

Best Practice for Plant Protection (& Quarantine) Act from countries of Southern & Eastern Africa

Notes:

Countries whose plant protection/plant quarantine/phytosanitary laws were analysed in this part of the HAPL project were:

Botswana (draft): Plant Protection Act

Eritrea (draft): Plant Protection Law (1997)

Kenya: Plant Protection Act 1937 (revised 1979)

Namibia (draft): Plant Quarantine Act

Mauritius: Plants Act 1976

Republic of South Africa: Agricultural Pests Act 1983 (as amended)

Seychelles: Plant Protection Act 1996

Tanzania (mainland): Plant Protection Act 1997

Uganda (draft): Plant Protection Act (2002)

Zanzibar: Plant Protection Act 1997

Title, date

Plant Protection (& Quarantine) Act

Preamble

Seychelles

AN ACT to make provision for preventing importation and spread of plant pests and diseases, for better protecting the agricultural and forestry resources and ecological environment of Seychelles, for regulating the importation of beneficial organisms, for regulating the export of plants and plant products and for connected purposes.

Commencement:

Either on a date set in the Act or on a date by Order of the Minister (delegated authority).

Notes:

If the Act is to be implemented piecemeal, there should be provisions for this within the Act.

Repeal and Savings

Seychelles

17.(1) The Plant Pest Act is hereby repealed.

(2) Notwithstanding the repeal of the Plant Pest Act a statutory instrument made under that Act which is in force at the commencement of this Act shall, so far as the statutory instrument is not inconsistent with this Act, continue in force until it is amended or repealed by a statutory instrument made under this Act.

Definitions

Using standard list of international definitions (FROM *FAO Glossary of Phytosanitary Terms*) as adopted at LWG Meeting, Pretoria, April 2001:

2. In this Act, unless the context otherwise requires -

Area	An officially defined country, part of a country or all or parts of several countries
Area endangered	See Endangered area
Antagonist*	An organism (usually pathogen) which does no significant damage to the host but its colonization of the host protects the host from significant subsequent damage by a pest
Authority	The National Plant Protection Organization, or other entity or person officially designated by the government to deal with matters arising from the responsibilities set forth in the Code
Biological control agent	A natural enemy, antagonist or competitor, and other self-replicating biotic entity used for pest control
Biological pesticide (Biopesticide)	A generic term, not specifically definable, but generally applied to a biological control agent, usually a pathogen, formulated and applied in a manner similar to a chemical pesticide, and normally used for the rapid reduction of a pest population for short-term pest control
Buffer zone	An area in which a specific pest does not occur or occurs at a low level and is officially controlled, that either encloses or is adjacent to an infested area, an infested place of production, a pest free area, a pest free place of production or a pest free production site, and in which phytosanitary measures are taken to prevent spread of the pest
Bulbs and tubers	Dormant underground organs of plants intended for planting
Certificate	An official document which attests to the phytosanitary status of any consignment affected by phytosanitary regulations
Clearance(of a consignment)	Verification of compliance with phytosanitary regulations
Commission	The Commission on Phytosanitary Measures established under Article XI, IPPC, 1997
Commodity	A type of plant, plant product, or other Regulated article being moved for trade or Other purpose
Consignment	A quantity of plants, plant products and/or other regulated articles being moved from one country to another and covered by a single phytosanitary certificate (a consignment may be composed of one or more lots)

Consignment in transit	Consignment which passes through a country without being imported, and without being exposed in that country to contamination or infestation by pests. The consignment may not be split up, combined with other consignments or have its packaging changed [formerly country of transit]
Containment	The application of phytosanitary measures in and around an infested area to prevent spread of a pest
Control (of a pest)	Suppression, containment or eradication of a pest population
Controlled area	A regular area which an NPPO has determined to be the minimum area necessary to prevent spread of a pest from a quarantine area
Country of origin *	Country where a consignment of plants was grown
Country of origin (of a consignment of plant products)	Country where the plants from which the plant products are derived were grown
Country of origin (of a consignment of plants)	Country where the plants were grown
Country of re-export	Country through which a consignment of plants passed and was split up, stored or had its packaging changed
Country of transit *	Country through which a consignment of plants passed without being split up, stored or having its packaging changed, without being exposed to contamination by pests in that country
Endangered area	An area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss
Entry (of a consignment)	Movement through a point of entry into an area
Entry (of a pest)	Movement of a pest into an area where it is not yet present, or present but not widely distributed and being officially controlled
Equivalence	The situation of phytosanitary measures which are not identical but have the same effect
Eradication	Application of phytosanitary measures to eliminate a pest from an area
Exotic	Not native to a particular country, ecosystem or ecoarea (applied to organisms intentionally or accidentally introduced as a result of human activities). As this Code is directed at the introduction of biological control agents from one country to another, the term "exotic" is used for organisms not native to a country
Field inspection	Inspection of plants in a field during the growing season
Fruits and vegetables	Fresh parts of plants intended for consumption or processing and may include edible roots and tubers, bulbs and nuts
Fumigation	Treatment with a chemical agent that reaches the commodity wholly or primarily in a gaseous state

