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BRITISH SOCIETY OF
PLANT BREEDERS



INTER-AFRICAN
PHYTOSANITARY
COUNCIL,
AFRICAN UNION



NRI with SCHOOL OF
SOCIAL SCIENCES & LAW,
UNIVERSITY OF
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Harmonisation of African Phytosanitary Legislation (HAPL)

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Introduction to HAPL

- HAPL is a project to support the harmonisation of African phytosanitary legislation in collaboration with Inter-African Phytosanitary Council (IAPSC) of the African Union (Formerly Organisation of African Unity, OAU) and the GTZ HAPPA* Project by

collection and analysis of appropriate legislation and formulation of recommendations on standards.

- Funded by the UK Department for International Development (DFID) initially through the ASSC (February 2001-June 2002)** and latterly under the PASS Project (July 2002-March 2003)***.
- The material on the HAPL section of the International Phytosanitary Portal is a joint output of HAPL and HAPPA.

* Harmonisation of Phytosanitary Policies in Africa

** ASSC, managed by Natural Resources International

*** PASS, managed by Hunting Technical Services

HAPL project background

- Most African countries are not benefiting from trade liberalisation because they lack the capacity to comply with the WTO rules. In Phytosanitary Affairs, the most important WTO agreement is the Agreement on the Application of Sanitary & Phytosanitary Measures (SPS).
- The Agreement on Trade Related Intellectual Property Rights (TRIPs) also relevant to phytosanitary affairs.
- Regional or sub-regional harmonisation of phytosanitary standards (required by SPS) is an essential intermediate step between the basic International Standard Phytosanitary Measures of FAO and the adoption of specific national laws.
- Accords with SPS Agreement and International Plant Protection Convention (FAO)
- The IAPSC as the appropriate regional body for Africa has a vital role to play in harmonisation but has been unable to fulfil this role because of lack of infrastructure, finance and personnel and poor communications with member countries.

* Whether the rules themselves are fair to developing countries is a question beyond the scope of the project.

HAPL project status

- The project was officially launched at the IAPSC Legislative Working Group meeting, Pretoria, March 2001
- Endorsed at 20th IAPSC General Assembly, April 2002
- The results will feed into GTZ's HAPPA project providing broader-based support to IAPSC

Objectives of HAPL

To improve sustainable livelihoods by strengthening the capacity of national African governments to participate in world trade through compliance with the Agreement on the Application of Sanitary and Phytosanitary Measures (World Trade Organisation) by:

- collecting and collating phytosanitary laws and regulations from member countries of OAU into a database;
- analysing legislation in terms of compliance/non-compliance, technical and administrative provisions and social compatibility;

- making recommendations on harmonised legislation;
- providing a source of advice on **regulations** (consolidating piecemeal minor enquiries);
- planning a training workshop on phytosanitary legislation.
- information exchange with DFID's International Trade Department.

The project team

- Project leader
 - **Dr Robert Black, Senior Lecturer, School of Social Sciences & Law, University of Greenwich***
- Principal Collaborator
 - **Dr Sarah Olembo, Asst. Scientific Secretary, IAPSC/African Union**
- Socio-legal specialist
 - **Mrs Angela Laycock, School of Social Sciences & Law, University of Greenwich**
- Plant variety rights and biotechnology law
 - **Dr Susan Wigzell, British Society of Plant Breeders**
- Pesticide law and socio-legal aspects
 - **Mr Will Dogley, MSc student, NRI**
- Programmer/database expert (until June2002)
 - **Dr Jon Venn, NRI**

* Formerly of the Natural Resources Institute, University of Greenwich

Principle project outputs

- Collection made of African legislation on phytosanitary affairs and on genetically modified (transgenic) crops where relevant to phytosanitary measures
- Recommendations to IAPSC on harmonisation
- Database of African phytosanitary legislation made available to IAPSC, other regional plant protection organisations and other interested parties
- Advice and support provided on phytosanitary regulations to African countries as requested
- Final report to include recommendations for Workshop on legislation

Defining the scope of African phytosanitary legislation

- Phytosanitary law - plant quarantine, pesticides
- Plant variety and seeds law where phytosanitary authority has jurisdiction
- Regulation of biotechnology similarly* (transgenic crops, genetically-modified bio-control agents)

