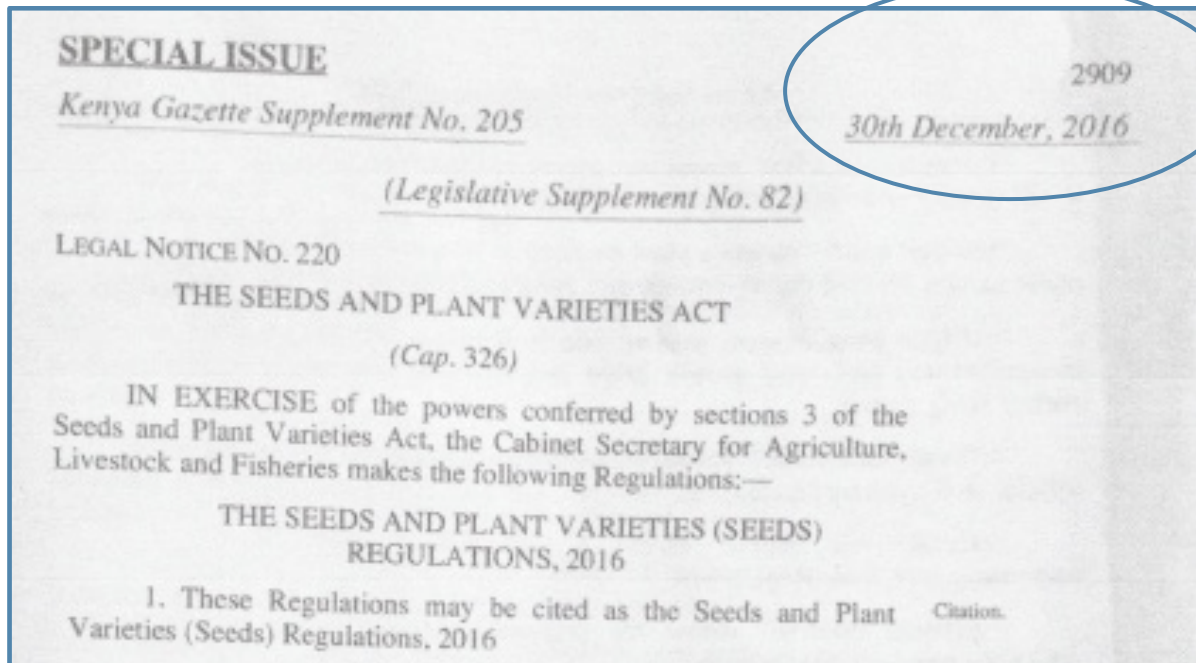


Case Study: Revising the Seed Regulations in Kenya

A strong public/private partnership is eventually formed to develop forward-looking seed regulations in Kenya – achieving the first seed regulation update in 25 years



Introduction

Seed is a living, viable organism. Seed quality for farmers is, therefore, essential. In sub-Saharan Africa (SSA) seed quality is generally highly regulated through the requirement that products sold as seed must be certified by the national seed regulatory agency or another institution whom the regulatory agency has authorized to do this work.

National regulatory agencies are tasked with ensuring that the information on the seed package label is an accurate representation of the seed inside – pure, of the stated variety, free of foreign matter, and above meets minimum germination standards. If the regulators do their job poorly, farmers – especially smallholder farmers (SHF) – suffer significantly due to low quality and potentially even counterfeit seed.

For private sector seed companies, however, seed certification can prove to be extremely costly. While a key factor is the actual expense incurred in certifying seed, of even greater importance are the ancillary costs related to delays in processing seed while waiting for regulatory approvals. These ancillary costs include labor and machinery downtime, loss of seed quality in the field due to insects and disease, and missed sales and delivery times due to slower than anticipated approval times.

Bridging these complex needs of both regulators and seed businesses requires trust, technical knowledge, willingness to work together, and a clear view of the overall goal: getting high quality seed to farmers, affordably and on time.

Note: The case study below covers a period of almost five years, with challenging periods occurring regularly. During the five year span of effort there were many good reasons for the public sector to be frustrated with the private sector, the private sector to be frustrated with the public sector, for private companies to be frustrated with their own association, and for association leadership to be frustrated with the members. However, the ultimate positive results are entirely due to the perseverance, good will, and hard work of all collaborators: Ministry officials, regulators, industry, and association leadership. No one gave up. It is important to keep this in mind as you learn the story of the journey, with its various ups and downs. New working relationships have formed and are active today as a result of this journey.

