

Partnership for Enabling Market Environments
for Fertilizer in Africa (PEMEFA)



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Legal Frameworks: Existing Statutes, Lessons, and the Way Forward

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About the New Markets Lab

- Non-profit law and development center focused on the intersection between law, economic development, entrepreneurship, and social impact
- Programs with a diverse set of partners around the world designed to leverage legal systems in sectors with growth potential (agriculture – including fertilizer and seed, services, technology) that are heavily regulated
- Set of interventions and tools to improve rules on paper and their implementation in practice
- Build market capacity through hands-on training for lawyers from around the world



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Gaps in the Enabling Environment

- **Information Gap:**
 - Enterprise level (many enterprises lack legal resources)
 - Legal Sector (market rules span jurisdictions and legal systems; agricultural law not a focus)
 - Public Sector (not always aware of market needs)
- **Implementation Gap:** Significant differences exist between laws on the books and laws in practice at national and regional levels
- **Rule of Law Gap:** Best practices and models should draw from developing countries' experiences; customized and incremental approach not common
- **Scale Gap:** Issues addressed on case-by-case basis without impacting system as a whole



NML's Methodology

- **Approach Law and Regulation as System**
 - Design regulatory system to encourage market innovation and growth
 - Focus on implementation gap
 - Highlight priorities, tradeoffs, and sequencing for policymakers
 - Benchmark against good regulatory practices
- **Innovate through Human Centered Design Solutions and Train Lawyers**
 - Reduce risk in the market, lower transaction costs, and make regulatory processes more transparent and inclusive
 - Train lawyers across national systems to build capacity and enhance potential for regional trade
 - Use legal tools (Legal Guides, Systems Maps, Case Studies) to engage public and private sector stakeholders in legal design and implementation





Examples of NML's Work

- Set of programs focused on sectors critical to development and heavily regulated
 - Agriculture (standards, seeds, fertilizer)
 - Services (ICT, financial, and transport)
 - Technology (IP)
 - E-Commerce
 - Emerging Industries
- Seed Regulation Example
 - Test cases to “pressure test” new regulations
 - Regional implementation case studies
 - Tanzania SAGCOT example: AGRA/USAID



Objectives

- Understanding and interpreting current regulatory frameworks
 - Common challenges, regulatory tradeoffs, and gaps in implementation
- Linking regulation with advocacy at national and regional levels
- Identifying priorities for drafting and revising fertilizer regulatory frameworks (national and regional levels)





NML Partnership with AFAP (Since 2016)

- **AGRA SSTP/USAID**
- **Strengthen Understanding of Key Components of a Harmonized Policy and Regulatory Framework** for East and Southern Africa (Malawi, Mozambique, Ethiopia, & Tanzania)
- **Consolidate and Disseminate Comprehensive Knowledge** of the status of fertilizer policies and regulations
 - **National stakeholder consultations**
 - Reviewed **existing fertilizer policies, standards and regulations**
 - Comparative analysis of **current policy status versus a model framework**
 - **Recommended requirements** for a strong national fertilizer regulatory system
 - **Policy and regulatory reform agenda** to create an environment that is more conducive to open markets and regional harmonization
 - **Legal and Regulatory Guides**



Good Regulatory Practices

- **Well Functioning National Policy, Legal, and Regulatory Framework to Encourage Fertilizer Market Development**
 - Typically framework consists of several interconnected instruments: Fertilizer Policy, Law/Act, and Regulations
 - Countries have a mix of measures
 - Even when exist may be out of date with market developments (for example, few address unique nature of bio-fertilizers and blends)



