

SEED TRADE ASSOCIATION OF KENYA

CODE OF ETHICS AND PRACTICE

MAY 2007

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I. INTRODUCTION

In order to govern their conduct in all dealings, organizations develop Codes of Ethics and Practice to help them achieve this goal. Seed Trade Associations are no exception to this established norm. Codes of Ethics and Practice provide moral principles and minimum standards according to which entities conduct their affairs. In many developing countries including Kenya, economic liberalization coupled with policy and regulatory reforms have brought many changes in the agricultural sector in general and the seed sector in particular. These changes raise a need for an instrument to guide the development and conduct of the seed industry which plays a crucial role in the livelihoods of Kenyans as well as the overall national economy.

Kenya's seed sector plays a fundamental role in Kenyan agriculture providing the foundation for food, feed, fibre and other plant production. Seed is one of the most critical inputs in improved agricultural production. The seed sector has great capacity for increasing on-farm productivity and enhancing food security in the country. More specifically, the seed sector serves five national aims:

- To improve the agronomic performance of field and horticulture crops;
- To improve resistance to pests and diseases which are economically significant or which pose threats to animal or human health;
- To respond to traditional and new requirements of primary and end use consumers in domestic and export markets;

- To exploit the potential of new science to satisfy consumer demands for health, function and environmental stewardship; and
- To achieve national uniformity with respect of the labelling and marketing of seed for sowing.

The Seed Trade Association of Kenya (STAK) is a membership organization, whose main objective is to promote the interests of seed trade merchants (including seed growers, seed agents and seed stockists) and facilitate the development and growth of the Kenyan seed industry and ensure provision of quality seed and related services to its members.

DEFINATION OF TERMS

- **Adventitious Presence** - Refers to the unintended, incidental presence as an admixture of seed of biotechnology-derived (GM) plant material in seed of a non-GM variety, or the unintended, incidental presence of seed containing one, or more, approved events in the seed lot of another GM variety.
- **Breeding** - Means the process of developing new plant genotypes by the application of scientific procedures to the generation of new genetic variability by inter-crossing or other methods and/or the selection of new and novel plant genotypes.
- **Breeder** - Means the person who has bred or discovered and developed a plant variety.

- **Advertisement** - Means all representations other than those on any seed label disseminated in any manner or by means relating to seeds.
- **Code** - Means the STAK “Code of Ethics & Practice” for Labelling and Marketing of Seed for Sowing purposes.
- **Event** - Refers to the product of the movement of a gene from a genome of one organism to that of another organism by biotechnology procedures.
- **Examination** - Includes any analysis or test or any combination thereof which are conducted according to recognized industry practices and procedures.
- **GM** - Means genetically modified and refers to the plant genetic resource material modified by the application of recombinant DNA technology.
- **Hybrid variety** - Means the first generation seed of cross fertilization produced by controlling the application so as to combine:
 - ❖ Two inbred lines;
 - ❖ Two single cross of inbred lines;
 - ❖ One inbred line with an open-pollinated variety;
 - ❖ A single cross with an inbred line; or
 - ❖ A single cross with an open-pollinated variety or
 - ❖ Two open-pollinated varieties.
- **ISF** - Means International Seed Federation.

- **Label** - Includes any tag or sticker affixed to the tag or parcel.
- **Label format** - Is to be printed on a parcel of seed or label attached thereto shall be in English, legible, indelible ink, and not less than eight point in size.
- **Lot designation** - Means the code, brand, mark, lot or line number which distinguishes a lot of seed from any other lot.
- **Lot of Seed** - Means a quantity of seed identified by the same lot designation every parcel of which is uniform within the tolerances specified in the Rules of the International Seed Testing Association.
- **Name** - For the purpose of any examination of seeds means the botanical name or preferred common name published in A Checklist of Economic Plants in 1979 (or any revised publication) compiled by the Commonwealth Scientific and Industrial Research Organisation.
- **Parcel** - Includes bag, barrel, case, container, package, packet or sack.
- **Proprietary variety** - Means a proprietary variety is one of which ownership can be proven, either through Plant Breeder's Rights, patents, breeding records, or ownership of the component parts (in the case of hybrids). The ownership may be transferred from the breeder to a marketer through an agreement. Marketers may claim exclusive distribution rights for a proprietary variety where written or verbal agreement between the breeder and the marketer grants such distribution rights.

