

Seeds2B

MANUAL ON REGIONAL SEED REGULATIONS IN THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

This Manual is a tool developed by the New Markets Lab and Syngenta Foundation for Sustainable Agriculture under the Seeds2B program and is not an official publication of COMESA. It is based on user experience with the COMESA Harmonized Seed Trade Regulations and electronic instructions for variety registration, updated as of February 2019. The Manual is designed to build understanding of the COMESA Regional Seed Trade Regulations and is part of an ongoing collaboration between the New Markets Lab and Syngenta Foundation for Sustainable Agriculture under the Seeds2B Initiative and Partnerships for Seed Technology Transfer in Africa (PASTTA). This manual is made possible by the generous support of the American people through the United States Agency for International Development (USAID) and the U.S. Feed the Future initiative. The contents are the responsibility of the New Markets Lab and Syngenta Foundation for Sustainable Agriculture under the Seeds2B program and do not necessarily reflect the views of USAID or the United States Government.



USAID
FROM THE AMERICAN PEOPLE

syngenta foundation
for sustainable
agriculture



February 2019

I. Executive Summary

This Manual on Regional Seed Regulations in the Common Market for Eastern and Southern Africa (COMESA) is designed to increase understanding of the COMESA Harmonized Seed Trade Regulations (“COMESA Seed Regulations”), which were approved in 2014 and are being implemented on an ongoing basis. This Manual is part of a larger “Seeds2B Legal Toolkit” developed by the New Markets Lab (NML) in partnership with the Syngenta Foundation for Sustainable Agriculture (SFSA) through the Seeds2B Initiative, and the Partnerships for Seed Technology Transfer in Africa (PASTTA), a Global Development Alliance (GDA) between the U.S. Agency for International Development (USAID), SFSA, African Agricultural Technology Foundation (AATF), and NML. In addition to this Manual, the Seeds2B Legal Toolkit includes Case Studies that evaluate the process for implementing regional seed regulatory initiatives at the national level and Test Cases on regional harmonization that are designed to “stress test” regional regulatory systems and document implementation. The Seeds2B Legal Toolkit as a whole serves as a knowledge base for enterprises, farmers, and other stakeholders and contributes to the general understanding of how to improve farmers’ access to improved seed. This Manual was most recently updated to reflect information available as of February 2019.

This Manual covers several areas: (1) an overview of the COMESA Seed Regulations; (2) the practical steps involved in key regulatory processes like regional variety registration, seed certification, and cross-border trade; and (3) possible implementation issues, including issues with marketing varieties registered in the regional seed catalogue. Information from the final section was gathered through stakeholder consultations, including those conducted in connection with the Seeds2B Legal Toolkit. Key elements of the COMESA Seed Regulatory System and implementation issues are summarized below.

Key Elements of the COMESA Seed Regulatory System:

- COMESA is relatively advanced in regional seed harmonization efforts. While COMESA started harmonization efforts after some of the other regional economic communities (RECs), it had the benefit of being able to learn from the work of other RECs in harmonizing seed regulation in the region and has moved forward relatively quickly. Nonetheless, implementation challenges will need to continue to be addressed.
- Implementation of the COMESA Seed Regulations appears to be progressing at a steady pace. COMESA reports that seven of the twenty-one COMESA members (Burundi, Kenya, Malawi, Rwanda, Uganda, Zambia, and Zimbabwe) have fully implemented the COMESA Seed Regulations. This assessment is based largely on the degree to which countries have domesticated COMESA rules; additional implementation issues will need to be addressed based on the degree to which different countries’ regulatory systems are interoperable as regional trade within COMESA expands.
- Many COMESA Members are part of other RECs, which calls into question the overlap among regional rules. This issue will become even more pressing as the new African

Continental Free Trade Area (AfCFTA) moves forward. As a current example, Kenya is a member of both the East African Community (EAC) and COMESA. Although the EAC is still working to put in place regional seed regulations (EAC countries currently follow a process established by the agreement between the Association for Strengthening Agricultural Research in Eastern and Southern Africa (ASARECA)/Eastern and Central Africa Programme for Agricultural Policy (ECAPAPA)) and the two regions aim to harmonize as part of the Tripartite Free Trade Area (TFTA), there are still differences in both structure and substance across each REC.¹

- The COMESA Plant Variety Catalogue (“COMESA Variety Catalogue”) has grown faster than other regional variety catalogues. As of February 2019, a reported 56 varieties of seven different species have been registered in the COMESA Variety Catalogue. The process for registering varieties in the COMESA Variety Catalogue is also relatively user-friendly.
- While it has been relatively easy to get varieties registered on the COMESA Variety Catalogue, this does not guarantee that the varieties can be easily marketed within the COMESA Member States. Companies have flagged concerns in this area, and this marks a key implementation issue to be addressed going forward.
- COMESA allows for four different classes of certified seed, and it appears that these also set a minimum standard. This is important, as some COMESA countries do maintain different seed classes. Seed labels will be important (and are being rolled out) to indicate the seed class as seed is more widely traded.
- Also of note with respect to seed classes is the issue of quality declared seed (QDS), which allows for a quality control system that is a more locally-based and less stringent alternative to formal seed certification. Of the countries that have fully implemented the COMESA Seed Regulations, only Rwanda and Zambia provide for QDS, which is a seed class not listed in the COMESA Seed Regulations. Many stakeholders view QDS as an important bridge between the formal and informal seed systems, and QDS is not incompatible with formal seed certification done under in accordance with the Organisation for Economic Co-operation and Development (OECD) Seed Schemes.²
- The COMESA Seed Regulations attempt to streamline quarantine and border testing processes through common pest lists and paperwork; however, inconsistencies do remain among COMESA Member States.

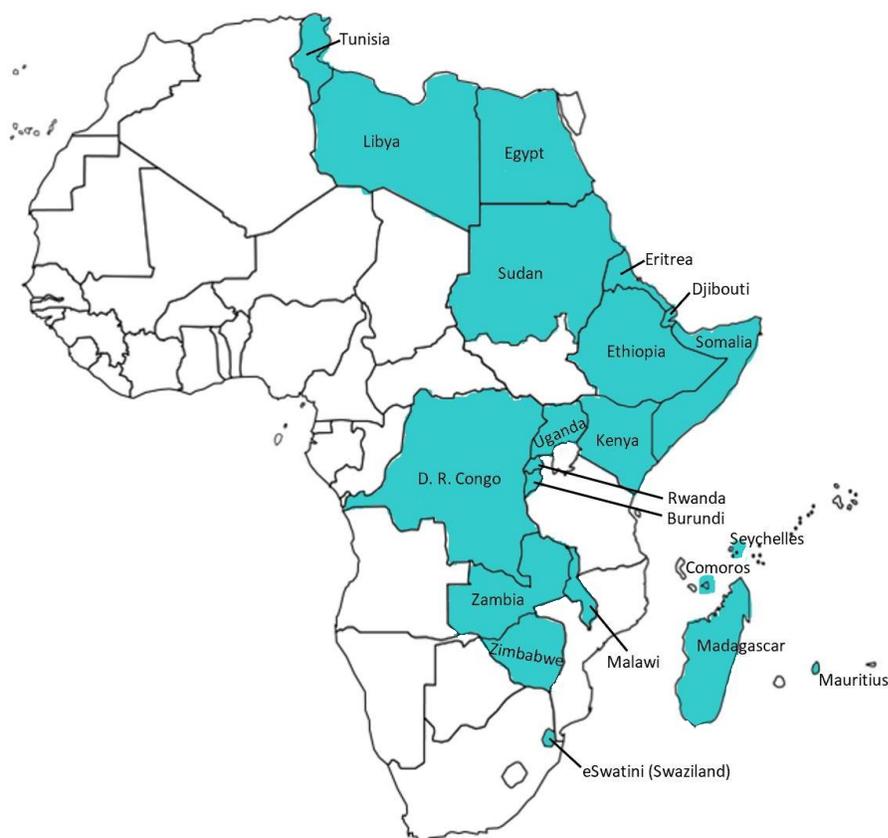
¹ Katrin Kuhlmann, “Harmonizing Regional Seed Regulations in Sub-Saharan Africa: A Comparative Assessment,” Working Draft, September 2015, 9-10, https://docs.wixstatic.com/ugd/095963_e897ed98f4b54238b44d0362c83434b6.pdf.

