



Submission on behalf of African CSOs to Josiah Wobil in response to the:
Development of Continental Guidelines for the Harmonisation of Seed Regulatory Frameworks in
Africa (Reference: AUC/DREA/C/036): Draft Report
July 2021

Key inputs

- We commend the author for developing a process to incorporate farmers' seed, farmer managed seed systems (FMSS) and farmers' rights into the Draft Report, and for explicitly stating the need to practically realise the rights of farmers, to ensure the sustainable use and conservation of the genetic variety or crops and related agricultural biodiversity. This is an overdue and well received step to ensure that the rights of small-holder farmers are safeguarded and upheld.
- If the Continental Guidelines are able to reinforce the need to realise farmers' rights, and its inextricable link to farmer seed systems that uphold food security and agricultural biodiversity on the continent, this could serve as significant progress to recognise these systems, to be taken up at national and regional levels.
- It is vital to protect farmers' rights to save, reuse, exchange and sell all seed, including of protected varieties, as well as protect and safeguard all systems that serve as the main source of seed on this continent, which includes local markets. Currently local markets, especially those that are not linked or geared to serving commercial global value chains are absent in the report, which are crucial to uphold the farmer-managed seed systems.
- The establishment of a Task Force to look at how to integrate FMSS into Continental Harmonisation is welcomed, and should open a hitherto closed door to first, acknowledging the existence and vital role played by small scale food farmers and mention here that special attention must be paid to translation of documents, meetings and consultations.
- Further, such a Task Force must ensure broad representation and participation particularly of farmers' associations from across the continent. We would be willing to support in the reaching out to representatives from African farmer organisations of small scale farmers to assist in ensuring that they participate meaningfully and effectively in this Task Force.
- The content, scope and understanding of what comprises FMSS must be done in consultation with small holder farmers especially women and youth. Proper consultations must be held in appropriate languages and all documents to be produced in these languages as well in advance.
- It is also crucial to ensure that the recognition and safeguarding of these systems is an integral part of all elements of the Continental Implementing Regulations, and as mentioned

that these practical safeguards and facilitation of FMSS should be clearly articulated at the outset and as the Continental Guidelines continues to develop – particularly as it is expected the Guidelines around FMSS will take longer to develop. Central to this work must be the recognition, protection and implementation of farmers’ rights.

- The Draft Report, while recognising the historical, current and future role of farmers’ seed and FMSS, focuses primarily on the seed itself, and its potential value for the commercial seed sector rather than focusing on ways to stimulate the public seed sector and thereby to find ways to ensure farmers participate effectively and to continue to serve as the basis for agricultural productions and extension on the continent. The inextricable connection between farmers, their agency in the development, conservation and sustainable use of seeds must be central to this discussion.
- In no way must these Guidelines restrict or prevent the functioning of FMSS, the base of food and nutritional security on the continent, which relies on the saving, reuse, exchange, and sale of seed, primarily in local markets, and that the Guidelines for FMSS must not be seen as merely a way to graduate farmers into the commercial seed sector but rather to strengthen and support this sector in its own right, through the public seed sector.
- The Draft Report suggests that mainstreaming FMSS must start at national level, before moving up to continental level, and that National Seed Services, working closely with the national farmers’ association, must attract public funding to implement a roadmap for these mainstreaming processes. We believe that the African Union’s (AU) African Seed and Biotechnology Program (ASBP), who is currently driving the Continental Harmonisation process, must support the financial resourcing and capacitation at national level to be able to begin this process.
- It is suggested to conduct an analysis on the effect of commercial seed laws in the continent, including seed trade laws and other laws such as PVP laws and biosafety laws, and how they have impacted food security, livelihoods and poverty alleviation, the exercise of human rights, and in particular, farmers’ rights.

Introduction

The African Centre for Biodiversity, along with other civil society organisations and farmers’ associations from Africa, have participated in the Development of the Continental Guidelines for the Harmonisation of Seed Regulatory Frameworks in Africa (The Continental Guidelines), providing preliminary comments in April 2021, after participating in the online stakeholder consultation that was held earlier that month.

