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MEMORANDUM

Submitted in the Public Consultation on the East African Community Seed and Plant Varieties Bill, 2025

TO

The Rt. Hon. Speaker and Honourable Members of the East African Legislative Assembly (EALA)

The Chairperson and Members of the EALA Committee on Agriculture, Tourism and Natural Resources

The Chairperson and Members of the EALA Committee on Legal, Rules and Privileges

The Clerk to the East African Legislative Assembly, Arusha, United Republic of Tanzania

FROM

African Resilience & Development Agency (AFRDA)

DATE

29 August 2026

RE: Joint Legal and Policy Memorandum on the EAC Seed and Plant Varieties Bill, 2025, Safeguarding Farmers' Rights, Farmer-Managed Seed Systems, Indigenous Seed, Farmer Varieties and Community Seed Banks in the Harmonisation of Seed Law Across the East African Community and Proposed Amendments Thereto.

Executive Summary

The African Resilience & Development Agency (AFRDA) respectfully submits this memorandum to the East African Legislative Assembly (EALA) in response to the public call for stakeholder input on the East African Community Seed and Plant Varieties Bill, 2025 ("the Bill"), gazetted on 28 February 2025 and now before the Assembly's Committee on Agriculture, Tourism and Natural Resources and Committee on Legal, Rules and Privileges following regional public hearings.

AFRDA recognises the legitimate objectives that animate the Bill including facilitating cross-border movement of quality seed, reducing duplicative testing and certification costs, attracting private investment in seed multiplication and strengthening the reliability of the formal seed supply chain. These are worthy aims squarely within the East African Community's mandate to cooperate on quality seed development under the Treaty for the Establishment of the East African Community. AFRDA does not oppose regional harmonisation of seed regulation as such.

AFRDA is, however, deeply concerned that the Bill, as currently drafted, is built almost entirely around the needs of the formal, certified seed sector and is silent or worse, implicitly hostile to the farmer-managed seed systems (FMSS) through which the overwhelming majority of East African smallholders actually obtain, save, exchange and improve the seed they plant each season. Independent estimates place the share of seed sourced through farmer-managed and informal channels in the region at between 70 and 90 percent of all seed planted.

Principal Concerns

- The Bill contains no definition of and no operative provisions for, "farmer variety," "farmer-managed seed system" or "community seed bank" and nowhere articulates farmers' rights as recognised under international law to which every EAC Partner State (other than Somalia) is already bound.
- Variety evaluation and release under clause 6 is confined to Distinctness, Uniformity and Stability (DUS) testing and Value for Cultivation and Use (VCU) or National Performance Trials (NPTs), criteria designed for uniform commercial varieties and structurally incapable of accommodating the genetically diverse, locally adapted farmer varieties that sustain food security in the region.
- Seed certification under clause 8 is framed in terms broad enough to be read as prohibiting the production, movement and cross-border exchange of any seed that is not certified, with no express carve-out for farm-saved seed, informal farmer-to-farmer exchange or community seed banks.
- The plant variety protection provisions in clause 12 delegate the substantive definition of breeders' rights, exceptions and conditions for protection to regulations made by

the Council of Ministers, placing decisions that determine the scope of farmers' freedom to save and exchange seed beyond the reach of parliamentary scrutiny and public participation.

- The Bill is silent on access and benefit-sharing, prior informed consent and disclosure of the origin of genetic material used in breeding which omission creates a real risk of the uncompensated appropriation of farmer-developed genetic resources.
- As a regional instrument operating alongside, rather than replacing the national seed and plant variety laws that all or most Partner States already have in place, the Bill risks generating legal conflict and could, in practice, undercut stronger protections that some Partner States have adopted or are developing including Tanzania's Quality Declared Seed system and the national agroecology strategies of Kenya, Tanzania and Uganda.
- The institutional architecture of the Bill which is a Community Seed and Plant Variety Committee composed of heads of national seed authorities, contains no guaranteed seat for farmer organisations, women's groups or civil society, notwithstanding the EAC Treaty's own commitment to broad-based participation.

These deficiencies place the Bill in tension with binding and persuasive instruments to which EAC Partner States are party or have committed including the Treaty for the Establishment of the East African Community itself, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), the Convention on Biological Diversity and its Nagoya Protocol, the OAU Model Legislation of 2000 and EALA's own resolution of 21 July 2025 urging Partner States to promote agroecology.

Part VIII of this memorandum sets out ten concrete, drafting-ready amendments addressing each of these gaps. AFRDA respectfully urges EALA not to advance the Bill to Third Reading in its current form and to refer it back to committee for redrafting in line with the recommendations herein, in genuine partnership with farmer organisations and civil society across all eight Partner States. A regional seed law that is durable, legitimate and fit for purpose must serve the entire seed system of East Africa, formal and farmer-managed alike and not one segment of it.

