

PROPOSED LEGAL FRAMEWORK FOR THE RECOGNITION AND PROMOTION OF FARMER MANAGED SEED SYSTEMS (FMSS) AND THE PROTECTION OF BIODIVERSITY



AF SA

ALLIANCE FOR FOOD SOVEREIGNTY IN AFRICA

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ABOUT THIS DOCUMENT



This framework aims to ensure the recognition and protection of the right of farmers to define rules, based on their habits and customs, within their communities, networks, or other collectives, for the organisation of their seed activities, as well as the need for the State to accompany them in this.

The framework is based on the results of various farmers' mobilisations that have taken place across Africa and the world, as well as on the reflections of farmers, experts and other national and international organisations that accompany them. The report was published in 2022 and is available on the AFSA website <https://afsafrika.org>

The report outlines the preliminary arrangements (example, Recognition of the past, present and future role of farmers in the selection, diversification, maintenance, and development of agricultural biodiversity), tools (national seed funds, regional farmers' registers...) and bodies (National/ Regional Farmers' Seed Committees) to be put in place for the management of the farmers' seed

system, the rules for ensuring seed quality in farmers' seed systems, the rules for the production and circulation of farmers' seed and the promotion of farmers' participation in decision-making and the protection of farmers' innovations and knowledge.

We are grateful to all the partner organisations, that participated in the 12 national consultations including Association Sénégalaise des producteurs de semences paysannes (ASPSP) - Senegal; Association Tunisienne de Permaculture (ATP) - Tunisia; Biodiversity and Biosafety Association of Kenya (BIBA) - Kenya; Coalition pour la protection du patrimoine génétique africain (COPAGEN) Burkina Faso - Rural Women's Assembly (RWA) - eSwatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe.

This document has tried to incorporate as much information and opinion as possible from the national consultations, but it does not cover the full range of information on the complexity of farmers' seed systems.

BACKGROUND AND RATIONALE



With the stated objective of achieving food security by making quality seeds available to farmers, African countries have adopted seed laws reminiscent of those developed since the 1950s by developed countries (Europe and the United States). These laws tend to promote a «green revolution» model of industrial agriculture by setting up a market-based regime for seed selection, production, and distribution. The rules frame the intervention of the different actors according to a segmentation of the seed system into different functions, namely (1) variety selection and dissemination, (2) seed production and multiplication, (3) seed quality control and certification, and (4) seed distribution and marketing.

The rules of the commercial or industrial seed system include establishing an official catalogue for the mandatory

release and registration of varieties for distribution and cultivation. Only seed from a registered variety can be distributed through marketing, which is defined as: «the sale, holding for sale, offer for sale and any assignment, supply or transfer, **with a view to commercial exploitation**, of seed or seedlings, whether or not in return for payment¹. Varieties admitted to the catalogue must be distinct, uniform, and stable (DUS) and have a certain agronomic and technological value (VAT).

Another important element of the regime established by the seed laws currently in force in African countries is the institution of **an official control and certification service**. Seed inspection is carried out in the field and in the laboratory to check the conformity of the seed to the minimum standards set by the technical regulations in

¹ ECOWAS Regulation <http://extwprlegs1.fao.org/docs/pdf/eco147490.pdf>.

force². Successful completion of the control process leads to the certification of the seed for marketing.

Finally, the scheme allows only seed producers (natural or legal persons authorized) to produce basic seed (G4), first-generation seed (R1), second-generation seed (R2) or third-generation seed (R3). It distinguishes between these producers and seed distributors who are obliged **to declare their activity and obtain approval through their registration on the list of authorized distributors.**

The regime is more focused on seed marketing and is organized around the different segments of the commercial chain. Seed accessibility (defined by FAO as the ability to acquire seed through cash purchase, exchange, loan, barter or the use of one's status or influence within a social network) is not fully considered in this scheme.

The regime is reinforced by **intellectual property** rights laws applicable to seeds, such as plant technology patents and plant breeders' rights (PVRs) and plant health protection laws.

Many farmers' seed activities are restricted or prohibited with such a regime in place. Depending on the country, this includes the production, exchange, and sale of seeds from farmers' fields and the organization of seed fairs to share locally adapted seeds and seedlings.

On the other hand, this regime favours the distribution of seeds in the form of 'technical packages', i.e. accompanied by fertilizers and advice to encourage beneficiaries to adopt predefined agricultural practices. These are in contrast to the agroecological practices promoted by international institutions and farmers' organizations in Africa. Farmers are losing the autonomy that has always characterized their seed activities, which are not dissociated from agricultural production.