- **Regulatory Authority** - Means the Kenya Plant Health Inspectorate Service.
- **Rules of the International Seed Testing Association** - Means those rules set out in the journal 'Seed Science and Technology, Volume 24, Supplement 1996, published by the International Seed Testing Association', and as amended from time to time.
- **Seed** - Means that part of a plant which is or is intended to be used for propagation and includes any seed, seedling, com, cutting, bulb, bulbils, layer, grafted material, marcott, root, runner, scion, set, split, stem, stock, stump, sucker or tuber so used or intended to be used;
- **Seed enterprise** - Means an organisation or body of legal persons, which is involved in seed production, processing and/or supply and registered as such by the Kenya Plant Health Inspectorate Service (KEPHIS).
- **STAK** - Is the acronym for the Seed Trade Association of Kenya.
- **Variety** - Means an assemblage of cultivated plants that is clearly distinguished by any characters (morphological, physiological, cytological, chemical, or others) which when reproduced, (sexually or asexually) retains its distinguishing characters. In this Code of Practice variety includes hybrids.

A. THE SEED TRADE ASSOCIATION OF KENYA (STAK)

1. Vision

To “at all times strive to attain excellence in quality seed trade and related services”.

2. Mission

To “promote the interests of the seed trade membership by upholding standards in the provision of quality seeds”.

3. Objectives

- 1) To create an organization providing quality services
- 2) To continuously develop and improve services to members and to strengthen members in the provision of quality seed
- 3) To open membership to players in the seed industry
- 4) To lobby with the government for policy review and changes and enactment of relevant legislation,
- 5) To influence farmers to use quality and certified seeds,
- 6) To become an accreditation agency in the seed industry and to become self-sustainable

4. Membership

Membership is open to public or private commercial seed companies engaged in the production, processing and/or marketing of seed on payment of an agreed fee.

Membership falls into two (2) categories:-

- 1) Ordinary – with voting rights
- 2) Associate – without voting rights

Members are required to demonstrate their commitment to:

- a) maintaining consumer confidence in seed quality;
- b) minimising detrimental impact on the environment, whilst conserving nature and wildlife;
- c) reducing the use of seed protection products;
- d) improving the efficiency of natural resource use; and
- e) ensuring a responsible attitude towards worker health and safety.

5. Professional Ethics

It is in the interest of the seed sector and all its members that the general public should have confidence in the sector and be assured that failure to observe the ethical requirements of STAK will be investigated and disciplinary action taken where appropriate.

STAK members owe a duty of care to the public and other members in the seed sector.

In particular, members have a duty to:-

- a) Be honest, truthful and conscientious in all their dealings related to the seed sector,
- b) Promote co-operation and good relations between members and other users

STAK will not, directly or indirectly, offer, solicit, accept or pay bribes in any shape or form, and requires its members to act likewise.

STAK shall always endeavour to act within the laws of the countries in which it operates in a socially responsible manner. STAK does not have, and therefore does not state, views on either national or international political matters, and it will abstain from participation in politics and interference in political matters. It will not make payments which are, or could be construed to be, of a political nature either in national or an international context. STAK has, however, a legitimate right and responsibility to make its views known on matters that affect its interests and those of its members. STAK is mindful that the utmost co-operation with the governments in the countries where it does business enables it to maximise its ability to contribute to the seed sector.