Germplasm	Plants intended for use in breeding or conservation programmes
Grain	Seeds intended for processing or consumption and not for planting (see Seeds)
Growing medium	Any material in which plant roots are growing or intended for that purpose
Harmonization	The establishment, recognition and application by different countries of phytosanitary measures based on common standards
Host range	Species of plants capable, under natural conditions, of sustaining a specific pest
IAPSC	Inter-African Phytosanitary Council
Infestation (of a commodity)	Presence in a commodity of a living pest of the plant or plant product concerned. Infestation includes infection
Inspection	Official visual examination of plants, plant products or other regulated articles to determine if pests are present and/or to determine compliance with phytosanitary regulations [formerly Inspect]
Inspector	Person authorized by a National Plant Protection Organization to discharge its functions
Interception (of a consignment)	The refusal or controlled entry of an imported consignment due to failure to comply with phytosanitary regulations
Intermediate quarantine	Quarantine in a country other than the country of origin or destination
Introduction	Entry of a pest resulting in its establishment
IPPC	Abbreviation for the International Plant Protection Convention, as Deposited in 1951 with FAO in Rome and as subsequently amended
International Standard for Phytosanitary Measures	An international standard adopted by the Conference of FAO, the Interim Commission on Phytosanitary Measures or the commission on Phytosanitary Measures, established under the IPPC
International Standards	International standards established in accordance with Article X paragraph 1 and 2 of the IPPC
Inundative release	The release of overwhelming numbers of a mass-produced, invertebrate biological control agent in the expectation of achieving a rapid reduction of a pest population without necessarily achieving continuing impact
IAPSC/IPPC	Acronym for the International Plant Protection Convention, as deposited in 1951 with FAO in Rome and as subsequently amended
Micro-organism	A protozoan, fungus, bacterium, virus or other microscopic self-replicating biotic entity

National Plant Protection Organization	Official service established by a government to discharge the functions specified by the IPPC [formerly Plant Protection Organization (National)]
Non-quarantine pest	Pest that is not a quarantine pest for an area [
Occurrence	The presence in an area of a pest officially reported to be indigenous or introduced and/or not officially reported to have been eradicated [formerly Occur]
Official	Established, authorized or performed by a National Plant Protection Organization
Organism	Biotic entity capable of reproduction or replication, Vertebrate or invertebrate animals, plants and micro-organisms
Outbreak	An isolated pest population, recently detected and expected to survive for the immediate future
Pathway	Any means that allows the entry or spread of a pest
Pest	Any species, strain or biotype of plant, animal, or pathogenic agent, injurious to plants or plant products
Pest free area	An area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained
Pest risk analysis	The process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it
Phytosanitary	Pertaining to plant quarantine
Phytosanitary certificate	Certificate patterned after the model certificates of the IPPC
Phytosanitary measure	Any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of quarantine pests
Phytosanitary regulation	Official rule to prevent the introduction and/or spread of quarantine pests, by regulating the production, movement or existence of commodities or other articles, or the normal activity of persons, and by establishing schemes for phytosanitary certification
Plant product	Unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pest
Plant quarantine	All activities designed to prevent the introduction and/or spread of quarantine pests or to ensure their official control
Plants	Living plants and parts thereof, including seeds and germplasm
Plants for planting	Plants intended to remain planted, to be planted or replanted

Planting (including replanting)	Any operations for the placing of plants in a growing medium to ensure their subsequent growth, reproduction or propagation
Plants in tissue culture	Plants in a clear aseptic medium in a closed transparent container
Point of entry	Airport, seaport or land border point officially designated for the importation of consignments, and/or entrance of passengers
Post-entry quarantine	Quarantine applied to a consignment after entry
Preclearance	Phytosanitary certification and/or clearance in the country of origin, performed by or under the regular supervision of the National Plant Protection Organization of the country of destination
Premises	Any building in which plants and plant materials may be found or suspected to be present.
Prohibition	A phytosanitary regulation forbidding the importation or movement of specified pests or commodities
Protected area	A regulated area which an NPPO has determined to be the minimum area necessary for the effective protection of an endangered area
Quarantine	Official confinement of plants or plant products subject to phytosanitary regulations for observation and research or for further inspection, testing and/or treatment
Quarantine area	An area within which a quarantine pest is present and is being officially controlled
Quarantine (of a biological control agent)	Official confinement of biological control agents subject to phytosanitary regulations for observation and research, or for further inspection and/or testing
Quarantine pest	A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled
Quarantine procedure	See Phytosanitary procedure
Quarantine station	Official station for holding plants or plant products in quarantine [formerly Quarantine station or facility]
Refusal	Forbidding entry of a consignment or other regulated article when it fails to comply with phytosanitary regulations
Region	The combined territories of the member countries of a Regional Plant Protection Organization
Regional Plant Protection Organization	Intergovernmental organization with the functions laid down by Article VIII of the IPPC [formerly Plant Protection Organization (Regional)]

