



The SADC Harmonized Seed Regulatory System: A Review of National Seed Policy Alignment Processes in HaSSP Project Countries

August 2012

Centre for Applied Legal Research (CALR)
12 Ashton Road, Alexander Park
Harare
Zimbabwe
www.ca-lr.org

Table of Contents

Abbreviations and Acronyms	3
Chapter 1 – Introduction	
1.1 Background.....	5
1.2 Problem Statement.....	6
1.3 Methodology.....	7
1.4 Enablers and Limitations.....	9
Chapter 2 – Legal Status of the SADC Harmonized Seed Regulatory System	
2.1 Public International Law Perspectives.....	10
2.2 Implications on National Seed Policy Alignment Processes.....	13
Chapter 3 – National Seed Policy Reform: Alignment of National Seed Legislation	
3.1 Analytical Framework.....	17
3.2 HaSSP Country Policy Alignment Assessments.....	17
Chapter 4 – Conclusion and Broad Recommendations	
4.1 Common Alignment Challenges and Broad Recommendations.....	47
References	49
Annex I (List of seed laws and regulations requiring alignment in the six HaSSP countries)	

Abbreviations and Acronyms

AISP	Agricultural Inputs Support Programme
ASARECA	Association for Strengthening Agricultural Research in Eastern and Central Africa
CIAT	International Centre for Tropical Agriculture
CIMMYT	International Maize and Wheat Improvement Centre
CSO	Civil Society Organisation
DANIDA	Danish International Development Agency
DDF	District Development Fund
DINA	National Directorate of Agriculture
EAC	East Africa Community
ECAPAPA	Eastern and Central Africa Programme for Agricultural Policy Analysis
ETIP	Extended Targeted Input Programme
FTLRP	Fast Track Land Reform Programme
GDP	Gross Domestic Product
GMB	Zimbabwe Grain Marketing Board
IARC	International Agricultural Research Centre
ICARDA	International Centre for Agriculture Research in Dry Areas
ICRAF	World Agroforestry Centre
ICRISAT	International Crops Research Institute for Semi-Arid Tropics
IFPRI	International Food and Policy Research Institute
IRRI	International Rice Research Institute
NGO	Non-Governmental Organisation
NPPO	National Plant Protection Office
NSA	National Seed Authority
SADC	Southern African Development Community
SSC	SADC Seed Centre
SPPS	SADC Plant Protection Sub-committee
SCCI	Seed Control and Certification Institute
SEMOC	Sementes de Moçambique Lda
SI	Statutory Instrument

STAM	Seed Traders Association of Malawi
TANSEED	Tanzania Seed Company
TECAP	Tecnologia & Consultoria Agro-pecu!aria Lda
TIP	Targeted Input Programme
TOSCA	Tanzania Official Seed Certification Agency
UNDP	United Nations Development Fund
USEBA	Mozambique Basic Seed Unit
UN	United Nations
USAID	United States Agency for international Development
ZASTA	Zambia Seed Trade Association

1. Introduction

1.1 Background

In February 2010, the Southern African Development Community (SADC) Ministers of Agriculture signed a Memorandum of Understanding (MoU) for the implementation of the ‘SADC Harmonised Seed Regulatory System’. The Harmonized Seed Regulatory System is an intricate ensemble of rules, standards, procedures and supporting measures necessary to facilitate the movement of seed (as a commodity) between countries in the region. It establishes commonly agreed regulatory standards, rules and procedures related to: Seed Variety Release; Seed Certification and Quality Assurance; and Quarantine and Phytosanitary Measures for Seed. The rationale for this System is premised on the need to facilitate enhanced seed trade in the region and to increase the availability of high quality seed to farmers through rationalizing and removing national regulatory barriers for the movement of seed across borders. This is expected to promote economies of scale in seed supply and to reduce market uncertainty (Rohbrach, 2003). This system represents an attempt to remove technical barriers to trade (TBT) in the regional seed market.

In order for the System to be functional, it requires SADC Member States to align their national seed regulations to the common standards, rules and procedures outlined in the SADC Harmonized Seed Regulatory System. The result of this alignment is what is known as ‘harmonization’. In other words, ‘harmonization’ is a ‘resultant status’, a ‘net result’ of national policy and legislative reform processes undertaken to correspond to the commonly agreed standards, rules and procedures. Lerner (2008) described the objective of harmonization as reducing regulatory duplication, overlaps and divergence between Member States. While harmonization is often misconstrued to mean creating uniform national regulations; it actually permits for differences in the form of national regulations, but emphasizes on the similarity of net results of the ‘commonly agreed principles’. Therefore, harmonization is not about enacting uniform seed rules in each SADC country, but it is about developing a common legal culture on seed regulation that is consistent with the commonly agreed standards, rules and procedures.

The process of aligning national seed regulations to the SADC Harmonized Seed Regulatory System for purposes of achieving ‘harmonization’ is inherently complex, multi-directional,

fragmented and unpredictable. Studies have revealed that it is not a linear mechanical process where national governments alter the regulations by a simple stroke of the pen (World Bank: 2008, Rundra: 2008). Rather, it is a process that is influenced by many factors of an economic, political, social and legal nature. This is because any proposal for regulatory reform brings with it concerns about potential ‘threats’ to national priorities, and fears of loss of national sovereignty, implications of changes in institutional responsibilities and the requirement of additional resources to implement them (Walliser, 2003). The success of any national policy and regulatory alignment process is therefore determined by the manner through which these factors are managed.

This paper was commissioned by the Food, Agriculture and Natural Resources Policy Analysis Network (FANRPAN), under the Harmonized Seed Security Project (HaSSP), to examine the status and challenges in national seed policy and regulatory alignment processes in the context of the SADC Harmonized Seed Regulatory System in Malawi, Mozambique, Tanzania, Swaziland, Zambia and Zimbabwe. It investigates the progress and shortcomings of national alignment processes to date in the context of the various factors that influence its success. The study specifically: (a) provides a contextual legal analysis of the SADC Harmonized Seed Regulatory System and its implications on national alignment processes, (b) gives a descriptive and analytical assessment of standard national regulatory alignment processes in each of the study countries including challenges being faced to date, and (c) proffers broad and country-specific recommendations on approaches for enhanced national regulatory alignment processes.

1.2 Problem Statement

The SADC Harmonized Seed Regulatory System is expected to establish a common legal framework through which seeds (as an agricultural commodity) are easily traded across national borders in southern Africa. Most of the SADC Member States demonstrated their political commitment by signing a Memorandum of Understanding (MoU) for the implementation of the System in 2010. Furthermore, technical and financial support for making the System functional through facilitating national policy and regulatory alignment processes has been provided by FANRPAN through the HaSSP project since 2010. However, despite the apparent political endorsement of the System at the SADC regional level; and the technical and financial support provided to countries at the national level; national policy and

regulatory alignment processes have not been progressing at the pace by the project. This study examines the status of the national seed policy alignment processes in the six HaSSP project countries. It specifically assesses the factors affecting the national policy alignment processes and makes broad and country-specific recommendations to address the challenges.

1.3 Methodology

The study focused on two main areas i.e. (a) assessment of standard national policy and regulatory alignment processes in each of the six countries, and (b) analysis of the challenges faced by the HaSSP Task Teams and Steering Committees in national policy and regulatory alignment. The study relied on secondary data collected through literature review. It also utilized a questionnaire and in-depth and key informant interview tools to obtain primary data.

	Assessment of Standard National Policy Alignment Processes	Analysis of Challenges in National Policy Alignment Processes
Literature Review	X	
Questionnaire	X	X
In-depth Interviews		
Key Informant Interviews	X	X

(a) Assessment of Standard National Policy and Regulatory Alignment Processes

Research under this area was carried out through a literature review of national legislation, and scholarly literature. A questionnaire was also administered to government departments (mainly the Ministries of Agriculture and Justice) in the six countries. Where additional clarification was required, key informant interviews were undertaken with specific government representatives.

Key Questions on Standard National Policy and Regulatory Alignment Process

Key Question	Sub-questions
1. What is the nature of the legal system existent in each of the 6 countries?	i. What is the legal and jurisprudential history forming the basis of the national legal system? ii. How is legislation classified and administered in the country?

	iii. What laws, legal instruments or policies regulate seed variety release, seed certification, and quarantine and phytosanitary measures in the country?
2. What is the standard domestication process/practice in each of the 6 countries?	<p>i. What are the stages or steps typically followed in legislative reform processes in the country?</p> <p>ii. Which national institutions are typically responsible for facilitating agriculture-related legislative reform processes in the country?</p> <p>iii. What are the roles and responsibilities (including the specific key actors) of these institutions in facilitating reform processes in the country?</p> <p>iv. Is there a role of non-State actors such as industry in the legal reform process? If so, what is the role and limitations of such actors?</p>

(b) Analysis of Challenges in National Policy Alignment Processes

Research under this area was carried out through a questionnaire that was administered to HaSSP Task Teams and Steering Committee members. Where additional clarification was required, key informant interviews were undertaken with specific members of the Task Teams and Steering Committees.

Key Questions on Challenges in National Policy Alignment Processes

Key Question	Sub-question
1. What is the status of legislative alignment (domestication) in each of the 6 countries to date?	<p>i. What stage in the domestication process have the country reached?</p> <p>ii. What outputs (i.e. substantive policy documents) have been produced thus far?</p> <p>iii. To what extent have these outputs been produced with the conscious participation of the relevant government institutions?</p> <p>iv. What measures have been taken to institutionalize the project-led domestication process within government (i.e. within the context of the standard domestication process or practice ordinarily followed by government)?</p> <p>v. Are there any challenges being faced by the country nodes, national task teams and HaSSP Steering</p>

1.4 Enablers and Limitations

The study team obtained considerable support from FANRPAN and the HaSSP country Task Teams in conducting the research. FANRPAN was particularly helpful in providing secretarial assistance in accessing contact details of the Task Teams and the Steering Committee members in all the six HaSSP countries. Most of the Task Teams were also very helpful in completing the questionnaires, and availing time to be interviewed. Having said this, the study team faced some limitations in obtaining some of the questionnaire responses in time.

2. Legal Status of the Harmonized Seed Regulatory System: Implications on National Alignment

It has been noted that the successful implementation of the SADC Harmonized Seed Regulatory System requires that Member States ‘*approve the proposed Systems...and continue to provide strong political support and good will...*’ (own emphasis) (ICRISAT, 2008). This statement; contained in the preamble of the document outlining the commonly agreed standards, rules and procedures on seed variety release, seed certification and quality assurance, and quarantine and phytosanitary measures; highlights a significant legal consideration in national policy alignment processes – i.e. the legal status of the Harmonized Seed Regulatory System. From a legal perspective Member State ‘approval’ can mean different things depending on the legal status of the instrument requiring approval. For instance: approval of a non-legally binding instrument will not require full formal domestication processes to be undertaken because of its voluntary nature; whereas approval of an international or regional legally binding instrument will require ‘domestication’ processes to be completed in full in order for it to have the force of law at national level. Therefore the precise nature of the legal instrument, in this case – the MoU on the SADC Harmonized Seed Regulatory System or the Technical Agreements on Seed Variety Release, Seed Certification and Quality Assurance, and Quarantine and Phytosanitary Measures; should be ascertained in order to have an appreciation of the nature of national ‘approval’ processes required for alignment at national level. This chapter focuses on this question, and provides insights on the implication of the legal status of the instruments on national policy alignment processes.