The **current regime is not adapted** to the practices, knowledge, innovations, and rules developed by peasant communities to organize seed production and dissemination within their collectives and different networks, a set referred to as the **peasant seed system**. The exceptions and some special mentions contained in the regime applicable to the commercial or industrial seed system do not allow the full enjoyment of the peasants of

their seed activities as practiced and organized by them since time immemorial and adapted over the ages.

The exclusive focus of seed laws on a standardized commercial regime and the absence of a specific regime adapted to farmers' realities, and practices make it difficult for farmers' seed systems to flourish, for farmers' rights to be realized and for agricultural biodiversity to be managed and renewed. The establishment of a specific regime for peasant seed systems is necessary to recognize and protect the rights of peasants, their practices, knowledge, and innovations, as well as the rules they define for the management, use and circulation of seeds within their collectives and networks. Farmers and rural communities represent more than 70% of the population in most African countries and access seed through peasant seed systems that are negatively impacted by the commercial regime.

This is why the **Alliance for Food Sovereignty in Africa (AFSA) has initiated the elaboration of a framework for the development of seed laws favourable to peasants' seed systems and biodiversity.** This framework is built on the results of various farmers' mobilizations that have taken place across Africa and the world and on the reflections of experts and other national and international organizations that accompany them. It is organized around the following elements

1. The preliminary provisions, i.e. the purpose, scope, guiding principles and definitions of terms;
2. The tools and bodies to be put in place for the management of the farmers' seed system, namely: the national committee on plant genetic resources, the regional farmers' seed committees and the regional farmers' registers;
3. Rules offering seed quality assurance in farmer seed systems, valuing autonomous organization of quality assurance;
4. Rules on the production and release of farmers' and farm-saved seed, including the protection of such seed from GMO contamination;
5. Promoting farmer participation in decision-making and protecting farmer innovation and knowledge.

² The control concerns varietal purity + specific purity, moisture content, germination and sanitary quality.

I. PRELIMINARY PROVISIONS

1. Definitions

For the purposes of this framework, the following definitions apply

Agroecology : Agroecology is a people-centric system of sustainable agriculture and a social justice movement driven by local farmers and other food producers to maintain power over their local food systems, protect their livelihoods and communities, and defend every African's right to nutritious and diverse food. Using agroecology, farmers and food producers work in sync with nature to grow abundant and diverse foods while regenerating natural ecosystems and biodiversity.

Community seed bank or seed hut (seed conservation space) : a facility created, maintained and kept by farmers at the community level and dedicated to the conservation and storage of seeds for use during the agricultural season and for circulation within farmers' networks in accordance with rules collectively defined by the farmers themselves.

Traditional knowledge : All the knowledge, innovations and practices that –farming communities and indigenous peoples have developed, are developing and will continue to develop over time, to preserve and enhance biodiversity and use it sustainably.

Conservation : Practice aimed at maintaining the quality of seeds and adapting them to changing climatic conditions, cultivation techniques and human needs according to the context. It includes the dynamic management of seeds consisting of their selection year after year based on farmers' knowledge and which contributes to the maintenance and adaptation of seeds.

Quality assurance : monitoring and control mechanisms based on rules and criteria set collectively by farmers within their organizations or networks to ensure the quality, including health, germplasm and agronomic quality of the farmer seed they produce and use in their production system. These rules can be organized through a code of conduct or a participatory system taking into account the habits and customs of the farmers' communities.





Circulation : any act undertaken by farmers to facilitate other farmers' access to seed, including donation, barter, sale, exchange, and any other form of collective use based on the movement of seed within farmers' networks.

Farmer : Any person who carries out or seeks to carry out, alone or in association with others or within a community, a small-scale subsistence or market agricultural production activity that relies largely, but not necessarily exclusively, on family or household labour and other non-monetary forms of work organization, and has a particular dependence on and attachment to the land. This word refers to both male and female farmers.

Collaborative research and breeding : collective organization of seed breeding or agricultural research based on the needs expressed by farmers, valuing farmers' expertise in collaboration with conventional researchers and operating under democratically established rules.

Farmers' seed register : a document developed and maintained by farmers' collectives for the voluntary registration of local and traditional varieties with a view to their description and characterization to ensure an inventory at the local level.