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Country	Current Instruments	Instruments Under Development
Ethiopia	Fertilizer Manufacturing and Trade Proclamation No. 137/1998; Growth and Transformation Plan (GTP II); Agricultural Policy and Investment Framework (2010-2020); Commercial Registration and Business Licensing Proclamation No.686/2010; MoANR Directive to Establish Criteria for Competence Certificate	Draft Fertilizer Proclamation; Draft Proclamation to Establish the National Fertilizer Industry Agency (NFIA)
Malawi	Fertilizers, Farm Feeds, and Remedies Act (FFRA) 1973, as amended 1996; National Fertilizer Strategy (NFS), 2012; Malawi Growth and Development Strategy (MGDS); Agricultural Sector Wide Approach (ASWAp), 2010	Fertilizer Act and Regulations (under development since 2003; modified 2007); Fertilizer Policy
Mozambique	Strategic Plan of Agricultural Sector Development (PEDSA) (2010—2020); Fertilizer Strategy, 2012; Fertilizer Regulation, 2013	Fertilizer Act
Tanzania	Fertilizer Act, 2009 (amended 2014); Fertilizer Regulations 2011 (amended 2017), Fertilizer (Bulk Procurement) Regulations, 2017; National Agricultural Policy (NAP), 2013; National Fertilizer Strategy (NFS), 2013	N/A







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Good Regulatory Practices Cont'd

- **Independent Fertilizer Regulatory Authority** established through Regulations under the necessary legal authority, skilled staff and well-equipped laboratories
 - Autonomous body to facilitate stable and predictable regulatory environment and facilitate development of and alignment with regional measures
 - Example: TFRA in Tanzania







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Good Regulatory Practices Cont'd

- **Streamlined and Simplified Registration Process for New Fertilizers**
 - Reduce the number of seasons of testing and fees
 - Example: Tanzania amended regulations in 2017 (shortened from 3 seasons to 1)
 - Remove the registration requirements for new blends
 - Shift to ex post system over time rather than ex ante (focuses on enforcement rather than market entry)
 - Phase-out approved list approach for fertilizers and adopt a truth-in-labeling approach
 - Example: Zambia and South Africa maintain a list of nutrients as opposed to a list of fertilizer grades
 - Ex post measures are a good regulatory practice but require sufficient capacity to implement







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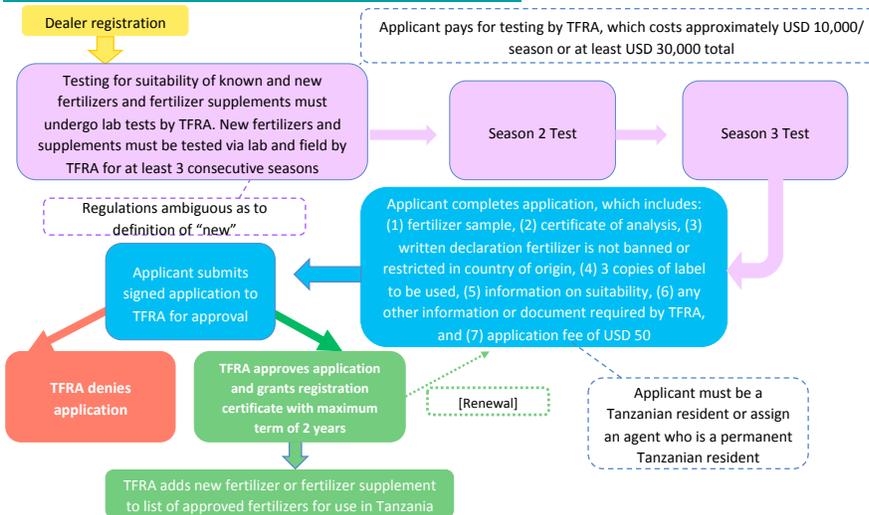