2.1 Public International Law Perspectives

SADC member states are expected to implement the standards, rules and procedures set out in the Harmonized Seed Regulatory System. As noted above, the process of national policy alignment that each country will adopt depends to a large extent on the legal nature of the regional instrument (s) that encapsulates it. This question is answered largely by principles of public international law.

The Nature of the Regional Regal Instruments in Public International Law

The seed standards, rules and procedures that form the basis of the SADC Harmonized Seed Regulatory System are contained in an MoU that was open for signature by SADC Ministers of Agriculture in February 2010. They have also been referred to as ‘Technical Agreements’ on Seed Variety Release; Seed Certification and Quality Assurance; and Quarantine and Phytosanitary Measures. The inter-changeable use of the terminology used to describe them without a clear nexus (i.e. Technical Agreements, on one hand; and an MoU, on the other) makes their precise nature somewhat obscure.

Technical Agreements

The Vienna Convention on the Law of Treaties (VCLT), defines an international agreement as an agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. An agreement (including Technical Agreements) on the other hand is an understanding between or among the parties as to what the rights and obligations of each one of them is. Invariably the language of the agreement conveys the binding nature of the understanding. It makes liberal use of words and terms which connote the peremptory or obligatory nature of the agreement. Such words and terms include “shall”, “undertake”, “obligated”, “enforce”, “ensure”. When one considers the SADC Seed “Technical Agreements”, it is evident from the text that they do not employ such language. They read like descriptions of systems and their constituent parts. As such, they do not impose legally binding obligations on member states nor do they confer rights on their own.

The term “Technical Agreement” is usually used to denote agreements dealing with technical issues within the competence of the State. Typically, a technical agreement comes about in this way: a main agreement or MoU is entered into between or among states which sets out the general framework for cooperation, including the general rights and duties of the parties. Within the main agreement or MoU there is an enabling provision for technical agreements. This provision would identify the authorities of the respective member states’ who are competent to sign the agreement (this is usually the minister of the relevant ministry). The enabling provision would also spell out any formalities and conditions precedents and areas of competence of such agreements. A generic example is an MoU entered between a regional or international body, and a national government ministry. There is normally a provision that

allows the international or regional body to enter into technical agreements with the government ministry for cooperation on matters falling under portfolio of that ministry. In such a case, the technical agreement would derive its authority from the principal MoU. In such a model the relationship between the MoU and the Technical Agreement would be comparable to the relationship between an Act of Parliament and subsidiary legislation.

MoU on Harmonized Seed Regulatory System

The only legally binding instruments that can be made under the SADC Treaty are Protocols. Art. 22 of the Treaty provides that each Protocol must: spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration; be approved by the Summit on the recommendation of the Council; be open to signature and ratification; and enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States. The SADC Protocol on Trade is an example of how SADC has managed to achieve the creation of a legally binding framework for the adoption of technical standards and procedures in pursuit of a harmonization policy. The Protocol contains six annexes which are sub-agreements on the harmonization of specific activities related to the trade.

Having said this, SADC Community jurisprudence also recognizes MoUs as legal instruments, albeit of a subsidiary nature. These are defined as preliminary legal documents that describe an agreement between parties which will eventually lead to a Protocol (Tralac, 2010). However some MoUs, such as the SADC MoU on SQAM, are also formulated to give effect to existing Protocols. Examples of SADC MoUs that have been concluded include the: MoU on Macroeconomic Convergence; MoU on SQAM; MoU on Cooperation in Taxation and Related Matters; MoU on the SADC Standby Brigade; and the MoU on the new Headquarters of SADC. The SADC MoU on the Harmonized Seed Regulatory System is one of the latest MoUs to be concluded.

The legal status of SADC MoUs is not absolutely clear, save for the fact that they are subsidiary to the SADC Treaty and SADC Protocols. However because they are considered preliminary legal instruments that are entered into by Ministers and not by the Summit of Heads of States or Government, they are generally not considered to be legally binding on their own. This is because within the SADC structure, it is only the Summit of Heads of State

or Government that can make legally binding decisions and instruments (Ditlhake, 2008). Other organs such as the Council of Ministers are mandated to implement policies made by the Summit.

2.2 Implications on National Seed Policy Alignment Processes

It appears from the foregoing discussion that the SADC MoU on the Harmonized Seed Regulatory System and the Technical Agreements that accompany it cannot be considered to be ‘legally binding’ instruments in the strict sense of the phrase. It would appear that the international law phenomenon to which they bear the closest resemblance is soft law. Soft law consists of norms and standards contained in non-binding instruments such as declarations, resolutions of international organizations, model laws, and the like. They have no binding effect but they can carry much persuasive value and political weight. The important thing to note in this regard is that, because they do not amount to legally binding agreements, States are under no legal obligation to domesticate them (nor are they capable of domestication in the true sense of transforming a rule of international law into a rule of domestic law). Because they carry political weight and persuasive value however, sometimes states will allow themselves to be influenced by them in the formulation of national policies and laws. This may be done overtly or covertly. However, the extent to which national governments can be persuaded to embrace these instruments in national policies depends on how they are communicated. As such, various factors come into play, the chief being ‘legal terminology’, and the ‘entry point for regulatory reform’.

2.2.1 *Appropriate Legal Terminology*

The use of accurate legal terminology in relation to national legislative reform processes cannot be overemphasized. This is because the correct terminology establishes certainty as to the precise nature of the reform sought. For example, the study observed that the use of the term ‘Agreement’ on its own in reference to the SADC Seed Regulatory Harmonization System gives a distorted impression that what is sought to be incorporated into national laws are legally binding commitments on SADC Member States. The System, as outlined in the preceding section, is encapsulated in an MoU that recognizes specific Technical Agreements in areas requiring seed standard, rules and procedure harmonization. While Member States are not legally obliged to incorporate them; they serve as an important tool to persuade Member States to incorporate them due to their significance in trade, agricultural

development and livelihood enhancement. Naturally, this clarification has implications on the advocacy approach to be adopted by six the pilot countries. For example, instead of erroneously emphasizing on ‘domestication’ which in itself is a nationally defined process involving various levels of approval including parliamentary approval for ratification in most countries; the countries can emphasize on *policy reform* based on ‘alignment’ to the SADC Harmonized Seed System while demonstrating the benefits of the effects of such alignment to the country and the region. As a matter of course, Ministries of Agriculture always *update* their laws without being legally bound to do so by regional or international Agreements. In our view, the alignment should be done as a matter of course and due to the benefits arising from such alignment; and not as a legal obligation.

2.2.2 *Entry Point for Regulatory Reform*

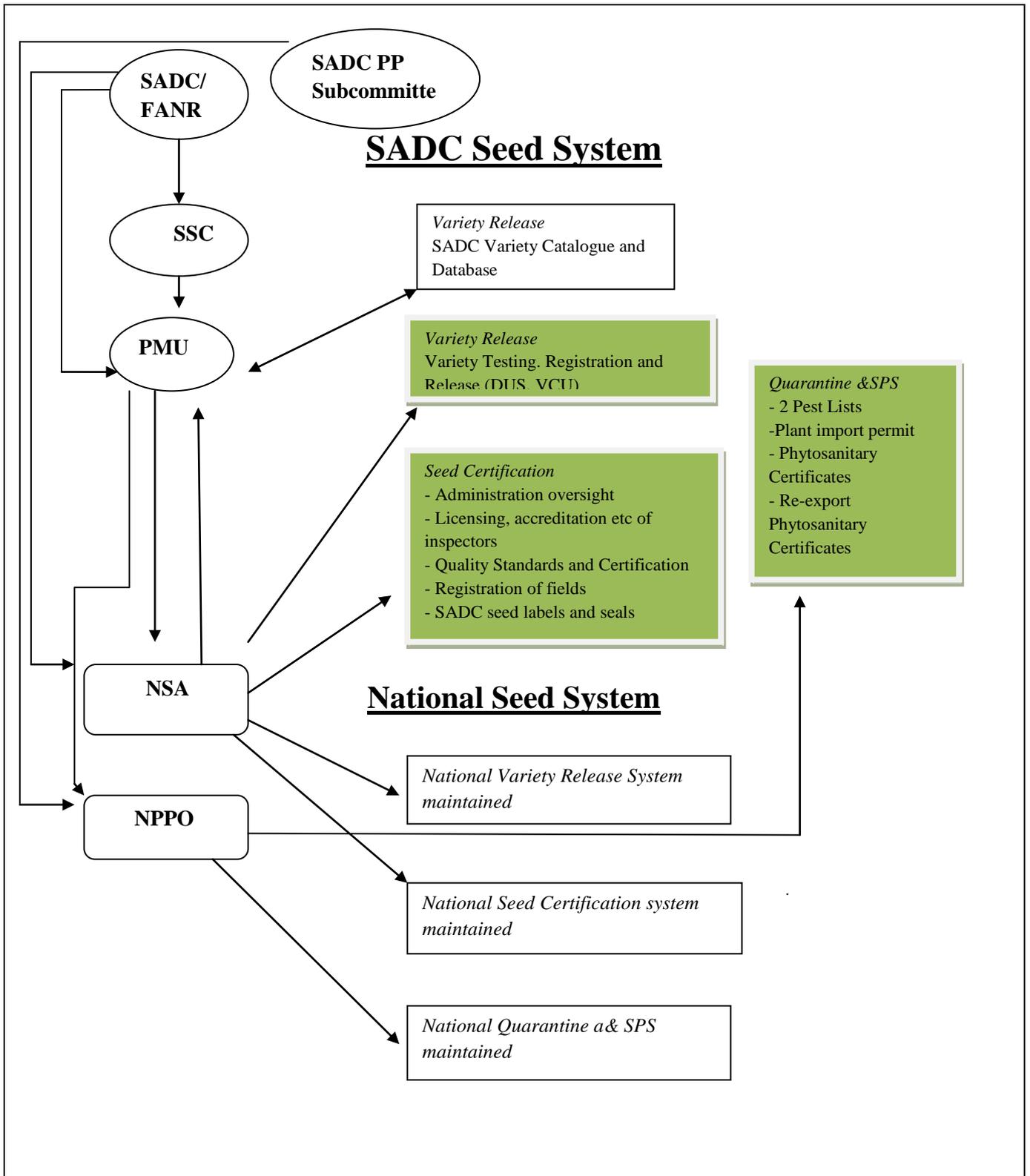
The word ‘domestication’ when used in the context of legal reform, is a technical legal term that means transforming international or regional legally binding instruments into national policies and laws. Being a technical term, the process that is required to achieve ‘domestication’ is well defined in public international law and national legal traditions of each Member State. This is particularly significant for countries that follow a dualist approach to domestication such as Malawi, Swaziland, Tanzania, Zambia and Zimbabwe. For countries that follow the monist approach, such as Mozambique, the procedure is not so rigorous because they accept international or regional instruments to be self-executing at national level, subject to constitutionally mandated confirmations. To use domestication as an ‘entry point’, when the regional legal instrument in question does not require such procedures to be followed, will lengthen the alignment process with no added value. Rather, the entry point should be adjustment of existing regulations, as a matter of course to respond to National Agricultural and Trade Policy dictates which are in line with the SADC Harmonized Seed Regulatory System.