The Starting Point

The main seed legislation governing the seed sector in Kenya is The Seed and Plant Varieties Act, Chapter 326, which commenced in 1975 and was amended in December, 2012. At the onset of KMT's project work in the crop seed sector in the second half of 2013, discussions about revising three sets of regulations that impacted the crop seed sector had been initiated, but the process was largely public sector driven and a number of seed companies were concerned about their lack of involvement. For many of the meetings held up to that point, the majority of participants were from the Government of Kenya and it was not unusual to find that the only private sector representative at meetings was the Executive Officer of the Seed Trade Association of Kenya (STAK). In addition, the Chairman of STAK at that time was from a government parastatal seed company.

The three sets of regulations under review were: The Seeds and Plant Varieties (Seeds) Regulations; The Seeds and Plant Varieties (Plant Breeder's Rights) Regulations; and The Seeds and Plant Varieties (National Performance Trials) Regulations.

Among these three, the main set of regulations governing the sector was The Seeds and Plant Varieties (Seeds) Regulations, which had last been updated in 1991, more than two decades earlier. While this set of regulations contained many provisions, the key provisions of concern to the private sector revolved around seed certification, which had become increasingly costly and challenging for seed companies over the years. In particular, the seed companies wanted to raise the concept of increasing self-regulation, even considering the possibility of authorizing non-KEPHIS inspectors to conduct certification activities, a clear departure from the current state of only allowing KEPHIS inspectors.

In September 2013, the Ministry organized a two day stakeholders' consultative workshop to review the proposed changes in the regulations. Of over 70 stakeholders in attendance, the vast majority were government representatives, with only a small handful of private sector representatives. Many seed company representatives said that they either had not been informed sufficiently in advance of the meeting to make plans to attend, or did not know about it at all.

There was growing concern among seed companies that regulatory changes would be pushed through, based largely on public sector input, and a valuable opportunity to improve the enabling environment for their businesses would be lost – perhaps for an additional two decades, or longer. Seed companies, particularly regional and multi-national companies with experience outside Kenya, claimed that Kenya's outdated regulatory environment did not enable innovation, agility, efficiency, or growth for Kenya's seed companies and they wanted to embark on a more progressive path.

The industry participants themselves were, however, part of the challenge. They had not built a strong trade association to represent private sector interests. As a result, the Government of Kenya frequently stated that STAK did not come to the table, and that the business entities in the sector had not clearly stated what they wanted in terms of a new regulatory framework.

The Journey

At regular project meetings with crop seed companies in Kenya, organized in partnership with STAK, concerns about the direction of the regulatory review were raised. In private, many companies expressed concern about the ability of STAK, in its current form, to lead the process on their behalf. In early 2014, a number of seed companies reached a consensus to make a serious effort to formally document what the private sector wished to see in the revised regulations, independently of the process that was already underway through public sector leadership.

The project facilitated a series of meetings to accomplish this between October 30, 2013 and January 14, 2014, in partnership with STAK. Some meetings included seed companies alone and some included both public and private sector participants. Many seed company managers invested significant amounts of time during this period to comb through the regulations and document what they wished to add, delete, or amend.

A key step was the preparation of a document for review by all contributing parties. This document, Summary of Private Sector Feedback on the Draft Seed and Plant Varieties (Seeds) Regulations, was finalized in April, 2014. The document contained line by line commentary on the proposed regulations, in addition to three overview statements related to a longer term vision for each of the three sets of regulations under review. For the first time, the private sector companies had documented a thorough overview of what they wished to accomplish.

Dissemination of the feedback document occurred through STAK correspondence with members, through STAK efforts in meetings, and through project team meetings with various government stakeholders, including senior Ministry officials. At this point in the journey, it was clear that the industry had a position, but that it was not completely consistent with the current direction of the regulations. In particular, the private sector was interested in seeing the regulations be more proactive in terms of creating an enabling environment for a growing and innovative crop seed sector. Discussions stalled for most of the remainder of 2014.

In September, 2014, a new online platform for industry information was launched. This platform, the Seed Sector Platform KENYA, was developed by the project team in collaboration with government partners, the Kenya Plant Health Inspectorate Service (KEPHIS) and the Kenya Agricultural and Livestock Research Organization (KALRO, formerly KARI) in addition to private sector players. A launch event was held in September, 2014 for the crop seed sector, bringing together public and private sector participants, including businesspeople, breeders, regulators and Ministry officials. The combination of speakers, a launch video, the breath of information transparently available on the Platform, and the public private collaboration to create the video, helped to raise the recognition of the importance of the seed sector – including the need for revising the old regulations.