We are pleased that several concerns raised by us have been taken into account by the consultant and are reflected in the Draft Report, in particular that farmers’ seed, farmers’ seed systems, and farmers’ rights are incorporated into the document. The consultant has taken the time to expand on the key aspects of how farmer-managed seed systems may be recognised and supported through this process at the Continental level. However, more work needs to be done to link these up with the full realization of farmers’ rights.

In addition, we would like to make further, substantive inputs to the Draft Report. The Draft Report serves as a useful document in terms of updating current regional and national seed regulatory

processes. As we continue to engage, we hope to support the AU and its role in strengthening farmers' seed systems, and to safeguard and realise farmers' rights. This will hopefully be seen as a pillar to guide the various Regional Economic Communities (RECs) and national governments towards a new framing of seed system development in Africa, and particularly towards a discreet regime on farmers' rights, as seen as part of a bundle of human rights, where a flourishing and thriving farmer seed system is a necessary prerequisite.

In terms of bridging the differences that exist between the various REC's harmonisation regulatory frameworks, the ACB has made extensive submissions to the seed harmonisation processes of COMESA, SADC, ECOWAS, EAC, and particularly on the skewed and biased orientation of these regulations in favour of the commercial seed sector, and the impact this will have on farmers' seed and their seed systems¹. We believe that these harmonisation frameworks directly impinge on FMSS structures, as they restrict the saving, reuse, exchange and sale of seed. It is vital to protect the saving, reuse, exchange and sale of seed, including of protected varieties, as well as protect all structures that serve as the main source of seed on this continent, which includes local markets, with over 50% of seed being sourced coming from the latter². While concerns around counterfeit seed may be reasonable, to neglect and restrict this essential seed source has direct impacts on the FMSS, and ultimately on food and nutritional security. Therefore, we believe there is very real cause for concern around the current state of national, regional, and indeed continental seed laws, which we believe infringes on the functionality of FMSS.

The overall orientation of the Continental Guidelines

The main objective of the Continental Guidelines, as stated in the Draft Report, is "to develop continental guidelines for the harmonisation of seed policies and legal frameworks including variety testing and release, seed certification and quality assurance, digitalized documentation, phytosanitary measures and plant variety protection/intellectual property rights" (Page 5 of the Draft Report). Expected outcomes of this mission are that these continental guidelines will "enhance access to quality seed for improving production and productivity for food security and nutrition" (Page 22 of the Draft Report).

Throughout the document, references to the various RECs and their successes to date, is used by the AU to justify expanding these successes to the Continental level, and essentially using these regional harmonisation frameworks as the building blocks towards harmonised continental seed regulations. It must be pointed out that little evidence is provided of the benefits, or the so-called successes or "dividends", of the REC's Harmonised Seed Regulatory Frameworks, beyond the degree they have been ratified, and to varying degrees where countries have developed legislation and policy as part of this process, and to some degree hints of cross-border trade in seed, which is not discussed in any detail in the report. None of these give any indication of the relevancy or appropriateness of this

¹ See: [The Status Report on the SADC, COMESA and EAC harmonised seed trade regulations: Where does this leave the regions' smallholder farmers?](#) 2018.; [Registration of farmers' varieties in SADC](#), 2020; [Concerns with the draft EAC Seed and Plant Varieties Bill, September 2018 version](#), 2019; [The SADC PVP Protocol: Blueprint for uptake of UPOV 1991 in Africa](#), 2018; [The Arusha Protocol and Regulations: Institutionalising UPOV 1991 in African seed systems & laws](#), 2018; [Seed policy paper: Towards national and regional seed policies in Africa that recognise and support farmer seed systems](#), 2018

² McGuire, S.J.; Sperling, L. Seed systems smallholder farmers use. *Food Secur.* 2016, 8, 179–195.

current regime. No analysis has been done of the effect of such seed laws, including seed trade laws and other laws such as PVP laws and biosafety laws, and how they have impacted food security, livelihoods and poverty alleviation, which is the main objective behind this process³. Too often, these processes are pursued with little justification, and fail to reach even the goals of developing the formal seed sector. Challenges described suggest that despite achievements in harmonising of policies and laws, few countries are fully implementing the Regulations. Our opinion is that the fact that to date there has been little implementation, is an indication of the failure of these harmonisation efforts, and particularly that seed sector growth does not resolve issues of food and nutritional security.