3. National Seed Policy Reform: Alignment of National Seed Legislation

As noted earlier, the SADC Harmonized Seed Regulatory System is a complex collection of rules, standards, procedures and supporting measures necessary to facilitate movement of seed between countries in the region. However, not all aspects of the System require legislative response i.e. legal reform. It is mainly aspects relating to standards, rules and procedure that will require legislative changes at national level. Furthermore such changes do not mean a complete overhaul of existing laws, but an addition to existing national standards, rules and procedures in the laws, but focusing on regional release and associated standards relating to Certification and Quality Assurance and Quarantine and Phytosanitary Measures for purposes of marketing seeds at the regional level. In other words, the envisaged changes will add a regional dimension to the existing national dimension for Variety Release and its associated standards. Other aspects of the System will be supporting measures implemented by non-national bodies, namely the SSC, PMU, SADC Seed Centre, SADC Plant Protection Sub-committee, and the SADC Directorate on FANR (See Diagram 1 below). The specific laws that will require changes to comply with the SADC Harmonization System for each country are listed in Annex I of this report. A database containing text of these laws has also been compiled as part of this study and is available for reference purposes.

This chapter provides a description and analysis of national policy and regulatory reform processes that are taking place in the six project countries. It endeavours to present the existent challenges through an analytical framework that consists of a combination of diagnostic and project implementation approaches aimed at assisting national task teams to better understand and manage their respective seed sector policy reform initiatives, and to design more equitable and sustainable strategies and operations for policy alignment.

Diagram 1: Major standards, rules and procedures that may require national policy alignment



3.1 The Analytical Framework

National seed policy alignment processes that are currently being led by the HaSSP Task Teams are not necessarily linear in nature. Rather, they are processes heavily influenced by a myriad of socio-economic, political and legal factors. For purposes of analysis, these factors inter-play in three spheres that the World Bank (2008) conceptually categorized as the: (a) Reform Context; (b) Reform Arena; and (c) Reform Process. The *Reform Context* refers to a country's political, economic, social, cultural and historical characteristics. It signifies the link between political processes in the country's seed sector and national political institutions and stakeholders. It is in this sphere that the SADC Harmonized Seed Regulatory System's reform agenda is usually questioned. Some of the questions that arise in this sphere include: what is the rationale for the proposed changes? , how and why are they being tabled? , who is driving the changes? The *Reform Arena* comprises the institutions and stakeholders that govern relations and behaviour within the seed sector. It is in this sphere that stakeholders' economic and political interests interplay, converge or conflict. These interests include both those that drive the seed policy reforms and those that are affected by the proposed policy reforms. The *Reform Process*, on the other hand, refers to the actual seed policy changes necessitated through information flow, public debate, coalition building, participation, transparency, communication and the interaction of actors in the policy arena over time (World Bank, 2008). Experience has shown that the success of the Reform Process sphere (i.e. success in actual policy alignment) is highly dependent on what obtains in the Reform Context and Reform Arena spheres (Schlager: 1996 Rodrik *et al*: 2004). The dynamics of the national reform context and national reform arena can either aid or thwart progress in seed policy reforms that are necessary for policy alignment. In order to obtain an incisive insight on the status and challenges in the HaSSP country national policy alignment processes, the country-by-country assessment outlined below is undertaken using the above-mentioned analytical framework.

3.2 HaSSP Country Policy Alignment Assessments

3.2.1 Malawi

Background to the Legal System

At independence in 1964, Malawi inherited a mixed system of English common law and customary law. Section 1 of the Constitution of Malawi declares it to be a sovereign

Republic. The President is the Head of State and Government with the power to assent to and promulgate laws. The President is empowered to appoint a cabinet one of whose duties is to initiate laws. Section 48 of the Constitution vests all legislative power in Parliament. Parliament consists of the National Assembly, Senate and the President. All Acts of Parliament only become law after being passed by both chambers and signed by the President. Malawi allows for the making of two forms of legislation, namely, primary (Acts of Parliament) and secondary legislation (subsidiary legislation made by the executive). Parliament is empowered to delegate its law making prerogative to the executive. Section 58(1) of the Constitution allows Parliament, through an Act of Parliament, to delegate to the executive the power to make subsidiary legislation. Legislation made in this regard is subject to specification of the parent Act of Parliament.

Legislation is administered by the respective Minister of the government department that is responsible for issues considered by the legislation. In the case of seed legislation, it is the Minister responsible for Agriculture that administers these laws. Laws that regulate Seed Variety Release, Registration, Certification and Quarantine and Phytosanitary Measures in Malawi include the: (a) Seed Act (Act 9 of 1996) which governs issues of variety recognition, variety lists, certification and all other matters related to seeds and their production and sale; and (b) Plant Protection Act of 1969 which establishes regulations for Phytosanitary measures. For example the exportation of plant materials and quarantine measures are regulated by the Plant Protection Act of 1964 (Export Regulations).

Malawi's National Seed Policy Alignment Process

The Reform Context

Malawi's seed sector has historically been dominated by government breeding programmes. However, in recent years the private sector has been prominent as a result of seed sector liberalization policies. Currently the private sector controls 90% of the market (Chinsinga, 2011). While this situation has been supported by some quarters in national political institutions, some stakeholders (mainly smallholder farmers and NGOs) still view private sector dominance with scepticism. Some scholars (Chinsinga, 2011) have even described the role of the private sector as making 'Malawi a sales point for foreign seed materials leading to the near collapse of crops such as millet, sorghum and legumes'. Having said this, government seed input subsidies play an important role in the seed sector. These have been in

place since the 1990s and continue, with added weight, to this day. Seed subsidy programmes reveal some level of government political and economic interest in the delivery and supply of seeds to farmers.

When questions regarding the SADC Harmonized Seed System's national policy reform agenda are posed in the setting of Malawi's reform context described above; there is likely to be variant responses depending on the interests of the stakeholders. However, because there seems to be a general government policy, for example, *the Agriculture Sector Wide Approach (ASWAp) - Malawi's Prioritised and Harmonised Agricultural Development Agenda* of 2011; towards greater private sector involvement which is in line with the objectives of the SADC System, these questions are not likely to illicit much negative responses from political institutions. However it will be important for the Malawi HaSSP Task Team to make a detailed assessment of the underlying political and economic considerations of the proposed seed policy changes from the country's political institutions.

The Reform Arena

The seed sector in Malawi is regulated by the Ministry of Agriculture and Food Security (MoAFS). Matters related to seed variety release, seed certification, and quarantine and phytosanitary measures are regulated by the Seed Services Institute (SSI), the Seed Certification and Quality Control Unit (SCQCU), the Agricultural Technology Clearing House Committee (ATCHC), and the Plant Protection Services (PPS). As regulators, these institutions are guided by government seed sector policy. Other stakeholders in the country's seed sector include: seed companies; the Seed Traders Association of Malawi (STAM); farmers; the National Smallholder Farmers' Association of Malawi (NASFAM). From the literature reviewed, it would appear that while there may be some competing economic and political interests amongst the institutions and stakeholders with regards to the appropriate seed policy thrust, the extent of such difference is not divisive. In order to obtain empirical evidence on the potential allies and opponents for the proposed seed policy changes; the HaSSP Task Team may need to undertake a detailed Stakeholder Analysis that examines stakeholder priorities, motivation, resources, degree of influence, and actual and potential alliances for the policy alignment.

The Reform Process for National Policy Alignment

The standard policy reform process followed in Malawi involves all sector institutions and stakeholders. However, the MoAFS, as the regulatory authority responsible for initiating agricultural policies in the country, leads the process. Other stakeholders, including private sector players, NGOs, farmers etc; play a complementary role in the process. Such complementary role includes advocacy activities such as public debates, and consultations on the gaps and proposed changes. The policy reform process followed in Malawi consists of 6 steps. These are outlined in the flow chart below.

MoAFS

Stakeholders

Step 1:

Department of Research (SSI, SCQCU, ATCHC, and PPS) identifies gaps in existing legislation

MoAFS is informed of the gaps and proposed changes for purposes of obtaining Ministerial Buy-in

Step 2:

MoAFS officially commissions a Review of the specific laws

Step 3:

MoAFS leads stakeholder consultations

Step 4:

Preparation of technical policy review documents by MoAFS for Cabinet (i.e. Cabinet Paper)

Step 5:

The AG's Office prepares draft Bill on the Amendments and/or Draft Regulations

Step 6:

For a Bill, the Minister of AFS takes it to parliament and the various parliamentary procedures are followed until it is signed into law by the President. For Regulations, the Minister of AFS publishes it and it becomes law

Stakeholders participate in consultations



For a Bill, stakeholders may be consulted during its debate in parliament

Analysis and Recommendations for Malawi

The HaSSP Malawi Task Team; which consists of representatives from the government (Ministries of Agriculture and Justice), the private sector, farmers and research; has been undertaking activities aimed at influencing the above-outlined process for purposes of facilitating seed policy alignment to the SADC Harmonized Seed Regulatory System. However the current status (i.e. where Malawi is within the 6-step process) is not entirely clear. It would appear from the study conducted that the ‘alignment process’ (i.e. the policy reforms), has not been officially endorsed by the policy makers i.e. the Minister of AFS. While government representatives from the relevant departments are represented in the task team, this does not necessarily amount to Ministerial buy-in that is anticipated under Step 1b of the process. It would appear that most of the activities undertaken (i.e. legal reviews and preparation of draft amendments etc.) are presently being done outside the official government process (i.e. the standard MoAFS process outlined in the flow chart), the strategy being to advocate for the Minister to adopt them at a later stage. As such it appears that Malawi is presently at Step 1 of the process.

This approach has both pros and cons. The positive aspects are that it allows for the task team to undertake technical activities associated with the alignment without government bureaucratic obstacles. However, experience has shown that governments would prefer to lead or drive policy reform processes from the beginning (including undertaking technical activities associated with the policy reform). Indeed, such technical activities are envisaged under Step 2 of the standard MoAFS policy reform process. As such, it would be a challenge for the task team to, at a later stage, convince the MoAFS to adopt drafts that were produced through a process that it was not officially part of. The result would be, as demonstrated by experiences from other similar initiatives, the production of draft legislation that have no political value.

