

# **Towards the Development of a Comprehensive Malawi Agro-biodiversity Policy and Legislation**

## **Workshop Report<sup>1</sup>**

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<sup>1</sup> *Report of a Consultative Workshop Held at Livingstonia Beach Hotel, Salima, Malawi Monday, 28 July, 2008*

## Introductory Remarks

The resilience of Malawi's agricultural sector strongly depends on agro-biodiversity which is defined as the variability among living organisms associated with cultivated crops and domesticated animals and the ecological complexes of which they are a part. To smallholder households, who comprise over 90% of the country's agricultural sector, agro-biodiversity has a significant role in guaranteeing them food sovereignty and security, poverty reduction, and sustainability of livelihoods. All these elements are critical to the country's successful implementation of the national development medium term development strategies such as the Malawi Growth and Development Strategy (MGDS) (2006-2011). Agro-biodiversity and its associated traditional knowledge is therefore a key driver to economic development for an agro-based economy like Malawi, and as such, must be conserved, maintained and utilized in a sustainable manner. Development policies and practices related to enhancing agricultural production and productivity should therefore always incorporate agro-biodiversity as a key element for meeting the needs of the immediate to medium terms as well as aspirations of future generations.

It must be acknowledged that Malawi's smallholder farmers have over generations immensely contributed to the development, conservation and sustainability of agro-biodiversity. They have done this through saving and exchanging seed from previous crops, selection and planting, generation after generation, those crop varieties that perform best under their local conditions, and in the process, have created a large diversity of crop landraces. The farmers extensively and routinely practice on-farm conservation of plant and animal biodiversity, and products of their informal innovations are not formally recognized protected from appropriation, piracy and erosion. However, these practices are recognized under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) to which Malawi is a Party (having signed the treaty on 10 June 2002 and ratified it on 4 July 2002). The country is also a Party to the Convention on Biological Diversity (CBD) whose objectives are: 1) conservation of biological diversity; 2) sustainable use of its components; and 3) fair and equitable sharing of benefits arising from genetic resources, with specific provisions on agro-biodiversity.

Major threats to agro-biodiversity in Malawi include:

- Food security demands for a rapidly growing population;
- The quest to adopt modern crop varieties and agronomic practices without integration of the socio-economic and ecological benefits smallholder farming households derive from landraces and informal innovations;
- Disasters such as droughts and floods arising from the impacts of climate change;
- Lack of awareness of the benefits of agro-biodiversity; and

- Lack of appropriate policies, legislation and mechanisms to promote agro-biodiversity conservation and sustainable use.

## **Rationale for the Malawi National Agro-biodiversity Policy**

In order to address the threats to agro-biodiversity and ensure that it positively contributes to food security, Malawi urgently needs to develop a policy which will guide conservation and sustainable use of agricultural genetic resources and materials, and the associated traditional knowledge, with the full and meaningful participation of concerned stakeholders, for the benefit of both present and future generations. Such a policy would recognize agro-biodiversity as an integral component of food security, livelihoods resilience and overall economic development without compromising the needs of future generations. It will also facilitate the effective local implementation of provisions and programmes of work in agro-biodiversity for appropriate multi-lateral agreements to which Malawi is a Party. The specific objectives of the Malawi National Agro-biodiversity Policy should include the following:

- i. To enhance agricultural growth and ensure food security by conserving, promoting and the sustainable use of the country's agro-biodiversity;
- ii. To protect and promote the rights and welfare of the smallholder farming community for their indigenous knowledge, innovations, skills, techniques and practices;
- iii. To develop options for a fair and equitable sharing of benefits arising from the access and use of agricultural genetic resources and materials;
- iv. To create effective management, commercialization, value-addition and use of agricultural genetic resources targeting local, national regional and international markets and in global trade;
- v. To promote the conservation and use of agro-biodiversity in the contexts of national seed systems, food quality and safety, and product marketing regulations; and
- vi. To contribute in maintaining sustainable ecological balances (ecosystems services) over time.

