ITEM 1. OPENING OF THE SESSION

1. Minister José Raphael Lopes Mendes de Azeredo, Head of the Department of Environment and Special Themes of the Ministry of Foreign Relations, opened the meeting by welcoming the Working Group to Brazil. He underlined Brazil’s full commitment to the Treaty, as well as the importance of the Working Group’s task to develop a package of measures for the enhancement of the functioning of the Multilateral System, for consideration by the Governing Body at its next Session.

2. Sr. Hélcio Campos Botelho, Director of Intellectual Property and Technology Agriculture of the Ministry of Agriculture, Livestock and Food Supply, expressed his gratitude to those who had been involved in making the meeting in Brasilia possible: the team from the Ministry of Agriculture, Embrapa, and the meeting organizers. He stressed that Brazil is actively implementing the Treaty, through policies such as the Program of Food Acquisition, the National Policy for Organic Production and Agroecology, and the Minimum Price Guarantee Policy.

3. Mr. Alan Bojanic, FAO Representative to Brazil mentioned that since the adoption of the Treaty by the FAO Conference fourteen years ago, it has become a major part of the Organization’s work, and a model for a number of other international institutions. The Director-General, Sr. José Graciano da Silva, has repeatedly expressed his full support for the Treaty, as vital for international food security. FAO is convinced that the Treaty can be strengthened, and the current meeting, he said, would play a vital role in this.

4. The Co-chairs, Mr. Bert Visser (Netherlands) and Sr. Modesto Fernández Díaz-Silveira (Cuba) thanked Brazil and FAO for their support. They stressed the importance of focus and concrete results. They noted the substantial intersessional work that had taken place, including through participation in seed sector meetings.

5. Mr. Shakeel Bhatti, Secretary of the Treaty, stressed the urgency of the moment. He noted that, in the recent International Seed Federation (ISF) Congress, its Secretary General, Mr. Michael Keller, had stated that, for the Treaty, it was a “now or never moment”. He fully agreed: failure to reach consensus on the package of measures to improve the Multilateral System would erode confidence in the Treaty. In his view, a small window of opportunity still remained.

1 The List of Participants is available at: http://planttreaty.org/sites/default/files/3wg_list_participants.pdf
ITEM 2. ADOPTION OF THE AGENDA

6. The Co-chairs of the Working Group then took over.

7. The Working Group adopted its Agenda, as given in Appendix 1, with the agreement that, where possible, discussions on individual measures to enhance the Multilateral System under Agenda Item 3 would be condensed, in order to facilitate discussion time on the key outcomes of its work in the biennium, and on tasks that remained to be completed.

ITEM 3. MEASURES TO ENHANCE THE MULTILATERAL SYSTEM TO BE CONSIDERED AND EVENTUALLY APPROVED BY THE GOVERNING BODY, AT ITS SIXTH SESSION

8. The Working Group reviewed the progress that has been made during the biennium, during the earlier meetings of the Working Group, in the development of the measures by which the functioning of the Multilateral System could be enhanced. These are:

I. Increase the availability of plant genetic resources for food and agriculture through the Multilateral System;
II. Strengthen non-monetary benefit-sharing mechanisms, such as capacity-building, technology transfer and information exchange;
III. Develop a Subscription Model/System for users of plant genetic resources for food and agriculture under the Treaty;
IV. Other improvements to the SMTA to increase user-based payments and make it more user-friendly;
V. Other ways to enhance income to the Benefit-sharing Fund in a sustainable and predictable long-term manner; and,
VI. Expand the access and benefit-sharing provisions of the Treaty.

9. It recognized the substantial progress that had been made in the biennium, while noting that not all tasks under the mandate had been finalised, and agreed to recommend that the Governing Body complete the package of measures, as described in Item 5 below. The Working Group welcomed the submissions received from Members of the Working Group, regional groups, and stakeholders.

10. The Working Group accordingly concentrated on the further development of a possible Subscription Model/System, as all Regions expressed substantial support for such a measure. It therefore developed a list of elements that could be part of a Subscription Model/System and identified alternative features yet to be resolved. This list is contained in Appendix 2.

11. The Working Group discussed ways in which a Subscription Model/System could be developed and implemented, and agreed that a step-by-step approach should be followed. The first step would be the incorporation of the Subscription Model/System into a revised Standard Material Transfer Agreement (SMTA), primarily through the revision of Article 6.11. The Working Group believes this could be considered at the Sixth Session of the Governing Body. A second step would deal with the modalities by which the Subscription Model/System would be completed in a larger framework, through a revision of, or a Protocol to, the Treaty.