The task team also reported several challenges in undertaking activities associated with policy alignment. The challenges, which are mainly of an institutional nature, include: inconsistency of task team and steering committee meetings, and lack of adequate resources to effectively undertake activities.

In order to expedite the reform process, the Malawi task team may need to consider the following recommendations aimed at re-designing its policy alignment approach:

- Undertake a Stakeholder and Institutional Assessment Analysis to ascertain the interests of actors and the institutional context of seed policy reforms in the country. With regards to stakeholder analysis, it will entail an examination of stakeholder priorities, motivation, resources and degree of influence. It will also involve identifying actual or potential strategic alliances to enhance their influence over the process. With regards to institutional analysis, it will entail understanding the ‘rules of the game’ within the MoAFS, and identifying entry points to influence the Minister of AFS. This analysis will assist the team to clearly map out its advocacy strategy.
- Within the context of its work plan, channel considerable effort (i.e. in terms of resources and time) to obtain Ministerial buy-in of the process. This will include planning for advocacy activities, such as policy dialogues, that are aimed at obtaining Ministerial buy-in.
- Enhance institutional partnership within the task team that emphasizes on clear ‘modes’ of interaction. This is because a strong coalition or partnership of stakeholders is crucial for enhancing influence over the process.

3.2.2 Mozambique

Background to the Legal System

Mozambique’s legal heritage has at its foundation in Portuguese Law as a result of the country’s colonisation by Portugal. However, traditional customary law was in many cases tolerated or tacitly accepted and it continued to influence the development of law in the country (OSISA, 2010). The President of the Republic is the head of the Executive and may pass laws and order them to be published in the *Boletim da Republica de Moçambique*. The laws made in Mozambique consist of Acts of the Assembly of the Republic, Decree-laws, Decrees and Notices. Acts of the Assembly of the Republic (*Leis*) are laws which have been passed by the House of Assembly and take the form of laws, motions and resolutions. Apart from legislative acts the Assembly may also make other decisions which may take the form of resolutions and published in the *Boletim da Republica de Moçambique*. Decree-laws (*Decretos Lei*) are laws passed by the Council of Ministers. Decrees (*Decretos*) are regulations made under certain Acts or in an autonomous manner. Notices, on the other hand, are acts made by the governor of the Reserve Bank of Mozambique in exercise of his powers.

There are also regulatory acts of ministers which are Ministerial Regulations (Diploma Ministerial), and regulatory acts also at the municipal level (*posturas e regulamentos municipais*).

The legal instruments that regulate the various aspects of the national seed system – including variety improvement, variety listing, seed production, processing, storage, analysis, certification and marketing (import and export) – were created in the early 1990s. The most important of these laws include: (a) Decree No. 41/94, which establishes the mechanisms for the development of a national seed industry, including guidelines for the production and marketing of different categories of seeds in Mozambique. The decree assigned the Directorate of Economics of the Ministry of Agriculture and Rural Development with the responsibility for implementing this law, and creating and enforcing other complementary regulations affecting the seed sector. It also creates the National Seed Committee to advise the Minister of Agriculture on seed issues; (b) Ministerial Diploma No. 95/91, which establishes rules and procedures for seed importation. This legislation seeks to insure that imported seeds are of good quality, discourage unnecessary seed imports, and coordinate and assist the different organizations involved in seed importation. Importing agents must be registered with the Ministry of Commerce and should have authorization for each importation. Seed varieties imported must be recorded in the Official Variety List. Documentation must be shown to prove that the imported seeds are of high quality; (c) Ministerial Diploma 184/2001 regulates seed production and certification.

Mozambique's National Seed Policy Alignment Process

The Reform Context

Mozambique's economy is highly dependent on agriculture, which in itself is dominated by smallholder farmers (World Bank, 2006). While the country's seed policy has largely been uncoordinated, it has historically been supportive of the informal seed system augmented by government funded input support programmes. For example between 1978 and 1982, the government had extensive farmer input support schemes, and the marketing of agricultural commodities was controlled by State enterprises (Mazvimavi, Minde & Manussa, 2011). Although there has been an insurgence of the private sector in the seed markets in recent years, the government policy has consistently been in support of informal seed markets. As such the country's formal seed system is not yet fully developed (Dominguez, Jones &

Waterhouse, 2004). This situation highlights the political significance of the seed sector in the country. The government's policy has for a long time been focused towards enhancing community seed production for livelihood enhancement. Having said this, the government has also recognized the significance of attracting investments into the sector, thereby aiming to develop and expand the formal seed system.

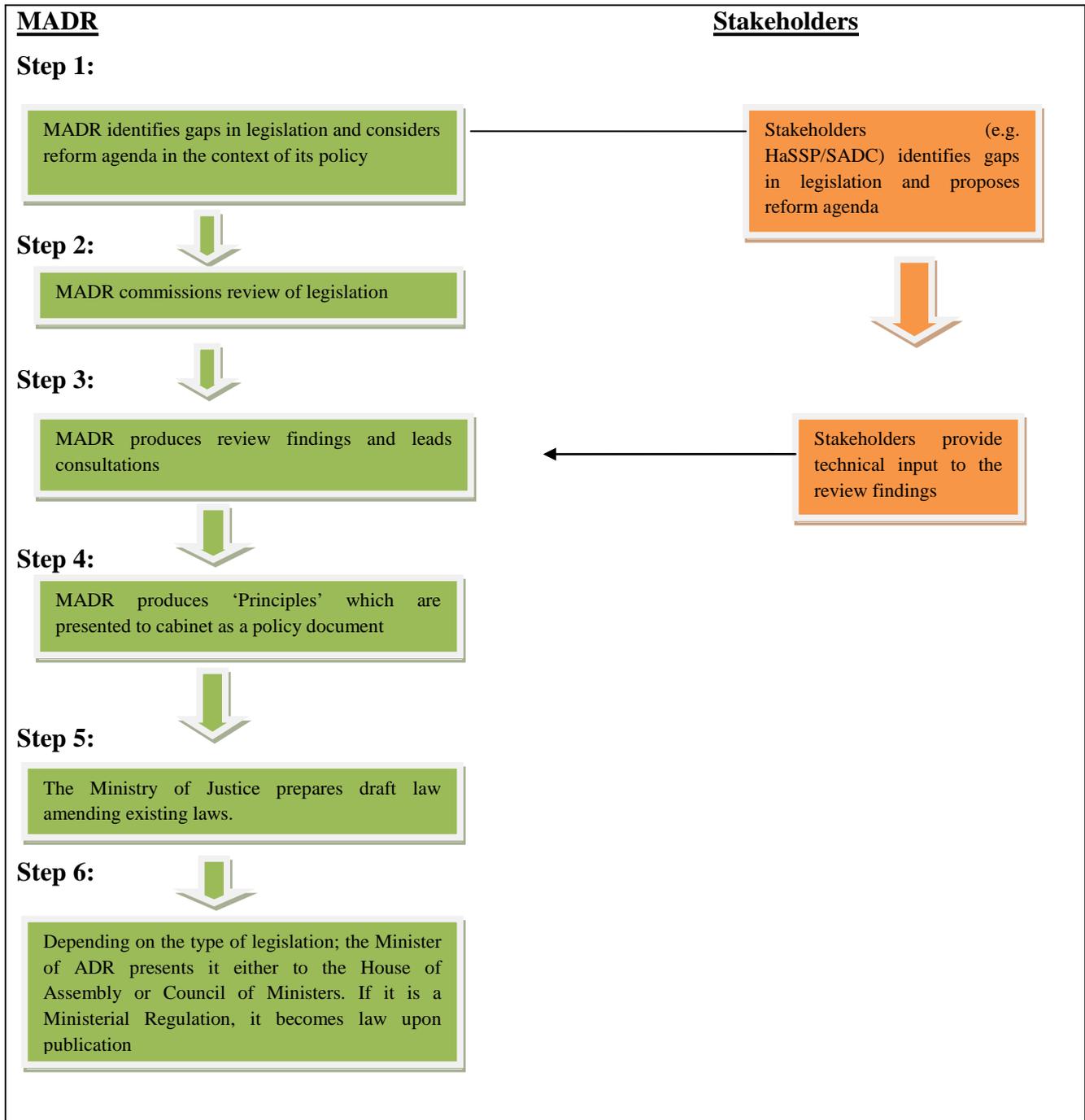
The introduction of the SADC Harmonized Seed System's agenda in the present context will most likely, on the face of it, be a welcome development. However, it is important for the HaSSP task team to be sensitive to the politics of the day with regards to the rationale behind the proposed changes. While the economic interests and benefits that ensue from the proposed policy changes may be apparent to some policy makers, the political connotations of what the changes will mean for the rural communities (that the government has historically been trying to promote) may not be so clear for others.

The Reform Arena

The *Ministerio da Agricultura e Desenvolvimento Rural* (MADR) is the main regulator of the seed sector in the Mozambique. Within it, there are several institutions that regulate aspects of seed variety release, seed certification, and quarantine and phytosanitary measures. These include the National Seed Committee *Comité Nacional de Sementes ou* (CNS) that registers new varieties for release; and a subcommittee under it that handles varietal registration and release. Other stakeholders include seed companies such as SEMOC, PANNAR, HYGROTECH Mozambique and TECAP. International Agricultural Research Institutions (IARCs) such the International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), International Centre for Tropical Agriculture (CIAT), International Rice Research Institute (IRRI), World Agroforestry Centre (ICRAF) and International Maize and Wheat Improvement Centre (CIMMYT) also play a significant role in the country's seed sector. Farmers (as both users of seed and informal producers of seed) and NGOs also add to the multiple stakeholders in the country. The interests of government are determined by economic and political considerations of the day usually reflected in government policy, as highlighted above. The interests of stakeholders, on the other hand, are varied and motivated by what each considers to be beneficial to them. There is a potential competing interests among the stakeholders, and the HaSSP task team should undertake a Stakeholder Analysis to ascertain these as a way of aiding its advocacy approach towards policy alignment.

The Reform Process

The standard policy reform process followed in Mozambique involves all sector institutions and stakeholders. While the MADR, has the ultimate responsibility of driving policy reforms; stakeholders can initiate the process as long as the proposed changes are in line with government's overall sector policy. Stakeholders also play an additional role of providing technical representations to government in the reform process. The policy reform process followed in Mozambique consists of 6 steps. These are outlined in the flow chart below.



Analysis and Recommendations for Mozambique

The HaSSP project has recently identified Mozambique as a pilot country. That notwithstanding, the country has reported significant progress in national policy alignment.