Studies such as Manalo, C. R., & Ignacio,(2021), point to marginal impacts on crop development due to PVP laws, and the general incompatibility of international seed regulatory systems. This is particularly the case with African seed systems. Beyond this, we have witnessed increased concentration and globalisation of the seed sector over the years⁴, and it is difficult to see how creating this legislation will enhance African seed sector development differently. There is an assumption made that Continental Seed Harmonisation will “sustain high standards of made-in Africa seeds and facilitate the emergence of seed production entities as trusted and reliable sources for indigenous demand. Continental Harmonisation will also assist African take up a more aggressive position on the continental and global seed market” (Page 30 of the Draft Report). The likelihood is that foreign, large-scale seed companies will be the main beneficiaries, and inequalities between countries on the continent will grow, with local seed systems being further marginalised. In order to support the implementation of various Annexes of the African Continental Free Trade Area (AfCFTA) related to trade of reproductive materials, and thereby stimulating intra-African trade, it would be useful for Africa to develop seed regulations that are suitable for its context, rather than simply adopt foreign seed legislation that serve foreign interests and only deepen Africa’s neocolonial relationships with the rest of the world.

Additionally, we wonder why this mission is focused only on Objective 2 of Component 4 of the ASBP. It does seem that some focus paid to Output 1 may yield interesting outcomes particularly around farmer driven quality assurance systems through improved contributions from farmers themselves, around African crops, and farmers’ diverse seed in the context of emergency situations, beyond the standard stakeholders. We suggest looking at other examples where local seed, and

³ Wattnem, T., 2016. Seed laws, certification and standardization: outlawing informal seed systems in the Global South, *The Journal of Peasant Studies*. <https://foodfirst.org/wp-content/uploads/2016/03/Wattnem-2016.pdf>; Manalo, C. R., & Ignacio, N. (2021). Plant Variety Protection in Practice in Vietnam: The Pains in the Gains Achieved. Philippines: Southeast Asia Regional Initiatives for Community Empowerment https://www.apbrebes.org/sites/default/files/2021-03/PVP%20TPGA_Fin_compressed.pdf; Christinck, A., and Tvedt, M.W., 2015. The UPOV Convention, Farmers’ Rights and Human Rights. An Integrated Assessment of Potentially Conflicting Legal Frameworks. GIZ. <http://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf>; Braunschweig, T. et al. Owning seeds, accessing food: a human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines. https://www.publiceye.ch/fileadmin/doc/Saatgut/2014_Public_Eye_Owning_Seed_-_Accessing_Food_Report.pdf

⁴ Bonny, 2017. Corporate Concentration and Technological Change in the Global Seed Industry. <https://www.mdpi.com/2071-1050/9/9/1632/pdf>; Deconinck, K., 2020, Concentration in Seed and Biotech Markets: Extent, Causes, and Impacts. *Annual Review of Resource Economics*, 12.5.1-5.19 http://ressources.semencespaysannes.org/docs/concentration_seed_biotech_market.pdf; Clapp, 2018. Mega-Mergers on the Menu: Corporate Concentration and the Politics of Sustainability in the Global Food System, *Global Environmental Politics*, 18(2) 12-33. <https://direct.mit.edu/glep/article-abstract/18/2/12/14909/Mega-Mergers-on-the-Menu-Corporate-Concentration?redirectedFrom=fulltext>

local quality assurance systems could be used, beyond those currently used for the formal system, to ensure that alternative options are not neglected, and likely to deepen the marginalisation of this incredibly innovative, dynamic, and indeed sustainable source of seed⁵.