* IAPSC's mandate includes biotechnology

There is something of a regulatory vacuum in most African countries as regards biotechnology and transgenic crops - some regulation is based on SPS

Defining relationships between national phytosanitary laws in Africa and international conventions and agreements

- LWG Meeting, April 2001/HAPL Phase I Report, July 2001 with activities since July 2001 examining:
 - **Agreement on Application of Sanitary & Phytosanitary Measures (SPS)**
 - **Trade Related Intellectual Property Rights (TRIPs)**
 - **African Plant Protection Convention**
 - **International Treaty on Plant Genetic Resources for Food & Agriculture**
 - **African Model Law on Rights of Communities, Farmers, Breeders and Access to Biological Resources**
 - **Adoption of standard definitions from FAO Glossary of Phytosanitary Terms**

Other concepts and linkages

In the initial target sub-regions of Eastern & Southern Africa, care should be taken to recognise:

- **Primary law (“Act”) as enabling legislation**
- **Secondary law (*Regulations, etc.*) describe procedures, requirements, etc. (“measures” in SPS)**
- Link with of *regulations* with **pest risk analysis (PRA)**
 - **measures must be transparent**

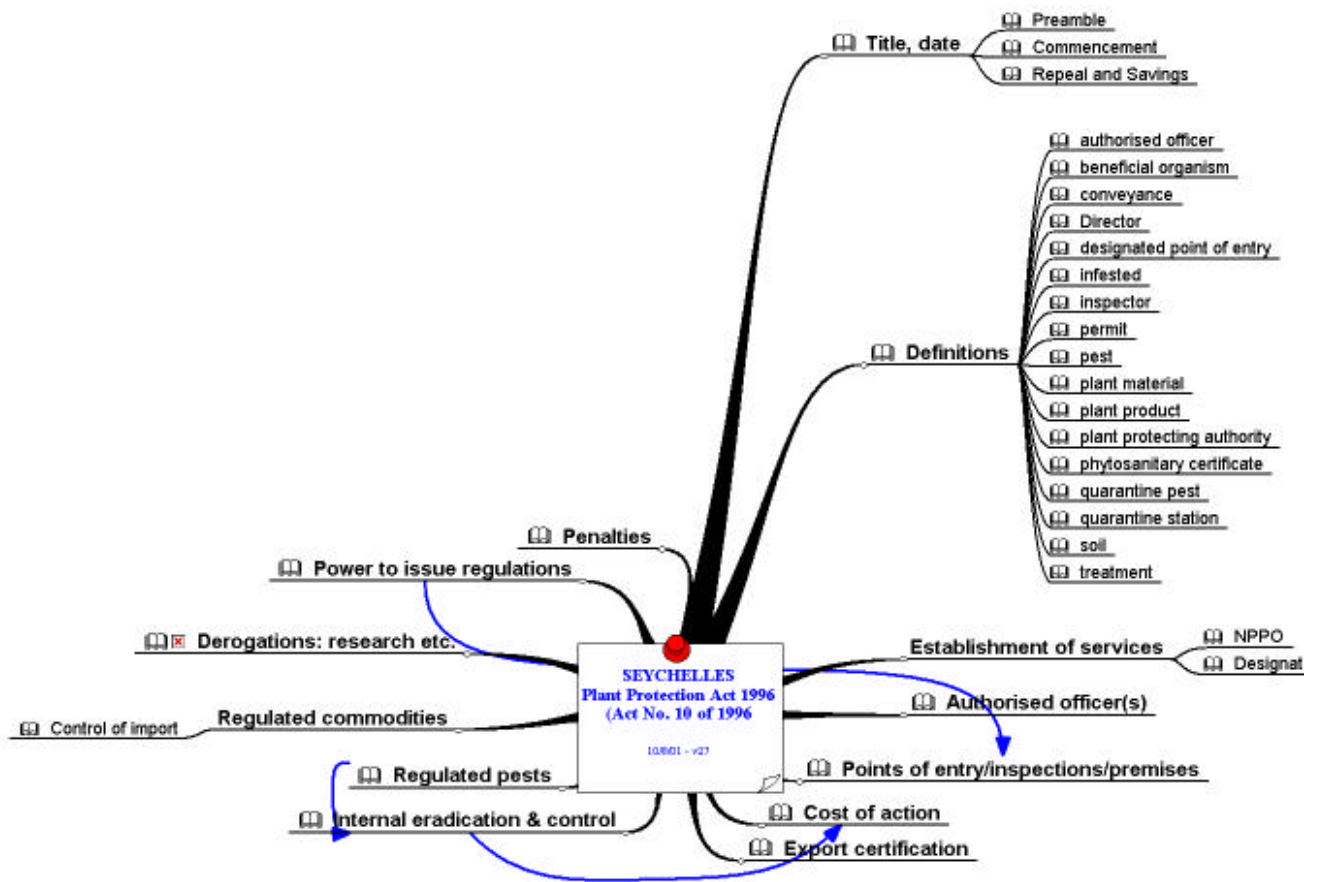
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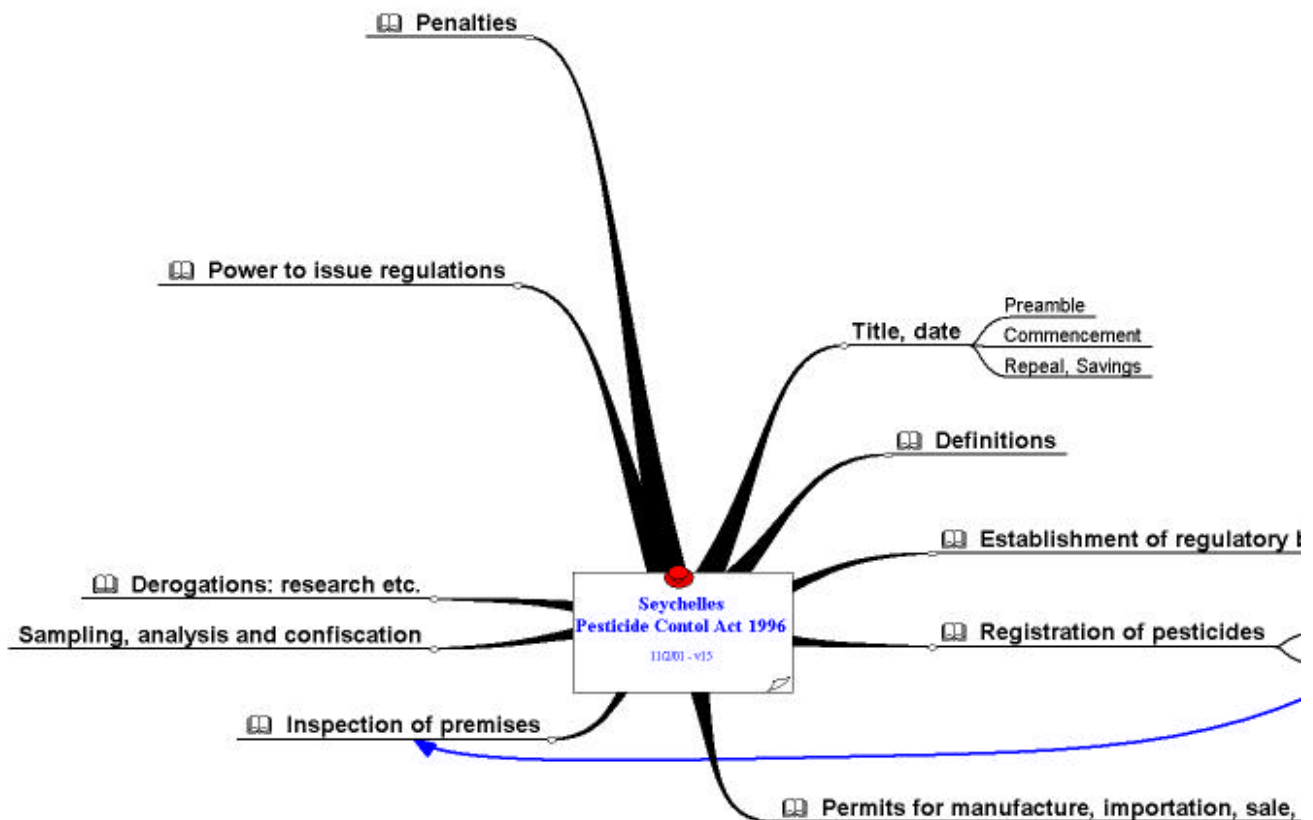
- FAO Pilot Scheme for Technical Cooperation Projects on national legislation
- Strong, positive interest from the policy unit of UK Department for Environment, Food & Rural Affairs (see later)