I. Purpose and Scope of this Memorandum

This memorandum is submitted pursuant to Article 127(3) of the Treaty for the Establishment of the East African Community, which commits the Community to interact with and draw upon the views of organs of civil society in the region and in direct response to the public hearings on the Bill convened by the EALA Committee on Agriculture, Tourism and Natural Resources.

The memorandum has three objects. First, it situates the Bill within its legislative history and the broader legal and policy framework governing farmers' rights, farmer-managed seed systems and agrobiodiversity that binds or guides EAC Partner States. Second, it provides a clause-level legal analysis of the principal deficiencies in the Bill as gazetted, assessing their compatibility with that framework and their practical consequences for smallholder farmers, food security and biodiversity. Third and most substantively, it proposes specific, drafting-ready amendments designed to reconcile the Bill's legitimate harmonisation objectives with the protection and promotion of farmers' rights, indigenous seed, farmer varieties and community seed banks.

This memorandum does not purport to be an exhaustive review of every clause of the Bill. It focuses on the provisions that most directly affect farmer-managed seed systems and farmers' rights, being the core mandate and concern of AFRDA. AFRDA stands ready to provide further written or oral testimony, technical drafting assistance or evidence to the responsible Committees as the legislative process continues.

II. AFRDA's Interest in the Bill

AFRDA is a community-centered non-profit development organisation advancing inclusive community development, climate adaptation and environmental sustainability. Its programmes include supporting smallholder farmers, farmer organisations and local institutions including community seed banks and farmer field networks to strengthen the resilience of food production systems to climate shocks, market volatility and biodiversity loss. AFRDA's Regional Food Systems and Agrobiodiversity Programme works directly with farming communities in several EAC Partner States on seed conservation, agroecological transition and policy advocacy.

AFRDA has a direct institutional interest in ensuring that regional legal frameworks governing seed strengthen, rather than erode, the resilience and self-determination of the smallholder farming communities with whom it works. A seed law that inadvertently criminalises or marginalises the informal exchange, saving and sale of farm-saved seed would directly undermine the work and years of investment by AFRDA and its partners in community-based seed security and agrobiodiversity conservation. It is in this capacity and in the interest of the millions of East African farming households who depend on farmer-managed seed systems for their food and livelihoods that AFRDA offers this submission.

III. Background and Legislative Context

A. Institutional and Legal Basis for EAC Seed Harmonisation

The East African Community is established by the Treaty for the Establishment of the East African Community (Act No. 2 of 2000), as amended and comprises eight Partner States namely Burundi, the Democratic Republic of Congo, Kenya, Rwanda, Somalia, South Sudan, Tanzania and Uganda. EALA is the Community's legislative organ, deriving its law-making mandate from Article 49 of the Treaty. The Bill is anchored specifically in Article 106 of the Treaty, under which Partner States undertake to co-operate in the development and production of quality seed, the strengthening of seed technology capacity and the creation of an enabling environment for private-sector seed multiplication and distribution.

That mandate for cooperation must however be read together with the Treaty's foundational principles. Article 6(d) commits the Community to social justice, equal opportunities and the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights. Article 103(1)(c) commits Partner States to encourage the use and development of indigenous science and technology. Article 105 commits the Community to cooperate in the field of food security. These provisions are operative principles against which any Community legislation on seed which is a subject matter inseparable from indigenous knowledge, food security and the livelihoods of the rural majority must be assessed.

B. Legislative History

Seed law harmonisation in the EAC has a decade-long history. A draft EAC Seed and Plant Varieties Bill was first proposed in 2018 under the East Africa Seed Harmonisation Initiative supported by USAID and the Alliance for a Green Revolution in Africa (AGRA), with the stated goal of improving regional availability of seed and planting material. That 2018 Bill was considerably broader in scope than the present one covering seed production, marketing, phytosanitary measures, genetically modified organisms and plant variety protection in a single instrument and proposed a centralised EAC Seed Coordination Office. It did not proceed to enactment having stalled in the face of sustained civil society opposition.

The present Bill was published on 28 February 2025 as EAC Gazette Bill Supplement No. 2 and was tabled before EALA in June 2025. It is narrower in scope than its 2018 predecessor focusing on variety evaluation, release and registration, seed certification and plant variety protection while replacing the proposed centralised Seed Coordination Office with a Community Seed and Plant Variety Committee composed of the heads of national seed authorities of each Partner State. The Bill has since undergone national-level sensitisation and consultation in several Partner States.

Notably, on 21 July 2025 after the Bill had already been tabled, EALA adopted a motion urging the EAC Council of Ministers and Partner States to promote agroecology to strengthen food sovereignty and food security, a resolution that explicitly calls for the establishment of community seed banks and the promotion of farmer-led seed initiatives and markets. AFRDA respectfully submits that the Bill, as currently drafted, sits uneasily beside and in material respects runs counter to the Assembly's own agroecology resolution and that this internal inconsistency itself counsels a further period of alignment before the Bill proceeds.