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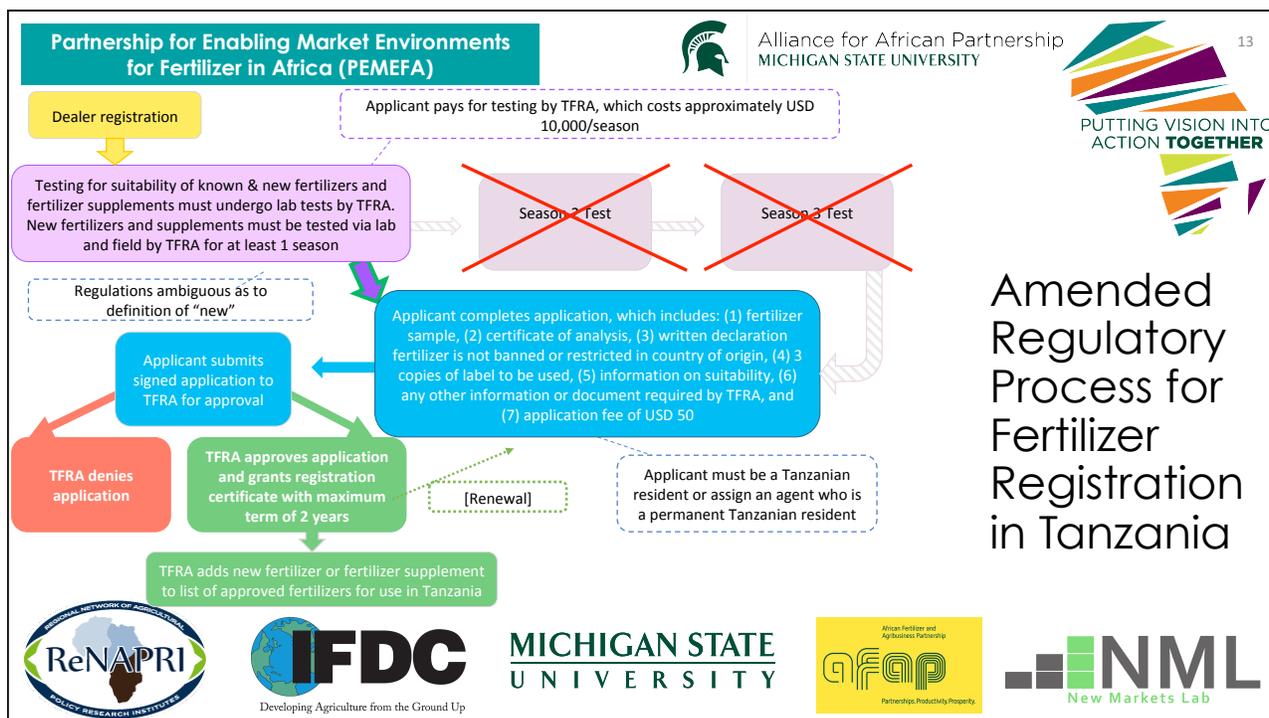
Prior Regulatory Process for Fertilizer Registration in Tanzania











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Good Regulatory Practices Cont'd

- **Enhanced Implementation of Existing Legal Mechanisms**
 - Expand capacity and training (including focus on laboratories, skilled staff, equipment, traceability mechanism) and enforcement (with deterrent penalties for violations)
- **Strengthened Public-Private Dialogue Platforms to Improve Regulatory Frameworks and Their Implementation**
 - AMOFERT in Mozambique; Tanzania Fertilizer Society
 - Mozambique's AMOFERT Platform is a well-recognized forum on issues related to fertilizer, and participated in drafting a new Fertilizer Act that is under review by the Mozambican government

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Good Regulatory Practices Cont'd

- **Awareness Building of Legal and Regulatory Systems**
 - Address challenges through (1) improved dissemination of information (Legal Guides), (2) assistance for preparing or interpreting legal documents like contracts, (3) providing transactional legal services to individuals working with the agricultural sector
 - Provide tailored legal training for farmers, including rights and obligations
 - Design training program for lawyers to improve overall regulatory environment and delivery of agricultural legal services to stakeholders
- **Harmonized Fertilizer Standards at Regional Level** to facilitate easy movement of blends within the region; harmonize laboratory capacities



Regional Harmonization

- **Abuja Declaration Calls for Regional Harmonization**
 - Calls on AU Member States and Regional Economic Communities (RECs) to take appropriate measures to **reduce the cost of fertilizer procurement** at national and regional levels **and develop capacity for quality control**
 - Focus on ensuring duty and tax-free movement across regions
- **Continental Free Trade Area (CFTA) and Tripartite Free Trade Area (TFTA; among EAC, SADC, and COMESA)**
 - Negotiations at an early stage and do not yet include fertilizer systems





Regional Harmonization Cont'd.

