



# COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

## Item 7.4 of the Provisional Agenda

### Nineteenth Regular Session

Rome, 17–21 July 2023

## FURTHER RESEARCH ON THE IMPACT OF SEED POLICIES, LAWS AND REGULATIONS

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*Appendix I: Draft concept note on further research on the impact of seed policies, laws and regulations on farmers' ability to access seeds and planting materials of diverse, locally adapted farmers' varieties/landraces*

## I. INTRODUCTION

1. The Commission on Genetic Resources for Food and Agriculture (Commission), at its Eighteenth Regular Session, considered the effects of seed policies, laws and regulations on the diversity of plant genetic resources for food and agriculture (PGRFA). It requested FAO, in cooperation with relevant international organizations, to continue to support countries in the development or revision of their national seed policies, as appropriate and according to their specific situations, taking into account the Commission's *Voluntary Guide for National Seed Policy Formulation*.<sup>1</sup>
2. Furthermore, the Commission requested FAO to undertake, in collaboration with the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), further research on the impact of seed policies, laws and regulations, taking into account the variety of factors that may affect, and possibly improve, farmers' ability to access sufficient and affordable seeds and planting materials of diverse, locally adapted varieties, including farmers' varieties/landraces (FVLs). The Commission also requested FAO to take a bottom-up, country-driven approach to seed security and promote farmers' participation in seed-related activities of FAO.<sup>2</sup> The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (Treaty), at its Ninth Session, welcomed joint activities of the Secretariats of the Treaty and the Commission, in particular with regard to the effects of seed policies, laws and regulations.<sup>3</sup>
3. This document proposes further research on the impact of seed policies, laws and regulations. A draft concept note is contained in *Appendix I* to the document, for consideration by the Commission.

## II. BACKGROUND

4. During its last two regular sessions, the Commission considered two studies on the possible impacts of seed policies, laws and regulations on farmers' ability to access seeds and planting materials, especially of FVLs.
5. In 2019, at the Commission's Seventeenth Regular Session, FAO presented a review of the status and trends of seed policies and seed laws of 94 countries, the Andean Community and the European Union to ascertain the scope of these instruments in terms of registration requirements for varieties prior to their commercialization, seed quality control provisions, and farmers' representation in the governing bodies of national seed authorities. The findings of the study were largely indicative. It remained, for example, unclear for many countries whether FVLs could be registered and seed of such varieties be produced and exchanged on a commercial basis, as the legislation itself does not often disclose this kind of information. Furthermore, the fact that FVLs were not mentioned in many seed laws could not be interpreted as to mean that they cannot be registered and that seeds of such varieties cannot be commercialized. The study also emphasized that many factors affect the diversity of PGRFA directly or indirectly and that it is therefore difficult to make rigorous claims about the impacts of seed policies in isolation.<sup>4</sup>
6. In response to these findings, the Commission requested FAO to carry out in-depth case studies for consideration by the Working Group on Plant Genetic Resources, at its next session. These case studies should consider the effects of seed policies, laws and regulations on: (i) on-farm diversity of PGRFA; (ii) smallholders' access to sufficient, affordable, diversified and locally adapted PGRFA, including FVLs; and (iii) food security and nutrition under the different seed systems. The Commission further requested FAO to clarify the terms "farmers' seed systems", "informal seed systems", "formal seed systems" and "integrated seed systems", taking into account submissions by Members and observers.

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<sup>1</sup> FAO. 2015. *Voluntary Guide for National Seed Policy Formulation*. Rome.  
<http://www.fao.org/3/i4916e/i4916e.pdf>

<sup>2</sup> CGRFA-18/21/Report, paragraph 105.

<sup>3</sup> IT/GB-9/22/Report, B.11.

<sup>4</sup> CGRFA-17/19/9.3; CGRFA-17/19/9.3/Inf.1.

7. In response to the Commission's request, FAO prepared a follow-up study, using the findings of the study presented in 2019. For the follow-up study two sets of countries characterized by marked differences in their seed regulatory provisions were delineated as the subjects. One set, comprising 12 countries, had legislative provisions that would potentially restrict the use of FVLs, while a second set of 26 countries had provisions that would potentially enhance diversity, or at the least not limit it. The Commission's National Focal Points for PGRFA of both sets of countries were surveyed as to the implementation of regulatory provisions for crop varietal registration, seed quality assurance, and the promotion and/or sale of FVLs. It was determined that differences between these two sets of countries in the implementation of seed laws and policies were not as marked as the provisions in their respective seed regulatory instruments seemed to suggest. In particular, there was no instance of FVLs being targeted specifically in the enforcement of seed regulatory provisions.<sup>5</sup>

### III. PREPARATION OF DRAFT CONCEPT NOTE

8. In response to the Commission's request, FAO developed a draft concept note for the conduct of further research, which is provided in *Appendix I* to this document. As requested by the Intergovernmental Technical Working Group on Plant Genetic Resources for Food and Agriculture, the concept note focuses on farmers' ability to access seeds and planting materials in particular of diverse, locally adapted farmers' varieties/landraces, taking into account different seed systems at national and local levels, which may be affected differently.<sup>6</sup> The concept note has been prepared in collaboration with the Treaty Secretariat, other relevant partners and experts, for consideration by the Commission.