Collection and processing of legislation

- After collection and verification of legislation, one of the principal activities of HAPL was the comparison and analysis of primary legislation using the technique of MAPPING LEGISLATION
- Using Mind Mapping (with *MindManager* software) appropriate sections of legislation are plotted on to a standard **statutory framework** – i.e. the basic provisions that the statute must provide as an enabling framework.
- Statutory frameworks for **plant protection and quarantine legislation** and **pesticide control legislation** were agreed and adopted at the LWG Meeting of IAPSC in Pretoria, April 2001.
- The mapped legislation from different countries may then be compared according to the required provisions* under each part of the statutory framework
- In the example below, the Plant Protection Act of the Republic of Seychelles has been mapped on to the statutory framework for plant protection and quarantine legislation.
- The equivalent statutory framework for pesticide control is then illustrated with the Mind Map of the Seychelles *Pesticide Control Act*.

* See below for *Guidelines for Phytosanitary Legislation and ‘Best Practice’*





Outputs of MindManager

- One advantage of the Mind Mapping software used is that outputs in several different formats are possible.
- Most usefully, the mapped text of legislation can be in the form of
- Files in Microsoft Word format with electronic cross referencing (hyperlinks)
- Files in HTML output for Internet browsing.

Analysis of plant quarantine legislation

- Initial focus on Southern and Eastern Africa - including Indian Ocean:
 - South Africa, Botswana, Namibia, Botswana
 - Tanzania (mainland), Zanzibar, Kenya,
 - Mauritius, Seychelles
 - Ethiopia, Eritrea

Major areas of concern identified (wide disparities)

- Definitions (“Interpretation” section)

- **Compare Tanzania (mainland) and Zanzibar, e.g. definitions of “Quarantine” - see Table 1a.**
- **Adopting necessary FAO definitions - consistent with SPS**
- Powers to make Regulations (“The Minister may issue regulations on ...”):
 - Scope of regulations must be specified in full (otherwise liable for challenge by Judicial Review)
- **Compare Seychelles and Eritrea – see Table 1b.**

Overall evaluation of legislation

- Mind mapping allows a crude but quick semi-quantitative evaluation of the scope of an item of primary law to be made by counting the proportion of provisions that are included in the statutory framework.
- The legislative item most exactly complying with the Statutory Framework adopted at the LWG meeting in Pretoria is the Eritrean draft law from 1997. This law was drafted with the assistance of an FAO-appointed consultant. Follows the format appropriate for a primary law in a Civil Law jurisdiction but the content follows the required provisions very closely.

Pesticide control legislation

A similar approach has been taken with pesticide control legislation from countries in Eastern and Southern Africa:

- Primary legislation mapped with *MindManager*
- Key provisions (definitions, powers to make regulations) compared in detail

In addition, more detailed studies* were made of pesticide control laws:

- Detailed comparison has been made with *content analysis*
- Results analysed in relation to results of a survey of the perceptions of pesticide regulation of disparate stakeholders in Africa (see later)

* Harmonisation of phytosanitary measures in Africa: laws and practices for improved pesticide management. Will George Dogley, MSc Dissertation, University of Greenwich, 2002

“Model Laws” for plant quarantine and pesticide control not appropriate

- Differences in legal and linguistic culture
- Different approaches
- The longest and most comprehensive item of legislation is that of the Republic of South Africa, written in a style that most other African countries would find unsuitable.
- The Plant Protection Act in Tanzania (1997) includes pesticide control in addition to plant health as a means of implementing national policy promoting integrated pest management in the jurisdiction. Although it is one of the longest pieces of legislation mapped so far, there are important omissions such as *Delegated Head of Service*,

Regulated Pests, Derogations. The sister territory of Zanzibar has a very different approach.

Guidelines for Phytosanitary Legislation and ‘Best Practice’

- An Expert Working Group convened by the Secretariat of the International Plant Protection Convention is providing updated *Guidelines for Phytosanitary Legislation* to assist developing countries to draft legislation appropriate to present trading conditions. (*‘Phytosanitary’ here refers only to plant quarantine; extensive guidance on pesticide control laws is already provided by FAO under its Pesticide Management remit (URL)*)
- To complement this activity and to avoid ‘Model Laws’ HAPL has provided guidance in terms of the ‘Best Practice’ from the countries of Southern and Eastern Africa that were surveyed during the project. (for plant protection and quarantine AND pesticides control).
- Word files for Best Practice can be viewed on this web site (see below).