- COMESA Developing Harmonized Frameworks
- EAC Harmonized Regulatory Instruments and Procedures for Fertilizer Market Under Development
- SADC Regional Agricultural Policy (RAP)
 - Policy not specific to fertilizer; no separate framework for fertilizer exists
 - No separate framework for fertilizer exists
- ECOWAS Regulation Relating to Fertilizer Quality Control in the ECOWAS Region



Regional Harmonization Example: ECOWAS Fertilizer Regulations (1)

- Streamlined Product Registration (ECOWAS – Product Registration Not Required; Truth in Labeling)
- Institutional Cooperation
- Free Movement of Fertilizer (including blends; way to meet market needs; ECOWAS)
- Standard Quality Definitions and Labeling Requirements (ECOWAS)
 - IFDC contributed to work on sampling and testing
- Harmonized Inspection and Analysis (ECOWAS)
- Common Licenses for Fertilizer Producers and Traders (ECOWAS)
- Shared Laboratory Resources (ECOWAS)





Regional Harmonization Example: ECOWAS Fertilizer Regulations (2)

- Requires domestication (differences between civil law and common law countries)
- IFDC WAFP project is assisting individual ECOWAS countries with domestication process
 - Develop quality controls in country distribution system (identify and evaluate lab and human resources)
 - Establish agency to enforce ECOWAS regulatory framework, including quality control and national committees to support these efforts
 - Draft modalities for issuance of import and distribution licenses; fix registration fees for importers and distributors
 - Set up penalties for infringement of regional and national regulations



Principles for Harmonizing Fertilizer Regulatory Frameworks

- Implementation at National Level is Critical
- Approaches May Vary Among Members of Regional Bloc
- Consider Sequencing of Regulatory Interventions
- Promote “Low Hanging Fruit” Reforms
- Establish Common Methodology and Indicators to Measure Progress
- Tailor Capacity Building to Needs of Individual Member Countries
- Listen to Private Sector and Civil Society Voices



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Regional Harmonization Interventions: Short-Term

- **Establishment of National Entities Responsible for Fertilizer Regulation**
 - Help facilitate stable and predictable regulatory environment at the country level and significantly contribute to a more efficient regional fertilizer market
- **Clarity on Product and Business Registration and Licensing Rules**
 - Inconsistent application of registration and licensing rules impedes harmonization efforts
- **Tariff and Customs Duties**
 - Countries could agree to exempt fertilizer from customs duties and other taxes, and harmonize VAT for fertilizer, including for fertilizer-related services
- **List of Approved Fertilizers**
 - Regionalize list of approved fertilizers to facilitate trade, with the long-term aim of transitioning to an ex post approach like truth-in-labeling







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Regional Harmonization Short-Term Interventions Cont'd.

- **Packaging and Labeling**
 - Establish uniform rules for packaging and labeling, such as a minimum set of information to be clearly labeled on fertilizer containers
- **Harmonized Regional Quality Control (Including Inspection)**
 - Establish a regional quality control system that extends all along the fertilizer value chain
- **Fertilizer Standards**
 - Adopt uniform standards for fertilizer, including blends, based on international standards
- **Raising Awareness of Fertilizer Laws and Regulations**
 - At national and regional levels, including by making sure proposed changes are shared and vetted with public and all rules are published







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Regional Harmonization Interventions: Long-Term

- **Shift to a Truth-in-Labeling Approach**
 - ECOWAS system is an example of ex post regulation and a Truth-in-Labeling approach
- **Free Movement of Fertilizer Cross-Border, Including Transport**
 - Remove or reduce border taxes, roadblocks, and escort systems; introduce one-stop border processes; and improve trade corridors
- **Regional Inspection, Analysis, Sampling, and Tolerance**
 - Inspection, analysis, and testing procedures could follow international standards and regional rules for inspection could be established







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Regional Harmonization Long-Term Interventions Cont'd.

- **Oversight and Administration**
 - Establish regional institutional mechanism with clear mandate
- **Right to Appeal and Confidentiality**
 - Harmonize grounds for appeal and ensure clear right to confidentiality for sensitive business information to avoid unfair competition







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Thank You!

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