## **Methodology**

The Centre for Environmental Policy and Advocacy (CEPA) initiated a dialogue on the development of the Malawi Agro-biodiversity Policy by drafting and circulating a concept note (Appendix 1) which was then discussed with key stakeholders to agro-biodiversity. The circulation was followed up by individual consultations with some of the key stakeholders as part of the preparatory process for the initial consultation

workshop. The workshop was then held on 28 July 2008 at Livingstonia Beach Hotel, Salima, Malawi. Main objectives of the workshop were:

- To review the status of national policy on agro-biodiversity in Malawi and major challenges;
- To initiate dialogue towards the development of a comprehensive Malawi National Agro-biodiversity Policy;
- To identify the scope and key elements to be addressed by the Malawi National Agro-biodiversity Policy;
- To identify key stakeholders/partners for collaboration in the development of the Malawi National Agro-biodiversity Policy; and
- To develop recommendations on the way forward.

The workshop comprised of the main presentation based on the concept note and group work whose reports are included in this workshop report (Appendices 2(A) and 2(B)). The groups were tasked to address following questions:

### **Working Group 1**

- Make recommendations on the thrust of a review of national instruments on agro-biodiversity in Malawi and identify major challenges;
- Make recommendations on the type of the prospective Malawi agro-biodiversity instrument to be developed at the end of the process (possible choice of a Policy, Strategy or some form of a harmonized instrument);
- Identify the scope and key elements to be addressed by the recommended product in point 2 above.

### **Working Group 2**

- Identify key stakeholders/partners for collaboration in the development of the Malawi National Agro-biodiversity Policy; and
- Propose the next steps towards the development of Malawi National Agro-biodiversity Policy.

## Outcome of the Consultative Workshop

### Key issues emerging from the concept note on the Malawi Agro-biodiversity Policy

It was noted that following legislative instruments relate to agro-biodiversity in Malawi, albeit not comprehensively:

- **Seed Act, 1988 (as amended in 1996) and Plant Protection Act (1969)** - Provide a framework for conservation of plant genetic resources. Both Acts however exclusively encourage conventional science, glaringly leaving out innovations and contributions by small scale subsistence farmers;
- **Patents Act (1959):** Does not accommodate small scale farmers who rely on incremental traditional knowledge which is not patentable. This Act only benefits large scale commercial seed companies who have the necessary technology and information to make inventions patentable under current legislation.

Policy instruments that address biodiversity in Malawi:

- National Biodiversity Strategy and Action Plan (NBSAP), 2006
- National Biotechnology and Biosafety Policy (recently approved)
- National Environmental Policy, 2004
- National Strategy for Sustainable Development, 2004
- Malawi Growth and Development Strategy (2006-2011) – Sub Theme 4: Conservation of the natural resource base
- Food Security Policy

Key challenges to agro-biodiversity policy in Malawi were identified and included:

- Lack of encouragement in the existing policies for cooperative research between farmers and public/private breeders;
- Ineffective implementation of *in situ* and *ex situ* conservation of agro-biodiversity elements;
- Lack of encouragement of viable partnerships that promote transfer of skills and knowledge;
- Lack of clarity on promotion of local products and absence of public awareness initiatives to promote local products and this has actually stifled

local innovation;

- Inadequate promotion of local crop varieties as there is no formal market for such varieties;
- Local markets have erected artificial barriers that keep out local products, although it was acknowledged that this challenge may not be exclusive as the Agricultural Development and Marketing Corporation (ADMARC) does buy local crop varieties);
- The so-called modern land-use practices in crop production have actually promoted monoculture that is leading to rapid loss of genetic resources through the neglect of local landraces;
- Limitations of existing innovation registration mechanisms – for instance, the Patents Act is ill suited for protection of farmers’ and breeders’ rights; and
- Lack of policy and legislation that addresses protection and realization of farmers’ rights.

### **Concluding remarks:**

It was acknowledged that although policy reforms have take place in Malawi that are increasingly focusing on the empowerment of rural poor, the existing instruments do not at all deal with the core issues that affect the conservation and sustainable management of agro-biodiversity. Furthermore, the depth of traditional knowledge that local farmers in Malawi have in agro-biodiversity needs to be recognized and protected through a *sui generis* policy and legislative framework. It is thus recommended that a comprehensive agro-biodiversity policy that will encourage use of local genetic resources that are better adapted to local conditions, and that are affordable to smallholder farmers needs to be developed for Malawi.