Dissemination of mapped legislation

On this web site under “Mapped Legislation” for plant quarantine and pesticide control can be found:

- Mapped legislation of the countries surveyed
- “Best Practice” for the two spheres of activity: **plant protection and quarantine** and **pesticide control**
- French translation of this explanation by courtesy of HAPPA

Plant variety and seed laws

- Identifying components of plant variety and seed laws relevant to plant health, bearing in mind *TRIPS* and *UPOV*.
- Addressed in a paper prepared by Drs Olemba and Wigzell for the Congress of the African Seed Trade Association (AFSTA) held in Dakar, Senegal at the end of March 2002.
 - **Following an invitation to Dr Olemba to present a paper on phytosanitary aspects of seed trade as Assistant Scientific Secretary of IAPSC.**

Socio-economic context of phytosanitary legislation

- Phytosanitary laws should recognise the often conflicting demands of international obligations and participation in world trade on the one hand and national aspirations for laws that are just and equitable
- HAPL project team identified issues relating to:
 - **legislation and its enforcement**
 - **awareness and participation of NGOs and other organisations**
 - **gender issues**
 - **trade in and transfer of germplasm**

- Questionnaire was devised and circulated at 20th General Assembly of IAPSC in Côte d'Ivoire, April 2002 (Laycock, Dogley)
- Backed up by structured interviews with selected respondents (Dogley)
- Further details in “[Harmonisation of phytosanitary measures in Africa: laws and practices for improved pesticide management](#)” Will George Dogley, MSc Dissertation, University of Greenwich, 2002

Recommendations on HAPL adopted at the 20th General Assembly of IAPSC, April 2002

The following recommendations, proposed by the Delegate from Kenya and seconded by the Delegate from Namibia, were adopted :

- The IAPSC 20th General Assembly, ... endorses this project and encourages member countries to comply with the project's requests for information on phytosanitary legislation.
- The IAPSC 20th General Assembly requests that the HAPL project team apply for funding from development partners for a new phase that will extend the project's coverage beyond the initial focus of Eastern and Southern Africa and to seek development partners that will enable the phytosanitary legislation of Francophone Africa to be included.
- The IAPSC 20th General Assembly supports and encourages the HAPL project team's plans for a training programme on phytosanitary legislation in March or April 2003 as submitted in the report of HAPL to the 20th General Assembly.

Future activities under HAPL or a successive project are being considered in relation to the transition of the Organisational of African Unity to the African Union and to the emergence of sub-regional bodies and organisations as stakeholders in harmonisation of relevant laws.

Training in African Phytosanitary Legislation

Outputs from HAPL include proposals and plans for a training in African phytosanitary legislation in order to increase understanding of the background to the laws and eventual harmonisation. Details of the proposals are available under [“Training Proposals”](#) on the HAPL website.

It is suggested that the next meeting of Legislative Working Group as could be a training event (subject to funding).

Table 1. Comparisons primary plant protection and quarantine laws of Tanzania mainland, Zanzibar, Seychelles and Eritrea.

(a) Definitions in the Plant Protection Acts of Tanzania (mainland) and Zanzibar.