² Katrin Kuhlmann, Yuan Zhou, and Shannon Keating, “Seed Policy Harmonization in COMESA and SADC: The Case of Zambia,” *Syngenta Foundation for Sustainable Agriculture and New Markets Lab*, September 2018, 7-8.

II. History and Background of the COMESA Harmonized Seed Regulations

COMESA is one of the more prominent African RECs and is headquartered in Lusaka, Zambia. COMESA currently has 21 member countries, with others in the process of acceding. Somalia and Tunisia are the most recent Members and were admitted in July 2018.³ South Sudan⁴ has expressed interest in joining as well.⁵ The map below (*Figure 1*) shows the current COMESA membership.

Figure 1 – COMESA Membership



Source: New Markets Lab (2019).

³ Common Market for Eastern and Southern Africa, Twentieth Summit of the COMESA Authority, *Final Communiqué of the Twentieth Summit of the Authority of Heads of State and Government*, Lusaka, Zambia, July 19, 2018; “Tunisia and Somalia Join COMESA: What is the Impact on Antitrust Regulatory Approvals?,” *Africa Legal Network*, <https://www.africalegalnetwork.com/legal-alert-tunisia-somalia-join-comesa-impact-antitrust-regulatory-approvals/>.

⁴ South Sudan was admitted to the COMESA Regional Customs Transit Guarantee in 2016. Osemo Ndalila, “South Sudan Joins the COMESA Regional Customs Scheme,” *COMESA*, May 5, 2016, <http://www.comesa.int/south-sudan-joins-the-comesa-regional-customs-scheme/>.

⁵ COMESA News, Vol 1, 2017, *COMESA Secretariat*, http://www.comesa.int/wp-content/uploads/2017/12/COMESA-News-Vol-1-2017_web.pdf.

Agriculture remains a main supporting sector in most COMESA Member States⁶ and contributes to about 30 percent of COMESA's Gross Domestic Product (GDP).⁷ However, food security is also a significant issue, compounded by a lack of availability of quality seed. Ensuring broader availability of new and improved seed varieties will continue to be an important part of the development agenda. The COMESA Seed Regulations' five main objectives aim to alleviate this problem by: 1) harmonizing phytosanitary measures for seed so that it is traded more transparently and safely within the region; 2) ensuring high-quality seed is traded efficiently; 3) encouraging investment in the seed industry within Member States; 4) increasing access to existing varieties; and 5) stimulating breeding of improved varieties.⁸

Development of harmonized seed regulations in COMESA began in 2008, with a Declaration from the COMESA Council of Ministers. COMESA Member States were tasked with harmonizing seed standards within two years of the Declaration in order to better support the flow of available seed in the region and also ensure compliance with Article 132 of the treaty establishing COMESA as a regional community.⁹ Along with the African Seed Trade Association (AFSTA), and with support from COMESA's Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA), the Harmonized Seed Trade Regulations were approved in 2014.¹⁰ Since COMESA developed its Seed Regulations at a later stage than other RECs,¹¹ they were designed to harmonize seed trade and rules within COMESA while also facilitating harmonization across the other RECs.¹² Although it will be difficult to align legal systems across all countries as broader regional harmonization plans proceed, these efforts are a crucial and significant step toward eventual harmonization across Africa under the AfCFTA, which has 52 signatory countries as of February 2019.¹³ *Figure 2* below depicts a timeline of the development of the COMESA seed regulatory system.

⁶ COMESA, Medium Term Strategic Plan, 2016-2020: In Pursuit of Regional Economic Transformation and Development, 31.

⁷ John Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP): "A COMESA 2014-2020 Strategy to Implement COMESA Seed Trade Harmonisation Regulations Leading to Increased Seed Production, Reliability, Trade and Competitiveness of the Seed Industry in the COMESA Region," *Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA)*, July 8, 2014, vi, <http://africleadftf.org/wp-content/uploads/2016/09/COMESA-Seed-Harmonisation-Implementation-Plan-COM-SHIP- JULY-2014.pdf>.

⁸ COMESA Seed Trade Harmonization Regulations, 3, 2014.

⁹ Official Gazette of the Common Market For Eastern and Southern Africa (COMESA), Vol. 20 No. 1, March 31, 2015, 29, <http://www.comesa.int/wp-content/uploads/2016/06/Vol-20-No.1-March-2015.pdf>; Under Article 132 of the Treaty Establishing the Common Market for Eastern and Southern Africa, Members shall "harmonise their policies and regulations relating to phyto-sanitary and sanitary measures without impeding the export of crops, plants, seeds, livestock, livestock-products, fish and fish-products."