12. The Working Group then developed a list of of elements that should be considered, in order to improve the SMTA, and to enhance user-based payments to the Benefit-sharing Fund of

2 The submissions have been compiled and are available at the following url: http://planttreaty.org/sites/default/files/3wg_submissions.pdf
the Treaty, including by making the SMTA more user-friendly. This list is contained in Appendix 3.

**ITEM 4. INTERIM MEASURES TO MAINTAIN THE OPERATIONS OF THE BENEFIT-SHARING FUND, PENDING FINAL ADOPTION OF THE PACKAGE OF MEASURES TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING**

13. The Working Group was informed of the status of funds that were likely to be available for the fourth round of the Benefit-sharing Fund. The Working Group recognized that, in the short term, Contracting Parties will need to continue to be major contributors to the Benefit-sharing Fund.

**ITEM 5. CONCLUSIONS AND RECOMMENDATIONS TO THE GOVERNING BODY, AT ITS SIXTH SESSION**

14. During its three meetings, the Working Group has discussed in considerable detail a number of elements that need to be addressed in the final package of measures to be prepared for the consideration and decision by the Governing Body.

15. While there is substantial agreement on a number of elements — in particular the interest in establishing a Subscription Model/System, as the primary payment mechanism in the Treaty’s access and benefit-sharing system — consensus has not yet been reached on certain elements, where various options remain for consideration.

16. The fact that many actors are involved in the process — governments of Contracting Parties to the Treaty, as well as the seed sector and farmers organizations — requires the development of sound mechanisms, able to attract more providers and users and to enhance the functioning of the Multilateral System, which take into account the many developments over the fourteen years since the adoption of the Treaty.

17. The Working Group recalls that the Multilateral System has not achieved all objectives for which it was constructed. While it has made good improvement regarding access with an increasing number of SMTAs, it has not achieved its monetary benefit-sharing functions, and availability under the MLS. To date, there has been no SMTA-based payment to the Benefit-sharing Fund. A failure to overcome the structural problems in the current working of the Multilateral System will put the future of the Treaty as a whole at risk.

18. It further agrees that these structural problems, such as transaction costs, the avoidance of SMTA material and the problem of voluntary payments, alternative sources of materials, the variation of the levels of payment, and different categories of recipient, cannot be overcome by revision of the SMTA alone, but recognizes some immediate changes could be done to make early progress on this.

19. The Working Group accordingly recommends to the Governing Body at its Sixth Session that it consider how the remaining work can best be concluded. Elements of the remaining work are identified below. Where consensus has not been reached, the alternatives are identified in square brackets. The Working Group accordingly recommends that the Governing Body decide on which options should be retained for further development, in its relevant resolution.

20. In this context, the Working Group notes that, as the Funding Strategy adopted by the Governing Body provides, the resources under its direct control — that is, the Benefit-sharing Fund — include both user-based income and contributions by Contracting Parties and
stakeholders, and recommends that all such sources be addressed together in a package of measures, taking into account that the Benefit-Sharing Fund is part of the broader Funding Strategy of the Treaty.

21. The Working Group recommends a further process, to address current concerns regarding structural components of the Treaty, such as: the Funding Strategy, the Global Information System, the promotion of sustainable use, and Farmers’ Rights, as well as the relationship with the implementation of the Nagoya Protocol. The strengthening of such components will support the enhancement of the Multilateral System. This will require some far-reaching decisions by the Governing Body, on the basis of which new mechanisms can be developed in a more complete form.

Proposed tasks for further work

a. As a first step, to elaborate the elements for a Subscription Model/System for user-based payments within the Multilateral System, which encourages the extensive use of the plant genetic resources for food and agriculture it contains, and therefore ensures sustainable and predictable income to the Benefit-sharing Fund, by revising the current SMTA.

   i. [To design the Subscription Model/System as the benefit-sharing mechanism following access to the plant genetic resources for food and agriculture in the Multilateral System.]

   ii. [To also explore an alternative benefit-sharing mechanism for occasional access to, and use of, individual samples from the Multilateral System. To design this alternative mechanism in such a way that:

      1. [all commercialization of products derived from materials received will lead to mandatory benefit-sharing, as in the current SMTA Article 6.7, possibly against different rates.] OR  

      2. [voluntary benefit-sharing is retained as the payment option for products freely available for further research, breeding and training, as in the current SMTA Article 6.8.]]

   iii. For each benefit-sharing mechanism proposed, to overcome the stumbling blocks to use of germplasm from the Multilateral System that have been identified, including the lack of termination provisions in the SMTA.