C. Structure and Stated Objectives of the Bill

As gazetted, the Bill establishes a common regional framework governing four principal subject areas:

(i) The evaluation, release and registration of plant varieties, culminating in listing on a Community Catalogue once released in at least two Partner States

(ii) Seed certification standards for seed produced, imported or exported within the Community

(iii) Plant variety protection (PVP) granting breeders exclusive rights over protected varieties

(iv) Institutional governance through the Community Seed and Plant Variety Committee which approves varieties, monitors compliance and recommends policy

The Assembly's Committee on Agriculture, Tourism and Natural Resources has stated that the Bill is intended to promote quality seed production while protecting food sovereignty and indigenous seed which is an objective AFRDA fully shares and one that the amendments proposed in Part VIII are designed to help the Bill actually achieve.

IV. The Centrality of Farmer-Managed Seed Systems to Food Security, Livelihoods and Biodiversity in the EAC

Agriculture is the backbone of the East African economy and the sector accounts for between 25 and 40 percent of Partner States' GDP, employs more than 80 percent of the region's population, supplies raw materials to over 70 percent of regional industry and constitutes roughly 65 percent of the volume of intra-regional trade. It is dominated not by large commercial operations but by smallholder mixed farming of food crops, cash crops, livestock and fisheries.

Within this smallholder-dominated sector, farmer-managed seed systems are not a marginal or residual channel but are the primary source of planting material for most East African households. Studies place the share of seed planted by smallholder farmers in East Africa that is either saved on-farm or obtained informally through local markets, seed fairs or direct exchange with other farmers at roughly 70 to 80 percent with continent-wide estimates for sub-Saharan Africa reaching as high as 80 to 90 percent for staple food crops. Smallholder farming itself accounts for approximately 75 percent of agricultural production and a comparable share of agricultural employment in the region.

This is not only incidental to food security but it is also foundational to it. The region remains food insecure notwithstanding decades of investment in formal seed systems. The number of severely food-insecure people in Eastern Africa has risen sharply in recent years from an estimated 87 million to approximately 132 million according to United Nations assessments and East Africa allocates a disproportionate share on the order of 29 percent of its export earnings to food imports, reflecting acute reliance on international markets for basic food security. Kenya's food import bill reached roughly KSh 201 billion in 2023 with the country importing an estimated 84 percent of the rice and more than 90 percent of the edible oils it consumes while food imports represented over 10 percent of Uganda's total merchandise imports in the same period.

Farmer-managed seed systems are also the principal reservoir of the region's agrobiodiversity. Unlike the formal sector which by commercial necessity concentrates on a narrow set of high-value and broadly adapted varieties, farmer-managed systems maintain the genetically diverse, locally adapted landraces and farmer varieties that provide resilience against drought, pests, disease and the increasingly erratic rainfall patterns associated with climate change. Women farmers play a disproportionate role as custodians of this diversity, typically bearing primary responsibility for seed selection, storage and exchange within farmer-managed systems across the continent which is a gender dimension that any seed law affecting these systems must take into account.

A regional seed law that regulates only the formal segment of this dual system while remaining silent on, or implicitly restricting, the segment that supplies the majority of the region's food cannot credibly claim to serve the food security and food sovereignty objectives that both the EAC Treaty and EALA's own agroecology resolution set as regional priorities.

V. Applicable Legal and Policy Framework

The Bill does not operate in a legal vacuum as the EAC Partner States are bound by or have committed to a body of international, continental and regional instruments that together establish a floor of protection for farmers' rights, farmer-managed seed systems and agrobiodiversity. This Part summarises the instruments most directly engaged by the Bill.

A. The EAC Treaty

Beyond Article 106 (seed cooperation), the Treaty's Articles 6(d), 103(1)(c) and 105 respectively committing the Community to human and peoples' rights, indigenous science and technology and food security, frame the interpretive lens through which the Bill must be read. Article 127(3) further commits the Community to structured engagement with civil society which is a commitment this very consultation process is intended to fulfil and which AFRDA submits, must be reflected not only in the Bill's enactment but in its ongoing implementation through regulations and Committee decisions.

B. International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

All EAC Partner States except Somalia are Contracting Parties to the ITPGRFA. Article 9 of the Treaty obliges Contracting Parties to take measures to protect and promote Farmers' Rights including the protection of traditional knowledge relevant to plant genetic resources, the right to equitably participate in benefit-sharing, the right to participate in national decision-making on matters related to the conservation and sustainable use of plant genetic resources and subject to national law, farmers' rights to save, use, exchange and sell farm-saved seed and propagating material. Responsibility for realising these rights rests with national governments but a regional instrument that structurally forecloses their realisation for instance by rendering the sale or exchange of uncertified farm-saved seed unlawful in substance would place Partner States in tension with obligations they have already undertaken.

C. United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)

Adopted by the UN General Assembly in 2018 with the affirmative vote of every EAC Partner State that participated in the vote, UNDROP recognises among other things the right of peasants and rural people to seeds, including the right to save, use, exchange and sell farm-saved seed, to protection of traditional agricultural knowledge and to participate in decisions that affect their livelihoods. While UNDROP is a declaration rather than a binding treaty, it reflects an emerging international consensus that regional legislators are well placed to give concrete effect to and its terms provide authoritative guidance on the content of a rights-respecting seed law.