Importantly, after the Platform was launched, a number of sector-related documents were made available to the public as downloads. The Summary of Private Sector Feedback on the Draft Seed and Plant Varieties (Seeds) Regulations was one of these documents, added to the download section in June, 2014. By March, 2016, this document had been downloaded 1,057 times.

However, for the remainder of 2014 and all of 2015, little progress was made on revising the regulations as it appeared that the differing long term views of the public and private sector were an obstacle to progress. Contributing to the delays was the developing situation of STAK leadership. The contract for the Executive Officer who had been in place since the beginning of the project was not renewed after December, 2014. For most of 2015 efforts were made to hire a replacement but were unsuccessful due largely to financial constraints and the inability to attract a strong pool of candidates from which to make a choice. STAK operated for most of the year without leadership for its Secretariat.

During this time, unsure of STAK's future advocacy ability and leadership, the project team became engaged with the Kenya Private Sector Alliance (KEPSA), and joined the Agriculture Sector Board. Participation on this Board opened an avenue for raising the issue of the delayed regulations directly with senior levels of government, as KEPSA routinely met with Presidential and Ministerial leaders to raise the issues of greatest importance for the private sector. For the first time, KEPSA began to bring up issues related to seed at their Presidential and Ministerial round-table meetings.

In September of 2015, as an emergency measure and with the agreement of the STAK Board, the project decided to hire a short term Acting Executive Officer of STAK. Her mandate was to run STAK effectively, organize and carry out a profitable Annual Congress within a few months, tackle the outstanding regulatory issues on behalf of STAK members, and recruit and hire a successor. It was estimated that approximately five months would be needed to accomplish the latter. The Acting Executive Officer brought deep, pan-African seed company experience with her to the position, in addition to strong administrative capabilities. With a STAK leader now in place, it was possible to begin to move forward again – and this time significant progress was made.

The project team and STAK decided that the next logical step was to plan, facilitate, and embark on a public private learning trip to South Africa to: 1) learn about the advanced regulatory environment there; 2) learn from the very highly regarded seed trade association, the South Africa National Seed Organization (SANSOR); and 3)

observe first-hand the extent to which an enabling regulatory environment had driven private investment in the sector.

This one-week trip was undertaken in February, 2016, and constituted a turning point in the discussions. The carefully identified and recruited delegation, a total of 9, consisted of:

- The senior official responsible for crop seed policy at the Ministry of Agriculture
- The two senior leaders at KEPHIS responsible for seed quality and seed certification
- The STAK Chairman of the Board
- Two additional STAK Board members, both of whom were MDs of African multi-national seed companies
- The newly hired Executive Officer of STAK
- Two project team members from Agri Experience (including the former Acting Executive Officer of STAK, who planned the trip)

The objectives of the trip, stated above, were fully met. SANSOR and private sector companies in South Africa very generously opened their doors and taught the team about the history of the sector. SANSOR also demonstrated the MIS system that they had built to handle seed certification, as they had been authorized to do this work by the government, which had discontinued its seed certification work in 1989. The South African seed quality approach, based on self-regulation with government oversight, was relatively mature at this point, but the investment catalyzed by the enabling environment was a revelation.

Probably the most important benefit of the trip, however, was the dialogue it catalyzed – based on common experiences and learning – among the public and private sector participants. During meals, in addition to during two lengthy group sessions during the week, the participants spoke candidly about what they were seeing, and whether or not it would work in Kenya. The government collaborators present were reluctant to move in the direction taken by South Africa, citing legislative barriers, STAK weakness, dominance of large scale farmers in the South African agricultural landscape, and seed company lack of sophistication, relative to SANSOR and the private sector sophistication seen in South Africa, as obstacles. Participants returned to Kenya with new views, but no agreed upon solutions.

Later in 2016, the government collaborators requested that the project facilitate a similar learning trip to Zambia, as they thought that the Zambian quality control and certification system – which had more government involvement than the South African system – might be a more acceptable approach to both public and private decision-makers. The project team agreed, and the one-week trip was undertaken in August, 2016. The delegation was a bit larger, with the addition of two additional KEPHIS officials, two additional STAK Board members (one from a global multi-national and one from a Kenyan seed company), and a representative of KMT.

The objectives of the learning trip to Zambia were similar to the South Africa trip, but with particular emphasis on: 1) learning from the government of Zambia how they were progressively regulating the sector; 2) seeing first-hand the private sector investment that the enabling environment had catalyzed; and 3) learning about the

new MIS system close to completion which would enable efficient public and private sector operations and communication related to certification and other matters.