With regards to aligning seed certification policies, Mozambique is at the beginning of step 2 of the reform process. The country has begun reviewing its seed production, marketing, quality control and certification standards, rules and procedures to be consistent with the SADC Harmonized Seed Regulatory System. With regards to aligning seed variety release policies, Mozambique is at the end of Step 2 of the reform process. Crop descriptions have been reviewed to be consistent with the SADC System. With regards to quarantine and phytosanitary measures the country is now at the beginning of Step 3 of the reform process. Having updated its quarantine regulations, Mozambique will be commencing consultations to obtain technical input from stakeholders.

The notable progress reported by Mozambique can be attributed to the nature of the country's policy reform process, and the political commitment of the Government of Mozambique (GoM). Unlike the other HaSSP countries, Mozambique's process allows a quick 'start off', especially for initiatives that have been endorsed by regional or international bodies, and which it has officially expressed its intention to comply and is within its policy scope. This is probably because the country follows a 'monist approach', where regional or international initiatives are expected to be regularized into the national legal system once they have been approved by the executive. As such the government takes the leading role and drives the process from the beginning. A review of other policy reform processes in Mozambique reveal that it takes an average of two years for a law to be amended.

Although Mozambique has reported significant progress in alignment, it is facing some challenges. The major challenge pertains to financial resources to enable it to hire experts to assist the government to expedite and finalize the outstanding but on-going review exercises for seed certification and variety release. This challenge appears to demonstrate the need for capacity in the MADR to facilitate the process.

In order to expedite the alignment process, the following recommendations may need to be considered:

- Undertake a Stakeholder and Institutional Assessment Analysis to ascertain the interests of actors and the institutional context of the on-going seed policy reforms. Although the policy alignment process is underway, there may be unforeseen obstacles during the next steps of the process. It is therefore important for the team to anticipate such obstacles in advance and devise strategies on how to address them
- There is need for the HaSSP Task Team to be properly and formally constituted in Mozambique. This will facilitate access to resources, including technical support to enable the MADR to successfully complete the alignment process

3.2.3 Swaziland

Background to the Legal System

The substance of Swaziland's laws is based on Roman-Dutch law jurisprudence. The country is an absolute monarchy. In terms of section 64 of the Constitution of the Kingdom of Swaziland, the executive authority vests in the King. The King may exercise this power directly or through the cabinet appointed from members of parliament. The power to make laws rests in the 'King-in-parliament'. This means that the King and Parliament may make laws. The Kingdom has a bi-cameral parliament with a Senate and a House of Assembly.

There are two main classes of legislation recognised in the Kingdom, namely, Acts of Parliament, and subsidiary legislation. Acts of Parliament are pieces of legislation which undergo parliamentary processes. They are introduced in the form of a bill and only become law after being passed by both houses and being assented to by the King. Subsidiary legislation, on the other hand, are laws made by the executive. However, section 253 of the Constitution mandates that every piece of subordinate legislation be placed before each Chamber of Parliament for a period of at least fourteen days. Therefore, any Regulations made under any Act of Parliament are subjected to legislative scrutiny.

Regulatory aspects of seed variety release, seed certification and quarantine and phytosanitary measures are governed by: (a) the Seeds and Plant Varieties Act of 2000 read together with the Seeds and Plants Varieties Regulations of 2002; (b) the Plant Control Act, 198. These laws are administered by the Minister of Agriculture.

Swaziland's National Seed Policy Alignment Process

The Reform Context

Agriculture is a crucial sector in the economy of Swaziland. The country's Central Bank (2003) observed that it contributes to a larger part of the GDP (including manufacturing activities arising from processing agricultural and forest products). Notwithstanding such significance, the country's seed sector is largely underdeveloped. Swaziland largely relies on seed imports in order to meet local demand for certified seed especially maize hybrid seed (SADC, 2004). There is also a shortage of legume seeds in markets, making the available seed expensive especially for the rural poor. While resort would normally be had to farm-saved seed under these circumstances, evidence shows that the quality of retained seed is low (SDC, 2011). These agronomic and economic considerations naturally stimulate political interest in the country. Because the situation requires intervention, the agenda proposed by the SADC Harmonized Seed Regulatory System is most likely to be welcomed by the various players.

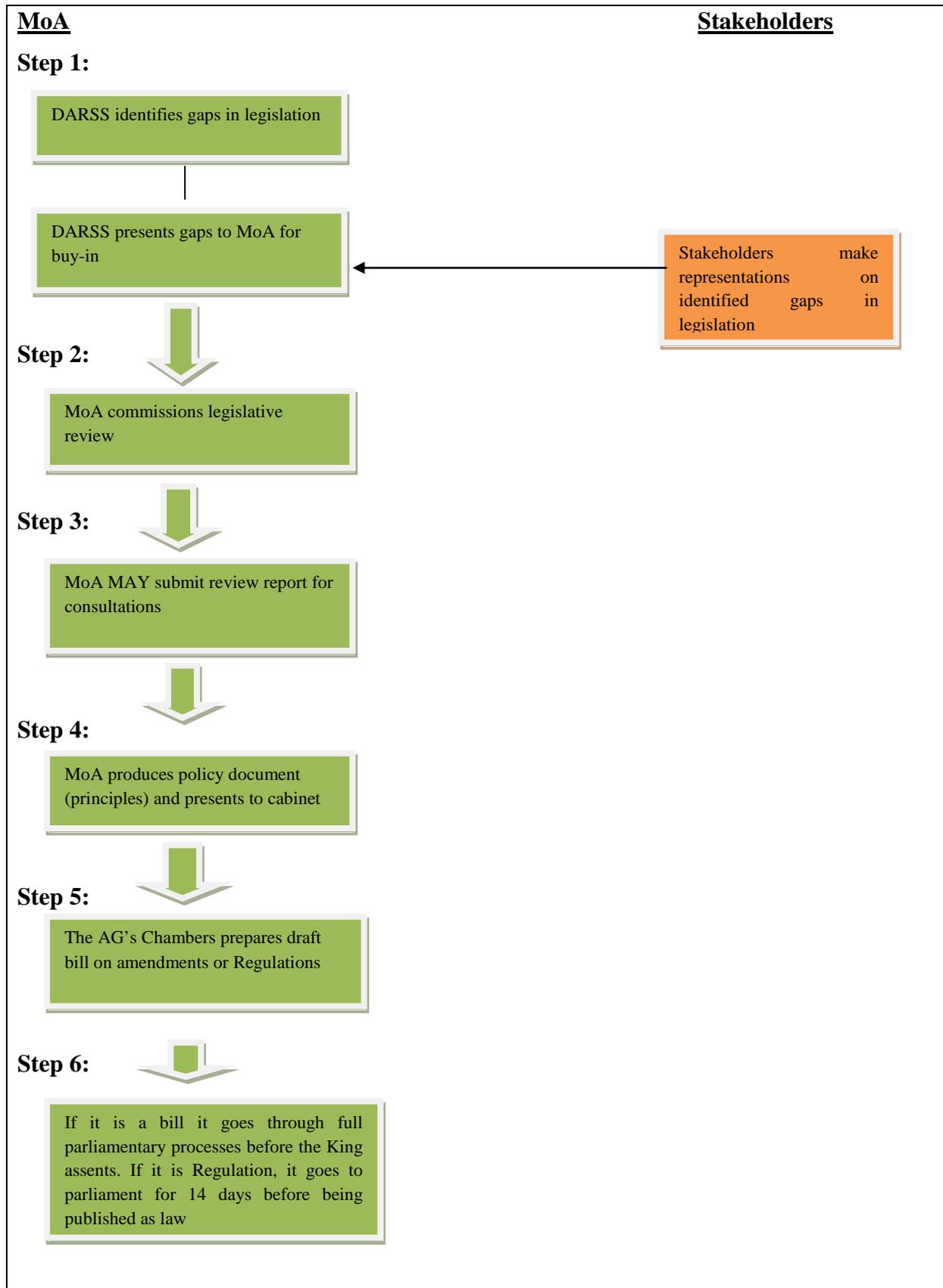
The Reform Arena

Swaziland's seed policy reform arena comprises of the Ministry of Agriculture (MoA). The MoA's Department of Agricultural Research and Specialist Services (DARSS) is responsible for regulating aspects related to seed variety release, seed certification, and quarantine and phytosanitary measures. Other stakeholders include private sector companies involved in seed trade, farmers and farmers associations, researchers and NGOs. While there is a general acknowledgement of the need to develop the country's formal seed system and to have cheaper improved seed available the country; some stakeholder such as farmers and farmers' association may have concerns with a strong private sector seed industry in the country. This, rightly or wrongly, presents competing interests, which the HaSSP task team should take into account.

The Reform Process

The standard policy reform process followed in Swaziland is almost in all cases, initiated by government in response to either pressure from stakeholders or on its own volition as a measure to address a gap in the law. However, there is no legal or policy obligation to consult stakeholders in the law-making process. However in some instances, stakeholders are

consulted and they provide their views during consultations. The policy reform process followed in Swaziland consists of 6 steps. These are outlined in the flow chart below.



Analysis and Recommendations for Swaziland

The HaSSP Task Team in Swaziland is currently aligning its seed laws and regulations to be consistent with the SADC Harmonized Seed Regulatory System. The task team, like other established HaSSP teams, consists of representatives that reflect a coalition of the public and private sectors, NGOs, researchers and farmers. The team has reported progress in the alignment process. With regards to seed variety release, Swaziland is at Step 5 of the alignment process. The team reported that the amendments are now with the Attorney-General's Office (AG's Office) for purposes of drafting. With regards to seed certification, the country is also presently at Step 5 of the process. The relevant amendments are being drafted by the AG's Office. With regards to quarantine and phytosanitary measures, Swaziland is at the beginning of Step 2. The team is planning to conduct a workshop to launch the review.

It would appear that the process in Swaziland is strongly anchored in and driven by government. The remarkable progress recorded in policy alignment so far, particularly for the alignment of seed variety release and seed certification legislation, could be attributed to the active involvement of the MoA's Principal Secretary in the HaSSP initiative. Ordinarily the challenge with most policy alignment initiatives such as HaSSP that originate outside national government structures, is obtaining political buy-in from the Ministry of Agriculture to drive the process. It would appear that, in the case of Swaziland, such buy-in already existed through the champion role played by the Principal Secretary.

Swaziland's policy alignment activities are however not without their own challenges. The task team has faced obstacles in the planning process. It was reported that the planning process for the national policy alignment activities was slow. This, it was reported, was caused by the Steering Committee not meeting regularly. This aspect highlights the need for a coherent and committed coalition of partners in policy advocacy for policy alignment. This is because the preparation and planning activities are as important as the project activities themselves. Another challenge, which is perhaps futuristic at this stage because the amendments are still being drafted, is that bills normally take long to be passed by the country's parliament i.e. at Step 6 of the process. It is feared that this may slow down the process of having the amended bills assented.