The Continental Guidelines and farmer-managed seeds

The Draft Report recognises and accepts the significant role that farmers' seeds play in agricultural production, food security, and indeed economically, with 90% of seed used coming from outside the formal sector. This therefore plays a significant role in seed trade on the continent but is unaccounted for. The Draft focuses on mainstreaming farmer-managed seed systems, taking the suggestion from African civil society to refer to this seed as FMSS rather than the commonly, degrading term as the informal seed sector, and recording such seed movements to show a truer reflection of the African seed trade. This is welcomed.

The main element of the continental harmonisation is seed quality. Therefore this mission focuses on: i) harmonisation of seed quality assurance and certification regulations, including standards for seed testing and inspection and phytosanitary measures; ii) harmonisation of variety release processes, as common procedures for varietal release and registration and a continental variety catalogue with regional catalogues to cater for agroecological variations; iii) harmonised accession to identified international seed sector-related treaties and conventions; iv) support to member states; v) incorporating the interests of the farmer-saved seed system; and vi) addressing the need to incorporate animal seed dimension.

The author attempts to provide innovative ways of mainstreaming FMSS into seed production, marketing and utilisation. The author mentions how the virtual exclusion of FMSS from formal seed ministrations has sidelined the importance of these diverse seed and seed systems and has been a serious detriment to Africa. The Draft Report therefore envisions the development of Continental Harmonisation as an opportunity to chart new ways of integrating FMSS into the seed discourse on the continent. As suggested in the Draft Report, this requires the "skillful incorporation of some elements of modern seed technology into FMSS practices, while maintaining the indigenous knowledge, adaptability, end use advantages, and other parameters which make FMSS the preferred seed source" (Page 29 of the Draft Report). The Draft Report argues for the establishment of a Task Force on Farmer-managed seed to develop a technical package of standards and advisories to mainstream FMSS into the African seed sector. While we greatly accept and appreciate the articulation of the value of FMSS, we believe that caution must be taken when considering mainstreaming FMSS, to not prevent it from functioning in its adaptable, malleable, and innovative way. This requires structures to support seed producers and traders operating in this system and not to try to merge and enmesh these time honoured systems into commercial seed systems and value chains. Here we caution against an integrated seed sector development approach that has at its framing the need to merge commercial and FMSS.

⁵ See the *Inventory* as part of the ITPGRFA, <http://www.fao.org/plant-treaty/areas-of-work/farmers-rights/inventory-on-frs/en/>

While we support the intention behind these efforts, we believe that it is also crucial to ensure that the recognition and safeguarding of these systems is an integral part of all elements of the Continental Regulatory Framework, and as mentioned that these practical safeguards and facilitation of FMSS should be clearly articulated at the outset and as the Continental Guidelines continues to develop – particularly as it is expected the Guidelines around FMSS will take longer to develop.

We appreciate that the Continental Guidelines, as mentioned by the author, should “create an enabling environment to foster participation of FMSS and enhance the benefits accruing from farmers’ deployment of seeds from that system” and that the “exercise should adopt a step-wise strategy, commencing from national level, to ensure that farmer managed seeds divest themselves of perceived negativity and accentuate their positive aspects that farmers find attractive and useful” (Page 44 of the Draft Report). It is also noted and appreciated that it is stated that such Continental Harmonisation “should not be an opportunity to formalize farmer-managed seeds” and indeed “rob it of some of its attractiveness to farmers” (Page 44 of the Draft Report). Therefore, the focus is on mainstreaming farmer-managed seeds, to enhance their usefulness and impact and facilitate their advantages, that make the FMSS the overwhelmingly preferred source of seeds in Africa, even in this modern era” (Page 45 of the Draft Report). The ancillary objective then is to migrate these seeds to boost the commercial seed industry, to expand their seed to traditional and food security crops that rely on the FMSS.