Seed : Seeds or other plant reproductive organs (such as seedlings, cuttings, grafts, bulbs, tubers) intended to be sown for harvesting.

Farmers' seed : seed selected and multiplied by farmers in agricultural production fields, using farmers' methods that do not transgress natural physiological, reproductive or recombination barriers and that are renewed by successive multiplications through open pollination or mass selection.

Farmers' seed system : All the knowledge, innovations, practices, and rules collectively developed by farmers based on their habits and customs and applied to the selection, production, conservation, use, quality assurance and circulation, in their networks and on local markets, of the seeds from their fields. In these farming systems, seed selection and production are integral to agricultural production.

Commercial seed system : A set of rules and standards governing seed activities, including selection, production, and marketing of seed, and the actors who carry them out under the control and policing of a central authority established to ensure the application of the above rules and standards. In such a system, seed production is distinguished from agricultural production, and varieties must be distinct, homogeneous, and stable for their seed to be authorized for marketing.

Local variety : a traditional variety originally associated with a particular area.

Traditional variety : an ancestral variety selected, maintained and improved by farmers from generation to generation and which has not been subjected to modern breeding, following techniques used in the laboratory and fields exclusively dedicated to seed production, as well as specific standards aimed at the distinctness, stability, and homogeneity of the cultivated varieties.

2. Object

This framework aims to ensure the recognition and protection of the right of farmers to define rules, based on their habits and customs, within their communities, networks, or other collectives, for the organization of their seed activities, as well as the need for the State to accompany them in this.

3. Scope of application

This framework applies to farmers' self-managed activities in seed selection, production, conservation, use, quality assurance and circulation within their networks and local markets.

As defined by this framework, the circulation of seeds is considered an act of mutual aid and solidarity between farmers, which does not fall under the seed marketing rules.

4. Principles

This framework is based on the following principles:

- a. The sovereignty of peoples over the plant genetic resources found on their national territory and their concerted management with the State which ensures their protection;
- b. Recognition of the past, present and future role of farmers in the selection, diversification, maintenance, and development of agricultural biodiversity;
- c. Equality of peasants before the law regardless of their gender, ethnicity, or political beliefs;
- d. Farmer participation in decision-making in the agricultural sector, particularly in the seed sub-sector;
- e. Free, prior and informed consent of farmers for any decision regarding access to plant genetic resources and associated knowledge available on their land.
- f. The recognition, protection, and fulfilment of all collective and individual rights by the relevant international instruments for the benefit of peasants, rural people, and local and indigenous peasant communities as appropriate.

II. MANAGEMENT FRAMEWORK OF THE FARMER SEED SYSTEM

5. National Policy Framework on Farmers' Seed Systems and Biodiversity

A National Consultative Framework on Farmers' Seed Systems and Biodiversity (NCFSB) is established. Its role is to support the government in the implementation of this framework for the recognition and promotion of peasant seed systems and the rights of peasant communities over the seeds from their systems, as well as to maintain dialogue between the different actors for collective management of seed issues according to the needs of peasants and in the interest of the nation.

The NCFSB ensures that participatory or collaborative breeding is integrated into programmes for the breeding, conservation and dynamic management of agricultural biodiversity and related species.

The establishment of the NCFSB results from consultation between the government, farmers' organizations and communities, public research institutions and other relevant actors. Once established, it adopts its operating rules. Its permanent secretariat is provided by the farmers' organizations through their delegates.

The CNSPD is funded from the national budget.

6. Regional Farmers' Seed and Agricultural Biodiversity Committees

The Regional Farmers' Seed Committees (RFSC) are created at the level of the agro-ecological zones of the country that constitute their area of action. They are networks composed of farmers, associations, public entities, and researchers active in the field of agricultural biodiversity. Their role is to ensure the safeguarding, dynamic management, multiplication, and dissemination of seed or genetic material registered in a regional farmers' register.

The RFSC is run by the farmers' collective active in the region. This collective provides the impetus for their implementation with the support of the state.

The RFSCs shall democratically define their operating rules in accordance with the rules applicable to associations in the country concerned.

7. Regional farmers' registers

The Regional Farmers' Register (RFR) identifies the farmers' varieties that are present in a given agro-ecological region to ensure greater traceability of the varieties in use in the region concerned. Registration of varieties in the farmers' register is voluntary and free of charge. It ensures that no intellectual property or other rights over the registered seeds, their parts, their genetic components, or the genetic information they contain can limit the rights of farmers to save, use, exchange, sell and protect them from genetic or phytosanitary contamination and biopiracy according to their own collective rules.