This Code is intended to streamline the activities of seed trade and provide the basis for self-regulation of the seed industry in Kenya. It is attributed to a commitment by plant breeders and proprietary marketers to adopt high standards of conduct in the breeding, production, processing and marketing

of seed for sowing. It will facilitate industry self reliance and introduce a national perspective on the packaging, distribution, labelling and marketing of seed at domestic, regional and international levels. This will in turn build confidence in the industry on the part of end users by encouraging farmers to use quality and certified seeds as well as provide a mechanism for dealing with errant seed traders. Kenya's seed industry is one of the most developed in the region and the development of this Code is expected to influence the seed industry beyond the political boundaries because of the interdependence of the region articulated through regional arrangements such as the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA) and the Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA).

In promulgating this Code, members of the Seed Trade Association of Kenya are mindful of the mutual advantages to be derived from the effective and systematic exchange of information and experience as well as mutual economic and technical co-operation in the fields of seed technology, production, distribution and trade as well as the need to provide a self-regulatory mechanism to enable them to comply with the provisions of the laws of Kenya relevant to seeds.

B. GUIDING PRINCIPLES IN OPERATIONALISING CODE

STAK will:

- Provide a forum for interaction and information exchange among seed traders;

- Promote the use of improved quality seed by conforming to national and international quality standards;
- Ensure that reliable and adequate information is afforded as to the nature, condition and quality of seeds intended for sale;
- Prevent the sale of seeds which are deleterious, or which have not been tested for purity or germination, or which are of a plant variety of which the performance has not been subjected to trials;
- Require the registration and or deregistration of persons growing any specified crop for the main purpose of seed production, or of persons selling any seed;
- Prevent the spread of plant diseases by seeds;
- Encourage adherence to the guidelines for seed certification, processing, sampling, testing, and marketing;
- Regulate the descriptions under which seed is sold by its members; and
- Provide a self regulatory framework for the governance of the seed industry ensuring the realisation of the right to information, participation and access to justice on all matters pertaining to sales of seeds.

C. APPLICABLE LEGISLATION

This Code acknowledges the intellectual property rights of breeders and other laws relating to plant health and environment. It obliges STAK members to adhere to the provisions of The Agriculture Act (Cap. 318), The

Seeds and Plant Varieties' Act (Cap. 326), the Plant Protection Act (Cap. 324), the Suppression of Noxious Weeds Act (Cap. 325), the Standards Act (Cap 496), the Environment Management and Co-ordination Act No.8 of 1999, the National Biosafety Regulations, the Industrial Property Act (2001), the Trade Marks Act (Cap. 506) and the Arbitration Act No.4 of 1995.

II. SCOPE

This Code applies to all seed companies and seed enterprises in Kenya that are involved in seed related activities and concerned with the production and trade in quality seeds. All members of STAK have agreed on the promulgation of the Code and accept its provisions. Members involved in importing, production and packaging will ensure that these activities are at all times carried out in accordance with the Code.

Moreover, STAK:

- Accepts the rights of members to acquire exclusive rights to material from plant breeding organizations or other institutions from within Kenya and outside Kenya and have the right to market this material in Kenya, acknowledging the company's proprietorship over such material; and
- Acknowledges and recognizes that companies, through their own entrepreneurial activities, may acquire trademarks or develop customized recognition for products which can be accepted as that company's intellectual property.

This Code applies to seeds sold or supplied for the purpose of sowing. 'Sold' or 'sell' includes barter, exchange, and exposing, having in possession, or delivering for sale in Kenya.

A. EXCLUSIONS

This Code does not apply to the following:

- Seed used for experimental or breeding purposes;
- Seed used solely for reproduction and export of the seed reproduced;
- Seed sold for purposes other than for sowing, providing the buyer so declares in writing to the Seller; and
- Seed sold as stock feed or birdseed provided that it is so labelled.

III. AIMS AND OBJECTIVES

The Code sets out the minimum standards of conduct that members should seek to observe.