Regulated article	Any storage place, conveyance, container or any other object or material capable of harbouring or spreading pests, particularly where international transportation is involved
Regional standards	Standards established by a regional plant protection organization for the guidance of the members of that organization
Regulated area	An area into which, within which and/or from which plant, plant products and other regulated articles are subjected to phytosanitary measures in order to prevent the introduction and/or spread of regulated pests (See Controlled area and Protected area)
Regulated article	Any plant, products, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of phytosanitary measures, particularly where international transportation is involved
Regulated non-quarantine pest	A non –quarantine pest whose presence in plant for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party
Regulated pest	A quarantine pest or a regulated non-quarantine pest
Release (into the environment)	Intentional liberation of an organism into the environment (see also “introduction” and “establishment”)
Release (of a consignment)	Authorization for entry after clearance
Restriction	A phytosanitary regulation allowing the importation or movement of specified commodities subject to specific requirements
Seeds	Seeds for planting, not for consumption or processing (see Grain)
Standard	Document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context
Stored product	Unmanufactured plant product intended for consumption or processing, stored in a dried form (this includes in particular grain and dried fruits and vegetables)
Surveillance	An official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures
Test	Official examination, other than visual, to determine if pests are present or to identify pests
Transparency	The principle of making available, at the international level, phytosanitary measures and their rationale
Treatment	Officially authorized procedure for the killing, removal or rendering infertile of pests

Wood

Round wood, sawn wood, wood chips or dunnage, with or without bark

Terms marked * might be defined in delegated (secondary) legislation.

Establishment of services

National Plant Protection Organisation

Designated Head of Service

As required in the International Plant Protection Convention

NPPO

Eritrea (Draft)

1. The Minister of Agriculture shall maintain a Plant Protection and Quarantine Unit within the [Land Resources and Crop Production Department] which shall be responsible for the protection of the agricultural resources of Eritrea, and the administration and enforcement of this Law.

2. The Plant Protection and Quarantine Unit shall advise the Ministry of Agriculture on any matters with which this Law is concerned including:

(a) the formulation of regulations under this Law and matters arising from the application of any such regulations;

(b) the declaration of any plant pest as a quarantine pest pursuant to Art. 15 ;

(c) the promotion of public awareness relating to plant pests and diseases, and the means of their prevention, eradication and control;

(d) the exercise of the Minister's powers under this Law;

(e) the phytosanitary implications of importing any plant material, plant products, plant pests, beneficial organisms or soil;

(f) the promotion of integrated pest management and control in Eritrea;

(g) the management, operation and requirements of the Plant Protection and Quarantine Unit;

(h) the examination of complaints and objections lodged in respect of decisions . and measures taken by Plant Quarantine Officers in the manner to be prescribed by regulation; and

(i) the liaison with competent authorities in neighbouring countries in plant protection matters;

(j) the participation of Eritrea in the relevant subregional, regional and international organizations.

3. The Plant Protection and Quarantine Unit shall periodically update and disseminate lists of plant material, plant pests and diseases, and beneficial organisms the importation of which into Eritrea is prohibited or restricted.

Optional Advisory Committee

Uganda (Draft)

Plant Health Technical Committee

7. (1) The Minister shall appoint a Plant Health Technical Committee to advise him or her on all technicalities arising from the administration of this Act and on any other issues Committee related thereto.

(2) The Committee shall consist of the following:

- a) the Commissioner for Crop Protection who shall be the Chairperson**
 - b) the Principal Inspector who shall be the Secretary**
 - c) an Entomologist**
 - d) a Plant Pathologist**
 - e) a Forest Officer**
 - f) one person to represent the Farmers' Associations**
 - g) one person to represent the Agricultural Exporters' Organisations**
 - h) one scientist to represent the National Environment Management Authority (NEMA)**
 - i) one scientist to represent the Uganda National Council for Science and Technology (UNCST)**
 - j) one scientist to represent the National Agricultural Research Organisation (NARO)**
 - k) one officer to represent the Uganda Revenue Authority**
 - l) one officer to represent the Uganda National Bureau of Standards (UNBS)**
 - m) one - Member -of the Uganda -Consumer Protection Association**
 - n) a representative of the Ministry responsible for Trade and Industry**
 - o) one lawyer to represent the Attorney General**
- representation from the seed and plant industry?*

(3) The Committee may co-opt to it, for such period as it thinks fit, such persons whose technical assistance or advice it may require.

(4) The appointed members of the Committee shall hold office for a period of three years but are eligible for reappointment, and such member shall cease to be a member of the Committee:

- a) if that person ceases to be an official of the institution that he or she was appointed to represent on the Committee;**
- b) if he or she resigns in writing under his or her hand. It addressed to the Chairman;**
- c) if he or she is absent without reasonable cause from three consecutive regular meetings of the Committee;**
- d) if in the opinion of the Minister becomes physically or otherwise incapable of discharging his or her duties as a member, and remains so for a period of one hundred and twenty consecutive days.**

(5) The terms and conditions of service of the members shall be determined by the Minister.