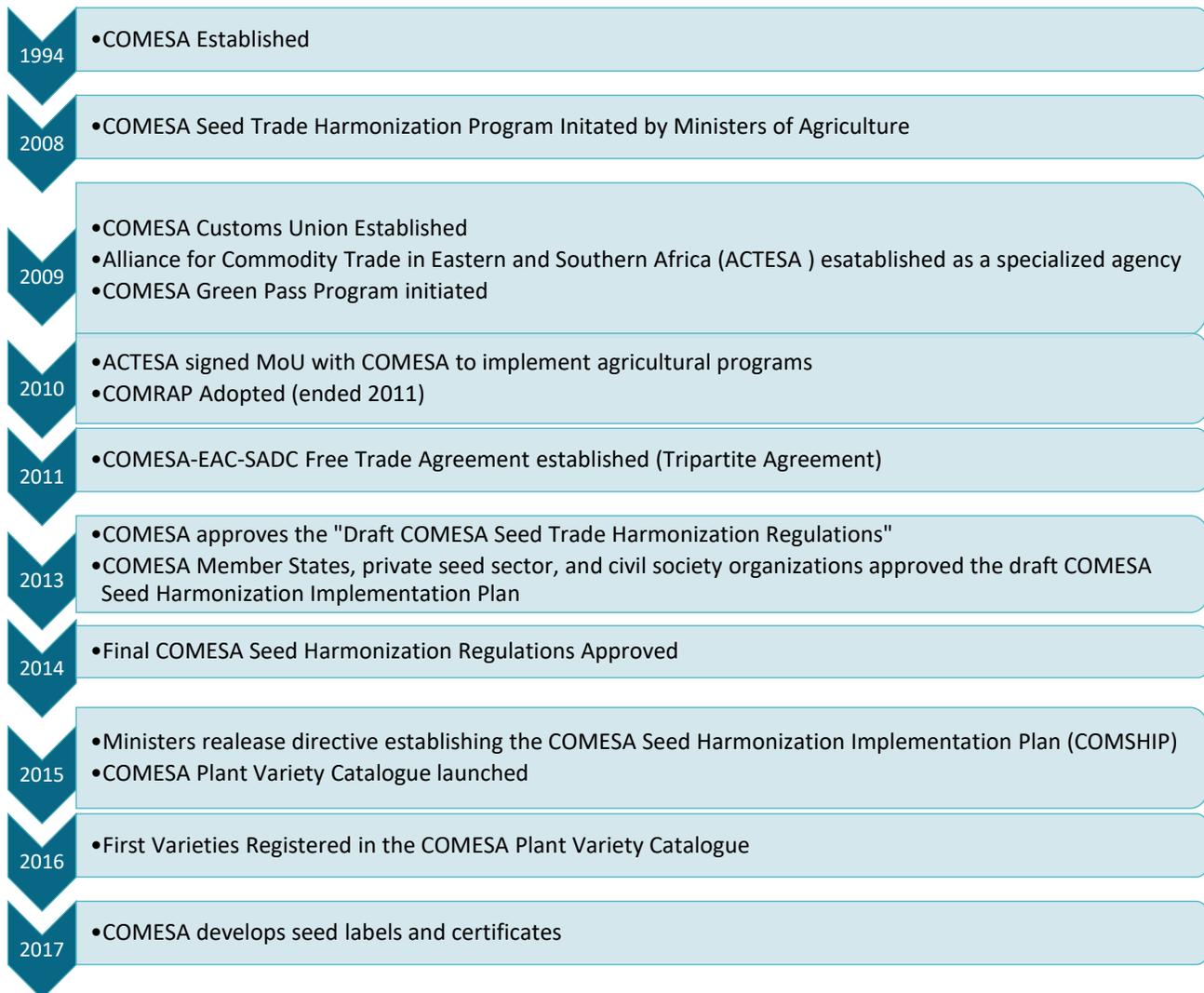
¹⁰ Ibid.

¹¹ Kuhlmann, "Harmonizing Regional Seed Regulations in Sub-Saharan Africa: A Comparative Assessment" at 25.

¹² Ibid at 26.

¹³ "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents," *tralac*, 2019, <https://www.tralac.org/resources/by-region/cfta.html>.

Figure 2 – COMESA Seed Regulatory System Timeline



Source: New Markets Lab (2018).

Although the COMESA Seed Regulations are now in force, each Member State must also take measures to domesticate and implement the regional regulations in order for them to work in practice.¹⁴ So far, only seven of COMESA’s Member States (Burundi, Kenya, Malawi, Rwanda, Uganda, Zambia, and Zimbabwe) have reportedly fully harmonized their national laws with the COMESA rules.¹⁵ The Democratic Republic of Congo (DR Congo), Djibouti, Ethiopia, Mauritius, and Seychelles have draft regulatory measures under consideration that will align their systems

¹⁴ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at ix.

¹⁵ Indication of Legal Instruments to be Signed at the 10th Extraordinary Session of the Assembly on the Launch of the AfCFTA, *African Union*, 21 March, 2018, <https://au.int/sites/default/files/pressreleases/34033>.

with the COMESA seed system.¹⁶ According to COMESA, DR Congo, Djibouti, Ethiopia, Mauritius, and Seychelles are expected to become compliant with the COMESA Seed Regulations by the end of 2019.¹⁷

The biggest challenge to the success of the COMESA Seed Regulations remains implementation. To expedite implementation of the COMESA Seed Regulations, the COMESA Secretariat worked with ACTESA to develop the COMESA Seed Harmonization Implementation Plan (COMSHIP), which was launched in 2015.¹⁸ Since its launch, 18 of the COMESA Member States have participated in the COMSHIP program.¹⁹ COMSHIP's main objective is to achieve full implementation of the COMESA Seed Regulations by 2020-2022,²⁰ and its most recent four-year focus is "to support full domestication of the COMESA Seed Trade Harmonisation Regulations in all 21 COMESA Member States."²¹ *Figure 3* below provides an overview of COMSHIP's priorities for 2019-2023.

COMSHIP provides national level implementation support through ACTESA and publishes annual regional reviews of the implementation status within Member Countries. COMSHIP creates a clear framework for both stakeholders and development partners, and it requires financial support from both Member States and development organizations.²² Member States that have received financial support from development agencies seem to experience better implementation results.²³ COMSHIP also includes a program on Plant Variety Protection (PVP)²⁴ and facilitates the Regional Agro-Inputs Programme (COMRAP).²⁵

¹⁶ COMESA, *Report of the Thirty-Eighth Meeting of the COMESA Council of Ministers*, Lusaka, Zambia, 14-15 July 2018, available at <http://www.aegegypt.com/Uploaded/Pdf/mibrahim/0909181.pdf>; Bob Koigi, COMESA to Introduce World's First Seed Labels and Certificates to Boost Regional Trade, February 2018.

<http://africabusinesscommunities.com/news/comesa-to-introduce-world-first-seed-labels-and-certificates-to-boost-regional-trade/>; Phillip Kambafwile, "COMESA Seed Regulations to Be Printed in 14 Local Languages," COMESA, June 13, 2017, <http://www.comesa.int/comesa-seed-regulations-to-be-printed-in-14-local-languages/>.

¹⁷ "Seven COMESA States Have Harmonized Seed Regulations," COMESA, December 14, 2018, <https://www.comesa.int/2018/12/14/seven-comesa-states-have-harmonized-seed-regulations/>.

¹⁸ See "COMESA Seed Harmonisation Implementation Programme (COMSHIP)," Mutual Accountability Framework Meeting Proceedings, Addis Ababa, Ethiopia, February 23-24, 2016, <http://africleadftf.org/wp-content/uploads/2016/09/COMSHIP-Mutual-Accountability-Meeting-Final-Report-8-4-2016.pdf>.

¹⁹ John Mukuka, "Status of the COMESA Seed Harmonization Programme (COMSHIP)," Presentation for the Alliance for Commodity Trade in Eastern and Southern Africa (ACTESA), June 2018, <https://www.seedtest.org/upload/cms/user/1.3COMSHIP.pdf>; Phillip Kambafwile, "COMESA to Introduce Seed Labels and Certificates to Boost Regional Trade," COMESA, February 21, 2018, <http://www.comesa.int/comesa-to-introduce-seed-labels-and-certificates-to-boost-regional-trade/>.