Once again, a key benefit of the trip was the opportunity for public private dialogue, trust-building, and common learning. However, this time it was clear that participants could see a joint way forward and that they were engaging in a more purposeful way. Seeing the growth and sophistication of the crop seed sector in Zambia had been an eye-opener for all participants. In addition, the growing levels of trust among participants, and continuing development of a common vision for the seed sector in Kenya, contributed greatly to productive and progressive group discussions during the trip. By the end of the week, the group had developed a jointly agreed list of key steps for moving forward.



Group at SeedCo plant in Zambia



Group at Pannar quality control lab in Zambia

Upon return from the second learning trip, progress on revising the regulations – now with a new spirit of what they could catalyze – accelerated rapidly.

Implementation

The next twelve months encompassed dialogue with a renewed level of energy to complete the revised Seeds Regulations. The key implementation events during this time are outlined below.

- November 2015: Meeting convened by KEPHIS at KEPHIS Laboratory in Lanet, Nakuru. The meeting was attended by approximately 15 people but only two from private sector, i.e. the STAK Acting EO and Faida Seeds who was based nearby. The remaining attendees were KEPHIS officers.
- December 17-18, 2015: Meeting convened in Naivasha through support of KMT. Participants included four officials from MOALF, five from KEPHIS, eight from private sector, six of whom were STAK members, and the Acting STAK EO. This was the start of in-depth, line by line, review of the input to the suggested revisions of the regulations previously provided by the private sector.
- February 15-19, 2016: Learning trip to South Africa from (referenced earlier)
- March 11, 2016: Review of draft regulations at KEPHIS HQ, specifically looking at how proposed changes from the December 2015 meeting were included. Participants included one official from MOALF, four from KEPHIS, and four from STAK.
- Aug 22-26, 2016: Learning trip to Zambia (referenced earlier)
- Nov 3-4, 2016: Retreat in Nyahururu to review the proposed final draft which had input from the Attorney General's office. Two officers from MOALF, three from

KEPHIS, five from STAK and one other private sector company attended. The retreat was facilitated by KMT. The meeting was an intensive, multi-day review of all of the proposed changes, and negotiations around changes that were not acceptable to the private sector. The meeting was characterized by compromise on both sides, but significant progress.

- December 30, 2016: The updated and revised Seeds and Variety Evaluation and Release Regulations were signed into law.

As the journey to revised regulations was long, and implementation likewise occurred over a period of several years, Annex I provides a full, multi-year timeline of the key events related to the journey and implementation, and indicates which steps were facilitated by KMT.

Results

The following unedited excerpt summarizing results is from an independent study commissioned by the project in 2018, titled “The Journey to Regulatory Reform in the Seed Sector: A Positive Public-Private Partnership”. The study author interviewed 13 public and private sector stakeholders about the regulatory reform process, including stakeholders from the Ministry, KEPHIS, and the private sector.

“The big win was the passing of the 2016 Seeds Regulations and the Variety Release and Evaluation Regulations. (The Plant Breeders’ Rights Regulations are still under review.)

Several actions created value and drive. For example, the constant and consistent engagement during the review period led to cordial personal relationships amongst the seed stakeholders. This induced a remarkably healthy relationship between the public and private sectors resulting in a lasting solid partnership. Furthermore, the tone of communication was participatory and focused on shared common interests, to the extent that each of the stakeholders interviewed felt that they played a central role in the PPP’s success – the gains belonged to all stakeholders.

In addition, the availability of resources for out of town meetings and exchange visits is widely acknowledged as a key catalyst for the positive outcome. Finally, stakeholders appreciated the long, drawn-out nature of policymaking that takes time, if it is to be truly participatory.

A healthy reform process requires some give and take - and as with any good legislation, there were winners and losers, some gains and some unintended downsides.

Interviewees were quoted as follows regarding the wins and losses of the process:

Wins

“...I think the Public-Private partnership was a very big win because in the past KEPHIS used to talk...the government was talking at the industry, rather than with...this is the law, you do it. And our partnerships in terms of implementing joint programs like partnering in training and so on was very limited and was. We now have strengthened STAK as an institution that can lobby government.”