D. Convention on Biological Diversity and the Nagoya Protocol

All EAC Partner States are party to the Convention on Biological Diversity (CBD) which recognises the sovereign rights of States over their genetic resources and the contribution of indigenous and local communities to their conservation. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization operationalises this through requirements of prior informed consent and benefit-sharing for access to genetic resources and associated traditional knowledge. A plant variety protection regime that grants exclusive rights over new varieties without any corresponding requirement to disclose the origin of genetic material used or to demonstrate consent and benefit-sharing where that material derives from farmer varieties or traditional knowledge sits uneasily with these commitments.

E. The OAU Model Legislation of 2000

The Organisation of African Unity's African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources (2000) remains the principal African-authored template for balancing breeders' rights with community and farmers' rights. It provides detailed, Africa-specific guidance on the content of farmers' rights, on access and benefit-sharing and on the conditions under which breeders' rights should be limited to protect food security, biological diversity and the customary practices of farming communities. Civil society and technical commentators have observed that the Bill in its current form, tracks the standards of instruments such as UPOV, the OECD and the World Bank far more closely than it tracks this African Model Law notwithstanding that the latter reflects standards specifically calibrated to African farming realities.

F. African Union Seed Harmonisation Guidelines and the Emerging AU Policy on Farmer-Managed Seed Systems

At continental level, the African Union's seed harmonisation guidelines already recognise farmer-managed seed systems as a legitimate and necessary complement to the formal sector and the African Union is in the process of developing a dedicated policy framework on farmer-managed seed systems. A regional EAC instrument developed in parallel without express alignment to this continental process, risks both duplicating and diverging from the emerging continental consensus and undermining coherence across Africa's overlapping regional economic communities.

G. AfCFTA Protocol on Intellectual Property Rights

The Protocol to the Agreement Establishing the African Continental Free Trade Area on Intellectual Property Rights together with its Annex on Plant Variety Protection currently under negotiation expressly requires that plant breeders' rights be balanced against farmers' rights and in line with Partner States' international obligations. All EAC Partner States are or are becoming States Parties to the AfCFTA. A regional PVP framework that omits express farmers' rights safeguards would be difficult to reconcile with the continental trade and intellectual property architecture that the region is simultaneously committing to build.

H. UPOV and Comparative Regional Plant Variety Protection Practice

No EAC Partner State is currently bound to adopt the 1991 Act of the UPOV Convention which affords narrower exceptions for farm-saved seed than the 1978 Act. Comparative regional practice demonstrates that meaningful farmers' privileges can coexist with an effective plant variety protection system i.e., both the Arusha Protocol for the Protection of New Varieties of Plants (adopted under the African Regional Intellectual Property Organization) and the SADC Protocol on Plant Variety Protection permit exemptions safeguarding farmers' rights to save and exchange seed of protected varieties. There is accordingly no technical or legal necessity for the Bill to adopt a more restrictive approach than these existing African regional precedents indeed, coherence across Africa's overlapping regional blocs, several of which include EAC Partner States as simultaneous members, counsels consistency with them.

I. National Constitutional and Statutory Context

Several EAC Partner States have constitutional or statutory commitments directly relevant to the Bill. Kenya's Constitution guarantees every person the right to be free from hunger and to adequate food of acceptable quality. Tanzania operates a Quality Declared Seed (QDS) system that provides a lighter-touch, farmer-accessible route to market for locally adapted varieties precisely because DUS/VCU testing is understood to be unsuited to that purpose. Kenya, Tanzania and Uganda have each adopted or are finalising national agroecology strategies that explicitly prioritise farmer-managed seed systems and community seed banks. As Dr. Peter Munyi's independent legal analysis of the Bill observes that seven of the eight Partner States already have national seed laws and several have national plant variety protection laws and the Bill would introduce a parallel and in places, materially different regional layer of regulation over the same subject matter with a real risk of legal conflict given the hybrid only partially direct-effect status of EAC law under Articles 8 and 16 of the Treaty.

VI. Clause-by-Clause Analysis: Core Deficiencies in the Bill as Drafted

A. Definitional Gaps (Article 2)

Article 2 of the Bill defines "breeder" to include not only a person who develops a plant variety, but also a person who merely "discovers" one. This formulation risks legitimising the appropriation of varieties that farming communities have over generations selected and developed through traditional practice where an outside actor's only contribution is to "discover" and formally register what farmers have already bred without any accompanying requirement of consent or benefit-sharing. At the same time, the Bill contains no definition whatsoever of "farmer variety," "traditional variety," "farmer-managed seed system" or "community seed bank." A statute that regulates seed comprehensively while lacking vocabulary for the system that supplies most of the region's seed cannot adequately govern it.

