

## Seeds2B

The Seeds2B icon consists of three overlapping circles in shades of green, arranged in a triangular pattern.

# Regional Variety Release Test Cases: 2016 Findings

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This report contains progress and findings to date of several Test Cases on Regional Seed Harmonization (Test Cases) that are designed to test the regional variety release process in different regional economic communities (RECs) in sub-Saharan Africa. The Test Cases are being conducted under the Seeds2B program, with the New Markets Lab (NML) and Syngenta Foundation for Sustainable Agriculture (SFSA) working as project partners in close collaboration with seed companies and breeding institutions. The purpose of the Test Cases is to assess regional seed regulatory structures and document the degree to which regional seed regulatory frameworks are being implemented in practice. The RECs covered in this report include the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the Economic Community for West African States (ECOWAS).<sup>1</sup>

As of November 2016, the project partners had initiated Test Cases in COMESA (seed potatoes and soybean), SADC (seed potatoes and maize), and the EAC (beans), and progress of implementation of the regional variety release system in West Africa is being closely monitored with plans to initiate a Test Case in the near future (national registration of a number of sorghum varieties, using the ECOWAS procedure, has been initiated in Mali for this purpose). The project partners also are monitoring ongoing registration efforts of seed potato varieties in various EAC countries. The COMESA seed potato test case resulted in the entry of three new varieties in the regional catalogue by December 2016; these were the first non-maize varieties to be

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<sup>1</sup> The regional harmonization of seed regulations in West Africa is a result of cooperation between ECOWAS, the Permanent Inter-State Committee against Drought in Sahel (CILSS), and the West Africa Economic and Monetary Union (WAEMU/ UEMOA).

entered into the COMESA Catalogue. COMESA, in particular, is hoping for a significant increase in the number of varieties listed in the regional catalogue, with plans to expand to over 100 varieties by the summer of 2017 (with the three new seed potato varieties added to the catalogue under this project, the total varieties listed increased to fourteen). While it may take time to achieve this goal, these aspirations do signal strong support for regional variety release and make this initiative particularly timely (See Table 1 below for a summary of known regional variety registrations).

Because of the number of steps involved in regional seed variety release, several initial Test Cases remain ongoing; however, significant findings have been made. Practical application of the regional seed regulations has illuminated the differences between the regulatory systems and relative ease of implementation, which will likely be central factors for seed companies going forward. While in some cases there are more significant differences between the regional seed variety release systems, in other cases small procedural or technical differences seem to have a large impact upon how these systems are used in practice (See Table 2 below for a comparison of the regional systems).

At this early stage, various factors already seem to impact company decisions regarding which varieties to list at the regional level and which regional variety release systems to use. These include not only variety characteristics but also the cost and ease of national variety release systems and “user-friendliness” and perceived level of implementation of regional variety systems. In addition, as companies become more acquainted with the regional variety release systems, these systems likely will become an increasingly significant factor in companies’ strategic decisions regarding which countries are chosen for national variety release and registration.

As an interesting point of comparison, the COMESA and SADC systems seemingly are quite similar. Both systems establish a separate regional variety catalogue, and in each case a requirement exists that a variety must be listed in two member states before an application for regional listing can be made (although the COMESA Seed Trade Harmonization Regulations, 2014 (COMESA Seed Regulations) clearly provide for a fast-track option for varieties released in only one member state). In both regions, a regional seed office has been established to administer regional variety release with the assistance of designated national seed authorities (NSAs) in each member state. For entry into the regional variety catalogue in both COMESA and SADC, an applicant needs to have a local presence in a member state of the REC. In addition, each applicant, at minimum, needs to provide results of tests for Distinctness, Uniformity, and Stability (DUS) and Value for Cultivation and Use (VCU) along with proof of release and registration in two Member States.

Despite these similarities, subtle differences in the COMESA and SADC systems seem to indicate that the COMESA system is more “user-friendly” at this stage, at least for

international companies. (Note: These are preliminary findings only and are not conclusive, because the SADC system has not been tested fully.) For example, the COMESA application can be done online directly to the COMESA Seed Office, while the SADC application must be submitted to the NSA in one of the member states. While SADC application forms are available online and can likely be sent via email to the NSAs, it does not appear that the SADC application can be submitted directly to the SADC Seed Centre. In the case of COMESA, direct application to the COMESA Seed Office has proven to help facilitate the application process.

Once an application has been submitted under the COMESA system, the NSAs of the relevant member states are responsible for uploading the required DUS and VCU information; in the SADC system the applicant needs to fill out the VCU and DUS information on forms as part of the application. Requiring an applicant to obtain this information rather than having the NSAs provide it directly could cause significant additional effort for companies, who do not always receive this information from national testing institutes. In addition, the SADC system specifically requires that DUS and VCU be done in the country of application, while the wording in the COMESA Seed Regulations is not as specific. If this requirement is strictly implemented within SADC (there are indications that it might not be), it could cause additional testing requirements for international companies in cases where DUS certificates were taken over from foreign plant protection offices during national variety listing. On the other hand, it is possible that the SADC system might be easier for smaller, local seed companies, since the NSAs might be in a position to provide greater hands-on assistance and information. All of these aspects will have to be further tested in order to develop more conclusive findings.