It seeks to promote a standard of reasonable behaviour that, if followed carefully, will help ensure compliance with the relevant law. The Code itself is not a rigid set of rules but a reflection of internationally accepted guidelines. It is a living document and may require regular updating to reflect current best practices. More specifically, the Code aims to:

- Set out good practice for all seed companies and seed enterprises in Kenya that are involved in seed related activities and concerned with the production and trade in quality seeds;
- Provide guidance and serve as a point of reference for all members;
- Promote public confidence in the seed industry in Kenya; and
- Assist and encourage vendors to provide meaningful information to consumers who purchase seed for sowing purposes.

IV. PACKAGING & DISTRIBUTION

A. PACKAGING

1. The packaging of seeds must be done in a manner suitable under all reasonable climatic, storage, transport and other conditions likely to be experienced;
2. Packaging of seeds should be carried out in a hygienic manner;
3. Seed shall be supplied in suitable containers of sufficient strength to withstand mechanical damage during transit.
4. Packaging equipment should be constructed to allow for easy cleaning and when necessary, sanitizing;
5. Packaging equipment, storage bins and shipping bags should be protected from pests rodents and birds with a complete pest control program that includes monitoring, eradication, cleaning, sanitation and record keeping;

6. Only solid bags or containers that are impermeable to contamination during storage and transportation are to be used;
7. Contaminated or recycled bags should not be used;
8. Packaged seed should be stored in clean and dry area and protected from vermin and pests;
9. Each package should be marked to identify source and lot. Any seed lot that has been treated must clearly state this on the label;
10. Containers, vehicles and storage facilities should be cleaned and sanitized before use; and
11. Seed distributors should analyze each lot for the presence of microbial pathogens of concern to help identify highly contaminated seed lots.

B. LABELLING

1. Unless otherwise specified, every statement made regarding the contents of a parcel of seed by a vendor, despite any agreement to the contrary, constitutes a warranty by the vendor that all particulars contained in the statement are true and correct;
2. Seed must be packaged and labelled for sale according to applicable laws and regulations;
3. Labels must contain the following information:
 - seed class
 - species
 - cultivar
 - lot number

- date of sampling
 - weight of packet/bag or container, and,
 - name and address of the seller, distributor, or packer of the seeds or a registered brand identifying the same.
4. Seed packages containing seed which has been treated with materials or treatments which may be hazardous to human and animal health shall carry labels which clearly indicate appropriate precaution and antidote information, and an appropriate warning that it should not be used for human or animal feed.
 5. All labelled information on seed quality shall be based on laboratory tests conducted by a qualified laboratory, using procedures approved by the applicable seed law and/or certification or of the International Seed Testing Association, and conducted within the legally applicable limits.
 6. Seed sold in large quantities – where seed from one lot is sold in quantities exceeding two tonnes, the parcel or parcels must be marked with the number, code or brand identifying the lot of seeds and the vendor must provide the purchaser with a written statement containing the full labelling details.
 7. For sales of unpackaged seed the vendor must provide the purchaser with a written statement identifying the lot of seeds and containing the full labelling details.
 8. Where seed from two or more different species is mixed together to the purchaser's or vendor's specification, the vendor should advise the purchaser that the labelling information is available for each lot of seed to be used in the mixture and provide the

purchaser with a written statement identifying the lots of seeds used in the mixture.

9. Labels must be so produced and fixed to containers as to remain legible and attached under all reasonable climatic, storage, transport and other conditions likely to be experienced.

V. PRODUCTION AND PROCESSING

Members of the seed industry involved in importing, production, processing and/or packaging will ensure that these activities are at all times carried out in accordance with the Code.

VI. QUALITY ASSURANCE

1. Seed should be of high quality and should conform to the legally required standards.
2. Seed should be officially certified and labelled with the represented quality regarding genetic purity and varietal purity stated.
3. All seed for sale must be supported by a seed testing analysis certificate issued under the rules of KEPHIS and this must be made available on request.
4. Considering that microbial and chemical contamination may occur during cultivation and harvesting of seeds in fields or during storage and transportation and that the safety of sprouts is dependent on the degree of preventive measures used on farm to avoid contamination of seeds,

seeds used for sprout production should be produced using good agricultural practices at all stages during planting, growing, harvesting, cleaning, storage and transportation.