²⁰ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at x.

²¹ European Seed, "COMSHIP, the COMESA Seed Harmonisation Implementation Plan," December 3, 2018, <https://european-seed.com/2018/12/comship-the-comesa-seed-harmonisation-implementation-plan/>.

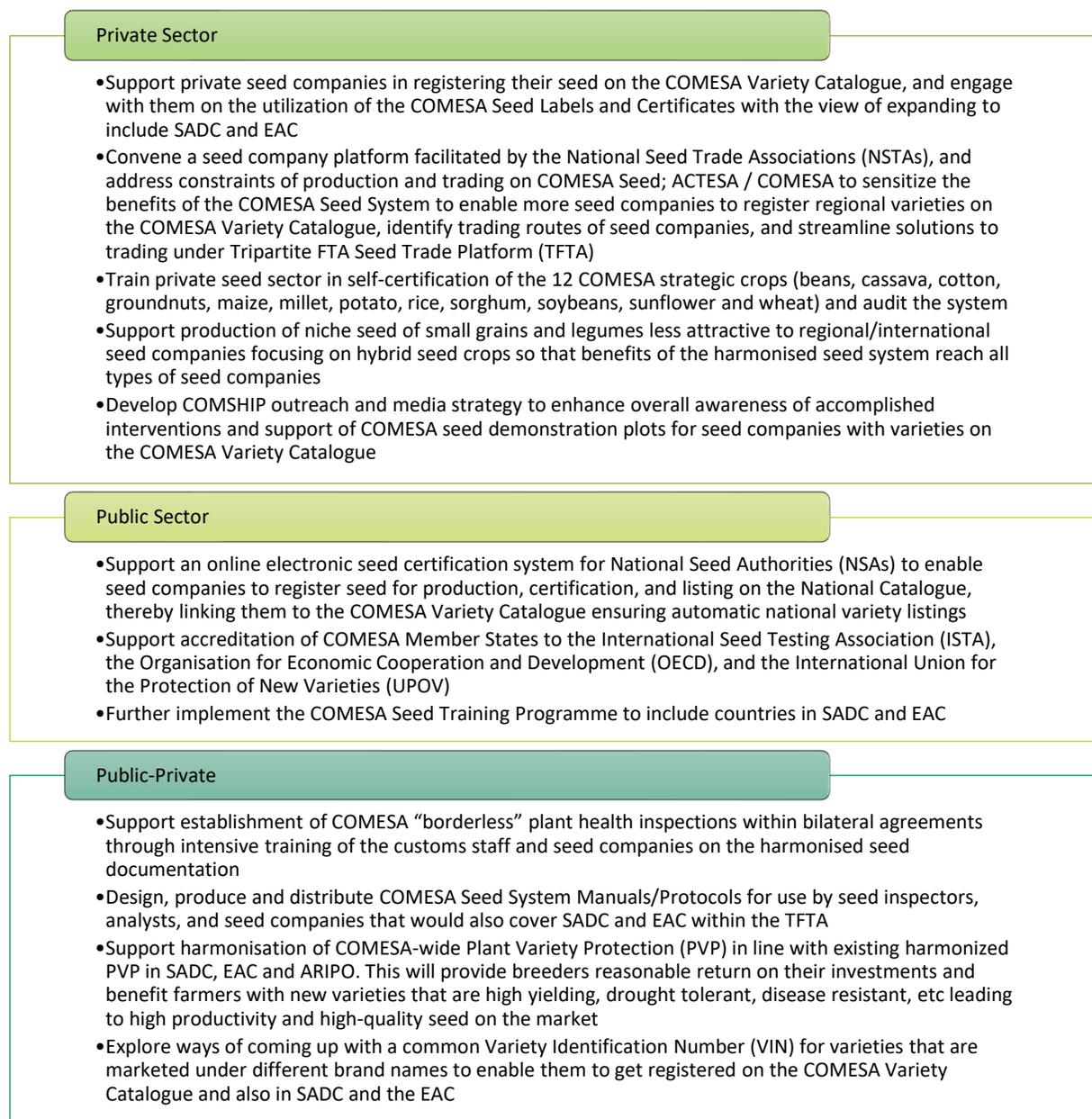
²² Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at x-xi.

²³ European Seed, "COMSHIP, the COMESA Seed Harmonisation Implementation Plan."

²⁴ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 73.

²⁵ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 8.

Figure 3 – 2019-2023 COMSHIP Priorities



Source: New Markets Lab (2019), based on European Seed, “COMSHIP, the COMESA Seed Harmonisation Implementation Plan,” December 3, 2018, <https://european-seed.com/2018/12/comship-the-comesa-seed-harmonisation-implementation-plan/>.

Table 1 below provides an overview of the status of implementation across the COMESA Member States. It is important to note that *Table 1* provides information on countries that COMESA has designated as fully aligned with the COMESA Seed Regulations, but this does not necessarily imply that fully aligned Member States have achieved full implementation in practice. COMESA defines full implementation as “the process of putting the policy into practice and consistently

applying these policies throughout all [21] Member States.”²⁶ According to COMSHIP, the process will reflect the particular legal and regulatory framework within each Member State as well as the unique context of the agriculture sector.²⁷ Generally, the process includes identification of any gaps and challenges in the current legal framework, domestication of harmonized national laws and regulations, and coordination and monitoring.²⁸ However, as practice has shown, implementation can include additional elements related to the interoperability of national systems, and questions of implementation may continue to arise as seed is increasingly traded within the region.

Table 1 – National Legislation Alignment with COMESA (2018)

	<i>National Legislation Fully Aligned w/ COMESA</i>	<i>Draft National Legislation Aligned w/ COMESA</i>	<i>Existing National Legislation Not Aligned w/ COMESA</i>	<i>No Legislation</i>
<i>Burundi</i>	✓			
<i>Comoros</i>				✓
<i>D.R. Congo</i>		✓		
<i>Djibouti</i>		✓		
<i>Egypt</i>			✓	
<i>Eritrea</i>				✓
<i>eSwatini</i>			✓	
<i>Ethiopia</i>		✓		
<i>Kenya</i>	✓			
<i>Libya</i>				✓
<i>Madagascar</i>			✓	
<i>Malawi</i>	✓			
<i>Mauritius</i>		✓		
<i>Rwanda</i>	✓			
<i>Seychelles</i>		✓		
<i>Somalia</i>				✓
<i>Sudan</i>			✓	
<i>Tunisia</i>			✓	
<i>Uganda</i>	✓			
<i>Zambia</i>	✓			
<i>Zimbabwe</i>	✓			

Source: New Markets Lab (2018).

Table 1 above shows alignment of national legislation with COMESA as one measure of implementation. Countries that have no existing seed regulations can adopt the COMESA rules outright but must create an aligned national legal framework to do so. Others are working to adapt current policies, laws, and regulations to match the requirements in the COMESA Seed Regulations.²⁹ A third set of countries have legal frameworks that are already aligned with the COMESA Seed Regulations. All COMESA Member States are expected to enforce the rules once

²⁶ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 10.