“One of the clear clear clear big wins is the seed inspection process which has largely been the domain of KEPHIS... KEPHIS has now recognized the need for private sector also to have inspectors so that currently we’ve gone through two cycles of training inspectors and analysts. Instead of seed companies relying on KEPHIS to come and do the inspection, now seed companies will also use private seed inspectors. Before, you called KEPHIS to come to inspect my crop in the field. Then they tell you they are not able to come because personnel are not available and one week makes a big difference...this policy change has been a big win.”

“So the fact that you can sit down with STAK, the Department of Agriculture of the Ministry and KEPHIS and other stakeholders and can raise issues in a good way that is actually anchored...we have a vote, we are fully represented. Nobody is now going to

make a decision about how seed should work and they've never sold a packet of seed. So it's fully represented."

"Talk about all seed committees. They were largely leaning towards government and other parastatals. But now as you read this document, STAK has representation which is good... that's why I'm saying the STAK board members program is normally very tight because we tend to be literally represented in all committees at the national level...when STAK is not represented in a meeting the people at the meeting will ask so now, where was seed? So I can say oh my goodness the gains there have been very, very good."

"...the regulations have reduced interventions from KEPHIS such as transportation and of course that comes with some cost efficiency. And when that happens then the farmers also get the benefit. If you check from 2015 you see even with other costs rising, the farmers benefited from the seed prices being stable....because normally if prices go up then you expect seed costs to go up as well."

"Because of these particular regulations, we are now among the five countries within COMESA which have their seed harmonized... It's like saying you've now reached a certain standard that is international. If these were not gazetted, Kenya would be lagging behind and people would wonder, Kenya, where are you. And that, that is a great gain."

Losses

"...the regulators are so much towards seed that potatoes are sometimes forgotten and I think for this particular case the argument asking for a tuber legislation is valid."

"...exporting vegetables made some big boys at the ministry of finance/treasury decide that vegetables are a rich man's business. Yet [export is] only about 20% of the value of vegetable seeds being sold; 80% is for local consumption...so they ended up putting a law that would basically impact everything on the local vegetable seeds market when they were actually looking at only the small portion of the seed business...so we're still paying taxes and this is impacting the cost of vegetables locally...For the past three years, we've been in discussion with the ministry, and even have put it through to the President through KEPSA."

"...in the case of seed self-inspection...our certification people are tougher and more rigorous because they understand that if they flaunt the mandate of the KEPHIS certificate they were given, KEPHIS can revoke the license and degazette us. That's how serious it is. It makes our inspectors fully accountable...in fact, they are tougher than KEPHIS... now every leader in the organization has been taken to through the course and understands what happens if you don't comply."

"The ministry was like the main shareholder of this, they own it. Then who is being impacted by what they're saying, it's the seed industry? And if the seed industry is impacted, whom does it impact? The farmers. And between the ministry and farmer, there is the regulator which is KEPHIS. So the PPP covers everybody who is touched in one way by the regulations. We must continue to work towards an ever more meaningful participation and engagement with all institutions. Harmony between

stakeholders is a critical need... just getting stakeholders to talk openly is a win by itself. Because that was never there."

Lessons Learnt & Future Considerations

The findings from the report titled "The Journey to Regulatory Reform in the Seed Sector: A Positive Public-Private Partnership", are cited below.

"Looking back, the change in the seed sector can be attributed to the seed sector finding its voice and owning the change. There are subtle Market Systems Development perspectives that guided these PPP changes. The case study interviewees identified some of these as lessons and good practices that can be considered by other PPPs.

PPP value drivers:

- **A solid partnership.** *The remarkably healthy relationship between the public and private sector members is what distinguishes this PPP as a best practice. There is a conciliatory tone in all their communication; open discussion is encouraged and issues are brought out in the open and resolved together. There is also strong participation; all stakeholders are invited to participate and encouraged to voice their thoughts. Finally, there is a fostering of honesty and openness based on the common goal, which is the good of the farmer/consumer. They are therefore able to acknowledge what isn't working and address the problem.*
- **Policymaking is made easier with good personal relationships.** *The series of meetings and workshops to deliberate on the regulations changed the atmosphere of engagement between KEPHIS and the seed producers; before this, every meeting between the two sectors was acrimonious. The mood changed; there was no more confrontation. The public and private sector representatives went from being foes to friends. In this regard, it made a difference that it was largely the same people working together and there was minimal staff turnover at the individual institutional level. This ensured consistency in sharing lessons and building capacity over time.*
- **Tone affects engagement.** *The sector engagement approach was all-inclusive and the tone conciliatory and solution-oriented. The tone of engagement means that both the private and public sectors see themselves as the initiators of change and laud their efforts as the reason for the successful PPP. In addition, looking at the wins and losses above, it is clear that both sectors ceded some interests and also gained something in the end. The new regulations encourage a shared approach to managing risks (i.e. some measure of self-regulation).*
- **Dedicating time away from busy schedules to focus on reviewing regulations:** *By supporting a retreat-type engagement by key stakeholders from both public and private sector, time was used efficiently to review the documents and come out with agreed changes, in the given time frame.*
- **Policymaking takes time.** *Even after Agri Experience's focused engagement, the policymaking process took nearly four years. Many of the needed changes did not require long timeframes to debate, nor did they require large capacity-building*