### **Comments from the Plenary:**

- i. The natural and logical custodian of the Malawi National Agro-biodiversity Policy is the Ministry of Agriculture and Food Security and should be involved at the onset of the dialogue. Key issues that must addressed are whether the Ministry will be prepared to use such a policy in conducting agricultural extension services, say in farmer field schools and promotion of lead farmers at the Extension Planning Area (EPA) level, and in participatory research;
- ii. As a starting point, a comprehensive review of all policy and legislation instruments dealing with agro-biodiversity in Malawi should be done with the view of harmonization of existing policies. The review should also look at existing regional instruments within the Southern Africa

Development Community (SADC) region, including the SADC Gene Bank Policy and the Protocol on Variety Protection.

- iii. The review recommended here should incorporate traditional knowledge and the value of smallholder farmers' practices;
- iv. The review should also address what has already been done on agro-biodiversity in Malawi, identifying existing gaps and how they relate to the national quest for food security;
- v. As part of the review above, attempts should also be made to answer the question: to what extent existing policies are being implemented, addressing the questions of why some of the key policies are not being implemented;
- vi. The Malawi National Agro-biodiversity Policy should include wild food plants as they are critical flora of Malawi contributing to agro-biodiversity. It was further noted that Malawi has over 6000 flowering plants at least 25% of which can be used in plant breeding programmes for cereals, root and tuber crops, grain legumes, among others; and
- vii. The concept note does not adequately address animal genetic resources.

### **Key Workshop Recommendations and Way-forward**

Workshop participants:

- Acknowledged that a comprehensive Malawi National Agro-biodiversity Policy is necessary and its scope should include following elements:
  - i. Plant and animal agro-biodiversity (include wild flora and fauna)
  - ii. Farmers' rights
  - iii. Traditional or indigenous knowledge
  - iv. Access & benefit sharing of genetic resources
  - v. Research and documentation
  - vi. Marketing
  - vii. Extension (*technology transfer*)
  - viii. Capacity building

- ix. Gender sensitivity
- x. Public awareness

- Recommended that the process to formulate a comprehensive Malawi National Agro-biodiversity Policy should start with a comprehensive review of all policy and legislation instruments dealing with agro-biodiversity in Malawi as well as regional and international instruments relevant to the policy;
- Recommended that the review of existing instruments must be done by a team at least comprising of legal, plant biodiversity and animal biodiversity expertise;
- Identified following key stakeholders and their respective roles in the formulation of the National Agro-biodiversity Policy:
  - a) CEPA – to play the leading role
  - b) Ministry of Agriculture and Food Security (Crops and Animals) – to:
    - Provide relevant information on aspects such as existing standards, regulations, legislation, policies and guidelines;
    - Provide documentation of challenges and recommendations to the existing policies; and
    - Provide documentation and information on national implementation of international obligations in agriculture such as the SADC Gene Bank, ITPGRFA, agro-biodiversity provisions of the CBD, and other relevant multilateral agreements.
  - c) Department of Environmental Affairs in the Ministry of Lands and Natural Resources - to:
    - Provide relevant agro-biodiversity related information such as standards, regulations, legislation, policies and guidelines;
    - Provide documentation on the challenges and recommendations to the implementation of existing policies;



- Provide documentation and information on the implementation of international obligations relevant to agro-biodiversity; and
  - Provide documentation and information on the status on the implementation of the programme of work under CBD.
- d) National Research Council of Malawi – to:
- Provide updated findings on agro-biodiversity research; and
  - Provide future plans on agro-biodiversity research.
- e) National Herbarium and Botanic Gardens – to provide information on:
- Breeding;
  - Conservation of threatened plant species; and
  - Geographical distribution and database of useful plants in Malawi.
- f) Parliamentary Committee on Agriculture and Natural Resources – to:
- Scrutinize the draft Malawi National Agro-biodiversity Policy; and
  - Lobbying in Parliament for the Agro-biodiversity Policy and legislation.
- g) Other stakeholders:
- Academic institutions: University of Malawi (Bunda College of Agriculture), Mzuzu University
  - Private sector:
    - i. Seed traders Association of Malawi (STAM)
    - ii. Association of Smallholders Seed Multiplication Action Group (ASSMAG)
    - iii. National Association of Farmers in Malawi (NASFAM)
    - iv. Tea Association of Malawi,