²⁷ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 10.

²⁸ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 16.

²⁹ Kuhlmann, “Harmonizing Regional Seed Regulations in Sub-Saharan Africa: A Comparative Assessment” at 29.

they are adopted, and COMSHIP does complete annual reviews of all Member States' implementation efforts.³⁰

In addition to domestication of the COMESA Seed Regulations at the national level, the COMESA Variety Catalogue is another indicator of the degree to which the COMESA rules are being implemented. Since the COMESA Variety Catalogue was launched in 2015 (and the first varieties registered in 2016), there have been marked increases in the number and diversity of varieties registered. As of February 2019, fifty-six different varieties had been registered in the COMESA Variety Catalogue,³¹ with seven different crop species represented and twelve different seed breeders engaged.³²

In a COMSHIP assessment posted at the end of 2018, COMESA noted that one of the main lessons learned since the launch of the program is that building seed companies' awareness of the COMESA Variety Catalogue remains crucially important.³³ At present, only about 20 percent of the 80 million smallholder farmers in the COMESA region have access to quality and improved seed,³⁴ demonstrating the need for continuing engagement. COMESA identified several goals for 2019-2023 to support more seed companies in the variety registration process, including supporting the production of "niche seed of small grains and legumes," and creating "COMESA Seed System Manuals/Protocols."³⁵ Further implementation efforts will focus on seed certification and the expansion of the COMESA Seed Training Programme to include countries from the EAC and SADC.³⁶ Seeds2B is also actively engaging with seed companies to build awareness of the COMESA Variety Catalogue and encourage the use of the catalogue.

Variety registration at the regional level rose significantly between 2016 and 2017 when twenty-four additional varieties appeared in the COMESA Regional Catalogue.³⁷ In addition, the diversity of varieties in the COMESA Variety Catalogue has increased substantially, with notable changes in 2017 when the catalogue expanded beyond hybrid maize to include bean, groundnut, sorghum, maize, soybean, and wheat (the first seed potato varieties were added in 2016 under a Seeds2B Test Case done by SFSA and NML). Notably, the number of soybean, wheat, and sorghum variety releases increased between 2016-17, while maize varieties stayed relatively the same.³⁸ As for 2018, variety registration rates were slightly lower than 2017, with nine different varieties of maize registered and seven Irish potato varieties registered. *Figure 4* charts the number and type (crop) of registrations by year.

³⁰ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP).

³¹ "COMESA Variety Catalogue," last visited February 12, 2019, <https://varietycatalogue.comesa.int/web/varietycatalogue>.

³² "Facts and Figures," *COMESA Variety Catalogue*, last visited February 12, 2019, <https://varietycatalogue.comesa.int/web/statistics>.

³³ European Seed, "COMSHIP, the COMESA Seed Harmonisation Implementation Plan."

³⁴ Phillip Kambafwile, "COMESA to Introduce Seed Labels and Certificates to Boost Regional Trade."

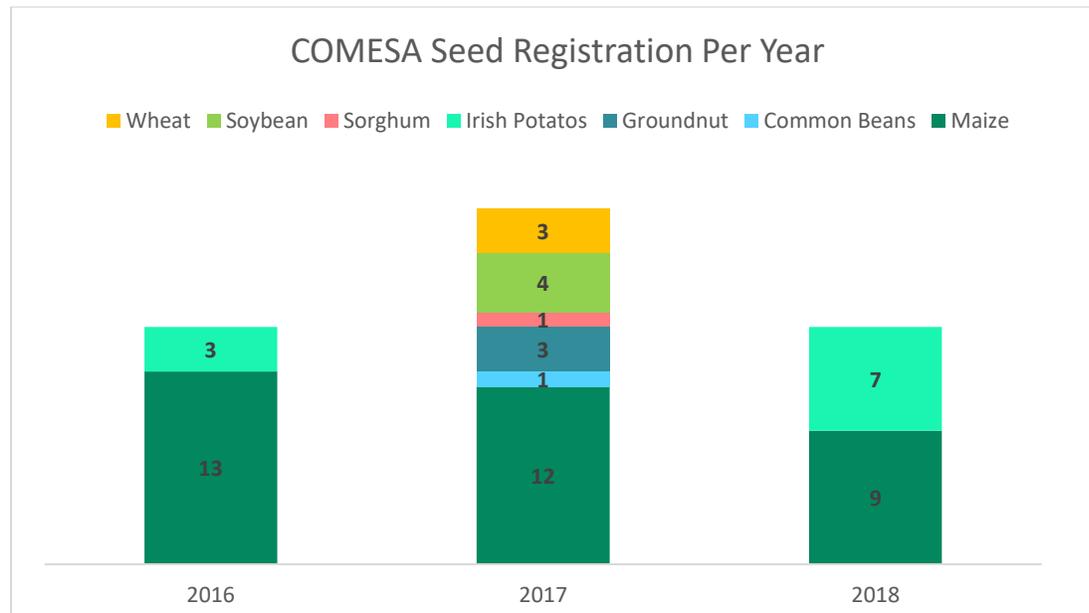
³⁵ European Seed, "COMSHIP, the COMESA Seed Harmonisation Implementation Plan."

³⁶ *Ibid.*

³⁷ "Facts and Figures," *COMESA Variety Catalogue*.

³⁸ *Ibid.*

Figure 4 – COMESA Regional Seed Registration



Source: New Markets Lab (2019) (Based on the COMESA Plant Variety Catalogue (2019)).

Test Cases undertaken by NML and SFSA provide insight into the ways that the COMESA Seed Regulations have been implemented, how this relates to the practices of other RECs, and where there are remaining gaps. Key takeaways include:

- The COMESA system is reported to be very “user-friendly,” at least for international companies, although the regional regulations for the other RECs are still being tested.
- In addition to variations among legal systems and degree of implementation of the COMESA Seed Regulations at the national level (domestication), variations in institutional, personnel, and infrastructure capabilities across COMESA Member States affect the harmonization process and speed of implementation.³⁹ Even if a country can align its laws with the COMESA Seed Regulations, without institutional capacity to implement these laws (for example laboratories to perform seed tests) on an ongoing basis, it will have a hard time fully complying with the COMESA rules. Interoperability between Member States’ regulatory systems is another factor, as noted above.
- With regard to seed certification, the COMESA Seed Regulations cover four seed classes, and QDS is not listed as a seed class. QDS provides for a locally-based less stringent alternative to formal seed certification and can be an important bridge between the formal and informal seed sectors. Some COMESA Member countries, such as Zambia, and

³⁹ Yuan Zhou and Katrin Kuhlmann, “Seed Policy Harmonization in SADC and COMESA: The Case of Zimbabwe,” *Syngenta Foundation for Sustainable Agriculture and New Markets Lab*, September 2015, 17, https://www.syngentafoundation.org/sites/g/files/zhg576/f/seeds_policy_zimbabwe_case_study_sept15.pdf.

Rwanda allow for QDS, but many COMESA countries do not.⁴⁰ Notably, QDS systems are recognized as compatible with the OECD Seed Schemes⁴¹ and can exist alongside certified seed classes.