We believe that this approach, while deeply recognising the historical, current and future role of farmers’ seed and FMSS, focuses primarily on the seed itself, and its potential value for the commercial seed sector, to which the actors are few, of which many are foreign companies. This is done rather than focusing on ways to stimulate the public seed sector, and ways to ensure farmers participate effectively, as custodians of these seeds and as rights holders, to protect their rights to continue these practices and ensure the conservation and sustainable use of agricultural biodiversity, access and benefit sharing, livelihood security, and indeed informal seed trade. The FMSS must be seen beyond simply providing genetic resources for the benefit of the private, corporate sector, but rather to serve as the basis for agricultural production and extension on the continent. Nor should FMSS be approached through a productivist lens.

The Draft Report suggests that measures of organisation, recording and monitoring should be adopted in FMSS operations, to make them more useful to farmers who rely on it and the commercial seed trade. This would include variety description and characteristics, quality assurance and seed standards, adaptability, etc., as part of mainstreaming seed operations, while also not burdening the operations with the same requirements of formal regulatory frameworks. The Draft Report suggests that this process must start at national level, before moving up to continental level, and that National Seed Services, working closely with the national farmers’ association, must attract public funding to implement a roadmap for these mainstreaming processes. We believe that the AU’s ASBP, who is currently driving the Continental Harmonisation process, does need to ensure there is financial resourcing and capacitation at national level to be able to begin this process – as it is also doing with the formal seed sector.

The suggested ways to enhance the informal seed sector, including developing seed standards – including both FAO’s quality declared seed (QDS) model, and the use of a new term Approved Farmer-Managed Seed (AFMS) - a relaxation of the QDS standards, used for seed saving and farmer-to-farmer exchanges. We would argue that local markets must be included as avenues for the sale of farmer seed.

In terms of developing regulations or other protocols, guidelines were provided, including: developing a list of crops with significant farmer-managed seeds (4 cereals, 2 legumes, 4 vegetable and 4 vegetative crops); a national list of farmer-based varieties (to be prepared by National Seed Service in close collaboration with relevant farmers’ association and recognised informal seed operators); data list (yield, disease tolerance, qualities – taste, flavour, colour, processing mode; stability rating, extent remaining true to type; sources of varieties; the initial seed; maintainer; seed trader responsibilities; eligibility of varieties; name and origin of variety; morphological description; suitable agroecological zone; procedures for maintaining variety); seed production (standards of the Maintainer’s Seed; laboratory seed standards, field standards, production methods; inspection; seed identify at harvest and conditioning, moisture content); labelling (QDS and approved farmer-managed seed – both to indicate: crop species; name of variety; name of seed producer; germination percentage; physical purity percentage; net weight; date of test; details of any chemical treatment; and name of responsible authority); organisational framework including: process of QDS or AFMS (declaration of seed crop production and declaration of conditioned seed); guide for quality assurance for farmer managed seed production (initial seed, production process, conditioning, quality checks i.e. viability testing, moisture testing, physical purity, and variety trueness).

It is suggested in the Draft Report that farmer-based seeds will need to register with the accredited National Farmers Union, who will register them with the National seed regulatory authority, and the regulatory authority will organise a basic course on seed production and seed quality assurance. Following the course, a roster of AFMS sources will be drawn up for popularisation among farmers in the area. It is then imagined that steps will then be taken to migrate interested farmers to the formal seed sector, by releasing varieties as formal sector varieties, as well as the incorporation of popular farmer-managed indigenous cultivars and landraces, into National Variety Catalogues. While support for farmers who aspire for this option can be beneficial, we must re-emphasise that in no way must these Guidelines restrict or prevent the functioning of FMSS, the base of food and nutritional security on the continent, which relies on the saving, reuse, exchange, and sale of seed, primarily in local markets, and that the Guidelines for FMSS must not be seen as merely a way to graduate farmers into the commercial seed sector but rather to strengthen and support this sector in its own right, through the public seed sector.