- v. Malawi Confederation of Chambers Commerce and Industry (MCCI)
- vi. Coffee Association of Malawi
- Malawi Environmental Endowment Trust (MEET)
- Civil Society Organizations (to play advocacy and awareness raising roles), including:
  - a. Farmers Union of Malawi
  - b. Smallholder Farmers Federation
  - c. CISANET
  - d. FOSANET
  - e. Participatory Ecological Land Use Management (PELUM Malawi)
- Smallholder farming community (to provide feedback/information on production and marketing of both improved and local varieties of crops and animals)
- Ministry of Trade
- Other relevant Government Departments (Lands, Forestry, Parks and Wildlife)

### **Next Steps post-Workshop and Tentative Time-lines**

- CEPA should establish a multi-disciplinary taskforce to lead the process in consultation with Ministry of Agriculture and Food Security - **Immediate**
- CEPA to mobilize resources (financial, human and material) for the comprehensive review of all instruments related to agro-biodiversity - **Immediate**
- CEPA to conduct stakeholder consultations for the comprehensive review of all instruments related to agro-biodiversity – **August - October 2008**
- CEPA to analyse the information from the consultations on the comprehensive review of instruments related to Agro-biodiversity - **October – December 2008**

- CEPA to prepare a comprehensive review of state of information on agro-biodiversity in Malawi – **October to December 2008**
- CEPA to organize a national workshop for a wide range of stakeholders at high level such Principal Secretaries, Directors and Chief Executive Officers of the private sectors (for awareness on existing potential of agro-biodiversity and how to promote or market it) – **February, 2009**
- Commencement of process to formulate and draft the Malawi National Agro-biodiversity Policy – **March 2009**

Appendix 1: Concept note on the Malawi National Agro-biodiversity policy and legislative framework

***The Malawi Agro-biodiversity Policy and Legislative  
Framework: Towards Development of a  
Comprehensive Policy***

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## **Acronyms**

CBD	Convention on Biological Diversity
CEPA	Centre for Environmental Policy and Advocacy
EAD	Environmental Affairs Department
FAO	Food and Agricultural Organization of the United Nations
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IUPGRFA	International Undertaking on Plant Genetic Resources for Food and Agriculture
UPOV	International Union for the Protection of New Plant Varieties

## Glossary

**Agro-biodiversity** - is defined as the variability among living organisms associated with cultivated crops and domesticated animals and the ecological complexes of which they are a part.

**Biodiversity or biological diversity** – is defined as variability among living organisms from all sources including *inter alia* terrestrial, marine and other aquatic systems and complexes of which they are part and includes diversity within, or between species within ecosystems and habitats.

**Convention on Biological Diversity** - is an international treaty whose objectives are conservation of bio diversity, sustainable use of its components and the fair and equitable sharing of benefits arising from genetic resources. It was adopted in Rio de Janeiro in 1992.

**Patents** – is a set of exclusive rights granted by a state to an inventor/discoverer or their assignee for a fixed time in exchange for a disclosure of the invention/discovery.

***Sui generis* system of rights** – *Sui generis* literally translated from Latin means “one that is of its own kind.” In the context of agro-biodiversity, it refers to creation of a new national law that would afford protection to intellectual property rights dealing with agricultural genetic resources or agro-biodiversity and the biotechnology that will result.

## **1. Introduction and Background**

The contribution of small-scale farmers<sup>2</sup> and local communities to agro-biodiversity conservation has been increasingly recognized since the adoption of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IUPGRFA) in 1983. This instrument, though not legally binding, provided a framework for the United Nations Food and Agriculture Organization (FAO) member states to regulate agro-biodiversity through the network of research institutions. The IUPGRFA for the first time recognized farmers' rights to save exchange and reuse seed to promote diversity of plant genetic resources and therefore enhance food security.