Plant Protection Act, Tanzania (mainland), 1997	Plant Protection Act, Zanzibar, 1997
<p>2. In this Act, unless the context requires otherwise- "analyst" means any person appointed as analyst under section 32 of this Act; animal organism " means any animal organism regardless of the stage of existence the organism is in; "certification " shall be construed accordingly; "conveyance" means any vessel, aircraft, train, truck, car, cart, cargo container, animal or other device whereby goods, soil or other things may be moved from one place to another; "disease" means any abnormal condition on a plant, communicable or believed to be communicable by the transfer of a causative agent or by the propagation of the affected plant which the Minister may by Order in the Gazette, declare to be a disease for the purposes of this Act "harmful organism" means an animal, plant or micro-organism, in whatever state of development, which is injurious to plants or plant products and which the Minister may declare, by order, published in the <i>Gazette</i> to be a harmful organism. Viruses and similar pathogens shall be treated as equivalent to micro-organisms and diseases not caused by harmful organisms shall be treated as equivalent to harmful organisms; "infected area" means any area or place in which a harmful organism or disease exists and which has been declared by the Minister, by order published in the <i>Gazette</i>, to be an infected area for the purposes of this Act and the term "infested area" shall be construed accordingly; "infested" means harbouring or containment by a harmful organism and the term "infected" shall be construed accordingly; "inspector" means any inspector appointed under section 33 and 34 of this Act; "inspector-in-charge" means an inspector appointed by the Minister and assigned as an officer-in-charge at a quarantine station or post entry quarantine station or at any other place as the Minister deems necessary; "integrated pest management" means one or a combination of plant protection methods in which particular attention is paid to biological, technological, plant breeding and other organic related measures, while limiting the use of chemical plant protection substances to the necessary minimum; "international phytosanitary certificate" means a phytosanitary certificate substantially in the form of the Model Phytosanitary Certificate annexed to the International Plant Protection Convention of 1951 as amended in 1979, and issued by or under the authority of a technically qualified and duly authorised officer and the term;</p>	<p>2. Interpretation In this Act, unless the context otherwise requires: "Beneficial organism" means any organism, including fungi bacteria, viruses, virus-like organisms or invertebrate animals, utilized specifically for the control of a pest or weed, for pollination, for the production of commercially valuable products, or for other purposes beneficial to agricultural production; "Conveyance" means any vessel, aircraft, truck, car, cart, cargo container, animal or other device whereby goods, soil or other things may be moved from one place to another; "Infested" means harbouring or contaminated by a pest; "Inspector" means any inspector appointed under section 15; "International phytosanitary certificate" means a phytosanitary certificate substantially in the form of the Model Phytosanitary certificate annexed to the International Plant Protection Convention of 1951 as amended in 1979, and issued by or under the authority of a technically qualified and duly authorized officer; "Minister" means the Minister for the time being responsible for Agriculture, in Zanzibar. "Nursery" means any place used for raising or growing any plant material for sale; "Packaging" means any means by which plant material, pests, beneficial organisms, good or soil may be enclosed, encased, covered, contained, supported or packed; "Pest" means any form of plant or non-domesticated animal life or any pathogenic agent other than a beneficial organism which can be injurious to plant material or to beneficial organism and includes any weed; "Plant material" means any plant, plant part (e.g root, leaf, stem, seed, flower, etc.) which can be affected by or can harbour a pest; "Point of entry" means any seaport airport, post office, transport terminal or border post, where goods may enter legally into Zanzibar; "Post-entry quarantine station" means a place for the holding of plant material or beneficial organisms in secure conditions, for observation, inspection, treatment or research after they have</p>

“Minister” means the Minister for the time being responsible for agriculture;

“natural environment” shall include its components- soil-water, air , species or wild flora and wild fauna. as well as interaction between

“outbreak pests” means harmful organisms to plants occurring in large numbers over large tracts of land, and in such magnitude that an individual or group of individual owners or occupiers, can not control or contain, or whose distribution is restricted in an area from where spread can be contained or delayed, and whose delayed control or the use of normal procedures or means can cause danger to health of plants, man, animal and the natural balance, and, which Minister may declare under section 6 of this Act, to be outbreak

“owner” in relation to land or premises includes the joint owner, part owner, lessee or occupier or the agent of an owner joint owner, part owner, lessee or occupier;

“packaging” means any means by which plants or plant products, harmful organisms, beneficial organisms, goods or soil may be enclosed, contained, supported or packed;

“pest” means any form of plant or non-domesticated animal life or any pathogenic agent other than a beneficial organism or any other agent can be injurious to plant or plant material or to beneficial organisms, and includes any weed;

“plant” means any member of the vegetable kingdom and includes any part of the plant whether severed from the plant or not;

“plant material” means any plant, part of plant or plant product which can be affected by, or can harbour, a pest;

“products” means products of plant origin which have not been treated or processed using simple methods such as drying or crushing, fruits or plants, including fruits and seeds which are not intended for cultivation;

“point of entry” means any seaport, airport, river or lake station, railway station, post office, transport terminal or border post, through which goods may enter Tanzania and which the Minister may declare to be a point of entry under section 14 of this Act;

“post entry quarantine station” means a secured place for the holding of plants, plant products or beneficial organisms for observation, inspection, treatment, or research after having been imported into Tanzania;

“prescribed” means prescribed by regulations made under this Act;