III. Regional Variety Registration, Certification, and Cross-Border Trade

The 2014 COMESA Seed Regulations are divided into two parts: Part One contains six chapters that establish an administration and enforcement system, certification system, variety release system, and quarantine and sanitary and phytosanitary (SPS) measures; Part Two consists of ten schedules that show documents and specific requirements for seed certification and registration, such as required certificates, label colors, and label contents.⁴² Some of the key regulatory processes outlined within the COMESA Seed Regulations are described below.

a. Variety Release and Registration

The process for variety release and registration in the COMESA Variety Catalogue is set forth in Chapter 4 of the COMESA Seed Regulations. Within COMESA, ACTESA coordinates regional variety applications. New and existing seed varieties are entered into the COMESA Variety Catalogue provided that certain conditions have been met; requirements fall within three tiers according to the COMESA rules on variety release and registration:⁴³ (1) new varieties that have not been registered and released in any COMESA country; (2) a variety that was registered and released in one COMESA country prior to launch of the COMESA Variety Catalogue in 2015; and (3) varieties that were registered and released in at least two COMESA countries prior to launch of the COMESA Variety Catalogue in 2015. These three tiers are discussed in greater detail below.

In all cases, varieties must show proof of satisfactory testing for:

1. **Distinctness, Uniformity, and Stability (DUS)** in accordance with the guidelines of the Union for the Protection of New Varieties (UPOV); and
2. **Value for Cultivation or Use (VCU) or National Performance Tests (NPT).**⁴⁴

New varieties (tier 1) must show results of two seasons of testing for both DUS and VCU and proof of release and registration in two COMESA Member States.⁴⁵ Registration applications for

⁴⁰ Sanne Herpers, Raymond Vodouhe, Michael Halewood, Bram De Jonge, "ISSD Africa Synthesis Paper: The Support for Farmer-Led Seed Systems in African Seeds Laws," *ISSD*, 2017, 8-9,

http://www.issdseed.org/sites/default/files/case/synthesis_paper_the_support_for_farmer-led_seed_systems_in_african_seed_laws_issd_africa_twg3.pdf; Katrin Kuhlmann, Yuan Zhou, and Shannon Keating, "Seed Policy Harmonization in COMESA and SADC: The Case of Zambia."

⁴¹ Katrin Kuhlmann, Yuan Zhou, and Shannon Keating, "Seed Policy Harmonization in COMESA and SADC: The Case of Zambia," at 7-8.

⁴² Kuhlmann, "Harmonizing Regional Seed Regulations in Sub-Saharan Africa: A Comparative Assessment" at 29.

⁴³ COMESA Seed Trade Harmonization Regulations, 27-28, 2014.

⁴⁴ *Ibid* at 20.

⁴⁵ *Ibid* at 27.

new varieties must also include the suggested variety name (or “denomination”) and a reference sample provided to the relevant National Seed Authority.⁴⁶ National Seed Authorities may set minimum requirements for germination, species and analytical purity, health, and moisture content of seed submitted as a reference sample.

Varieties that have been registered and released in one COMESA Member State (tier 2) are eligible for an expedited or “fast track” process, where only one season of DUS and VCU testing is required (confirmation test), along with DUS and VCU information from the original Member State.⁴⁷ Proof of release in a second Member State is also required.

If a variety has already been registered and released in at least two COMESA Member States (tier 3), no additional testing is required, and an application can be made for immediate entry in the COMESA Variety Catalogue, provided that the application contains the necessary DUS and VCU data. *Table 2* below provides a comparison of the processes.

Table 2 – COMESA Variety Release & Registration Process Requirements

COMESA Variety Release & Registration Process – Requirements		
Varieties Released in 2+ COMESA Countries	Varieties Released in 1 COMESA Country	New Varieties
<ul style="list-style-type: none"> • Application for Regional Catalogue entry • Submission of necessary DUS & VCU Data • Initial Registration Fee • Annual Registration Fee 	<ul style="list-style-type: none"> • Application for Regional Catalogue entry • Submission of necessary DUS & VCU data from 1st Member State • Proof of release in 2nd Member State (only one season of DUS and VCU required) • Initial Registration Fee • Annual Registration Fee 	<ul style="list-style-type: none"> • Application for Catalogue entry • Two seasons of DUS and VCU Testing • Proof of release in two Member States • Initial Registration Fee • Annual Registration Fee • Suggested Variety Name • Reference sample provided to National Seed Authority

Source: New Markets Lab (2018) (based on the COMESA Seed Trade Harmonization Regulations, (2014)).

In addition to the requirements outlined above, the following practical steps are required for entry of a variety in the COMESA Variety Catalogue:

- **Step One:** creation of an online account.⁴⁸ In order to create an account, the applicant must either be located in one of the COMESA Member States or be represented by an

⁴⁶ Ibid.

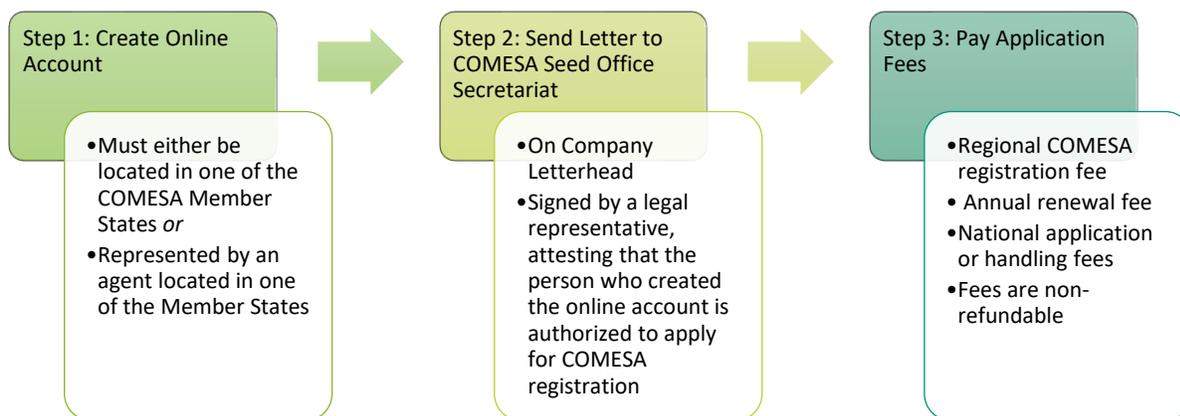
⁴⁷ Ibid at 28.

⁴⁸ See “COMESA Seed Variety Catalogue,” <https://varietycatalogue.comesa.int/web/login>.

agent located in one of the Member States.⁴⁹ See Appendix I for an image of the COMESA application page.