Another significant difference is that COMESA provides a fast-track option for varieties that have been tested and approved in one member country, which SADC, at least on paper, does not. If a variety has been released in one COMESA country, an application for regional listing can be accepted following or concurrent with a "fast track" process involving only one season of VCU/national performance trials (NPT) in another COMESA country. This not only reduces the time required for regional listing of a new variety in COMESA vis-à-vis SADC, but it also seems to align COMESA with system created under the Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA), which is being implemented within the EAC, allowing for varieties released under the ASARECA process to qualify for COMESA registration and signalling an area for possible harmonization under the Tripartite Free Trade Area among COMESA, the EAC, and SADC.

The ASARECA variety release system differs from the SADC and COMESA systems insofar as there is no regional variety catalogue. Instead, there is an option for expedited variety release under the ASARECA system as noted above if a variety has already been released in another EAC country. The ASARECA system allows for data from national tests in one EAC country to be used when a variety is being evaluated

in another EAC country. When well-implemented, this can significantly reduce the time necessary for subsequent release in additional EAC countries, thereby allowing release in a second (or third) EAC country after one season of VCU/NPT. The project partners collaborated on an early Test Case of the ASARECA systems (seed potatoes), and companies have come to accept and increasingly use this system, particularly in countries where they have previously been wary of the time and costs of national variety release.

It is also worth noting that the current system in operation in the EAC is not the result of a regulation at the EAC level, but rather arose under an agreement that stemmed from the work of another institution, ASARECA. To some extent, the ASARECA Agreement has been domesticated through the national laws and regulations of EAC member states. A new framework is under development at the EAC institutional level, however, which will be binding upon all EAC member states. It is likely that the EAC system will be designed in such a way that it will incorporate elements of the existing ASARECA variety release agreement and the COMESA Seed Regulations,<sup>2</sup> again with implications for the Tripartite Free Trade Area, and its implementation will be the subject of future Test Cases.

The system in West Africa is similar to SADC and COMESA insofar as the West African system establishes a regional variety catalogue that allows for the marketing of regional varieties in all member states. The difference, however, is that the regional catalogue in West Africa is simply a compilation of the national catalogues of member states. This removes the requirement for companies to complete an additional application in order to obtain regional listing. The system, which is based upon a binding regional regulation, ensures that all member states apply the same standards for national variety release and registration, including tests for DUS and VCU.

The regional harmonization of seed regulations in West Africa is a result of cooperation between ECOWAS, the Permanent Inter-State Committee against Drought in Sahel (CILSS), and the West Africa Economic and Monetary Union (WAEMU/ UEMOA). This ECOWAS-UEMOA-CILSS system is not fully operational; however, progress at the regional level was significantly boosted at the end of August 2016 with the validation of a new regional variety catalogue and two enabling regulations crucial to the implementation of the system. At the national level, implementation has significantly progressed, and all ECOWAS-UEMOA-CILSS member states have adopted national seed legislation and established national variety catalogues, and most have formally adopted the regional regulation.

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<sup>2</sup> EAC Secretariat and ASARECA, *Progress in Seed Policy Harmonization in the East African Community*, Presentation at African Seed Trade Association Congress 2016.

**Table 1: Regional Variety Release in Eastern and Southern Africa**

<b>Country/Region for Variety Release</b>	<b>Crop/Variety</b>	<b>Country of Origin</b>	<b>Year Variety Release</b>
Tanzania (Early Test Case)	Seed Potato (4 varieties from International Potato Center)	Kenya	2012
Rwanda	Maize (Pannar 618)	Kenya, Tanzania	2011
Uganda	Sunflower	Kenya	TBD
Kenya	Sweet Potato (4 varieties)	Uganda	TBD
Kenya	Rice	Tanzania	TBD
Tanzania (Test Case)	Beans	Burundi	IN PROCESS
COMESA (Test Case)	Seed Potato (3 varieties)	Egypt, Zambia, and Kenya	2016 in COMESA Catalogue
COMESA	Maize (11 varieties)	N/A	2015 in COMESA Catalogue
SADC	Maize (23-24 varieties)	N/A	2014-2016 in SADC Catalogue
SADC	Sorghum (1 variety reported)	N/A	2016 in SADC Catalogue

Source: Katrin Kuhlmann and Yuan Zhou, based on authors' research and interviews.

