



Centre for Environmental
Policy and Advocacy

POLICY BRIEF

Volume 5, Issue 2

**REALIZATION OF
FARMERS' RIGHTS
IN MALAWI**



What are Farmers' Rights?

Understanding of farmers' rights by people in Malawi is still varying. In the course of interacting with farmers, several definitions have emerged as provided in boxes below:

"Farmers need to be freely allowed to plant what they feel will satisfy their needs, without being forced to chose certain varieties" Ms Florence Ngwenyama, 2007

"*Ufulu wamalimidwe* and *Ufulu woteteza malimidwe* - literally translated as rights that protect traditional ways of farming and traditional seed varieties (traditional seed conservation)", Kasungu district NASFAM farmers, 2009

"*Ufulu wosamalira mbeu zamakolo* - literally translated as the right to manage traditional seed varieties", Mulanje, Thyolo and Phalombe districts NASFAM farmers, 2009

While IUPGRFA (1998) defined farmers' rights as rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin. These rights also include the right to save, use, sell and exchange farm-saved seeds or the right to land.

Farmers' rights need to be considered within a broader context by taking into account other important farming factors such as access to water, land, credit, technology, markets, sound environmental management and

equitable gender participation. However, the implementation of farmers' rights in Malawi is constrained because the country lacks a policy and legal framework that deals with the participation of farmers on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture. Furthermore, most farmers' organisations and institutions providing services on agro-biodiversity do not have a reasonable understanding of farmers' rights and its ultimate goals. Their

awareness and vision of the end results of realizing farmers' rights are vague and their application of its principles is weak.



Farmers in Kasungu district in Central Malawi have been involved in participatory breeding trials of various varieties of groundnuts; but varieties traditionally used by the farmers were not included

What is the Rationale behind Farmers' Rights?

The driving force of Malawi's agricultural sector is its rich agro-biodiversity. Maize (*Zea mays*), Sorghum (*Sorghum bicolor*), rice (*Oryza sativa*), millet (*Pennisetum spp*, *Eleusine coracana*) and groundnuts (*Arachis hypogaea*) are the major crops for Malawi. Originally, Malawi was a country of sorghum and millet but these have been marginalized with the introduction of maize (GoM, 2005).



Maize



Sorghum



Buye

Major leguminous crops grown in Malawi include common beans, cow peas, Bambara beans, peas, groundnuts and pigeon peas. Cassava (*Manihot esculenta*), sweet potatoes (*Ipomea batatas*) and European potatoes (*Solanum tuberosum*) are among the widely cultivated root and tuber crops. In addition to these, there are many edible tubers and the most popular ones include buye (*Prectranthus esculentus*) and several species of terrestrial orchids.

Farmers' Rights seek to emphasize the following: -

- **Equity** - While crop varieties and animal breeds developed through modern breeding are protected through the formal intellectual property rights and seed laws, the work of local farmers in Malawi to develop new varieties remains informal and in the public domain. Plant breeders continue to benefit from the conservation and protection of agro-biodiversity resources done by local farmers. Hybrid maize seed such as MH17 and MH18 were developed from local germplasm selected and bred by local farmers over a number of years. Unfortunately the farmers did not receive any compensation after these hybrids were commercialized because the local varieties were considered as a common heritage.
 - **Conservation** - Local varieties for most of the crops are under serious threat of becoming extinct in Malawi. Apart from natural
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disasters such as droughts, floods, one of the major reasons is the gradual replacement of local varieties with hybrids being aggressively promoted by private seed companies, breeders and the agricultural extension system in the country. There has also been a growing gap between agricultural research and local farmers. Due to the inadequate institutional attention to local germplasm, the local varieties have suffered. As a result, it has mainly been the local farmers who have been conserving and protecting local varieties.

- **Securing farmers' practices** - Since the beginning of agriculture, farmers have sourced seed informally through saving, selling, sharing and exchanging. Saving and exchanging of seeds is very essential for maintaining local varieties and more importantly facilitating farmers' breeding. In some cases researchers and breeders have worked with farmers in breeding; but this is mainly to enable breeders' access local germplasm and related knowledge. In Malawi, the withdrawal of the state from the seed industry leaving it to commercial seed companies has restricted farmers' practices including the interaction between breeders and farmers since the companies are only interested in marketing their already developed varieties and very much less about local capacity in breeding.
 - **Recognition of local farmers' efforts** - The country is in the process of developing the plant breeders' rights legislation. Once the legislation is enacted, hybrid varieties will be protected through the formal Intellectual Property Rights system; the breeding work of local farmers will remain informal and in the public domain unless a parallel but equally effective *sui generis* system is established to protect traditional varieties.
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- **Recognition of local landraces as the basis of plant breeding**
Breeders do not recognize farmers' local landraces and genetic resources as varieties considering issues of distinctness and stability. The characteristics for the protection of plant breeders' rights do not fit well into farmers' rights protection. The characteristics of uniformity, stability, and distinctiveness negate the rights of farmers who would have sustainably conserved and improved their varieties. There is concern about the effect of uniformity on biological diversity and the inability it has to encompass landraces and traditional varieties. Replacing the requirement of 'uniformity' with 'identifiability' would encourage heterogeneity by making it possible to protect populations of landraces under a plant variety protection system.



Displayed local landraces (Cassava, buye, finger millet, sorghum, bambara)

Policy and Legislation on Farmers' Rights in Malawi

Malawi does not have specific policy and legal instruments dealing with farmers' rights. However, there are a number of legislation that have a bearing on conservation and utilization of plant genetic resources. These include Seed Act, 1988 (as amended in 1996), Plant Protection Act (1969) and the Patents Act (1959). Progressive steps are currently being undertaken to develop specific legislation dealing with farmers' rights. Currently there are two draft Bills which are being considered dealing with farmers' and plant breeders' rights. The revised draft Environmental Management Bill (2006) has a chapter on farmers' rights.



Stakeholder workshop on legislation of farmer's rights

The Bill is currently awaiting tabling in the Malawi National Assembly for enactment. Although Environmental Management falls under a separate ministry from Agriculture, stakeholders have agreed to leave it there and will only be repealed once an appropriate legislation is enacted. The draft Plant Breeders' Rights Bill (now changed to Plant Variety Protection Bill)

which has been in draft for nearly seven (7) years will be the appropriate home for farmers' rights once enacted. The development of the Bill is still underway although it has been caught up with controversies between plant breeders' and farmers' rights advocates as the breeders do not want to include farmers' rights provisions.

However it does not require one to do any analysis to realize that if farmers' rights provisions remain in the yet to be enacted revised Environmental Management Bill, there will be implementation challenges.

How to attain farmers' rights in Malawi?

- **Lobby for the enactment of appropriate legislation** – In order to realize farmers' rights the country needs to speed up the enactment of legislation providing for farmers' rights. The legal instruments are important for the administration of farmers' rights.
- **Promotion of farmers' rights** – There is an urgent need to develop a reasonable understanding of farmers' rights and its ultimate goals.
- **Remove barriers that keep out local products in formal markets** - The Seed Act has stringent standards on labelling and packaging ostensibly provided for maintenance of standards and therefore protection of farmers but which ultimately keep out small-scale seed producers and sellers from entering the market. It is essential for legislation to provide for exemptions or modifications specifically for small-scale subsistence farmers that may be seed producers and sellers.

Acknowledgements

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