8. (1) The functions of the Committee shall be

- a) to provide scientific guidance on the conduct of pest risk analysis, pest surveillance, and evaluation of germplasm;**

- b) to guide the formulation of ordinances and regulations provided for under this Act;
 - c) to advise the Commissioner on all matters relating to and , connected with the enforcement of the provisions of this Act and any regulations made thereunder;
- (2) In exercising its functions, the Committee shall regulate its own procedure.

Notes: (i) legal functions do not necessarily have to be assigned to a unit or body with the same name;

(ii) details of the Advisory Committees functions and operations could be in a Schedule/Annexe to the Act.

Designated Head of Service

Eritrea (Draft)

Article 3. Head of Plant Protection and Quarantine Unit

1. The Head of the Plant Protection and Quarantine Unit, in accordance with the prescribed regulations:

- (a) shall issue, under such terms and conditions as he or she deems necessary, or refuse to issue, import permits for the importation into Eritrea of plant material, plant pests, beneficial organisms, and soil;**
- (b) may revoke, amend or cancel import permits issued under Subsection (a), promptly providing to the importer the written reasons for any such revocation, amendment or cancellation;**
- (c) may require that any imported propagating material be grown in a quarantine station.**

Article 27. Delegation of Powers of the Minister

The Minister of Agriculture may delegate any of the Minister's powers under this Law except the power to delegate and the power to make regulations.

Alternative: Uganda (Draft)

4. (1) The Commissioner for Crop Protection shall be charged with the due administration of this Act, and every inspector shall, in the performance of his or her duties under this Act, act in accordance with any instructions, not being inconsistent with the provisions of this Act, which the Commissioner may from time to time issue for the purpose of such administration.

(2) The Commissioner for Crop Protection shall advise the Minister on any matters with which this Act is concerned nationally, regionally and internationally including:

- a) the exercise of the Minister's powers under this Act;**
- b) the formulation of regulations under this Act and matters arising from the application of any such regulations;**
- c) the declaration of any pest as a quarantine pest pursuant to section 20 of this Act;**
- d) the phytosanitary implications of importing any plant material, plant products, plant pests, beneficial organisms or soil;**

- e) the management, operation and requirements of the plant health service;
- f) the fees to be charged or otherwise revenue to be generated from the services rendered;
- g) the promotion of public awareness relating to plant diseases- and pests, and the means of their prevention, eradication and control;
- h) the examination of complaints and objections lodged in respect of decisions and measures taken by Inspectors in the manner prescribed under this Act;
- i) the liaison with competent authorities in *Uganda*, neighbouring countries and internationally in plant health matters;
- j) the withdrawal, revocation or suspension of a plant import authorization;
- k) on any other matter as the Minister may from time to time require.

Delegation

6. (1) The Minister may, with the exception of the power of delegation, assign or delegate any or all of his or her powers under this Act.

(2) The Minister may prescribe schedules specifying functions under this Act that may be delegated to any specified individual or institution, including designation of laboratories and competent scientists as official identifiers of biological specimens.

(3) In exercising the powers of delegation, assignment or appointment, the Minister may prescribe the manner and conditions for the appointing, assigning and delegation, and may enter into contracts with competent individuals or institutions on such conditions as may be deemed fit and agreed between the parties.

Notes: (i) see note under NPPO above;

(ii) in some administrations, the Chief Agricultural Officer (Head of Department of Agriculture) is designated as head of Service, i.e. most senior officer responsible to the Minister.

Authorised officers/inspectors

1. Establish definitions of:

"inspector" in e.g Kenya's Act, s.2:

"inspector" means the Director of Agriculture, and every officer of the Ministry of Agriculture authorized by the Director of Agriculture to act as an inspector, and any other person authorized by the Director of Agriculture, with the approval of the Minister, by notice in the Gazette to act as an inspector;

Alternatively, establish definitions of

authorised officer AND inspector as in Seychelles' Act, s.2

"authorised officer" means an authorised officer appointed under section 12(1) (c), a police officer, a trade tax officer, an immigration officer, a public health inspector and a postal officer;

"inspector" means a person appointed under section 12(1);

2. Duties of inspectors

Seychelles

12.(1) The Minister may -

...

(b) appoint an inspector who shall form part of the unit referred to in paragraph (a);

(c) appoint an authorised officer;

10. (3) An authorised officer shall have the power of an inspector set out in subsection (1)(f).

13.(1) The Minister may in writing delegate any of the powers conferred on the Minister under this Act except that contained in section 12(1)(a), this subsection and section 16.

(2) The Minister may in writing delegate any of the powers conferred on the Director under this Act except that contained in this subsection.

14.(1) An action shall not lie against the Government, the Director, an inspector, authorised officer or other officer under this Act for an act done or omitted to be done in good faith in the performance of a function under this Act.

(2) Except where it is otherwise provided under this Act, compensation shall not be payable to any person for anything done or omitted to be done under good faith under this Act.

Notes: provision is necessary for appointment of government officers with Ministry/PPU and in OTHER Ministries/Departments, as in examples above.