B. Variety Evaluation and Release (Clause 6)

Clause 6(1) makes Distinctness, Uniformity and Stability (DUS) testing, together with Value for Cultivation and Use (VCU) testing or National Performance Trials the sole route by which a variety may be released and ultimately listed on the Community Catalogue once released in at least two Partner States. These criteria were designed for genetically uniform commercial varieties. Farmer varieties are by their agroecological nature heterogeneous populations that derive their resilience precisely from the genetic variation that DUS testing is designed to exclude. As currently framed, the clause offers Partner States no alternative evaluation pathway placing farmer varieties permanently outside the formal release system and by extension, outside any variety that can lawfully be marketed as certified seed notwithstanding that Tanzania and Uganda have each explored or adopted alternative evaluation approaches better suited to farmer varieties at the national level.

C. Seed Certification (Clause 8)

Clause 8 provides that seed of a variety listed on the Community Catalogue "shall be produced, imported or exported within the Community as certified seed" if it is certified by a national seed authority. The clause is silent on the status of uncertified seed. Read in isolation, the provision is reasonably susceptible to the interpretation that uncertified seed including farm-saved seed exchanged between farmers, sold at local markets or distributed through community seed banks may not lawfully be produced, moved or traded at all. Whether or not that is the drafters' intention, the ambiguity itself is untenable and a statute capable of being read to criminalise the seed-saving and exchange practices of the majority of the region's farmers must be drafted with unambiguous precision and not left to inference.

D. Plant Variety Protection and Sub-Delegation (Clause 12)

Clause 12(1) provides that an application for protection in a Partner State is to be assessed under that Partner State's national law which is an implicit and welcome and an acknowledgment that PVP remains in substance a matter of national competence. Clause 12(4) however delegates to the Council of Ministers the power to make regulations governing conditions for protection, rights of priority, examination procedures, the scope of breeders' rights and registration and maintenance requirements which is precisely the substantive content that determines how far a farmer's freedom to save, use and exchange seed of a protected variety is curtailed. These are matters of fundamental rights allocation that belong in primary legislation, subject to full parliamentary scrutiny and public participation and not in executive regulations that may be made and amended without recourse to the Assembly. The internal inconsistency between clauses 12(1) and 12(4), national assessment of applications, but Community-level definition of rights also creates real legal uncertainty as to which body of law ultimately governs the scope of a granted right.

E. Absence of Farmers' Rights Provisions

Nowhere does the Bill articulate farmers' rights as a counterweight to breeders' rights notwithstanding that every Partner State but one is bound by Article 9 of the ITPGRFA to protect and promote precisely such rights. The Bill's asymmetry detailed (if partly deferred) protection for breeders and none for farmers is not a neutral drafting choice because it operationalises a policy preference for the formal sector over the farmer-managed sector that supplies the majority of the region's seed.

F. Non-Recognition of Community Seed Banks

Community seed banks are a cornerstone of farmer-led conservation and resilience strategy across East Africa and their promotion is a specific object of EALA's own 21 July 2025 agroecology resolution. The Bill makes no reference to them whatsoever and neither recognises their legal status nor to clarify that their core functions of conservation, multiplication and farmer-to-farmer distribution of farmer varieties fall outside the scope of certification and plant variety protection enforcement. This silence leaves community seed banks in a position of legal precarity under a Bill whose certification provisions if read literally could expose their ordinary activities to challenge.

G. Regional Harmonisation, National Sovereignty and Non-Regression

The Bill would install a new EAC-level layer of seed and PVP regulation alongside the national laws that most Partner States already have. Given the Treaty's hybrid approach to direct effect under which EAC law does not automatically override national law absent Partner States conferring such precedence, the practical relationship between the Bill and existing or emerging national protections is unclear. This is not a merely theoretical risk as Tanzania's Quality Declared Seed system and the national agroecology strategies under development in Kenya, Tanzania and Uganda each depend on regulatory space that the Bill's DUS/VCU-only release pathway and broadly framed certification requirement could constrain or displace. Regional harmonisation should raise the floor of protection across the Community and must not be permitted even inadvertently to lower it in Partner States that have moved further than the regional minimum.

H. Institutional Composition and Governance

The Community Seed and Plant Variety Committee as constituted under the Bill comprises the heads of national seed authorities which is a technically competent but exclusively governmental and formal-sector body. No seat is reserved for farmer organisations, women's farmer networks, indigenous or local community representatives or civil society notwithstanding that the Committee's decisions on variety release and Community Catalogue listing will directly shape the space available to farmer-managed seed systems. This composition is difficult to reconcile with the participatory commitment in Article 127(3) of the Treaty.

I. Process and Participation Deficits

Beyond the Bill's substantive content, AFRDA notes process concerns that bear on the legitimacy and durability of any resulting Act including limited public availability of EALA's legislative calendar and committee work plans for the Bill, sensitisation and consultation activities that to date have not been evenly conducted across all eight Partner States and a subsidiary rule-making structure (clause 12(4) in particular) that would allow the most consequential detail of the regime to be settled through regulationswith no guaranteed opportunity for farmer or civil society input at that stage.