5. Seed producers should provide evidence that their product was grown according to good agricultural practices.
6. Producers of seeds for sprout production must ensure that trace-back records and recall procedures are in place to effectively respond to the health and environmental risks. Such procedures must enable complete and rapid recall of any implicated seed lots and provide detailed information to assist in the identification and investigation of any contaminated seeds and sprouts. To achieve this, the following should be adopted:
 - Seed production and distribution practices should minimize the mixing of multiple lots of different origins, which could complicate trace-back and provide greater opportunity for cross-contamination
 - All the necessary authorities should be notified of all recalls.
 - Seed producers and distributors, and sprout manufacturers should maintain a record of traceability for each lot. The lot number, the producer and the country of origin should be indicated on each bag.
 - Seed producers should have a system to: effectively identify lots; trace the sites and agricultural input associated with the lots; and allow physical retrieval of the seeds in case of a suspected hazard.

- Where a lot has been recalled because of a health or environmental hazard, other lots which were produced under similar conditions and which may present similar hazards should be evaluated for safety.
- Seeds, which may present a hazard, must be held and detained until they are disposed of properly.

VII. VARIETY NAMES

1. Where variety names are used, the vendor warrants that the seed contained in the parcel conforms to the seed of the variety so named.
2. Where variety names are used, the vendor should identify the variety owner.
3. If the seed contained in a parcel is seed of a hybrid variety, the word “HYBRID” and the name, code or number of that variety must be included on the parcel or label attached to the parcel.

VIII. SEED CERTIFICATION

Members of STAK are required to abide by official seed certifying schemes for testing and certifying varieties of crop and pasture seeds, and/or the freedom of, or the resistance or immunity to, prescribed diseases or pests as may from time to time be listed by STAK in conjunction with the regulatory authority and as spelt out in the Laws of Kenya.

IX. PROHIBITED SEEDS

1. Seed retailers should pay particular attention to seed which has been packed and labelled and offered for sale with reference to the status of prohibited and noxious weed seeds, prohibited and restricted organisms.
2. This Code recognizes that under the Suppression of Noxious Weeds Act (Cap. 325) and The Environment Management and Co-ordination Act No. 8 of 1999, it is an offence to sell seed which is contaminated with seeds, bulbs, corns or tubers, prescribed as prohibited or noxious under the aforementioned legislation more particularly detailed in **Annex I** attached hereto.

X. GENETICALLY MODIFIED SEEDS

For species for which varieties are commercially available which contain approved events (“GM varieties”) this Code recognizes the reality of the possibility of Adventitious Presence in seed lots.

Adventitious Presence may occur through unintentional, incidental admixture of seed of a GM variety in the seed lot of a non-GM variety containing another event.

Such seed should be dealt with under the National Biosafety Regulations which require that the release of GM for contained trials, field trials or commercialisation be preceded by risk assessment and the approval of the National Biosafety Committee.

XI. MARKETING AND PROMOTION

1. The advertising methods employed should be centred on the provision of accurate and complete information, should conform to standards of ethics, and should be in good taste.
2. Methods of advertising should conform to normally accepted good advertising practice of the seed industry.
3. Information regarding variety should be accurate and balanced and must not be misleading, either directly or by implication.
4. Claims for the usefulness of varieties should be based on the most recent available evidence, which was or could be by the exercise of reasonable diligence have been available to the person making the claim.
5. Comparisons of varieties must be factual, fair and capable of substantiation. In presenting a comparison, care must be taken to ensure that it does not mislead by distortion, by undue emphasis, or in any other way.
6. Advertisements should not be such as to bring discredit upon, or reduce confidence in the seed industry.

XII. CONTROL POINTS AND COMPLIANCE CRITERIA

- 1) **TRACEABILITY** - STAK members should ensure that there is a documented traceability system that allows seeds to be traced and tracked forward to the immediate customer.
- 2) **RECORD KEEPING AND INTERNAL SELF-INSPECTION**
 - STAK members should undertake a minimum of one self-

inspection against a checklist to be distributed by STAK. The internal self-inspection should be documented and recorded. Effective corrective actions should be documented and implemented.