The Convention on Biological Diversity (CBD), 1992 provided a legally binding framework that specifically called for states who are parties to recognize and protect traditional knowledge and innovations that includes those of farmers. The International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), 2001 provides a more elaborate binding instrument for farmers' rights. It also provides a mechanism for exchange of germplasm among members through various research centres and provides a framework for regulating intellectual property rights, as well as access and benefit sharing arrangements. Malawi as a party needs to both CBD and ITPGRFA needs to implement these provisions.

Further, for a predominantly agricultural economy such as Malawi in which over 91% of the population is dependent on small-scale agriculture the importance of appropriate policy interventions to enhance food security cannot be overemphasized. The driving force for Malawi's agriculture is the rich agro-biodiversity (EAD, 2006). The conservation and sustainable utilization of agro-biodiversity owes a great deal to the contribution of small-scale farmers who have undertaken selection of genetic resources to suit certain conditions<sup>3</sup>. The policy and legislation dealing with seed production, sale, import and export as well as that dealing with plant breeding invariably target commercial breeders and large seed companies, thereby ignoring and undermining the efforts of the of small scale farmers<sup>4</sup>. Further, while large commercial breeders and seed producers and sellers are protected by intellectual property regime, the efforts of small-scale farmers whose efforts are usually the basis for breeding programs are not protected at all.

This concept outlines the main policy and legislation challenges affecting sustainable conservation and management of plant genetic resources in Malawi. The concept seeks to review the extent to which an agro-biodiversity policy and legislation could effectively facilitate small-scale farmer conservation and innovation practices and how such policy can facilitate the efforts of these farmers to promote biodiversity conservation.

## **2. Policy and Legislation affecting on farm conservation of plant genetic resources in Malawi**

The most important pieces of legislation that have a bearing on conservation and utilization of plant genetic resources include the Seed Act, 1988, as amended in 1996, the Plant Protection Act, 1969 and the Patents Act, 1959. The Seed Act provides the regulatory framework for production, sale, import and export of seeds as well as standards for seed germination. The Plant Protection Act on the other hand is intended

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<sup>2</sup> The definition of small-scale farmers should encompass mainly subsistence farmers who utilize over 90% of their harvests for food: see the definition suggested in the model legislation in IDRC/IPGRI (2001).

<sup>3</sup> See also CEPA (2007), Status of Implementation of Farmers' Rights in Malawi; also available on [www.cepa.org.mw](http://www.cepa.org.mw);

<sup>4</sup> See Seed Act (1988) as amended in 1996;

to control pests and diseases that are destructive to plants and to prevent the introduction of such pests and diseases. Both Acts seek to provide a conducive environment for conservation of plant genetic resources through ensuring appropriate standards and competences of people responsible for seed production, sale or import and export as well as the need to protect plant genetic resources from harmful pests and diseases.

The thrust of all these legislation however is to encourage conventional science: hence seed producers and sellers must be registered and comply with certain formalities before they can be allowed to participate in the seed business. The process therefore leaves out small-scale subsistence farmers that do not have corresponding infrastructure. Further, the small-scale farmers rely on incremental local knowledge passed from generation to generation that can easily be considered to be in the 'public domain' and therefore not patentable under the Patents Act. On the other hand, large-scale commercial seed companies have the necessary technology and information to make inventions patentable under current legislation, even though such inventions may have arisen from prior knowledge acquired from local communities. No mechanisms exist to protect local knowledge or indeed recognise its contribution to conservation and sustainable utilization of biodiversity.

There is a direct linkage between effective conservation of agro-biodiversity and sustaining food security in the country. Agro-biodiversity is the basis for Malawi's agricultural production and its erosion could result in weakening the foundation for food production, consequently resulting in food insecurity. Genetic diversity within domesticated, cultivated and wild and harvested species is widespread due to a number of factors, some of which include preference to improved varieties. For example over-emphasis on maize has contributed to the marginalization of sorghum<sup>5</sup> and millet<sup>6</sup> which were once staples in some parts of Malawi. Similarly, the heterotic benefits that cross breeding offers have not been realised since most of the indigenous crops and local breeds of animals have lately been neglected, leading to genetic erosion of the local plants and animals (EAD, 2006).