initiatives with respect to understanding. However, the nature of multiple stakeholders participating influences the speed of collaboration and cooperation.
“

In addition to the findings, above, from the independent review, project leaders offer two additional lessons for consideration:

1. With policy-making, the waiting periods can be as important as the periods of action, as long as there is a proactive way to exit the waiting period. Sometimes things have to get worse before they get better, and this realization can help to galvanize action at a later date.
2. Private sector players do not naturally provide the necessary support needed by an advocacy group. Often private sector players need to clearly experience what may be at stake financially if they don't have an advocacy group in order to make the required investment in such a group – in this case their seed trade association.

Despite the strong success to date, there are important considerations and recommendations for the future.

1. STAK needs to continue looking for emerging bottlenecks from the regulations and continue engaging with MOALF and KEPHIS to resolve them. To effectively work in this area, STAK needs to consider hiring a policy officer.
2. The base of support in the government, particularly at the Ministry, for ongoing regulatory review and improvement needs to be broadened. The process is very dependent upon several key people at the Ministry and at KEPHIS, although KEPHIS has done an excellent job of bringing in future leaders as part of the process.
3. KEPHIS and STAK should work towards operationalizing standard seed, by developing the required protocols for standard seed certification.
4. Make PDF copies of the gazetted regulations accessible online.
5. Ongoing support to ensure continued progress for self-regulation in the area of seed certification should be considered, at least until the proof-of-concept regarding cost-effectiveness and efficiency is realized.

ANNEX I: Calendar of events

Journey to Regulatory Reform – Calendar of Events		KMT facilitated?
1975	The Seeds and Plant Variety Act, Cap 326	
2010	National Seed Policy Launched	
June 2012	Kenya Seed Industry Study (<i>Agri Experience, funded by KMT</i>)	Yes
2012	The Seeds and Plants Varieties (Amendment) Act gazetted	
2013	The Crops Act, The Kenya Agricultural and Livestock Research Act, The Agriculture, Fisheries and Food Authority Act, gazetted	
July 2013	First retreats to draft revised regulations (Drafting committee consisted of ten Government of Kenya officials and the EO of STAK)	
Oct 2013	Private sector convening to discuss regulatory revision and process for review, convened with STAK	Yes
Nov 2013	Second private sector convening to discuss regulatory revision and process for review, convened with STAK	Yes
Jan 2014	Private sector roundtable meeting to review and consolidate combined comments from two prior private sector meetings, convened with STAK	Yes
Mar 2014	Drafting and approval of document outlining combined private sector feedback to the proposed regulations	Yes
June 2014	Public posting of private sector comments in download section of online platform: Seed Sector Platform KENYA	Yes
Oct 2015	Hire Acting STAK Executive Officer/Active, Functional Secretariat	Yes
Nov 2015	OpEd published titled: “Crop Seed Company Propositions for Improving Current Seed Regulations” by Paul Gamba, an Economist with Tegemeo Institute	Yes
Dec 2015	Review draft regulations (Naivasha, Public/Private WG)	Yes
Jan 2016	Policy Brief, Crop Seed Company Propositions for Improving Current Seed Regulations (Tegemeo Institute)	Yes
Feb 2016	Hire permanent STAK Executive Officer	Yes

Feb 2016	Benchmarking visit to South Africa (Public/Private WG)	Yes
Mar 2016	OpEd published titled: "Let the Seed Industry Grow Up" by Capt. James Karanja (Rtd), former Chair of STAK Board of Directors	Yes
Mar 2016	Review of Draft Regulations (KEPHIS HQ, Public/Private WG)	
Aug 2016	Benchmarking visit to Zambia (Public/Private WG)	Yes
Nov 2016	Stakeholder meeting to review Attorney General's comments on, and finalize, draft regulations (Nyahururu, Public/Private WG)	Yes
Dec 2016	Seeds and Plant Varieties Regulations gazetted	