- 3) **GUARANTEE OF SEED QUALITY** – A seed record/certificate of the seed quality, variety, variety purity, variety name, batch number and seed vendor should be available guaranteeing seed quality.

XIII. ADMINISTRATION OF CODE OF ETHICS

1. Copies of the Code shall be kept at STAK's offices and the Executive Committee shall ensure compliance with the Code.
2. Administration of the Code will be vested in STAK Executive Committee which shall ensure compliance with the Code.
3. All STAK members should have access to the Code which should be widely publicized. A leaflet summarizing the Code's action points should be widely publicized and distributed.

XIV. COMPLIANCE WITH THE CODE OF ETHICS

1. Compliance with this Code is mandatory for all members of STAK. Members must be able to demonstrate at all times that their actions; behaviour and conduct comply with the Code.
2. Disputes arising between members of the Association concerning the interpretation and application of the provisions of the Code that

cannot be settled amicably between the parties shall be resolved by Conciliation and Mediation between the parties. The Chairman of the Association shall appoint a Conciliator or Mediator acceptable to both parties in accordance with the ISF Procedure Rules for dispute settlement.

3. If the Conciliator or Mediator is unable to reconcile the parties within an agreed period and after receiving a request from one of the disputing parties, the Chairman of the Association shall refer the matter to Arbitration. The parties shall appoint an Arbitrator and failing agreement, the Chairman of the Association shall appoint an Arbitrator in accordance with the ISF Procedure Rules for dispute settlement.
4. Non-compliance with the Code may expose a member to disciplinary action by the Association including but not limited to deregistration as a seed merchant.
5. Members should note that they are bound not merely by the terms but also by the spirit of the Code.

XV. DEALING WITH BREACH OF THE CODE

Where breaches of the Code have been established the following actions may be taken by Association:

- I. Notify the respondent in writing to give a written undertaking to cease and desist within a specified time frame any practice which has been determined to constitute a breach of this Code;

2. Upon notification in writing, the respondent may be required to issue corrective statements as appropriate. The format, size, wording, mode of publication and method of distribution of such statements will be subject to approval by STAK prior to release/publication;
3. A breach of the Code may be referred to an appropriate regulatory authority;
4. Continued refusal by the offending party to undertake the required remedial action may lead to suspension or expulsion of a STAK member from the Association pursuant to its Constitution.

XVI. RELATIONSHIP TO THE SEED AND PLANTS TRIBUNAL

STAK members may appeal against the decisions of the Regulatory Authority to the Seed and Plant Varieties Tribunal on matters relating to seed, plant breeder's rights or any other matters as provided for under Section 28 of the Seeds and Plant Varieties Act.

The decisions of the Tribunal shall be final and conclusive except on questions of law in respect of which STAK members have a right of final appeal to the High Court of Kenya.

XVII. MONITORING AND EVALUATING THE CODE

The Code shall be periodically evaluated to:

- Enable the continued relevance of the Code in view of changes in the profession and the seed industry;
- Ensure that the Code adequately addresses the ethical issues faced by members and the industry; and
- Review Legislative changes that have impacts for members.

XVIII. EFFECTIVE DATE

This Code becomes effective from 1st September, 2007

XIX. COMMITMENT

I have read and understood this Code and hereby accept to abide by its contents.

Name of Signee

.....

Designation

.....

Company/Organization

.....

Full address of company/organization

.....

Signature

Date.....

Official Stamp of Company/Organization

.....

Annex I

Plants declared to be noxious weeds under the Suppression of Noxious Weeds Act, Cap. 325

Lolium Temulentum (Darnel)

Datura Stramonium

Datura metel

Datura ferox

Datura tatula

Eichhornia crassipes (Water hyacinth)

Salvinia Auriculata

Avena sterilis

Avena Fatua