**Table 2: Regional Variety Release in COMESA, SADC, East Africa, and West Africa**

	<b>COMESA</b>	<b>SADC</b>	<b>EAC/East Africa</b>	<b>ECOWAS/West Africa</b>
<b>Regional Variety Catalogue</b>	COMESA Variety Catalogue	SADC Seed Variety Catalogue	There is no regional catalogue, only an option to fast-track the national variety release and registration process in one member country if a variety has already been released in another member country	ECOWAS-UEMOA-CILSS Regional Common Catalogue of Plant Species and Varieties (2016)
<b>Conditions to Qualify for Listing in the Regional Catalogue</b>	A variety holder can apply for registration of a variety in the COMESA Variety Catalogue if the variety has already been released in two COMESA Member States (or, under certain circumstances, has been released in one Member State)  Once a variety is registered in the COMESA Variety Catalogue, it can be marketed in any country in the region, although an exception does exist	A variety holder may apply for regional listing of a variety in the SADC Variety Catalogue once it has already been released in two SADC Member States  Once regionally listed, a variety is supposed to be freely marketable throughout the region, although an exception does exist	A variety that is already registered in one member country's catalogue can be released in another member country following at least one season of VCU testing, provided there is sufficient test data available from previous field trials in similar agro-ecological zones	The regional catalogue is the sum of national catalogues of Member States.  Varieties that are released and registered nationally in accordance with regional protocols are automatically included in the regional catalogue and marketable in the region
<b>Application Process</b>	Online application directly to COMESA Seed Office  Alternatively, physical application to COMESA Seed Office on downloadable application form	Application forms downloadable on the SADC Seed Centre website  Signed applications must be submitted to the NSA of one of the two SADC countries where the variety has been released	Standard application for national listing in a participating country, but includes allowance for the use of trial data from another member country (along with proof of release in the other country), thereby cutting down the time a company needs to spend on in-country tests	No separate application for regional listing

<p><b>Degree of Implementation at Regional Level</b></p>	<p>The COMESA Variety Catalogue was launched in November 2015 and is available online</p> <p>11 varieties (all maize) have been listed in the COMESA Variety Catalogue</p>	<p>The SADC Seed Centre was established in December 2011</p> <p>The first varieties were listed in the SADC Catalogue in November 2014</p> <p>As of March 2017, the Catalogue contained twenty-four varieties, most of which are maize (the online catalogue shows 24 maize varieties, but the SADC Seed Centre also reports that sorghum varieties have been listed)</p>	<p>The ASARECA system has been implemented to varying degrees in the variety release and registration regulations of EAC countries</p> <p>Implementation, however, has not been fully achieved largely due to lack of awareness of the ASARECA Agreement and differences in approach and interpretation among EAC countries</p>	<p>ECOWAS-UEMOA-CILSS Regional Common Seed Committee established August 2015</p> <p>Regional Common Catalogue of Plant Species and Varieties was validated on 30 August 2016, but is not yet available online. It includes 1496 varieties of 11 ECOWAS priority crops based on essential DUS and VCU information and replaces 2008 version</p> <p>Enabling regulations validated</p> <p>Technical regulation related to the organization of the ECOWAS-UEMOA-CILSS Variety Catalogue</p> <p>Executive regulation on the modalities for quality control and seed certification in the ECOWAS area</p>
<p><b>Nature of Regional Legal Instrument</b></p>	<p>Regional Regulation</p> <p>Under the COMESA institutional structure, regulations are binding upon member states and require domestication at the national level to effect implementation</p>	<p>The SADC Harmonized Seed Regulatory System (HSRS) is the result of a memorandum of understanding (MOU)</p> <p>Under the SADC institutional structure, an MOU is a non-binding legal instrument; Members States can formalize an MOU by domestication through their own legal and regulatory process</p>	<p>Agreement done through regional institution (not EAC)</p> <p>Non-binding agreement to harmonize procedures; however, agreement has become binding to the extent that it has been incorporated into the national regulations of participating countries</p>	<p>Regional Regulation</p> <p>ECOWAS regional regulations are binding on member states and supersede national regulations, but countries must take further action at national level to gazette ECOWAS Regulations and amend or enact national laws</p>
<p><b>Key Findings</b></p>	<p>The COMESA system appears, at this point, to</p>	<p>Applications not yet submitted under Test Case</p>	<p>Countries in the EAC are taking concrete steps to implement</p>	<p>Test Cases have not yet begun. National registration of a number</p>

<p>be favored by companies</p> <p>More "user-friendly" due to factors such as option for online application</p> <p>Application directly to COMESA Seed Office</p> <p>DUS and VCU data provided by NSAs rather than applicant</p> <p>Online registration may cause problems for international companies that want to do application from their headquarters</p> <p>Appears to align with ASARECA system in EAC</p>	<p>project; however, although broadly similar to the COMESA system, small differences appear to make the COMESA system more "user-friendly"</p> <p>SADC requires physical application to an NSA</p> <p>DUS and VCU need to be conducted in the country of application*</p> <p>DUS and VCU information needs to be provided by the applicant</p> <p>Variety holder needs to have a registered address in the country of application*</p> <p>* To be confirmed through Test Case</p>	<p>the ASARECA system and companies are more willing to apply for national variety release as a result</p> <p>It is not always clear how individual countries will apply fast-track release under the ASARECA system</p> <p>There seems to be alignment between the ASARECA and COMESA systems</p>	<p>of sorghum varieties, using the ECOWAS procedure, has been initiated in Mali for this purpose. But it is anticipated that companies may appreciate that regional listing does not require any additional applications or costs other than national listing in one member state</p> <p>Significant progress in implementation at national level: Regional Regulation adopted in 13 out of 17 countries; all 17 member states have implemented a national seed law, instituted a national catalogue of species and varieties, and established a national seed committee</p>
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Source: New Markets Lab, 2016.