Points of entry/inspections/premises

Points of entry

Inspections

Points of entry

Zanzibar

3. Declaration of points of entry and quarantine stations

The Minister may, from time to time by notice published in the Official Gazette

a) declare any points of entry to be the only points where plant material, pests, beneficial organisms or soil may be imported into Zanzibar and

b) declare any suitable premises to be quarantine stations, or post-entry quarantine stations, for the detention and treatment of plant material, pests, beneficial organisms or soil imported into Zanzibar.

Notes: (i) the Act should contain **provision** for points of entry to be declared by means of an Order or Regulation;

(ii) points of entry should be classified according to the capacity for handling materials of different risk to the security of the country;

(iii) NPPO should establish facilities at points of entry.

Inspections

Eritrea (Draft)

Article 10. Prohibition of removal

1. No plant material, plant pest, beneficial organism, soil or associated packaging under examination or liable to be examined by a Plant Quarantine Officer shall be removed or handled in any way, nor shall any container be opened, except in accordance with the directions of a Plant Quarantine Officer.

2. In cases in which plant material is destined for human consumption the Plant Quarantine Officer shall exercise her/his powers of inspection so as to determine, according to the phytosanitary conditions of the material, the issuance or the refusal of the relevant entry permit. Other controls and inspections shall take place provided an entry permit has been issued allowing the plant material to enter the country .

Article 12. Inspections

1. Any person who has imported any plant material, plant pest, beneficial organism, soil, or associated packaging shall make them available for inspection and allow a Plant Quarantine Officer to examine the imported items and to take samples at any reasonable time to enable the Plant Quarantine Officer to determine whether or not the Law and any permit issued under it, have been complied with and whether or not further steps should be taken.

2. Any plant material, plant pest, beneficial organism, soil, or associated packaging in transit through Eritrea shall be made available for inspection by a Plant Quarantine Officer who shall examine the items and take samples as necessary, in order to determine whether or not further steps should be taken.

3. If upon inspection the imported material or the material in transit present any risk for the importation and spread of plant pests and diseases, or does not otherwise satisfy the provisions of this Law, it shall be subject, at the expense of the importer, to:

- (a) quarantine at an official plant quarantine station;**
- (b) appropriate treatment in order to remove the risk;**
- (c) re-exportation; or**
- (d) destruction.**

4. The Government of Eritrea shall bear no liability for the destruction or disposal of

plant material or other items imported into Eritrea in contravention of this Law.

Article 21. Powers of Plant Quarantine Officers

1. A Plant Quarantine Officer with appropriate identification:

(a) who suspects that any person, container or conveyance entering or moving within Eritrea, or any land or premises may harbour a plant pest, may stop and without a warrant search such person, container, conveyance, land or premises, except a dwelling place, and take samples of, seize or detain any plant material, beneficial organism, soil, associated packaging, or other thing infested or suspected to be infested with a plant pest.

(b) may require any person to produce any permit, certificate or other documentation required under this Law and provide such other information as the officer may deem fit.

- 2. A Plant Quarantine Officer who seizes or detains any plant material, beneficial organism, soil, or associated packaging under this Law may:**
- (a) store, analyze, treat, quarantine, destroy or dispose of it at the place where it was seized or move it to any other place for storage, analysis, treatment, quarantine or disposal; or**
 - (b) require its owner or the person having the possession, care or control of it at the time of seizure, to store, treat, quarantine, destroy or dispose of it.**
- 3. Any Plant Quarantine Officer who causes anything to be seized or detained shall, as soon as practicable, notify the owner or person having possession, care or control of the thing, of the steps taken and the reasons for them and shall on request give such person a receipt for anything seized. If the seizure is not made in the presence of such person, they shall be notified in writing in the manner prescribed by regulation.**

Article 22. Appeals

- 1. Any owner or occupier of land, owner or operator of a conveyance or owner or importer of plant material, plant pests, beneficial organisms or soil who is aggrieved by any decision by a Plant Quarantine Officer or the Head of the Plant Protection and Quarantine Unit to destroy, dispose of or order the treatment of anything may appeal to the Minister of Agriculture and shall notify the Head of the Plant Protection and Quarantine Unit of their intention to do so, in the manner prescribed by regulation under this Law.**

2. Upon notification of an intention to appeal, the Head of the Plant Protection and Quarantine Unit shall take all reasonable steps to stay the destruction, disposal or treatment of the thing pending determination of the appeal, except where in the opinion of the Head of the Plant Protection and Quarantine Unit any delay would create a significant risk or prejudice to plant health in Eritrea.

Notes: at points of entry, authorised officers have powers of:

inspection, detention, release, reference to post-entry quarantine, refusal, destruction, treatment.

Land and premises

Zanzibar

18. Right of Entry

- a) An inspector may, for the purposes of this Act, and on producing evidence of his appointment, enter at any time upon any land or into or conveyance.
- b) An inspector may, for the purposes of this Act and on producing evidence that a magistrate upon being satisfied that the inspector has reasonable grounds for requiring entry to the dwelling/house, authorises such entry by a warrant.

