisal Industry Act 1996; as amended by Part IV of the Crop Laws (Miscellaneous Amendments) Act 2009	Section 5 empowers the Board to issue export licenses and permits. Section 20 empowers the Board to make regulations on a number of issues including export of sisal	The specific law on Marketing of all Crops to amend this law by repealing all those sections but vesting the Board the role to issue a general export license and coordinate other permits issued by other institutions named in the specific law on each consignment. It has to be clear that it is the Minister who should make Regulations as he is in a better position to coordinate with other ministries and Government agencies to avoid issuing of conflicting regulations in the agricultural industry.

6	The Sugar Industry Act, 2001 as amended by Part VIII of the Crop Laws (Miscellaneous Amendments) Act 2009	Under section 4 as amended by section 89 of the Crop Laws (Miscellaneous Amendments) Act 2009 the Board has the power to issue to issue licenses for export or importation of sugar from or into Tanzania; to register or license sugarcane growers, manufacturers of sugar and by products, sugar importers and exporters. The board also can make Rules	The same as above
7	The Cotton Industry Act,2001 as amended by Part V of the Crop Laws (Miscellaneous Amendments) Act 2009	The board has powers under section 5 to regulate marketing and to make regulations. However, the manner of regulation is not in the main Act	The same remarks as above
8	The Coffee Industry Act, 2001 as amended by Part III of the Crop Laws (Miscellaneous Amendments) Act 2009	The board has powers under section 5 as amended by Section 19 of the Crop Laws (Miscellaneous Amendments) Act 2009 to regulate marketing.	The same as above
9	The Tea Industry Act, 2001 as amended by Part II of the Crop Laws (Miscellaneous Amendments) Act 2009	The board has powers under section 5 (4) (d) and (e) as amended by Section 19 of the Crop Laws (Miscellaneous Amendments) Act 2009 to regulate export.	The same as above
10	The Cereals & Other Produce Regulations, 2011	Regulation 15, 16 and 17 provide for the roles of the Board in safeguarding the interests of growers in setting up prices, negotiation in stakeholders forum	One set of Regulations should be enacted to coordinate marketing activities of all the crops. The Regulation should have schedules which provide guidelines for specific crops since not all crops are the same. All requirements will be provided in one set of Rules. The Board does not have offices in the whole country and should not be issuing permits for specific consignments. This is the function of Local Government.
11	Pyrethrum Industry Rules, 2014	The Board issues licenses, export license, export permits and buying licenses.	In the schedule to the Main Regulations, there should be a guideline to this crop where the export of the pyrethrum products such as crude extract and the like should not apply for export permit, the general export license will suffice. The export documents at the Tanzania Revenue Authority should be copied to the Board.
12	The Tea Regulations, 2010 Part IV. The Board issues licenses, export license, export permits and buying licenses.		Same as above
13	The Cotton Regulations, 2011	The only Regulations on Marketing are Regulation 37 which provide on crop buying season and 38 which provide on how to set indicative prices.	The Regulations need to be amended to incorporate more guidelines on setting up prices which doesn't in any way conflict with the price-setting under contract farming, provide clear export procedures, etc to limit the discretion of the Board which sometimes issues conflicting directions on some matters due to lack of rules. These proposed amendments will be reflected in the Regulations which cover other crops as well.

14	The Sisal Industry Regulations, 2011	On marketing, Regulation 35 provides for the role of the Board in announcing indicative price. Regulation 18 provides for the power of the Board to issue export licenses.	The same as above
15	The Coffee Industry Regulations, 2013	Part VI is on the auctioning and export of coffee covered in Regulation 42 to 44. Export is allowed on to those with export license, and export application form is provided. Regulation 68 provide for the indicative prices to be published by the Board	There is a need to amend the Regulations so as to put additional requirements from other institutions so as to avoid back and forth and duplicity of requirements from other institutions of the Government.
16	The Cashewnut Industry Regulations, 2010	The Board issues licenses, export license, export permits and buying licenses.	The same as above