### IV. GUIDANCE SOUGHT

9. The Commission may wish to:
- a) review and, as appropriate, revise the draft concept note given in *Appendix I* to this document;
  - b) recommend that FAO carry out further work on the effects of seed policies, laws and regulations, based on the concept note, as revised by the Commission; and
  - c) make any other recommendations with regard to further research on the impact of seed policies, laws and regulations.

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<sup>5</sup> CGRFA-18/21/12.3; CGRFA-18/21/12.3/Inf.1.

<sup>6</sup> CGRFA-19/23/9.1, paragraph 25.

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## APPENDIX I

### DRAFT CONCEPT NOTE ON FURTHER RESEARCH ON THE IMPACT OF SEED POLICIES, LAWS AND REGULATIONS ON FARMERS' ABILITY TO ACCESS SEEDS AND PLANTING MATERIALS OF DIVERSE, LOCALLY ADAPTED FARMERS' VARIETIES/LANDRACES

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In recent years, a number of countries have adopted policies, laws or regulations that aim to support the registration or commercialisation of farmers' varieties/landraces (FVLs) and to expand the range of varieties from which farmers may choose. The European Union, for example, allows FVLs to be registered as Conservation Varieties and their seed to be sold locally<sup>7</sup>. Some countries provide for the possibility of registering farmers' varieties/landraces in the regular variety list or in a separate one<sup>8</sup>. Other countries recognize Quality Declared Seeds as a standard for quality assurance, which may lower seed production and quality assurance costs, and so enhance farmers' access to the seeds and planting materials produced through this standard.

Through a review of recent literature, reports and case studies, and through targeted interviews with select stakeholder groups, the scoping study will address the question whether seed policies, laws and regulations have enhanced access to diverse, locally-adapted farmers' varieties / landraces, and if so, how?

In exploring this question, the scoping study will take account of factors beyond seed legislation that may affect, positively or negatively, farmers' access to seeds and planting materials of FVLs. These factors may include, *inter alia*, the level of interest of farmers or other stakeholders in registering and commercializing FVLs, and of how key aspects of seed value chains, such as varietal maintenance or quality assurance, are addressed. How specific policy instruments are implemented in practice, and how farmers and other stakeholders understand and respond to these instruments, should also be noted. Finally, the study should recognize farmers' use of different seed systems (e.g. formal, informal, integrated) in relation to crop and context.<sup>9</sup>

#### Methodology

Recent literature will be gathered from published and unpublished reports from different sources, as well as from a review of the Policy Resources in the Treaty's Toolbox for Sustainable Use of PGRFA,<sup>10</sup> the Inventory of National Measures, Best Practices and Lessons Learned on the Realization of Farmer's rights, the International Treaty compliance reports and the Background Study on Bottlenecks and Challenges to the Implementation of Articles 5 and 6 of the International Treaty. Based on this review, case studies will be developed that represent different legislative scenarios, geographical regions, and crop types (e.g. cereals, pulses, vegetative crops, vegetables). Targeted interviews will also be conducted with select stakeholder groups along the seed value chain who have direct knowledge of these case studies to supplement documentary evidence.

#### Process

An entity or entities experienced in the organization and conduct of this type of research should be involved in the preparation of the study. Interviews should be conducted with different stakeholder groups. Preliminary results should be shared and discussed with a multi-stakeholder group to ensure that the research meets the stated purpose.

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<sup>7</sup> Commission Directive 2008/62/EC of 20 June 2008 providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic erosion and for marketing of seed and seed potatoes of those landraces and varieties, OJ L 162, 21.6.2008, p. 13–19.

<sup>8</sup> For example, Benin, Burundi, Malaysia, Niger, Thailand and Switzerland provide for separate lists to register varieties defined as "traditional", "niche", "conservation" or "local".

<sup>9</sup> CGRFA-18/21/12/3/Inf.1.

<sup>10</sup> <https://www.fao.org/plant-treaty/tools/toolbox-for-sustainable-use/overview/en/>

The expected output will be a literature review, a summary of case studies and a discussion of the results. Each case study should detail the legislative instruments, elaborate elements of success, challenges faced, and note key contextual factors. General lessons should be drawn regarding the possible impacts of seed policies, laws and regulations that aim to improve farmers' access to seeds and planting materials, particularly to FVLs. Questions for further research should also be framed, and methodologies proposed, based on review and analysis of these case studies.

**Timeline**

The report of the scoping study will be presented to the next Working Group meeting for its consideration.