Notes: (i) authorised officers have power to inspect "premises" to search for illegally imported materials;

(ii) "Dwellings" need a warrant.

Cost of action

See local link(s): [Internal eradication](#)

Uganda (Draft)

26. (1) The Minister shall by Statutory Instrument prescribe the services for which fees shall be charged and their corresponding charge rates.

(2) The Minister shall also provide, by Statutory Instrument how the revenue accruing from the charge under sub-section (1) above shall be expended.

29. For the avoidance of doubt, it is hereby declared that :

- a) any removal, treatment, reshipment, or destruction of materials to which this Act applies in accordance with the requirements of this Act shall be carried out at the expense of the owner, importer, occupier or any person in- charge of the material concerned, as the case may be; and
- b) the Government, including persons acting on its behalf, in the implementation of this Act, shall not be liable for any costs or losses resulting directly or indirectly from actions taken under this Act.

Notes: see also provision for compensation under 'Internal eradication and control'

Internal eradication & control

See local link(s): [Regulated pests.](#)

Eritrea (Draft)

Article 17. Infested Areas and Control Measures

1. The Minister of Agriculture may, by notice published in the *Gazette*:

- (a) declare any area in Eritrea which is infested or is suspected of being infested with any quarantine pest, to be an infested area;**
- (b) declare any land or premises which is infested or is suspected of being infested with any quarantine pest to be under quarantine;**
- (c) prescribe any measures for the treatment or disposal of plant material, plant pests, soil or associated packaging, and the treatment of conveyances, whether or not they have been found to be infested, in order to limit the spread of the quarantine pest;**
- (d) prescribe the period within which it shall be lawful to plant or replant the whole or part of any infested area or place under quarantine.**
- (e) prohibit, restrict or control the removal of any plant material, soil, conveyance or other thing from an infested area or place under quarantine to any other part of Eritrea, and control the movement of persons and animals out of an infested area or place under quarantine.**

Article 18. Treatment, containment and eradication of quarantine pests

- 1. If a Plant Quarantine Officer believes that a quarantine pest may be present at a farm or plant nursery, he or she may enter into such farm or plant nursery and inspect any plant material.**
- 2. If the Plant Quarantine Officer is satisfied that a quarantine pest is present at any place, he or she may cause a written notice to be served on the owner or occupier of such place and if he or she deems it appropriate for the purposes of this Law, on the owner or occupier of any land or premises in the vicinity, ordering each of them, within a period specified in the notice, to take whatever measures on their land the Plant Quarantine Officer considers appropriate to eradicate, contain or restrict the spread of the quarantine pest.**
- 3. If an owner or occupier either fails to comply with any term of a notice issued under Art.17(c) or Section 2 of this article, or is unable to comply within the stipulated period and advises the Head of the Plant Protection and Quarantine Unit accordingly, the Head of the Plant Protection and Quarantine Unit may authorise a Plant Quarantine Officer to enter upon the land or premises in question and to take, at the expense of the owner or occupier, whatever measures may be appropriate to carry out the requirements of the notice.**

Article 19. Removal of Quarantine Restrictions

1. The Head of the Plant Protection and Quarantine Unit shall regularly review the situation in respect of any land placed under quarantine and shall notify the Minister of Agriculture as soon as either:

- (a) the relevant plant pest has been eradicated; or**
- (b) the Head of the Plant Protection and Quarantine Unit is of the opinion that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the land under quarantine.**

***Gazette* and in either a daily newspaper circulating in the relevant area or by notice served on all affected owners or occupiers of land, declare that from a specified date any land identified in the notice shall no longer be under quarantine.**

Article 20. Compensation

1. Subject to section 2, where any plant material or other thing is destroyed or harmed by any measures taken to eradicate, contain or limit the spread of a quarantine pest, the Minister of Agriculture shall compensate the owner of the plant material or thing destroyed or harmed from moneys voted for that purpose by the National Assembly.

2. The Minister of Agriculture shall not be obliged to compensate any person who has suffered loss as a result of action authorised under this Law if the action was taken to remedy a situation caused wholly or partially by that person's negligence, failure to comply with lawful instructions or contravention of this Law.

Notes: (i) a difficult area, covering the interface between eradication and control under plant quarantine and 'routine' plant protection or pest management. In the context of plant quarantine and compliance with international trade rules, the crucial provisions relate to action needed after the detection of a *quarantine pest*. Some countries plant protection laws fail to make the necessary distinction between *quarantine pests* and pests or harmful organisms in general; their laws may be adequate for domestic purposes but lack the link with plant quarantine and international trade;

(ii) see also provision for compensation under 'Cost of Action'

(iii) see also Notification under 'Regulated pests'

Regulated pests

Eritrea (Draft)

Article 15. Declaration of Quarantine Pests

The Minister of Agriculture may declare, by notice published in the *Gazette*, any plant pest to be a quarantine pest if it presents, or is likely to present, a threat to the production of or trade in plant materials or to the natural environment and if it is either not known to be established in Eritrea or is established in Eritrea but is the subject of measures for its eradication or containment.