- **Step Two:** submission of a letter to the COMESA Seed Office Secretariat. The COMESA Seed Office Secretariat is located at Ben Bella Road, P.O. Box 30051, Lusaka, Zambia, and letters should bear the letterhead of the seed company or breeder. The letter must be signed by a legal representative, attesting that the person who created the online account is authorized to apply for COMESA registration.⁵⁰
- **Step Three:** completion of the required payment after registration.⁵¹ According to the COMESA website, the Regional COMESA registration fee is \$350, and the annual renewal fee (required to maintain a variety on the catalogue) is \$200.⁵² In addition, the applicant must pay national application or handling fees according to the NSA's prescribed fees of the COMESA Member State/s where the variety has been released. These fees are non-refundable, even in the case of rejection.⁵³ Once the completed application has been submitted and all fees have been paid, COMESA will review the application.

Figure 5 – Application Process for Registration in the COMESA Variety Catalogue



Source: New Markets Lab (2018).

Overall, COMESA notes that the time from application to regional listing should take a maximum of 15 working days once payment is received. *Figure 5* above outlines the application process for registration in the COMESA Variety Catalogue.

⁴⁹ "Filing an Application," *COMESA Variety Catalogue*, December 2017, <https://varietycatalogue.comesa.int/web/fillinghelp>.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² "Filing an Application."

⁵³ Ibid.

While some details of the application procedure are not spelled out in the regulations themselves (for example, the exact fees applicants must pay and requirements for reference samples), the COMESA Variety Catalogue website outlines this information for applicants.⁵⁴ According to its website, COMESA strongly recommends online applications, which are submitted directly to COMESA and not through the National Seed Authority (NSA) of a Member Country. An online application, along with payment, enables the other COMESA Member States to see the application and validate the description of the proposed variety. The NSA of the relevant Member State/s are instructed to upload the DUS and VCU data during the application process.

Throughout the Test Cases conducted by NML and SFSA, the private sector has noted the ease of working with ACTESA. Direct application to ACTESA through COMESA's online portal has proven to help facilitate the application process. COMESA works directly with the NSAs to provide DUS and VCU information, reducing the heavy burden on the applicants to obtain and submit this information as is the case in other regional systems. COMESA also allows for some flexibility regarding the location of the DUS and VCU tests, meaning that applicants are not necessarily limited to completing these tests within the country of application.

Once registered in the COMESA Variety Catalogue, a variety is intended to be freely marketed in all COMESA Member States, although implementation issues can arise in practice. First, Member States' NSAs are allowed to "assess the merits" of varieties introduced for marketing and "tak[e] action as appropriate."⁵⁵ Member States may also apply to the COMESA Seed Coordination Unit to limit market access of registered seed based on technical issues like unsuitability for cultivation, risk to human and/or animal health, and risk to other seed varieties.⁵⁶

It is also notable that only a handful of COMESA Member States have fully implemented the COMESA Seed Regulations, which will have an impact on marketing varieties in practice. Countries that have implemented the COMESA Seed Regulations might not recognize the regulatory procedures of countries that have not implemented the rules, decreasing the predictability of regional processes and leading to additional procedural steps (for example, trials or further steps for marketing approval).

Further, the COMESA Seed Regulations themselves allow for some variation amongst Member States, for example by providing discretion in the release of genetically modified seed varieties,⁵⁷ and for "technical issues, such as unsuitability for cultivation, or risk to other seed varieties, human health, animal health and the environment."⁵⁸ COMSHIP has been working on annual

⁵⁴ Ibid.

⁵⁵ COMESA Seed Trade Harmonization Regulations, 10, 2014.

⁵⁶ Ibid at 29.

⁵⁷ Ibid at 30.

⁵⁸ Ibid at 31.

regional reviews that highlight remaining barriers to implementation and market availability.⁵⁹ Most notably, issues tend to arise related to:⁶⁰

- Small and fragmented national seed markets
- Inconsistencies across national seed laws, or non-existent laws
- Inconsistencies across national phytosanitary and quarantine measures
- Lack of capacity

COMSHIP has helped address these issues through a few different measures. For example, COMSHIP is working with 18 of the COMESA Member States to implement laws and regulations that align with the COMESA Seed Regulations (COMSHIP is not yet active in Libya, Tunisia, nor Somalia). It has also undertaken capacity building efforts, training 270 delegates through the COMESA Seed Training program.⁶¹ COMSHIP also established the Mutual Accountability Framework (COMMAF) in 2018, which brings together civil society, seed companies, farmer organizations, and COMESA Member States to increase transparency and accountability in the implementation of the COMESA Seed Regulations.⁶² COMMAF monitors COMSHIP's implementation, acting as an independent reporting check to improve trust in the system.⁶³ Finally, the COMESA Seed Information System (COMSIS) is also under development; COMSIS will be a monitoring system to determine impacts of change in the seed sector across COMESA Member States.⁶⁴

b. Seed Certification

The COMESA Seed Certification system is outlined in Chapter 3 of the COMESA Seed Regulations. Seed certification refers to the process “of ensuring that seed offered for sale meets minimum requirements of field and laboratory regulatory standards.”⁶⁵ Most of the seed certification requirements set out in the COMESA Seed Regulations are minimum standards, meaning that the COMESA Member States have some discretion in implementing more stringent requirements for things like the number of inspections required during the certification process. The COMESA seed certification rules also set out labeling and categorizing requirements.

The COMESA seed labels and certificates are yet to be fully rolled out, but samples have been presented to public and private sector representatives in the COMESA Member States that have national seed systems that are aligned with COMESA.⁶⁶ COMESA establishes four different,

⁵⁹ “COMESA Seed Harmonisation Implementation Programme (COMSHIP),” Mutual Accountability Framework Meeting Proceedings.

⁶⁰ Ibid at 3.

⁶¹ COMESA, *Report of the Thirty-Eighth Meeting of the COMESA Council of Ministers*.

⁶² Ibid; John Mukuka, “Status of the COMESA Seed Harmonisation Programme (COMSHIP),” Presentation, June 2018, available at <https://www.seedtest.org/upload/cms/user/1.3COMSHIP.pdf>.

⁶³ European Seed, “COMSHIP, the COMESA Seed Harmonisation Implementation Plan.”

⁶⁴ COMESA, *Report of the Thirty-Eighth Meeting of the COMESA Council of Ministers*.

⁶⁵ COMESA Seed Trade Harmonization Regulations, 2, 2014.

⁶⁶ European Seed, “COMSHIP, the COMESA Seed Harmonisation Implementation Plan.”

OECD-aligned seed classes: pre-basic seed, basic seed, first generation certified seed, and second-generation certified seed.⁶⁷ Labels for each type of seed are then color-coded to allow for easy recognition (violet on white, white, blue, and red, respectively).⁶⁸ *Figure 6* depicts the color classifications and label content of the COMESA seed classes.