In order to address some of these challenges and to expedite the policy alignment process, the following recommendations may be considered:

- The task team and steering committee, being a partnership coalition of stakeholders focusing on the same objective of ensuring seed policy alignment, should be coherent. In this context, it should be appreciated that policy reform is not only technical but also political. Whereas, the progress reported so far has been achieved based on technical input by the stakeholders, the task team and steering committee should also be guided by institutional processes of consensus building, communication, participation, conflict resolution, compromise and adaptation. These aspects are crucial to build a strong coalition that will be the ‘engine’ behind the alignment process
- While the achievements reported by Swaziland are commendable, it appears that the approach adopted to achieve them was somewhat linear in nature. A linear (technical) approach can be effective especially if it is being championed by the government. Its effectiveness is normally visible at the beginning and middle steps of the process, but it can have some shortcomings towards the end of the process i.e. at step 6, if it does not involve an element of public consultation. This is because public consultations increase legitimacy, ownership, and sustainability of the proposed reforms; particularly amongst parliamentarians who will be expected to debate and vote on the proposed changes. It is therefore recommended that, as the process moves towards Step 6, the HaSSP task team heightens public dialogue and engage the public and parliamentarians on the policy changes being proposed by amendments.

3.2.4 Tanzania

Background to the Legal System

Tanzania like most African countries has a hybrid legal system. As a result of its colonial history the legal system in Tanzania is composed of English common law derived from colonisation as well as customary and Islamic law. However, the most prominent source of law is Acts of Parliament. Tanzania is a United Republic consisting of mainland Tanzania and the island of Tanzania Zanzibar. The head of the Tanzanian executive is the President who presides over the government. Parliament is defined in section 62(1) of the Constitution as consisting of the President and the National Assembly. The Constitution gives the President authority to assent bills by parliament as a final step in converting a bill into a law.

Legislative power is vested in Parliament with regard to all union matters and mainland Tanzania whilst legislative power in Tanzania Zanzibar is vested in the House of Representatives. The country's legislation is in the form of Acts of Parliament and subsidiary legislation.

Tanzania has a strong legal regime that regulates seed variety release, seed certification, and quarantine and phytosanitary measures. The laws include: (a) the Seeds Act of 2003 read together with the Seeds Regulations of 2007; (b) the Plant Protection Act of 1997 read together with the Plant Protection Regulations of 1998. These laws are administered by the Minister of Agriculture.

Tanzania's National Seed Policy Alignment Process

The Reform Context

Tanzania has a history of formal seed systems, dating back to 1973 (MoAC, 1997). Although, the system was based on public seed programmes; the country has since created a permissive policy environment that allows the participation of the private sector seed companies. While the country's liberalization policy has indicated a penchant to the economic gains associated with large private seed companies in the agricultural sector; the government still maintains policy considerations for small-scale seed production. For example, in 2006, the government established the Agriculture Seed Agency whose function is to produce process and market both basic and certified seeds, to promote private sector participation in seed production, to promote the use of improved seeds and to strengthen collaboration with research institutes on matters related to availability of new crop varieties (Mizambwa, 2010). These national policy considerations appear to be consistent with the agenda and objectives of the SADC Harmonized Seed Regulatory System. It would appear that the political institutions already have the same objectives. This is perhaps not surprising since Tanzania was one of the three Eastern African countries to harmonize seed regulations under the Eastern and Central Africa Programme for Agricultural Policy Analysis (ECAPAPA) Harmonisation of Seed Laws project.

The Reform Arena

The Ministry of Agriculture, Food Security and Cooperatives (MoAFSC) is the main regulator of Tanzania's seed sector. Specific regulatory aspects pertaining seed variety

release, seed certification, and quarantine and phytosanitary measures are undertaken by MoAC's departments such as the Research and Development Division (RDD); the Plant Breeders Rights Unit (PBRU); and the Crop Development Division (CDD). Other stakeholders in the country's seed sector include seed companies such as Tanzania Seed Company Limited (TANSEED), Alpha Seed, INCOFIN Tanzania Ltd, East African Seed Company, Pannar, and Cargill Hybrid Seed. Farmers and famers' associations, researchers and NGOs are other stakeholders in the sector. Although the government's seed policy is generally consistent with the proposals in the SADC Harmonized Seed Regulatory System, it is important for the Tanzania HaSSP team to be cognisant of some potential opposition to this intervention. For instance, it has been noted that approximately 93% of the seeds used each planting season are recycled from the previous crop (Daily News, 2008). This is an important consideration, because smallholder farmers presently view such seed as cheap and affordable to them, despite their low quality. It is unconceivable, therefore for such stakeholders, to view any changes to existing seed legislation as a 'threat' to the status core.

The Reform Process

The standard policy reform process followed in Tanzania involves all sector institutions and stakeholders. While the MoAFSC, has the responsibility of initiating agricultural policy reforms in the country, it is government policy that the Ministry should widely consult stakeholders in the process. As such, stakeholders, including the private sector, NGOs, farmers etc., play a complementary role in the process. Such complementary role includes advocacy activities such as public debates, and consultations on the gaps and proposed changes. The policy reform process followed in Tanzania consists of 6 steps. These are outlined in the flow chart below.

MoAFSC

Stakeholders

Step 1:

RDD, CDD, PBRU identifies gaps in law and prepares proposal for amendment

Stakeholders are consulted in identifying gaps and in the design of the proposal for amendment



Step 2:

MoAFSC establishes ministerial consensus on the general framework of the proposal
- Ministry Lawyers, Directors, Permanent Secretary and Minister must agree on the proposal



Step 3:

MoAFSC prepares policy document with proposed changes (Cabinet Paper) and presents it to Cabinet

Stakeholders are consulted on the content of the Cabinet Paper before it is presented to Cabinet



Step 4:

RDD, CDD, PBRU and MoAFSC Lawyers together with the AG's Office initiate drafting of the amendments and prepare a bill



Step 5:

Bill is presented to the Cabinet Committee on Judicial Matters and recommended to parliament



Step 6:

The bill is taken through the parliamentary approval process before being assented by the President

Stakeholders and the public are consulted during the first reading of the bill in parliament

Analysis and Recommendations for Tanzania

Like Mozambique, Tanzania has recently been included as a pilot country under the HaSSP project. That notwithstanding, the country has reported significant progress in aligning its seed policies to the SADC Harmonized Seed Regulatory System. The process has so far obtained buy-in from the MoAFSC on seed variety release and seed certification amendments. This means the proposals for policy reform on these two aspects have gone through Step 2 of the process. With regards to variety release and seed certification, it appears that the country is between Step 3 and Step 4. The policy reviews were completed; however, it is not entirely clear whether the policy document (containing the proposed changes) has been presented to Cabinet. With regards to quarantine and phytosanitary measures, it would appear that the country is at Step 1. Tanzania is still identifying gaps in the Plant Protection Act and the Plant Protection Regulations. These are being done within the context of the HaSSP project (presumably led by RDD, CDD, and PBRU). The next step will be to obtain government buy-in on the proposed changes.

Having said this, Tanzania is also facing some challenges associated with the alignment process. Like the other HaSSP countries reviewed, these challenges are mainly institutional and relating to the task team structure and functional efficiency. For example, it was reported that the task team is too large (in terms of numbers of representatives), thereby making it difficult to meet regularly. The challenge of adequate financial resources was also cited as an obstacle. However, in terms of the approach, Tanzania noted that as a task team they are not clear on how to engage the various government institutions and policy-makers involved in the policy reform process. This, it was noted, affects the effectiveness of planned advocacy strategies.

In order to expedite the reform process, the Tanzania task team may need to consider the following recommendations:

- Establish a policy alignment sub-committee within its task team and steering committee that will be charged with the responsibility of undertaking advocacy work and engaging government within the policy reform arena. Because the seed policy alignment processes are already formally anchored within the MoAFSC, the role of the sub-committee will be to influence the government to expedite the process in each of the remaining steps.

- Provide training on ‘policy engagement and advocacy’ to the task team and steering committee. The training will assist the sub-committee in understanding the advocacy approaches, strategies and techniques to utilize for purposes of ensuring expedited alignment of the seed policies.

3.2.5 Zambia

Background to the Legal System

Zambia’s legal system is the product of two distinct legal traditions, namely; customary law and English common law. The country is a sovereign Republic, where the President is the head of the Executive who appoints cabinet Ministers from members of the National Assembly. The country’s legislative authority is vested in the President and the National Assembly. The National Assembly exercises its legislative mandate through passing bills which are assented to by the President.

Laws enacted by the parliament are principal legislation and have primacy over any other laws enacted in Zambia with the exception of the Constitution. The legislation is administered by the relevant minister. Article 80 of the Constitution allows for the enactment of statutory instruments (i.e. subsidiary legislation). The laws that regulate seed variety release, seed certification, and quarantine and phytosanitary measures in Zambia include: (a) the Plant Variety and Seeds Act (Vol. 14 ch. 236) read together with the Plant Variety and Seeds Regulations of 1997; and (b) the Plant Pests and Diseases Act (Vol. 14 ch. 233).

Zambia’s National Seed Policy Alignment Process

The Reform Context

Like many countries in the region, the Zambian seed industry was initially characterized by national breeding programmes after independence. Private sector involvement was permitted following the economic liberalization policies that swept through the continent in the 1990s. As such, today Zambia’s policies have consistently been amended to meet the dictates of the increasing demand of seed and the involvement of private seed companies. For instance, the Plant Variety and Seeds Act was amended to allow for increased private sector participation in seed quality control through licensing. This demonstrates the government’s general seed policy thrust. It would appear therefore that questions regarding the rationale behind the

SADC Harmonized Seed Regulatory System's reform agenda would not raise much political alarm from policy-makers since it is in line with the government's general policy thrust.

The Reform Arena

The Ministry of Agriculture and Livestock (MoAL) is responsible regulating aspects related to seed variety release, seed certification, and quarantine and phytosanitary measures. A significant institution in this regard, within the Ministry, is the Seed Control and Certification Institute (SCCI). Other stakeholders in the country's seed sector include seed companies, the Zambia Seed Trade Association (ZASTA), seed grower associations, farmers, researchers and NGOs. These stakeholders have different interests. An interesting aspect of this however is the existence of some level of convergence between some of the seemingly competing interests. For example, there is a strong public-private partnership, where production and marketing of seed is carried out almost entirely by the private sector; while the provision of foundation seeds for public bred varieties involves participation by the public sector (Chipili, 2007). Furthermore, most seed companies focus on the development and marketing of hybrid maize seed, leaving most other traditional crops such as millet being supplied by NGO-led community projects that are developing seed provision system in rural areas (Chipili, 2007). Therefore all stakeholders have an influence on the release of seed varieties in the country. Such a situation, where synergies can be found in an environment that ordinarily creates division in other countries; is an important factor necessary for the HaSSP team to take into account in national policy alignment activities.