The farmers' register is organized and maintained by the RFSC on the basis of rules adopted within the RFSC.

8. Fonds Semencier National (FSN)

A National Seed Fund (NSF) is established to support farmers' seed activities and the management and sustainable use of agricultural biodiversity. The State undertakes consultations with farmers and relevant stakeholders, including public research institutions, to design the NSF and specify any relevant role it can play in ensuring seed security for farmers and their communities. The NSF is funded by the State, which is responsible for recovering its share of the benefit sharing defined in various international Treaties, Conventions and Protocols concerning biodiversity and genetic resources.

III. SEED QUALITY ASSURANCE IN FARMERS' SEED SYSTEMS



9. Seed quality assurance system

9.1. Farmers have the right to collectively define and adopt rules to ensure the quality of the seed they release within their collectives. These rules shall include the following:

- The germinative faculty,
- Sanitary quality,
- Agronomic quality,
- Organoleptic quality,
- Any other quality deemed relevant by the farmers according to their ecological and socio-cultural context.

9.2. The quality assurance rules for seed produced and released in farmers' seed systems are based, among others, on the following elements

- - A common vision: the farmers concerned belong to the same organization, a collective or a local

network with close links and common principles and values. This network could extend to the level of an agro-ecological region and constitute the CRSP of the area in question.

- Principles of trust, equality and transparency based on:
 - A commitment by the farmers through a charter or any type of collective agreement,
 - Collectively defined rules with the definition of appropriate quality criteria,
 - Transparent and participatory verification mechanisms with a documented process management system and clear consequences for non-compliance,
 - A label or logo.
- Participation and collective learning.

9.3. Farmers' communities are freely organized to ensure the harmonization, at the national level, of quality assurance rules defined at different geographical levels or in different farmers' networks or collectives.

IV. SEED SELECTION, PRODUCTION AND RELEASE

10. Seed Selection and Production

The selection, production and multiplication of farmers' seeds take place in the farmers' fields and are not subject to any form of authorization or registration requirement, either for the seed or for the farmer carrying out these activities. They are done freely based on farmers' knowledge and practices and rules that farmers develop within their various collectives according to their habits and customs.

Existing laws affecting seed activities, including those protecting intellectual property, do not deprive farmers of their right to maintain their ancestral seed practices and farmer innovations related to these practices, including those of sowing, harvesting, selecting, saving, re-sowing, exchanging, and selling any seed or propagating materials produced in their fields and farmer seed systems.

11. Seed and agricultural biodiversity conservation

Farmers have the right to save their seeds according to their agricultural, cultural, and customary practices. The production and use of seeds in farmers' seed systems contribute to the conservation and dynamic management of agricultural biodiversity.

Farmers have the right to create and maintain biodiversity conservation areas adapted to their context and to give them the name appropriate to that context. They retain the initiative and the right to decide who can access these maintenance areas and define the conditions under which such access can be granted.

The state supports farmers and their collectives in setting up mechanisms to ensure that their free, prior, and informed consent is respected for any access to seeds and knowledge from their seed systems, as well as guarantees of:

- a fair and equitable sharing of the benefits derived from the use made of the seed or knowledge so received.
- the prohibition of any intellectual property or other rights in such seeds, their genetic parts or components

or the genetic information contained therein, and limiting the rights of farmers to save, use, exchange, sell and protect them from genetic or phytosanitary contamination and biopiracy under their own collective rules.

Farmers have the right to form networks to share knowledge and seeds between stakeholders in different areas of biodiversity maintenance. This farmer solidarity contributes to the development of varieties and their adaptation to local conditions in different places.

Farmers' seeds saved and used by farmers in their own fields or maintained in agricultural biodiversity conservation areas are, in relation to the commercial seed system, seeds under development. As such, they belong to the farmers' collectives that develop them.

12. Seed release

Farmers have the right to exchange, give away, sell, or put into circulation, by any other means, farmer seeds and any other seeds selected in their fields within their collectives and on local markets according to the modalities and rules collectively defined based on their knowledge, practices, habits and customs.

The above-mentioned acts are considered to be mutual aid or solidarity between farmers and do not constitute commercial transactions. As such, they cannot be prohibited, subject to registration for farmers, or give rise to the payment of a fee under any other legal provision in force in the country.