There is therefore an urgent need to develop an agro-biodiversity policy which will identify and establish mechanisms to support the conservation of agro biodiversity in the country. Although, the National Biodiversity Strategy and Action Plan outlines a number of actions on how to sustainably use and conserve biodiversity in general and agro-biodiversity specifically, many of them are unlikely to be accomplished in the absence of a specific policy instrument.

Below is an outline of some policy challenges that may need to be addressed in order to promote agro-biodiversity conservation and innovation practices:

### **2.1 Local markets have erected artificial barriers that keep out local products**

The Seed Act, for example, has stringent standards on labelling and packaging ostensibly provided for maintenance of standards and therefore protection of farmers but which ultimately may keep out small-scale seed producers and sellers from entering the market. The Seed Act as amended in 1996 however provides for exceptions in that the Minister can provide for different standards and equipment for different seed testing

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<sup>5</sup> *Sorghum bicolor*;

<sup>6</sup> *Pennisetum spp* and *Eleusine coracana*;



stations (See section 33 of the amended Act). Nevertheless it is essential to develop an agro-biodiversity policy to specifically outline exemptions or modifications specifically for small-scale subsistence farmers that may be seed producers and sellers. The draft Malawi Plant Breeders Rights Bill could provide the framework for this but the thrust of the draft seems biased towards commercial breeders. There will therefore be need for specific legislation to cover farmers' rights including their participation in the seed industry.

### ***2.2 Lack of clear policy on promotion of local products and absence of public awareness initiatives to promote local products stifles local innovation***

Agro-biodiversity policy and legislation should encourage diversity by encouraging pro-diversity labelling and public education campaigns that attract local consumers to local products. Of course this would not mean that the public should endure substandard products, the Consumer Protection Act clearly provides the public protection from substandard products.

### ***2.3 Lack of policy to encourage viable partnerships that promote transfer of skills and knowledge or the equitable sharing of benefits arising from research***

While there is evidence that public breeders work with local farmers to promote seed production and animal breeding there is no policy to encourage viable partnerships that promote transfer of skills and knowledge or the equitable sharing of benefits arising from research. Government should therefore work with local farmers or associations to deal with purely mechanical barriers that prevent diversity from reaching the market, thereby providing incentives for local farmers. It is a subsidy in favour of large commercial plant and animal breeders and seed companies for Government to introduce stringent market regulations in the name of standards and public health while ignoring the disadvantages that small-scale farmers have in entering such a market. Recent reports suggest that some unscrupulous seed traders have exploited the system in times of urgency or emergency buying and have put substandard products on the market with little or no consequences.

### ***2.4 Policies do not encourage cooperative research between farmers and public/private breeders and there are no incentives provided to the private sector to encourage them to invest in local products***

As highlighted above, informal cooperation already exists between local farmers and public breeders. These may need to be formalized and perhaps extended to the private sector, where necessary and specific incentives may be provided to ensure that both sides are motivated to pursue common objectives that promote breeding programmes. Local farmers act simultaneously as breeders, growers and primary consumers, their incentives may partly lie in sharing the research products with them at no cost but where these are commercialised it is necessary to reflect the partnership in any commercial gains that may accrue<sup>7</sup>.

### ***2.5 Monoculture will lead to loss of genetic resources through the neglect of local land races***

Modern farming systems promote large scale use of hybrid and composite varieties because of their high yielding potential. This poses continued challenge to biodiversity and is a major threat to resource poor farmers' rights to harvest and plant seeds of their own choice.

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<sup>7</sup> See IDRC/IPGRI (2001);

### **2.6 Ineffective implementation of in situ and ex situ conservation of agro biodiversity elements**

The national gene bank is poorly funded and it exerts little influence in decisions regarding agricultural research services in the country. The role of the national gene bank and herbarium in the conservation of agro biodiversity could be enhanced by putting in place a proper policy framework.

### **2.7 Limitations of existing innovation registration mechanism**

The Patents Act under which innovations can currently be registered is ill-suited for the type of innovations that are associated with agro-biodiversity and related indigenous knowledge since it is individual-oriented. The definition of a patentable 'invention' under the Patents Act suggests that local knowledge can easily be undermined. Indeed the Patents Act is ill-suited for protection of farmers and breeders rights as UPOV, for example, provides an entirely different intellectual property system from the industrial system.