“propagative material” means any living plant or part of the plant (including seed, corn, cutting, bud or rhizome) used or intended for propagation;

“quarantine” means the official confinement of plants and plant products, harmful organisms to plants, beneficial organisms, goods or soil being imported into or exported from, Tanzania, subject to phytosanitary regulations, for observation and research or for further inspection and/or testing;

been imported into Zanzibar;
 “Prescribed” means prescribed by regulations made under this Act;

“Propagative material” means any living plant or part thereof (including seed, corn, cutting, bud or rhizome) used or intended for propagation;

“Quarantine” means a biologically secure state with respect to dispersal or dissemination of pests;

“Quarantine station” means a place for the inspection detention, treatment, reconsignment or destruction of plant material, pests, beneficial organisms, goods or soil being imported into or exported from Zanzibar;

“Soil” means any medium (including earth, water, compost or clay) which is capable of supporting plant life, or of harboring or transmitting pests;

“Treatment” means any appropriate process (including the use of chemicals, heat or low temperature) for ensuring the removal, sterilization or killing of a pest;

“Weed” means any plant potentially injurious to agriculture in Zanzibar which is declared by the Minister, by notice published in the Official Gazette, to be a weed under this Act.

“quarantine station” means a place for the inspection, detention, treatment, reassignment or destruction of plants or plant products, harmful organisms to plants, beneficial organisms: goods or soil being imported into or exported from, Tanzania;

“research institute” means an institute of a national standard to which the Minister may delegate his powers pursuant to section 32 of this Act;

“soil” means any medium (including earth, water, composite or clay) which is capable of supporting plant life, or harbouring or transmitting harmful organisms to plants;

“treatment” means any appropriate process (including the use protection substances heat or *low* temperature) for ensuring removal, sterilization, or killing of harmful organisms to plants

“weed” means any plant potentially injurious to agriculture declared by the Minister, by notice published in the *Gazette* weed for purposes of this Act.

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(b) Power to issue Regulations in plant health laws of Seychelles and Eritrea

Plant Protection Act, Seychelles (1996)	Draft Plant Quarantine Law, Eritrea (1997)
<p>16. The Minister may make such regulations for the better carrying out the purposes and provisions of this Act and without prejudice to the generality of the foregoing may, in particular -</p> <p>(a) designate points of entry for the purpose of importation under this Act;</p> <p>(b) appoint or prescribe or provide for anything which is required to be appointed or prescribed or provided for under this Act;</p> <p>(c) provide for fees to be paid in respect of a permit or certificate which may be granted or any services which may be provided under this Act;</p> <p>(d) provide for the payment of compensation by the Government in respect of any matters under this act;</p> <p>(e) provide for penalties up to R25,000 in fine and 3 years imprisonment for contravening any regulations;</p> <p>(f) amend the Schedules.</p> <p>(h) make such regulations as are required to be made under this Act;</p>	<p>Article 26. Regulations</p> <p>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.</p> <p>Without prejudice to the generality of the foregoing, the Minister may make regulations, orders or notices for all or any of the following purposes:</p> <p>(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;</p> <p>(b) prohibiting or restricting the introduction into Eritrea of any plant pest, beneficial organism, soil, associated packaging or other thing specified in the . regulations;</p> <p>(c) designating points of entry and quarantine stations;</p> <p>(d) prescribing procedures to be followed by any authorised officer in the exercise of powers or the performance of obligations under this Law;</p> <p>(e) prescribing which plant material imported into Eritrea may be exempted from the requirement of</p>

	<p>a phytosanitary certificate or an import permit; .</p> <p>(f) prescribing procedures to be adopted for the treatment of imported materials regulated by this Law andd of the conveyances bringing them to Eritrea to prevent or control the introduction of plant pests into Eritrea;</p> <p>(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;</p> <p>(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.</p> <p>(i) providing for the inspection of domestic plant material, beneficial organisms, soil, or associated packaging for export and for the issue of appropriate phytosanitary cell ificates;</p> <p>(j) promoting coordination and cooperation among Governn lent Departments and third parties in implementing and enforcing the Law;</p> <p>(k) reporting the existence, .outbreak and spread of any plant pests;</p> <p>(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;</p> <p>(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;</p> <p>(n) imposing and determining fees and other payments in relation to any permit or certificate required under this Law;</p> <p>(o) prescribing forms to be used;</p>
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