The circulation of seeds by farmers from one country to another is done according to a simplified access procedure defined at the national level. This simplified procedure is set up on the proposal of self-organized farmers' collectives in consultation with the relevant state body in charge of crop biodiversity management. It necessarily includes documentation of such cross-border movement of seeds in the hands of farmers.

The quality assurance rules put in place by farmers should include conditioning, storage, packaging and labelling to ensure the identification of seed released under this framework.

13. Protection against contamination from genetically modified organisms (GMOs)

The State, in consultation with farmers and other stakeholders, shall take all necessary measures to protect local and traditional varieties, agricultural and wild biodiversity and the general public from the risks

associated with the introduction of genetically modified organisms (GMOs).

The State shall ensure that the decision to take such a measure is not postponed because of the lack of certainty linked to the state of scientific and technical knowledge at the time.



V. PROMOTING FARMERS' PARTICIPATION IN DECISION-MAKING AND PROTECTING FARMERS' INNOVATIVE PRACTICES AND KNOWLEDGE.

14. Farmer participation in decision-making

The State shall put in place, in consultation with farmers' organizations and collectives, mechanisms for consultation and involvement of farmers in decision-making in the agricultural sector, and particularly in the seed sub-sector.

The participation of farmers in decision-making requires the provision of clear information in the appropriate language, preferably chosen by them, to enable them to give an informed opinion in the decision-making process.

15. Promotion of traditional knowledge, innovations, and practices of farmers in seed matters

Farmers and rural communities are the custodians of traditional knowledge, practices and innovations that have enabled, and will enable, the development and maintenance of biodiversity. The use and sharing of this knowledge within farmers' collectives and networks as recognized in this framework enables its dynamic conservation.

The State, in consultation with farmers' organizations and collectives, shall establish an access and benefit-sharing mechanism that allows farmers and rural communities to grant access, on the basis of prior informed consent, and to negotiate the conditions for a fair and equitable sharing of the benefits related to this access and the use that will be made of it by the applicant and any other person to whom he or she would in turn grant access.

The State is setting up a technical and financial support mechanism dedicated to the promotion of farmer innovation and the maintenance of farmer practices favourable to the sustainable use of agricultural biodiversity.

16. Access to public gene banks

Farmers have easy access to seeds and associated information stored in public gene banks on terms and

conditions adapted to farmers' needs and practices.

All movement of seed and associated information from farmers to public gene banks and from public gene banks to farmers or other users is documented in writing for tracking purposes. The document should contain the following information:

- In case of movement to the gene bank:
 - the name of the farmer who delivered the seed
 - the date of delivery
 - the name and characteristics of the seed supplied
 - an undertaking by the gene bank that it will take the necessary measures to ensure that no intellectual property or other rights in the seeds provided, their parts, their genetic components, or the genetic information they contain, can limit the rights of farmers to save, use, exchange and sell them, as well as measures to protect them from genetic or phytosanitary contamination and biopiracy
- In case of movement of the gene bank to third parties:
 - the name and characteristics of the seed delivered.
 - the name of the natural or legal person who received the seed
 - the reasons for the transfer, the destination of the seed and the conditions of the replacement.
 - an undertaking by the gene bank that it will take the necessary steps to ensure that no intellectual property or other rights in the seeds provided, their parts, their genetic components, or the genetic information they contain, can limit the rights of farmers to save, use, exchange and sell them and to protect them from genetic or phytosanitary contamination and from biopiracy





The Alliance for Food Sovereignty in Africa (AFSA) is a broad alliance of different civil society actors that are part of the struggle for food sovereignty and agroecology in Africa. These include: African farmers' organizations, African NGO networks, specialist African NGOs, consumer movements in Africa, international organizations which support the stance of AFSA, and individuals. Its members represent smallholder farmers, pastoralists, hunter/gatherers, indigenous peoples; faith-based institutions, and environmentalists from across Africa. It is a network of networks and currently with 35 active members.

The core purpose of AFSA is to influence policies and to promote African solutions for food sovereignty. AFSA serves as a continental platform for consolidation of issues pertaining to food sovereignty and together marshal a single and louder voice on issues and tabling clear workable solutions.

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The AFSA logo is displayed in white on a light green background. It features the letters 'AF' in a bold, sans-serif font, followed by a green silhouette of the African continent, and the letters 'SA' in the same bold, sans-serif font.

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