VII. Risk Assessment

If enacted without amendment, the Bill carries material risk across five interlocking dimensions.

1. Food security risk

A regulatory framework that constrains the farmer-managed channels supplying 70 to 90 percent of planted seed without a viable formal-sector substitute at comparable scale and cost threatens to reduce instead of increasing the quantity and diversity of seed available to smallholders compounding a food security situation already marked by high food-import dependence and tens of millions of severely food-insecure people in the region.

2. Biodiversity risk

Concentrating regulatory recognition on genetically uniform DUS-compliant varieties will over time erode the genetically diverse farmer varieties that constitute the region's principal buffer against climate variability, pests and disease.

3. Livelihood and equity risk

Certified seed is frequently priced beyond the reach of smallholder households and a framework that channels the seed supply toward the certified segment without affordability safeguards and without protecting farmer seed enterprises' market space risks deepening rural poverty and facilitating the concentration of the seed market in the hands of a small number of well-capitalised commercial actors.

4. Legal and constitutional risk

Provisions in tension with the EAC Treaty's human rights, food security and indigenous knowledge principles with Partner States' ITPGRFA and CBD obligations and with constitutional guarantees such as the right to food do expose any resulting Act to legal challenge before the East African Court of Justice under Articles 27 and 30 of the Treaty and to protracted non-domestication or non-implementation at national level as occurred with the 2018 Bill.

5. Reputational and legitimacy risk

A regional flagship law widely perceived, as the current draft already is by a broad coalition of farmer networks and civil society organisations across the Community, as favouring external commercial and intellectual-property standards over African farmers' own African Model Legislation risks undermining public confidence in EALA's legislative process more broadly.

VIII. Proposed Amendments

AFRDA proposes the following ten amendments to the Bill. They are designed to preserve and strengthen the Bill's legitimate harmonisation objectives, cross-border recognition, quality assurance and an enabling environment for investment while closing the gaps identified in Part VI. Proposed statutory language is set out in indented italics for ease of reference by the drafting committee and it is offered as a starting point for legislative drafting, not as final text.

Amendment 1. Definitions (amend Article 2)

Amend the definition of "breeder" to remove reference to mere discovery and insert new definitions recognising farmer varieties, farmer-managed seed systems and community seed banks as distinct, legitimate categories.

> *"breeder" means a person who develops or breeds a plant variety through a deliberate act of selection or hybridisation, or who employs or commissions such a person, or a successor in title thereto; a person who merely discovers a variety already developed, selected or maintained by a farmer or local community shall not, by that act alone, be considered a breeder for the purposes of this Act.*
>
> *"farmer variety" or "traditional variety" means a variety that is traditionally grown, selected, developed or maintained by farmers or local communities using their own knowledge and practices, whether or not it satisfies the criteria of distinctness, uniformity and stability under section 6.*
>
> *"farmer-managed seed system" means the informal system, based on farmers' own practices of saving, selecting, exchanging and selling seed, and including community seed banks and local seed markets, through which farmers access, develop and disseminate planting material.*
>
> *"community seed bank" means a community-based institution, however organised, established and governed by farmers or local communities for the conservation, multiplication, exchange and distribution of farmer varieties and associated traditional knowledge.*

Rationale:

Precise definitions are the necessary foundation for every other amendment proposed below and close the door to the appropriation of farmer-developed material through the current, over-broad definition of "breeder."

Amendment 2. A Dedicated Farmers' Rights Clause (new provision)

Insert a freestanding Farmers' Rights clause, applicable throughout the Act thereby giving direct domestic effect at Community level to the substance of Article 9 of the ITPGRFA and Article 19 of UNDROP.

> *(1) Nothing in this Act shall be construed to limit farmers' rights, individually or collectively, to:*
>
> *(a) protection of traditional knowledge relevant to plant genetic resources*
>
> *(b) an equitable share of benefits arising from the use of plant genetic resources*
>
> *(c) participate in decision-making, at national and Community level, on matters relating to the conservation and sustainable use of plant genetic resources*
>
> *(d) save, use, exchange and sell farm-saved seed or propagating material of farmer varieties, without restriction*
>
> *(e) use a protected variety to develop a farmer variety, including material obtained from genebanks or plant genetic resource centres*
>
> *(2) Partner States shall take such national measures as are necessary to give effect to the rights set out in subsection (1), consistent with their obligations under the International Treaty on Plant Genetic Resources for Food and Agriculture and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.*

Rationale:

This clause converts the region's existing but under-implemented international obligations into an operative provision of the Bill itself, ensuring the Act cannot be read whether by a court, a regulator, or a private party to override farmers' rights by omission.

Amendment 3. Dual-Track Variety Evaluation and Release; Farmer Varieties Register (amend Clause 6; insert new Clause 6A)

Confine DUS/VCU/NPT testing under clause 6 to varieties destined for the certified-seed market and Community Catalogue and establish a parallel, farmer-accessible register.