We commend the author for the extensive thinking that has been put into how to incorporate farmers’ seed and FMSS into this process. Of course, participation of national farmer associations would be required to ensure that this process is credible and considers the concerns and aspirations of small-scale farmers. The content, scope and understanding of what comprises FMSS must be done in consultation with small holder farmers especially women and youth. Proper consultations must be held in appropriate languages and all documents to be produced in these languages as well in advance.

The Continental Guidelines and Farmers Rights

Continental Harmonisation is described as having the potential to strengthen the domestication of international conventions and treaties for the management of plant genetic resources for food and agriculture (PGRFA), with the Continental Guidelines on Harmonised Accession to the Identified Seed Sector-Related Treaties and Conventions, including: the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA); the International Plant Protection Convention (IPPC); the Convention on Biological Diversity and its Cartagena Protocol on Biosafety; amongst others. This would be done by seeking a common arrangement with each of the key international treaties and conventions, with a process to define and design a common African position in each case followed by consultations among Member states towards validating and adopting the agreed common protocols.

The Draft Report speaks primarily to the ITPGRFA, and Farmers' Rights as outlined in the Treaty, the IPPC, and UPOV.

We commend the author for explicitly stating the need to practically realise the rights of farmers to ensure the sustainable use and conservation of the genetic variety or crops and related agricultural biodiversity, and even refers to India's Plant Variety Protection and Farmers' Rights Act, 2001, which secures the rights of farmers to save and sell farm-saved seed even if they are from a protected variety. The Draft Report also refers to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), an important instrument to both understand and inform the implementation of Farmers' Rights as part of a bundle of human rights, and which has been endorsed by all countries on the continent. This is a bold and well received step to ensure that the rights of small-holder farmers are safeguarded and upheld, as we move towards an era of continental harmonisation. The author suggests that the AU should secure its membership with the ITPGRFA, similarly to the EU, due to the major impact the Treaty and Farmers' Rights will have on African farmers, and Africa's biodiversity. In this way the AU would become a signatory of the Treaty, and set up a negotiating team on behalf of Africa. It is suggested that once the guidelines document is approved, a Task Force would be established to develop this process for accession to the Treaty.

If the Continental Guidelines are able to reinforce the need to realise farmers' rights, and its intricate link to farmer seed systems which uphold food security and agricultural biodiversity on the continent, this could serve as significant progress to recognise these systems, and finding ways to ensure adequate resourcing is achieved, primarily geared towards public research institutions, local markets, and the conservation and sustainable use of these genetic resources. In this case, other REC's harmonisation processes should adopt these measures, towards finding a continental harmonised approach to farmers' diverse seed, their seed systems (including local markets) and farmers' rights. At this stage this is sorely lacking at national, regional and continental level, and this could serve to progress this need and align regional processes in this regard, and ultimately in national seed laws. Indeed, this is the first time that any conceptualisation of seed policies and guidelines in Africa has included the FMSS, that the majority of farmers rely on in the continent, beyond the provision to register farmers varieties in SADC, which has not seen any progress since the ratification of the SADC Technical Guidelines.

In terms of the description on UPOV, we believe firmly that UPOV is incredibly bias towards private rights over farmers' rights, and is ill-suited for the African context due to its limited flexibility and general undermining of local seed and agricultural systems. Currently, there is a technical expert working group (AHTEG) on farmers' rights, developing options for the implementation of farmers' rights and we would strongly recommend that consultations be held with the group of experts who are working in that space, representing small scale farmers to understand more fully, the issues being discussed in relation to UPOV 1991, and intellectual property rights generally speaking. Here we also mention the recent extension for least developed countries (LDCs) regarding the implementation of the TRIPs agreement and in particular the need to plant variety protection legislation in place on the part of such LDCS. Africa has 33 LDCs. Further, we caution against using an intellectual property framework to address the needs for protection of FMSS and the implementation of farmers' rights, and would welcome deeper discussions and dialogues on these issues especially with small scale food producer organisations on the continent.