Figure 6 – COMESA Seed Classification Labels

Pre-basic seed (Violet band on white)	<table border="1"> <tr><td>FRONT OF LABEL</td></tr> <tr><td>Species (Latin name)</td></tr> <tr><td>Variety</td></tr> <tr><td>Lot Number</td></tr> <tr><td>Test Certificate Number</td></tr> <tr><td>Date of Test</td></tr> <tr><td>Net Weight</td></tr> <tr><td>Seed Treatment Declaration</td></tr> <tr><td>BACK OF LABEL</td></tr> <tr><td>COMESA Logo and National Logo</td></tr> <tr><td>Name and Address of Certifying Authority</td></tr> <tr><td>Seed Class</td></tr> <tr><td>COMESA Declaration</td></tr> <tr><td>Statement of Re-packing and Re-labelling</td></tr> <tr><td>Country of Production</td></tr> </table>	FRONT OF LABEL	Species (Latin name)	Variety	Lot Number	Test Certificate Number	Date of Test	Net Weight	Seed Treatment Declaration	BACK OF LABEL	COMESA Logo and National Logo	Name and Address of Certifying Authority	Seed Class	COMESA Declaration	Statement of Re-packing and Re-labelling	Country of Production
FRONT OF LABEL																
Species (Latin name)																
Variety																
Lot Number																
Test Certificate Number																
Date of Test																
Net Weight																
Seed Treatment Declaration																
BACK OF LABEL																
COMESA Logo and National Logo																
Name and Address of Certifying Authority																
Seed Class																
COMESA Declaration																
Statement of Re-packing and Re-labelling																
Country of Production																
Basic seed (White)																
First generation Certified seed (Blue)																
Second generation certified seed																

Source: COMESA Seed Trade Regulations, 2014

In addition to seed classification type, COMESA labels must also indicate pertinent information such as species, variety, seed testing certificate number, weight, seed class, etc.⁶⁹ COMESA Member States must also base their seed certification tests on the rules published by the International Seed Testing Association (ISTA). Finally, Member States must also adopt the COMESA Certification Standards set out in Schedule D of the COMESA Seed Regulations, which contain the specific thresholds for basic and certified seed for different seed varieties.⁷⁰ Schedule D has three broad categories of considerations for seed tests: field standards, lab standards, and diseases.⁷¹

Over the next four years (2019-2023), COMSHIP has pledged to assist Member States with implementation of the COMESA Seed Certification in a number of ways. First, COMSHIP has promised to support the creation of an electronic seed certification system so that the process of certifying and listing seed in the National Catalogues will become easier, with more automatic updating between the National Catalogues and the COMESA Variety Catalogue.⁷² COMSHIP also intends to complete further capacity building activities to help private sector companies successfully self-certify crops.⁷³ Streamlining the labeling process will facilitate trade across the

⁶⁷ COMESA Seed Trade Harmonization Regulations at 14.

⁶⁸ *Ibid* at 15.

⁶⁹ *Ibid* at 16.

⁷⁰ *Ibid* at 17.

⁷¹ *Ibid*, Schedule D.

⁷² European Seed, “COMSHIP, the COMESA Seed Harmonisation Implementation Plan.”

⁷³ *Ibid*.

region, and, once fully implemented, National Seed Authorities will be able to issue the COMESA Regional Seed Certificate.⁷⁴

c. Cross-border Trade

Chapter 5 of the COMESA Seed Regulations set out quarantine and phytosanitary measures for seed, with implications for the cross-border trade of seed varieties. Part One of Chapter 5 deals with phytosanitary measures and seed documentation for import and export. Part Two deals with the quarantine pest list and movement within Member States. Member States are expected to use discretion in exercising phytosanitary measures, as well as justify any re-testing of seed.⁷⁵ A reduction in testing at the border is meant to help move seed more quickly throughout the region.

Generally, three forms must accompany seed lots destined for import/export from COMESA Member States and for movement within COMESA Member States. The Seed Testing Certificate must be presented at entry and exit points. In addition, all seed imported by the Member States must be accompanied by a Plant Import Permit, which is presented to inspectors at entry and exit points.⁷⁶ All seed exported by a COMESA Member State must be issued a phytosanitary certificate, which also must be presented to inspectors at entry and exit points.⁷⁷ If a seed lot does not have the proper certificates or fails to meet the conditions of the plant import permit, or if a quarantine pest has been found, the importing Member State may issue a non-compliance notification.⁷⁸

Quarantine and border testing can present significant non-tariff challenges if not conducted in a way that conforms to good practices, sometimes resulting in cumbersome procedures and expensive delays during the transport of seed. One of the main objectives of COMSHIP is to reduce these barriers, in part through the development of a common regional pest list.⁷⁹ COMSHIP is also working to integrate seed lots into the COMESA Virtual Trade Facilitation System (CVTFS), which is an online system that supports logistics.⁸⁰

Knowledge of standards and applicable law is also an important aspect of effective implementation. In addition to assessing and facilitating harmonization of national laws, ACTESA is working to create “‘One-Stop’ Plant Health Inspection Points” at the border through bilateral agreements in all COMESA Member States.⁸¹ ACTESA and AFSTA are also working to build capacity among customs and plant health inspection officials so that they are more familiar with the COMESA system.

⁷⁴ Ibid.

⁷⁵ COMESA Seed Trade Harmonization Regulations, 39, 2014.

⁷⁶ Ibid at 32.

⁷⁷ Ibid at 33.

⁷⁸ Ibid at 34.

⁷⁹ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 6.

⁸⁰ European Seed, “COMSHIP, the COMESA Seed Harmonisation Implementation Plan.”

⁸¹ Mukuka, ed., COMESA Seed Harmonisation Implementation Plan (COM-SHIP) at 39.

Appendix I - COMESA Variety Catalogue Application Form



Variety description

Species name (1) _____
Variety name (2) _____
Synonym (3) _____
Commercial contact (4) _____
Agro-ecological zones (5) _____
Date _____

Applicant (6)(7)

Name _____
Company _____
Address _____
Phone number _____
Email address _____
Status of the applicant (6) _____

Breeder's company

Name _____
Address _____
Registration number _____
Contact name _____
Phone number _____
Fax number _____
Email address _____

Maintainer's company

Name _____
Address _____
Registration number _____
Contact name _____
Phone number _____
Fax number _____
Email address _____

First country of registration

Country _____
Registration date _____
Registration number _____

Second country of registration

Country _____
Registration date _____
Registration number _____

if the variety has been registered in only one country before June 30th 2015

Date of application _____
Application number _____

A picture is joined with the application form (8)

- (1) The Species name can be the English or Latin name.
- (2) The variety name has to be different from names already used in Species from the same class according to UPOV rules.
- (3) If synonyms are used, please indicate in which countries they are used, and the reasons for that. Please note that COMESA Seed Committee can reject the use of synonyms if there is no valid reason for it.
- (4) Please indicate where and how a potential user of the variety can have access to it.
- (5) Agro-ecological zones will be defined for COMESA countries later on. Please indicate according to your knowledge which zones the variety is adapted to.
- (6) The applicant has to be located in one of the COMESA countries. He/she can be the Breeder or a representative of the Breeder.
- (7) Please note that the COMESA Seed Office will need a headed letter from the company attesting that the applicant is entrusted to apply for the registration of the company's varieties.
- (8) A picture of the variety is not mandatory but strongly recommended.

Please join to this application form a headed letter from the company attesting that the applicant is entrusted to apply for the registration of the company's varieties, and eventually a picture of the variety.

Please return this application form completed, signed, and accompanying documents to COMESA Seed Office, Ben Bella Road, LUSAKA, ZAMBIA.