12 Appendix IV. List of laws to be amended - Fertilizers

SN	SECTION AND LAW	CURRENT POSITION	PROPOSED AMMENDMENT
1	Regulation 4(9) of the Fertilizers Regulation, 2011 as amended in 2017	Regulation 4(9) of the Fertilizers Regulation, 2011 as amended in 2017 provides that a certificate of registration shall expire in the time specified in the certificate that is not later than two years from the date of registration. Thus the maximum period is 2 years which is considered to be very short.	Amend Regulation 4(9) of the Fertilizers Regulation, 2011 as amended with a view to providing for the extension of validity period of certificate of registration to 5 years
2	Regulation 3(3) of the Fertilizers Regulations as amended in 2017	Regulation 3(3) of the Fertilizers Regulations as amended in 2017 provides for the requirement that an application for registration to be by a resident person shall be signed by permanent resident person.	Amend the regulations with a view to allow applications presented by non-residents provided their foreign addresses are provided.
3	Section 9(2) of the Fertilizers Act, 2009	Section 9(2) of the Fertilizers Act, 2009 provides wide discretion to the Director to refuse registration of fertilizer even where the applicant has met all conditions. It says: "The Director MAY, after receiving an application for registration grant registration and issue registration certificate if he is satisfied that the required conditions are complied with."	Amend section 9(2) of the Fertilizers Act, 2009 Removal of discretion to refuse registration where an application has satisfied all conditions. Delete the word "MAY" in section 9(2) and replace it with the word "SHALL"
4	Sections 36 and 37 of the Fertilizers Act, 2019	Sections 36 and 37 of the Fertilizers Act, 2019 provide for right of appeal from TFRA (inspector, analyst or director) to the Minister of agriculture, who has to appoint 3 members to form an appeals board to hear the appeal. There is a notable absence of timelines within which the Minister can appoint members of Appeals Board, and absence of stipulated duration for handling appeals from TFRA on registration issues or any issue for that matter,	Amend the Fertilizers Act (sections 36 and 37) or Regulations with a view to introducing a timeline of 14 days within which the Minister must appoint members for the appeals panel, and provide a 90 days duration for the panel to finalize the appeal
5	The Fertilisers Act, 2011	Multiplicity of institutions with conflicting roles dealing with fertilizers (TFRA, TBS, SGS and like bodies), and seek possibility for reducing fees for indispensable institutions (SUMATRA, Radiation Commission and the Weight and Measures).	Amend the Fertilizers Act with a view to specifically add provisions that consolidate fertilizers related powers and inspection during importation to one body only, that is, TFRA. This amendment must be clear in stating that it overrides all other statutes that negate or is inconsistent with this position. Whether or not the above amendment is done, the Ministry should agitate and lobby for the review of fees charged by all the institutions downward. The amendment can also specifically exempt fertilizers from unwanted or unfair fees imposed by other institutions.

13 Appendix V. List of laws to be amended - Access to Registered Public Varieties

S/NO	THE LEGISLATION	RELEVANT SECTION/PROVISION	RECOMMENDED CHANGES
1	Plant Breeders Rights Act, 2012	In the spirit of the Circular, there should be an introduction of a new Section immediately after section 32 of the Act, to capture the provisions of the Circular.	A new section should be added to reflect the fact that the government undertakes to facilitate easy and coordinated access to protected varieties owned by the public institutions through the central system under the auspices of MALF. The rationale behind this recommendation centers on the fact that with amendment, the ideals of the Circular will have the statutory force/ status. It creates a sense of permanence and expresses government commitment
	Section 40 of the Act which states: The holder of breeders' right may assign or authorize any person, to undertake any activity described or referred in section 30		We recommend that this section be amended to reflect the options which have been referred to in the Government Circular, 2016 such as: a) The types of the licenses under Article 3 of the Circular; b) The role of the Ministry in assisting holders of PBR other than the government institutions in the negotiation and drafting of the licensing agreements and overall advisory services on authorization.
2	The Government Circular on Authorization of Publicly Owned New Varieties of Plants of 2016	Article 3 of the Circular which covers the two types of authorizations (licences) which are: (1) Exclusive Licences and (2) Ordinary Authorization/Non- Exclusive Licences. The circular is silent on the issue of exceptions to the exclusive rights under Section 31 of the Plant Breeders Rights Act, 2012 that allow other people or institutions to use protected varieties of seeds under certain specified circumstances.	Article 3 of the Circular should be amended to start with the words: "Subject to Section 31 of the Plant Breeders Rights Act, the Ministry may issue two types of Authorizations on protected seeds varieties…"

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