Article 16. Duty to give Notice of a Pest

The occupier or owner of any land or premises on which a plant pest is found which is identified as, or is suspected to be, a quarantine pest shall immediately notify the Plant Protection and Quarantine Unit.

Notes: (i) 'regulated pests' include 'quarantine pests' and 'regulated non-quarantine pests'; as yet, no primary laws have been seen which incorporate the latter concept.

(ii) see also 'Internal eradication and control';

(iii) duty on owners to notify presence of pests is a questionable in developing countries but appears to be a standard provision.

Regulated commodities

Import

See local link(s): [Points of entry/inspe ...](#)

Eritrea (Draft)

Article 7. Phytosanitary certificate

No plant material, plant pest, beneficial organism, soil or associated packaging should be allowed to be imported except with a phytosanitary certificate issued by the plant protection authority of the exporting country [in accordance with the International Plant Protection

Convention and which conforms in all material respects with either the model phytosanitary certificate for export or for re-export, as the case may be, in the annex to the convention).

The Minister of Agriculture may, by regulation, exempt certain classes of plant material from the requirement of a phytosanitary certificate.

Article 8. Prohibited and Restricted Items

The Minister of Agriculture may, by regulation, prohibit or restrict the introduction, sale, cultivation, propagation or movement of any plant material, plant pest, beneficial organism, soil, or any other thing capable of harbouring or spreading a plant pest.

PART III

IMPORTATION

Article 5. General Principles

1. No person shall import into Eritrea any plant material, plant pest, beneficial organism, soil or associated packaging material except in accordance with this Law.

2. No plant material, plant pest, beneficial organism, soil or associated packaging material shall be imported into Eritrea unless:

(a) brought into Eritrea via a designated point of entry;

(b) declared and offered for inspection on arrival; and

(c) accompanied by the prescribed permits and certificates.

3. The person in charge of any conveyance transporting or storing anything required to be declared under Section 2(b) shall make the conveyance and its contents available for inspection and treatment by a Plant Quarantine Officer in accordance with this Law as soon as reasonably possible after arrival in Eritrea and at any other time when reasonably directed to do so by a Plant Quarantine Officer.

4. The Customs Service and the Post Office shall be responsible for notifying the Plant Quarantine Officers of the arrival of any plant material, plant pest, beneficial organism, soil, associated packaging or other thing regulated by this Law.

5. The Customs Service shall inform the Plant Quarantine Officers and Health Inspectors (Sanitarians) of the arrival of any plant material destined for human consumption.

6. Any person in Eritrea who receives any plant material, plant pest, beneficial organism or soil from outside Eritrea, whether or not that person consented to it being dispatched, shall on receipt immediately notify the Plant Protection and Quarantine Unit and carry out the instructions of such Plant Quarantine Officer regarding its destruction, disposal or treatment.

Article 6. Plant Import Permit

No plant material, plant pest, beneficial organism, soil or associated packaging should be allowed to be imported except with a plant import permit and in strict compliance with the terms and conditions of such permit.

The Minister of Agriculture may, by regulation, exempt certain classes of plant material from the requirement of a plant import permit.

Article 11. Quarantine Stations

1. The Minister of Agriculture shall create plant quarantine stations or designate existing facilities to be official plant quarantine stations, where imported plant materials may be quarantined.

2. Plant Quarantine Officers may require that imported plant material be kept or cultivated at a plant quarantine station for phytosanitary observation, inspection, testing, detention, reconsignment or destruction, for such time as he or she deems necessary .

Notes: Lacking from this example of 'best practice' is the provision for a person aggrieved by a refusal of an import permit to appeal to the Minister.

Confiscation

Zanzibar

9. Seizure of illegally-imported plants, etc.

a) Subject to subsection (2), anything imported into Zanzibar contrary to this Act may be seized by an inspector, and at the importer's expense, be treated destroyed or otherwise dealt with as the inspector thinks fit, or may be taken to a quarantine station for such further inspection, treatment and disposal as may be required.

b) No inspector shall destroy anything under subsection (a) unless with the concurrence of a more senior inspector such as Head of Plant Protection Division, Commissioner for Research and or the Principal Secretary of the Ministry of Agriculture.

Derogations: research etc.

Eritrea (draft)

Article 9. Importation for Scientific Research

Notwithstanding anything in this Law, the Minister of Agriculture may permit the importation of any plant material, plant pest, beneficial organism, or soil for the purposes of scientific research subject to such terms and conditions as the Minister may consider appropriate to safeguard public health, agriculture and the environment.

Notes: there should be provision for third country quarantine.

Export certification

Eritrea (Draft)

Article 13. Pre-export Examination

Any person intending to export a consignment of plants or plant products to another country which requires such plants or plant products to be accompanied by a phytosanitary certificate on importation shall submit the consignment to the Plant Protection and Quarantine Unit for pre-export examination.