> *6(1) A national plant variety release committee shall not release a plant variety for sale as certified seed unless that variety has undergone the tests set out in this section. This section applies only to varieties intended for release and marketing as certified seed and shall not be construed to require any such testing as a precondition for the production, multiplication, exchange or sale of a farmer variety within a farmer-managed seed system.*
>
> *6A(1) Each Partner State shall establish and maintain a National Register of Farmer Varieties, on which a variety shall be registered on the application of the farmers or local community acting as its custodians, assessed against criteria appropriate to farmer varieties including farmer-recognisable identity, performance and history of use and not against the distinctness, uniformity and stability criteria applicable under section 6.*
>
> *6A(2) A variety entered on the National Register of Farmer Varieties of any Partner State may be produced, multiplied, exchanged and sold by farmers and community seed banks in any Partner State for non-commercial and small-scale commercial local exchange, without listing on the Community Catalogue.*

Rationale:

This creates a workable, lower-cost pathway modelled on Tanzania's Quality Declared Seed experience, giving farmer varieties formal recognition without forcing them through testing criteria they cannot by their biological nature satisfy.

Amendment 4. Certification Carve-Out for Farmer-Managed and Community Seed Systems (amend Clause 8)

> *8(1) Seed of a variety on the Community Catalogue shall be produced, imported or exported within the Community as certified seed only where that seed is marketed, labelled or sold as certified seed. Nothing in this section restricts or renders unlawful the production, saving, exchange, gifting or sale including across the borders of Partner States for personal, household or community-level use of farm-saved seed, seed of a farmer variety or seed distributed through a community seed bank, whether or not such seed is certified.*

Rationale:

This removes the principal source of legal ambiguity identified in Part VI(C) and places beyond doubt that ordinary farmer seed-saving and exchange practices are lawful.

Amendment 5. Legal Recognition and Protection of Community Seed Banks (new Part)

> *(1) Community seed banks are recognised as legitimate institutions for the conservation, multiplication, exchange and distribution of farmer varieties and associated traditional knowledge.*
>
> *(2) Partner States may establish a light-touch registration framework for community seed banks for the purposes of extending technical, financial or capacity-building support; such registration shall not operate as a licence or precondition for a community seed bank to lawfully conduct its core functions.*
>
> *(3) The conservation, multiplication and farmer-to-farmer distribution activities of a community seed bank shall not, without more, constitute an infringement of a breeder's right granted under Part [PVP Part] of this Act.*

Rationale:

Directly implements EALA's own 21 July 2025 agroecology resolution and removes the legal precarity identified in Part VI(F).

Amendment 6. Mandatory Minimum Safeguards for Plant Variety Protection (amend Clause 12)

Delete clause 12(4) insofar as it delegates the substantive definition of breeders' rights and their exceptions to Council of Ministers regulations and replace it with a primary-legislation floor of mandatory minimum standards binding on Partner States' national PVP laws.

> *12(4) The requirements and conditions for plant variety protection shall be determined under the national law of each Partner State. Partner States shall ensure that their national law includes, at a minimum:*
>
> *(a) a farmers' privilege permitting farmers to save, use and exchange, though not sell on a commercial scale, farm-saved seed or propagating material of a protected variety for propagation on their own holdings*
>
> *(b) a breeders' exemption permitting the use of a protected variety for further breeding, including the development of farmer varieties*
>
> *(c) exceptions for private, non-commercial and experimental or research use*
>
> *(d) a requirement that an applicant for protection disclose the source of genetic material used in developing the variety and demonstrate that any material sourced from a farmer variety or traditional knowledge was obtained with prior informed consent and on terms of fair and equitable benefit-sharing.*
>
> *12(5) Any regulations made under this Part by the Council of Ministers shall be laid before the Assembly and shall not take effect unless approved by resolution of the Assembly.*

Rationale:

Resolves the internal inconsistency between clauses 12(1) and 12(4) identified in Part VI(D), restores parliamentary oversight of subsidiary legislation and gives concrete, judiciable content to the disclosure-of-origin and benefit-sharing obligations arising under the CBD and Nagoya Protocol.

Amendment 7. Inclusive Institutional Composition (amend provisions establishing the Community Seed and Plant Variety Committee)

> *The Community Seed and Plant Variety Committee shall consist of the heads of national seed authorities of each Partner State, together with not fewer than one representative of farmer organisations, one representative of women farmers' networks and one representative of civil society organisations working on agrobiodiversity or farmers' rights, nominated by their respective constituencies from each Partner State on a rotating basis, provided that no fewer than one-third of the total voting membership of the Committee shall be drawn from non-governmental constituencies. Decisions of the Committee on variety release and Community Catalogue listing shall be published and open to public comment for not less than thirty days before finalisation.*

Rationale:

Brings the Committee's composition into line with Article 127(3) of the EAC Treaty and ensures that the body making the most consequential day-to-day decisions under the Act is accountable to those most affected by them.