The Reform Process

The standard policy reform process followed in Zambia involves all sector institutions and stakeholders. While the MoAL, has the responsibility of initiating agricultural policy reforms it also consults stakeholders in the policy reform process. As such, stakeholders, including the private sector, NGOs, farmers etc., play a complementary role in the process. Such complementary role includes advocacy on the gaps and proposed changes for reform. The policy reform process followed in Zambia consists of 7 steps. These are outlined in the flow chart below.

MoAL

Stakeholders

Step 1:

MoAL obtains 'approval in principle' from Cabinet to authorise it to commence amendment of legislation



Step 2:

Having received the 'approval in principle' MoAL prepares a 'layman's draft' i.e. instructions to Ministry of Justice to prepare a draft bill. This is done in consultation with the MoAL



Step 3:

The draft bill is presented to the Legislative Committee by the MoAL and the Ministry of Justice (for purposes of ensuring that it is consistent with the country's agricultural policy)



Step 4:

The bill is sent back to the Ministry of Justice if there are further amendments suggested by the Legislative Committee



Step 5:

The bill is sent to Cabinet for approval



Step 6:

The bill is presented before parliament and the select committee on agriculture consults stakeholders (it takes 3 weeks to consult)

Stakeholders are given an opportunity to make their comments and give their views



Step 7:

The bill goes through the remaining parliamentary processes before being assented by the President

Analysis and Recommendations for Zambia

The HaSSP Zambia Task Team; which consists of representatives from government (Ministries of Agriculture and Justice), private sector, farmers and research; has been undertaking activities aimed at influencing the above-outlined process for purposes of facilitating seed policy alignment to the SADC Harmonized Seed Regulatory System. On all three aspects, namely; seed variety release, seed certification, and quarantine and phytosanitary measures; it appears that Zambia is still to complete Step 1 of the process. This however, does not mean that no activities have been undertaken thus far. The task team has been identifying gaps in the seed laws and proposing changes for amendment. However, these activities are being done outside the MoAL standard policy reform process outlined in the flow chart above. Although the activities have involved government representatives (from the departments represented in the task team), this does not amount to MoAL official buy-in. In Zambia, official Ministerial buy-in, necessary to officially commence the process is reflected through a Cabinet instrument known as an ‘approval in principle’. It is after obtaining such an instrument that the MoAL can officially commence the reform process and anchor it within its structures.

It would appear that like Malawi, the strategy being pursued by the Zambia task team, is to start with the technical activities of the reviews etc, with the intention of officially engaging government at the a later stage. While this approach is practical and has its advantages, as outlined in the Malawi country review section above, it also has its shortcomings. It is therefore pertinent that effort be placed on advocacy activities aimed at obtaining the ‘approval in principle’ for the MoAL to officially commence the reform process. An important observation in the Zambia case, is that the Permanent Secretary in the MoAL is engaged in the task team activities. This is an important advocacy opportunity for the team to utilize such engagement for purposes of making the Permanent Secretary a ‘champion’ for obtaining the ‘approval in principle’ and facilitating the entire reform process, as was done in the case of Swaziland.

The major challenges being faced by the Zambia task team and steering committee relates to lack of understanding of (a) its role in the alignment process, and (b) the role of the respective members of the task team in the alignment process. This was noted to be a ‘stumbling block’ in planning and implementing policy alignment activities. The task team also noted that there

is a general lack of appreciation of what the policy alignment process entails. This naturally affects any planned activities, because they depend on a clear appreciation of the reform context, reform arena and reform process.

In order to expedite the reform process, the Zambia task team may need to consider the following recommendations aimed at re-designing its policy alignment approach:

- Undertake a Stakeholder and Institutional Assessment Analysis to ascertain the interests of actors and the institutional context of seed policy reforms in the country. This analysis will assist the team to clearly map out its advocacy strategy.
- Within the context of its work plan, channel considerable effort (i.e. in terms of resources and time) to obtain the Cabinet's 'approval in principle'. This will include planning for advocacy activities, such as policy dialogues and engagement with the Permanent Secretary in the MoAL.
- Establish a policy alignment sub-committee within the task team and steering committee that will be responsible for spearheading the alignment process.
- Provide training to task team members on policy engagement and advocacy approaches that will assist the sub-committee in its role of influencing the alignment process

3.2.6 Zimbabwe

Background to the Legal System

Zimbabwe's legal system is based on Roman-Dutch Law with elements of English Common Law. The country is a constitutional Republic with an executive President and a Parliament. In terms of section 32(1) of the Constitution of Zimbabwe the role of making laws is the prerogative of the President and Parliament. Parliament is composed of two chambers i.e. the House of Assembly (Lower House) and Senate (Upper House). The executive consists of the President and Cabinet. Cabinet ministers are drawn from members of parliament.

There are two major forms of legislation in Zimbabwe, namely; Acts of Parliament and Statutory Instruments (i.e. subsidiary legislation). An Act of Parliament is legislation made by parliament and comes into operation on the day that it is gazetted. Statutory Instruments, on the other hand, are subsidiary legislation made by the executive with authority delegated by parliament. For every statutory instrument there must be a relevant Act of Parliament

called the principal or enabling Act. A statutory instrument should be consistent with the principal/enabling Act. Zimbabwe has two major pieces of legislation that deal with seed variety release, certification and quarantine and phytosanitary measures. These are (a) the Seeds Act [Chapter 19:13] read together with the Seeds (Amendment) Regulations of 2003 (No. 12) SI 100/2003; and (b) the Plant Pests and Diseases Act [Chapter 19:08] read together with the Plant Pests and Diseases (Importation) (Amendment) Regulations of 1988 (No. 2) SI 48/1988, Plant Pests and Diseases (Pest Control) (Amendment) Regulations of 1973 (No. 1) SI 1058/1973, and Plant Pests and Diseases (Pests and Alternate Hosts) (Amendment) Order of 1988 (No. 2) SI 147/1988.

Zimbabwe's National Seed Policy Alignment Process

The Reform Context

Agriculture has historically been an important sector of the Zimbabwe's economy. Prior to 2000, seed production and demand was dominated by the large-scale commercial farming sector. However, the dynamics in the seed sector changed following the country's land reform programme of 2000. Between 2000 and 2010, seed production was on the decline resulting in significant seed importation. For instance, in 2009 alone, between 15,000 and 20,000 tonnes of maize seed was imported through legal channels, while an additional substantial amount was imported illegally across borders (Sperling et al. 2009). These challenges presented political implications on policy makers, in the context of the land reform programme. The government, over the last decade, played an important role in the provision of agricultural inputs, both as a drought response initiative and to buttress the land reform programme (Govere *et al.* 2009). Although national seed supply has recovered in the last three years, the seed sector remains somewhat politically sensitive in the country. It is important for the HaSSP task team to be cognisant of the political sensitivity of the sector, as it undertakes its activities aimed at aligning national seed policies. It would not be inconceivable for the SADC Harmonized Seed Regulatory System's agenda to be questioned in this context. Questions pertaining to who is driving the agenda? how and why are changes being proposed?, are not unexpected from a country that is emerging from a political and economic crisis in which agriculture was at the centre.

The Reform Arena

The Ministry of Agriculture, Mechanization and Irrigation Development (MoAMID) is the main regulator of the country's seed sector. Aspects relating to seed variety release, seed certification, and quarantine and phytosanitary measures are regulated by divisions under the MoAMID. These include the Department of Research and Specialist Services (DR&SS) Seed Services etc. Other stakeholders include seed companies, farmers, farmers' associations, researchers, and NGOs. As with other countries, these stakeholders sometimes have competing and conflicting interests. It is therefore important for stakeholders to be of the same mind with regards the objectives of the national policy alignment exercise. That such interests should be effectively managed is particularly important in the case of Zimbabwe, where, due to the politically sensitive nature of the sector, any disgruntlement by one segment of the stakeholders can send mixed political messages to political institutions to the detriment of the alignment process.

The Reform Process

The standard policy reform process followed in Zimbabwe involves all sector institutions and stakeholders. However, the MoAMID, as the regulatory authority responsible for initiating agricultural policy reforms in the country, leads the process. Other stakeholders, including private sector players, NGOs, farmers etc; play a complementary role. The standard policy reform process followed in Zimbabwe consists of 6 steps. These are outlined in the flow chart below.

MoAMID

Stakeholders

Step 1:

DR&SS and other departments identify gaps in laws

Stakeholders may be consulted in identifying gaps

DR&SS presents proposals for amending laws to the MoAMID for buy-in
- Permanent Secretary
- Minister

Step 2:

MoAMID commissions review of legislation

Stakeholders may be consulted in the review of the legislation

Step 3:

MoAMID prepares a policy document (containing the proposed reforms) known as a Memorandum of Principles

Step 4:

MoAMID presents Memorandum of Principles to Cabinet

Step 5:

If Cabinet approves the Memorandum of Principles, the AG's Office prepares a draft bill of the amendments if it is the principal legislation or draft Regulations if it is a subsidiary legislation

Step 6:

If it is a bill, the MoAMID presents it to parliament and all the parliamentary processes are followed before the President assents. If it is a Regulation, the Minister of AMID publishes it and it becomes law

Stakeholders are consulted by the portfolio committee on Agriculture

Analysis and Recommendations for Zimbabwe

The HaSSP Zimbabwe Task Team; which consists of representatives from government (Ministries of Agriculture and Justice), private sector, farmers and research; has been undertaking activities aimed at influencing the above-outlined process for purposes of facilitating seed policy alignment to the SADC Harmonized Seed Regulatory System. On all three aspects, namely; seed variety release, seed certification, and quarantine and phytosanitary measures; the task team has undertaken reviews to identify areas that require reform for purposes of alignment. However, like Malawi and Zambia; it appears that these activities are being undertaken outside the official standard reform process outlined in the flow chart above. While government representatives from the relevant departments and the Attorney-General's office are involved in the reviews in the context of the HaSSP project; this does not amount to government buy-in. Government buy-in is obtained at Step 1b of the process, wherein the alignment process is officially endorsed by the Minister and anchored within the MoAMID structures. As such, it would appear that Zimbabwe is still to complete Step 1 of the process.

What puts Zimbabwe in this situation is perhaps linked to the fact that the Minister of AMID has not signed the MoU for the implementation of the SADC Harmonized Seed Regulatory System. As such, it appears at least at face value, that there is no political support for policy alignment. As noted in chapter 2 of this report, the SADC MoU establishes the political framework through national activities aimed at implementing the SADC Harmonized Seed Regulatory System are undertaken. The task team may need to examine the reform context and the dynamics of the reform arena, in order devise mechanisms to facilitate political buy-in.