### **2.8 Limitations of existing policy and legislation on protecting farmers' rights**

Both the National Science and Technology Policy, 2002 and the Science and Technology Act 2003 provide for development of appropriate technology for agricultural development and promotion of patenting and commercialisation of research for farmers and industry, but do not go into detail on how farmers' rights can be protected. The draft Malawi Plant Breeders Rights Bill seems to lean towards conventional intellectual property legislation and focuses on commercial breeders. Malawi therefore requires a *sui generis* policy and legislation framework for protection of farmers' rights and innovations pertaining to biological resources.

## **3. Concluding Remarks**

Recent policy reforms are increasingly focussing on the empowerment of the rural poor who are invariably small-scale farmers. The National Environmental Policy, as revised in 2004, the National Land Policy (2001) and the draft Food Security and Nutrition Policy (2004) have provisions that promote conservation of biodiversity. In addition, the National Biodiversity Strategy and Action Plan developed within the framework of the CBD provides a number of priority activities for enhancing agro-biodiversity. These disparate policy instruments however do not deal with the core issues affecting the conservation and sustainable management of agro-biodiversity in general and landraces in particular.

The Seed Act needs to reflect the participation of local farmers who do not have the infrastructure to enable them undertake registration and record keeping. Hence seed certification schemes need to be revised to take into account of these informal small-scale farmers' efforts in plant breeding.

The draft Plant Breeders Rights Bill in its present form is biased towards commercial breeders who can take advantage of formal and conventional intellectual property provisions. The knowledge of local farmers and other local community groups in agro-biodiversity conservation needs to be recognised through a *sui generis* policy and legislation framework that recognises and protects local knowledge and innovation and in a form that can easily be utilized at that informal level.

## **References**

### **1) Texts and Reports**

Crucible II Group, (2000) *Seeding Solutions: Volume 1. Policy Options for Genetic Resources: People, Plants and Patents Revisited* (IDRC/IPGRI, Rome);

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Leskein, D and Filtner, M (1997), *Intellectual Property Rights and Plant Genetic Resources: Options for a Sui Generis System*, IPGRI: Issues in Genetic Resources No. 6;

Environmental Affairs Department, (2006) *National Biodiversity Strategy and Action Plan*, Lilongwe; and

Malawi Government (2005) *Draft Report on Evaluation of Best Practices for the Conservation of Sorghum and Cowpea Landraces in the Shire Valley in Malawi* (Malawi Plant Genetic Resources Centre, Lilongwe).

### **2) Policy and Legislation**

*Seed Act, 1988, amended 1996;*

*Plant Protection Act, 1969;*

*Patents Act, 1959;*

*National Science and Technology Policy, 2002;*

*Science and Technology Act, 2003;*

*National Environmental Policy, 2004;*

*Environment Management Act, 1996; and*

*Draft Food Security and Nutrition Policy, 2004.*

### **3) International Instruments**

*Convention on Biological Diversity, 1992;*

*International Undertaking on Plant Genetic Resources for Food and Agriculture, 1983; and*

*International Treaty on Plant Genetic Resources for Food and Agriculture, 2001.*

## **Appendix 2(A). Report for Working Group One**

### **Members:**

Alick Manda, NRC - *Chair*  
Victor Mhoni, CISANET - Secretary  
Dalitso Kafuwa, FAIR  
Clement Tikiwa, EAD  
Tomomi Awamura, PELUM  
Benson Chipezaani, MEET

### **Thrusts of the review of instruments**

- The Convention on Biological Diversity (CBD) signed by Malawi in 1992
- Review of national development policies such as MGDS, and other related policy documents
- Malawi developed the National Biodiversity Strategy & Action Plan (NBSAP) – *domestication & implementation*
- Assessment: if the national agro-biodiversity strategies adequately addresses agro-diversity
- Review to look at sectoral policies, legislations & issues: agricultural and environmental issues e.g. land, forestry, food & nutrition security, fisheries – vis-à-vis BD
- Review also the other support conventions like UNFCCC, UNCCD, ITPGRFA etc.
- Assess the gaps & emerging issues