Amendment 8. Non-Regression and Subsidiarity Clause (new provision)

> *(1) Nothing in this Act shall be construed to diminish, restrict, or override any right, protection or standard more favourable to farmers, farmer-managed seed systems or the conservation of agricultural biodiversity that exists under the national law, policy or Constitution of a Partner State on the date this Act comes into force, or is subsequently adopted.*
>
> *(2) Nothing in this Act shall prevent a Partner State from maintaining or introducing additional measures to protect farmers' rights, farmer varieties, or agrobiodiversity, provided that such measures do not create arbitrary or unjustifiable obstacles to the legitimate cross-border trade in certified seed contemplated by this Act.*

Rationale:

Directly addresses the sovereignty and non-regression risk identified in Part VI(G), ensuring harmonisation raises the regional floor without lowering standards already achieved by more advanced Partner States.

Amendment 9. Participation Requirements for Subsidiary Rule-Making (new provision)

> *Before making any regulation, guideline or Community Catalogue decision under this Act, the responsible organ shall:*
>
> *(a) publish the proposed measure, in English, Kiswahili and such other languages as are widely used within the Community, for a comment period of not less than sixty days.*
>
> *(b) conduct documented, meaningful consultation with farmer organisations, women's farmer networks, indigenous and local communities and civil society organisations in each affected Partner State.*

Rationale:

Ensures the participatory commitment of Article 127(3) of the EAC Treaty is carried through into implementation and not only into the Bill's own enactment.

Amendment 10. Monitoring, Review and Reporting (new provision)

> *(1) The Community Seed and Plant Variety Committee shall submit an annual report to the Assembly on the implementation of this Act, including its effects on farmer-managed seed systems, agricultural biodiversity, seed prices and affordability and the operation of the National Registers of Farmer Varieties and community seed banks established under this Act.*
>
> *(2) The Council of Ministers shall cause a comprehensive review of this Act to be conducted within five years of its commencement, with the participation of farmer organisations and civil society and shall table the findings of that review before the Assembly.*

Rationale:

Builds in an evidence-based feedback loop so that any unintended consequences for farmer-managed seed systems can be identified and corrected without requiring a full legislative re-opening.

IX. Procedural Recommendations to EALA

- Defer Third Reading of the Bill pending its referral back to the Committee on Agriculture, Tourism and Natural Resources for redrafting in line with the amendments proposed above.
- Ensure that public hearings and sensitisation activities are conducted on an equivalent basis in all eight Partner States including at sub-national and community level and not only in capital cities or before technical audiences.
- Publish EALA's legislative calendar, committee work plans and committee reports concerning the Bill to enable the public to plan and time its participation.
- Translate the Bill and accompanying explanatory materials into Kiswahili and other languages widely spoken across the Community.
- Commission an independent regulatory impact assessment of the Bill including a specific assessment of its likely effects on gender equity, agrobiodiversity and smallholder livelihoods before the Bill proceeds to Third Reading.
- Establish a joint technical working group, inclusive of farmer organisation and civil society representatives from across the Community to work with the Committee on the redrafting of the contentious provisions identified in this memorandum.
- Consider, given that the great majority of Partner States already possess national seed and plant variety laws, whether the Community-level instrument would more appropriately take the form of a framework or model law setting minimum standards and guidance for national alignment, rather than a directly prescriptive regulatory instrument, thereby reducing the conflict-of-laws risk identified in Part VI(G) and Part VII(4).

X. Conclusion

AFRDA supports the East African Community's ambition to build a regional seed system that facilitates trade, assures quality and attracts investment. That ambition and the protection of farmers' rights, farmer-managed seed systems, indigenous seed, farmer varieties and community seed banks are not in tension but rather are complementary and both are necessary if the Community's stated objectives of food security and food sovereignty are to be realised in substance and not merely in name.

The Bill as gazetted does not yet achieve that balance and AFRDA respectfully urges the Assembly to adopt the ten amendments proposed in Part VIII of this memorandum, to implement the procedural recommendations in Part IX and to ensure that the final Act reflects the lived reality of the millions of East African farming households for whom seed is not merely an input but the foundation of food, culture and resilience across generations.

AFRDA thanks the Assembly and its Committees for the opportunity to contribute to this important legislative process and stands ready to provide further written submissions, technical drafting support or oral testimony as the Committees may require.

Respectfully submitted,

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Chief Executive Officer / Continental Coordinator

On behalf of the **African Resilience & Development Agency (AFRDA)**

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cc. Parliament of The Republic of Uganda

cc. Parliament of The Republic of Kenya

cc. Parliament of The Republic of Rwanda

cc. Parliament of the Republic of Tanzania

cc. National Legislative Assembly of The Republic of South Sudan

cc. Parliament of the Republic of Burundi

cc. Parliament of The Democratic Republic of Congo

cc. Federal Parliament of Somalia