It would also appear that like Malawi and Zambia, Zimbabwe's strategy is to proceed with technical activities associated with the alignment before obtaining buy-in, with the intention of officially engaging the MoAMID at the a later stage. While this approach is practical and has its advantages, as outlined in the Malawi and Zambia country review sections above, it also has its shortcomings. It is therefore pertinent that considerable effort be placed on advocacy activities aimed at obtaining (a) political buy-in through signing of the SADC MoU, and (b) Ministerial buy-in through the Minister's endorsement of the policy alignment process. Having said this, it should also be acknowledged, as outlined in the chapter 2 of this

report, that the MoU is not necessarily a legal precondition for the seed policy reform. As such, the task team can consider placing emphasis on obtaining the Minister's endorsement to drive the alignment process without reference to the MoU. Policy reforms in the MoAMID occur as a matter of course, and the alignment process activities can proceed with this comprehension.

In order to expedite the reform process, the Zimbabwe task team may need to consider the following recommendations aimed at re-designing its policy alignment approach:

- Given the challenges faced in obtaining political support from the MoAMID, the task team may need to re-strategize the 'entry points' for policy reform. In this context, the task team may wish to include other government ministries in the HaSSP task team, namely; the Ministry of Industry and Commerce, and the Ministry of the Regional Integration and International Cooperation. While the MoAMID is the lead Ministry in the proposed seed policy reform process, the other two ministries are important stakeholders because of the commercial and regional trade dimension associated with the proposed policy reforms. Involving these ministries can place significant leverage on the MoAMID to buy into the alignment process.
- Undertake a Stakeholder and Institutional Assessment Analysis to ascertain the interests of actors in the reform arena and role of the reform context for seed policy reforms in the country. The analysis should emphasize on the effect of the reform context on the reform arena and reform process. This analysis will assist the team to clearly map out its advocacy strategy, particularly with regards to identifying the obstacles in obtaining political buy-in, and devising appropriate mechanisms to address them.
- Within the context of its work plan, channel considerable effort (i.e. in terms of resources and time) to obtain the MoAMID buy-in. This will include planning for advocacy activities, such as policy dialogues and engagement with the Minister of AMID.
- Establish a policy alignment sub-committee within the task team and steering committee that will be responsible for spearheading the alignment process.

4. Conclusion and Broad Recommendations

Legal reform processes are, by their very nature, complex. While they are often misunderstood to only involve technical re-wording/re-adjustment of legislation; the reality as demonstrated by the experiences in the HaSSP pilot countries, is that they are not so linear. This is because they are dictated and influenced by various political, economic, social and legal factors. As such, they are ‘more like a marathon than a sprint in nature’ and take considerable time to complete (World Bank, 2004). That notwithstanding, they can also be ‘aided’ to facilitate efficiency.

The role of the HaSSP national task teams is to ‘aid’ the policy reform process. Although the membership of the task teams reflect a wide spectrum of stakeholders, including government representatives from the Ministries of Agriculture and Justice; they are ‘external’ to the process. Each country has a standard process it follows when they are reforming legislation, as demonstrated in chapter 3 of the report. The role of the task teams, as an ‘external unit’, therefore is to influence the Ministries of Agriculture to take the legislative reform proposals through all the prescribed steps, until the amendments are signed into law. This requires the task teams to be adequately prepared for this role.

The study revealed that the HaSSP pilot countries are at different stages of national policy alignment. For purposes of analysis the countries can be grouped into two categories. The first category includes Mozambique, Swaziland, and Tanzania. These countries have made significant progress, which can be attributed to the fact that they managed to officially anchor the seed policy alignment process within their Ministries of Agriculture. With political support and official government buy-in established, the role of the task teams in these countries is to concentrate on devising and implementing advocacy mechanisms aimed at hastening reform activities in and through each of the policy reform steps. The second category includes Malawi, Zambia and Zimbabwe. These countries have undertaken significant HaSSP project-related activities but have not yet managed to anchor the policy alignment process in their respective Ministries of Agriculture. As such, they are still to officially commence the policy alignment process according to the standard reform processes defined by their respective governments. Because the standard policy reform processes are generally prescriptive and sequential, the only way that policy alignment can be achieved is through completing all the prescribed steps. The task teams in these countries ought therefore

to concentrate effort and resources in obtaining Ministerial buy-in in order to officially commence the process.

4.1 Common Alignment Challenges and Broad Recommendations

- *Managing dynamics of the reform context and reform arena* - The success of legislation alignment processes depends significantly on country's sense of "ownership". Policy reforms usually bring concerns associated with potential "threats" to national priorities and fears of loss of national sovereignty. This is normally fuelled by attitude and interpretation of the proposed changes. This is because many regulatory reforms imply changes in institutional responsibilities and the establishment of new rules and procedures that may require additional resources. As such task teams should be cognisant of these realities in devising and implementing their activities. This will entail viewing the alignment process through a political economy lens that broadens their activities beyond technical solutions to include an emphasis on stakeholders, institutions and processes.
- *Task team composition and functionality* – The HaSSP national task teams are an important source of policy influence in the national seed policy alignment processes. As such, their composition must reflect all important stakeholders. The current composition is wide. However, there may be merit to also include representatives from the Ministries of Industry and Trade given the commercial and trade aspects associated with the reforms. Furthermore, because of the significance of achieving policy alignment, it is perhaps important for the task teams to establish a sub-committee on policy alignment with a specific role of spearheading policy alignment activities.
- *Designing advocacy approaches* – Because the HaSSP task teams are 'external' to the national standard policy reform processes, each task team should have a carefully developed set of advocacy approaches based on empirical research. These approaches should address the challenges being faced including emphasis on policy engagement mechanisms.
- *Avoiding parallel processes* – It is important that the HaSSP project be viewed as complementing government activities, and not competing with government processes, in policy alignment; particularly for countries that are still to obtain official government 'buy-in'. While the strategy of proceeding with some technical activities

related to legal reviews etc. within the HaSSP project but outside the official government process is practical; there is a risk of these activities being viewed as a parallel process. Experience has demonstrated that governments are very sensitive about 'external' entities prescribing laws for them through a 'perceived' parallel process.

References

Pablo Lerner. (2008). *The Relationship Between 'Common Principles', Comparative Law and the 'New Ius Commune'*. 16 *European Review of Private Law* 6

Walliser (2003). *What does alignment imply for IDA? Reflections on Burkina Faso's PRSCs*. Attacking Poverty Course, April 9, Washington D.C.: World Bank.

Rudra, Nita. (2008). *Globalization and the Race to the Bottom: Who Really Gets Hurt*. Cambridge: Cambridge University Press.

Edella Schlager. (1996). *A Comparison of Three Emerging Theories of the Policy Process*, *Political Research Quarterly*

Rodrik, Dani, Subramanian, Arvind. and Trebbi, Francesco. (2004). *Institutions Rule: The Primacy of Institutions over Integration and Geography in Economic Development*, *Journal of Economic Growth*

A. Dithlake (2008), *SADC Status Report*, SADC Council of NGOs

Kadzamira Z. (1971) , '*Constitutional changes in Malawi 1891–1965*', in G Smith and ors (eds), *Malawi: Past and Present: Selected Papers from the University of Malawi History Conference 1967* (1971)

World Bank (2004). *The Political Economy of Policy Reform: Issues and Implications for Policy Dialogue and Development Operations*, Social Development Department Environmentally and Socially Sustainable Development Network

Hatchard J (2004), *Comparative Constitutionalism and Good Governance in the Commonwealth* (2004),

D.D. Rohrbach, I.J. Minde b, J. Howard (2003), *Looking beyond national boundaries: regional harmonization of seed policies, laws and regulations*, *Journal on Food Policy* 28 (2003) 317–333

Chinsinga (2011), '*Seed and Subsidies: The Political Economy of Input Programmes in Malawi*', Future Agricultures Conference on Sustainable Seed Systems in Ethiopia: Challenges and Opportunities, EIAR, Addis Ababa 1-2 June 2011

Holden, S., R. Kaarhus & R. Lunduka (2006), *Land Policy Reform: the role of land markets and women's land rights in Malawi*, Noragric Report No. 36. Ås: Norwegian University of Life Sciences.

Mbaya S (2002), *Report on the Malawi National Civil Society Conference on Land Reform Policy and Land Law Formulation Process* (March 20 – 22nd, 2002)

Open Society Foundation (2010), *Mozambique Justice Sector and the Rule of Law*

J. Howard, J. Low, J. J. Jeje, D. Boughton, J. Massingue & M. Maredia (2001), *Constraints and Strategies for the Development of the Seed System in Mozambique*, Ministry of Agriculture and Rural Development Directorate of Economics, Research Paper Series, Research Report No. 43E, January 2001

K. Mazvimavi, I. Minde, S. Manussa, P. Tshuma & C. Murendo (2011), 'A Review of the Agricultural Input and Output Markets Development in Mozambique', Paper presented at "Dialogue on Promoting Agricultural Growth in Mozambique" 21 July 2011

ANNEX I

TABLE OF LAWS REGULATING SEED VARIETY RELEASE, CERTIFICATION,
QUARANTINE AND PHYTOSANITARY MEASURES IN HaSSP PROJECT
COUNTRIES

COUNTRY	SEED VARIETY RELEASE	CERTIFICATION	QUARANTINE AND PHYTOSANITARY MEASURES
Malawi	Seed Act (Act 9 of 1996)	Seed Act (Act 9 of 1996)	Plant Protection Act of 1969; Plant Protection Act of 1964 (Export Regulations)
Mozambique	Decree No. 41/94	Ministerial Diploma 184/2001	Ministerial Diploma No. 95/91
Swaziland	Seeds and Plant Varieties Act of 2000; Seeds and Plants Varieties Regulations of 2002	Seeds and Plant Varieties Act of 2000; Seeds and Plants Varieties Regulations of 2002	Plant Control Act, 1981
Tanzania	Seeds Act of 2003; Seeds Regulations of 2007	Seeds Act of 2003; Seeds Regulations of 2007	Seeds Regulations of 2007; Plant Protection Regulations, 1997
Zambia	Plant Variety and Seeds Act (Vol. 14 ch. 236); The Plant Variety and Seeds Regulations of 2007	Plant Variety and Seeds Act (Vol. 14 ch. 236); The Plant Variety and Seeds Regulations of 2007	Plant Pests and Diseases Act (Vol. 14 ch. 233)
Zimbabwe	Seeds Act [Chapter 19:13]; Seeds (Amendment) Regulations, 2003 (No. 12) SI 100/2003	Seeds Act [Chapter 19:13]; Seeds (Amendment) Regulations, 2003 (No. 12) SI 100/2003	Plant Pests and Diseases Act [Chapter 19:08]; Plant Pests and Diseases (Importation) (Amendment) Regulations, 1988 (No. 2) SI 48/1988;

			Plant Pests and Diseases (Pest Control) (Amendment) Regulations, 1973 (No. 1) SI 1058/1973 and Plant Pests and Diseases (Pests and Alternate Hosts) (Amendment) Order, 1988 (No. 2) SI 147/1988.
--	--	--	--