### **Challenges of the review of instruments**

- Financial resources
- Timeframe
- Public awareness
- Knowledge gap – *farmers, non-state actors*
- Cooperation of public and private sector

### **Team of experts:**

- Legal expert with knowledge on biodiversity
- Plant biodiversity expert
- Animal biodiversity expert

### **Prospective Instrument and Scope**

**The instrument:** Harmonised agro-biodiversity policy

Why? The NEAP has agro-issues, CBD has agro-issues & climate change has agro-issues  
Why not put all these together, synchronised (*remove same things*) & reduced paperwork

### **The scope & elements**

- Plant and animal agro-biodiversity (include wild flora and fauna)
- Farmers rights
- Access & benefit sharing
- Public awareness
- Research
- Indigenous knowledge
- Marketing
- Extension (*technology transfer*)
- Capacity building

## **Appendix 2(B). Report for Working Group Two**

### **Members:**

Hon A.N Jumbe  
Prof James Seyani  
Mr J.J.Mussa  
Mr M. Kayembe  
Mr G. Banda  
Ms U. Munthali

### **Key Stakeholders**

Key stakeholders/partners for collaboration with CEPA in the development of the Malawi Agro-biodiversity Policy:

- CEPA – leading role
- Ministry of Agriculture and Food Security (Crops and Animals)
  - Provide relevant information e.g. standards, regulations, legislation, policies and guidelines on what is on the ground.
  - Documentation of challenges and recommendations to the existing policies, etc.
  - Implementation of international agricultural obligations e.g. SADC gene bank, IUPGRFA, ITPGRFA
- Department of Environmental Affairs in the Ministry of Lands and Natural Resources
  - Provide relevant information e.g. standards, regulations, legislation, policies and guidelines on what is on the ground.
  - Documentation of challenges and recommendations to the existing policies, etc.
  - Implementation of international obligations relevant to agro-biodiversity
  - Status on the implementation of programme of work under CBD
- National Research Council of Malawi (OPC)
  - Provide updated research findings on agro-biodiversity research
  - Provide plans on agro-biodiversity research

- Forestry Department ???
- Department of Lands???
- Parks and Wildlife??
- What is the role of DPNW, Lands, FD in Agro-biodiversity
- Ministry of Trade:
  - Promote marketing
- Tourism
  - Promote local foods
- National herbarium:
  - Breeding
  - Conservation threatened plants
  - Geographical distribution of
  - Database of useful plants in Malawi
- ADMARC
  - Marketing
- Parliamentary Committee of Agriculture ...
  - Policy scrutiny
  - Lobbying in parliament
- Academic Institutions:
  - Bunda College - research and devpt (transfer of skills)
  - Mzuzu University - research and development
- Private Sector
  - Seed traders Association of Malawi (STAM)
  - ASSMAG (Association of smallholders farmers)

- NASFAM
- TEA association of Malawi,
- Malawi Confederation of Chambers Commerce and Industry (MCCI)
- Coffee Association of Malawi
- Private sector
  - Development and promotion of other agro-biodiversity resources
  - Input into marketing of minor crops in Malawi eg. Sesame, castor oil, sorghum, finger millet
- MEET: Can it support the process?
- CSOs - Roles: Advocacy, awareness etc
  - Farmers Union of Malawi
  - Smallholder farmers federation
  - CISANET
  - FOSANET
  - PELUM Malawi
- Local farmers:
  - Provide feedback/information on production and marketing of both improved and local varieties of crops and animals.

### **Next Steps**

- i. CEPA to establish a taskforce to lead the process in consultation with Ministry of Agriculture
- ii. CEPA to conduct stakeholder consultations – (Aug to Oct)
- iii. Analyse the information - (Oct-Dec)
- iv. Prepare a comprehensive review of state of information (look at gaps, challenges etc) – Oct-Dec



- v. Bring together a wide range of stakeholder at high level eg PS, directors, CEOs of private sectors (making them aware what exists and how to promote or market) (Feb)
- vi. Process then starts and then Draft instrument (Mar)

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