Article 14. Export Phytosanitary Certificate

Each consignment submitted under Art. 13 shall be examined by a Plant Quarantine Officer within 14 days of the date of export in accordance with the requirements of the country of destination and if:

(a) the Officer is satisfied that the requirements for the issue of a phytosanitary certificate have been met, he or she shall issue a phytosanitary certificate in accordance with this Law;

(b) the material to be exported presents any risk for the exportation and spread of plant pests, or does not otherwise satisfy the provisions of this Law, it shall, at the expense of the exporter, be subject to:

- (i) appropriate treatment in order to remove the risk; or**
- (ii) destruction.**

[Notes: see Phytosanitary Certificate under 'Definitions'](#)

Power to issue regulations

Eritrea (Draft)

Article 26. Regulations

The Minister of Agriculture may make, amend or revoke regulations or issue any order or notice which he or she considers appropriate to give effect to any of the purposes of this Law.

Without prejudice to the generality of the foregoing, the Minister may make regulations, orders or notices for all or any of the following purposes:

- (a) prohibiting or restricting the introduction into Eritrea of any plant material as being likely to introduce any plant pest into the country (whether or not already present in Eritrea) or as having noxious or undesirable characteristics, or as being of an undesirable strain;**
- (b) prohibiting or restricting the introduction into Eritrea of any plant pest, beneficial organism, soil, associated packaging or other thing specified in these regulations;**
- (c) designating points of entry and quarantine stations;**
- (d) prescribing procedures to be followed by any authorised officer in the exercise of powers or the performance of obligations under this Law;**
- (e) prescribing which plant material imported into Eritrea may be exempted from the requirement of a phytosanitary certificate or an import permit; .**
- (f) prescribing procedures to be adopted for the treatment of imported materials regulated by this Law and of the conveyances bringing them to Eritrea to prevent or control the introduction of plant pests into Eritrea;**
- (g) providing for the control and care of plant material or beneficial organisms kept or grown in isolation or in quarantine conditions whether in quarantine stations or elsewhere;**
- (h) requiring the provision and maintenance of such facilities as may reasonably be required by the Plant Quarantine Officers to perform their duties under this Law.**
- (i) providing for the inspection of domestic plant material, beneficial organisms, soil, or associated packaging for export and for the issue of appropriate phytosanitary certificates;**
- (j) promoting coordination and cooperation among Government Departments and third parties in implementing and enforcing the Law;**
- (k) reporting the existence, outbreak and spread of any plant pests;**
- (l) prescribing the manner in which Plant Quarantine Officers shall arrange for the destruction, removal, uprooting or treatment of plant material within an infected area or quarantined place;**
- (m) inspecting growing plants, lands or other premises and plant material, including plant material in storage or being transported, to ascertain the presence or absence of plant pests;**
- (n) imposing and determining fees and other payments in relation to any permit or certificate required under this Law;**
- (o) prescribing forms to be used;**

- (p) establishing the procedures and time limits for the administrative appeals provided for under this Law;
- (q) issuing, suspending and revoking of permits or certificates provided for under this Law;
- (r) carrying out, coordinating and encouraging research in the field of plant protection;
- (s) promoting public awareness of plant pests and their prevention, eradication and control including integrated pest management techniques;
- (t) liaising with competent authorities in other States as well as with subregional, regional and international organizations in plant protection matters;
- (u) authorizing the importation and release of beneficial biological control agents to be used in research and agriculture.

Notes: With the availability of Judicial Review (or its equivalent in Civil Law jurisdictions), a provision for regulations which simply say words to the effect of:

'The Minister may make such regulations as he thinks fit for the purposes of this Act'

are no longer adequate because any regulations made under this provision might be declared *ultra vires* (beyond the powers or scope of the Act) in a court of law. The example above is not meant to be comprehensive but is a guide to the list of matters that might be regulated.

Offences and penalties

1. Because of wide variations in the form of the criminal law in different countries, and wide differences in the style of legislation in this area, it is not practicable to identify 'best practice' with the provisions for offences and penalties.

It can generally be noted that some penalties, particularly fines fixed in specific monetary terms, rapidly become out of date and they no longer act as a deterrent. To avoid this problem, it was recommended at the LWG meeting in Pretoria, April 2001, that penalties for offences under the Act should ideally be given with reference to a standard scale of penalties, according to how serious the offences are. Offences at the lowest end of the scale will attract only relatively small fines while offences at higher end of the scale might be punishable by fines and/or imprisonment with the severest penalties restricted to the worst offences. (Offences in this Act might only go up to the middle of such a scale.)

Statutory provision for this scale and the penalties for each category of offence would be in a separate Act that applies to criminal offences generally (with the approval of the Attorney General). The advantage of this approach is that the actual penalties, such as the level of fines or term of imprisonment, can be changed to reflect inflation or society's views on the offences by amending one central piece of legislation; it is then not necessary to amend the Plant Protection (& Quarantine) Act.

2. Offences are generally of STRICT LIABILITY, i.e. not requiring intention or other forms of *mens rea* such as recklessness. There should, however, be DEFENCES such as that of 'acting reasonably'.