To enable the adoption by the Governing Body, at its Sixth Session, of a revised SMTA that includes provision for the Subscription Model/System, the Secretariat is requested to prepare a revised SMTA, a Registration Form, and other relevant materials. Submissions received by 27 June will be taken into account. The Working Group requests the Bureau of the Sixth Session of the Governing Body to consider the possibility of reconvening the Working Group just before the Sixth Session of the Governing Body, subject to the availability of financial resources.

b. This first step should include consideration of payment rates within the Treaty’s access and benefit-sharing, taking into account the role of the Contracting Parties.

c. As a second step, to prepare a draft [amendment to the Treaty] / [Protocol to the Treaty] completing the Subscription Model/System and extending the crop coverage to [the scope of the Treaty itself, namely all plant genetic resources for food and agriculture,] [a defined list of crops], in harmony with enhanced benefit-sharing provisions.

d. To explore a proposal to develop a mechanism of contributions by Contracting Parties that will ensure sustainable and predictable income to the Benefit-Sharing Fund and other elements of the Funding Strategy, such as an amendment to the Funding Strategy.

e. To propose a target for the income to the Benefit-Sharing Fund for the 2018–2023 period, that
is meaningful and realistic, recognizing that opinions at how to arrive at the target still show divergence. The target should be based on such factors as: the current amount needed for the project cycle, allowing for incremental growth, in each cycle; a needs analysis that takes into account information sources such as the FAO Global Plan of Action on Plant Genetic Resources for Food and Agriculture.

f. To explore the consolidation of a long-term investment strategy for the Benefit-sharing Fund.

22. The Working Group further notes that it has not yet been possible to provide reasoned estimates of the likely income to the Benefit-sharing Fund that could result from the various payment options, because user-based income will depend first and foremost upon the attractiveness of the revised Multilateral System and the actual willingness of users to access material from the Multilateral System. Reasoned estimates will support meaningful decision-making. It therefore recommends that, in further developing the payment options, users be requested to express their willingness to use such options, and in this context project the likely income to the Benefit-sharing Fund.

23. In the context of mobilizing donor support to activities under the Benefit-sharing Fund, the Working Group recommends that the Governing Body reconsider the current arrangements for projects carried out in the framework of the Benefit-sharing Fund, by strengthening the programmatic approach, in order to make support to the Benefit-sharing Fund more attractive:

1. By providing greater predictability to prospective donors, regarding the planned activities and targeted outputs and impacts of proposed projects, in order to enable them to make informed decisions regarding their potential contributions;
2. By improving thematic coherence between individual projects, and project cycles;
3. By developing a long-term investment strategy, with objectives and results;
4. By promoting synergy between the Benefit-sharing Fund and the Funding Strategy, of which the Benefit-sharing Fund is a part; and
5. By considering the feasibility and desirability of a donor council, or some similar body, to support the implementation of the Treaty.

24. The Working Group draws to the attention of the Governing Body that currently known income to the Benefit-sharing Fund is not adequate to maintain the forthcoming fourth project cycle at anything like the current levels. It therefore recommends that the Governing Body call on Contracting Parties to contribute funds to the Benefit-Sharing Fund on an _ad hoc_ interim basis, for the years 2015–2017, in order to maintain momentum in the reshaping of the Multilateral System.
THIRD MEETING OF THE AD-HOC OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

Brasilia, Brazil, 2-5 June 2015

AGENDA

1. Opening of the meeting
2. Adoption of the agenda and time table
3. Measures to enhance the Multilateral System to be considered and eventually approved by the Governing Body, at its Sixth Session

   Measure I: Increase the availability of plant genetic resources for food and agriculture through the Multilateral System
   Measure II: Strengthen Non-Monetary Benefit-sharing Mechanisms, such as capacity-building, technology transfer and information exchange
   Measure III: Develop a Subscription System for users of plant genetic resources for food and agriculture under the Treaty
   Measure IV: Other improvements to the SMTA to increase user-based payments and make it more user-friendly
   Measure V: Other ways to enhance income to the Benefit-sharing Fund in a sustainable and predictable long-term manner
   Measure VI: Expand the access and benefit-sharing provisions of the International Treaty

4. Interim measures to maintain the operations of the Benefit-sharing Fund, pending final adoption of the package of measures to enhance the functioning of the Multilateral System of Access and Benefit-sharing
5. Preparations for the Sixth Session of the Governing Body
6. Other business
7. Adoption of the report
Elements that the Subscription Model/System will need to address

<table>
<thead>
<tr>
<th>Elements of Subscription Model/System</th>
<th>Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of who is eligible to subscribe to the Subscription Model/System, and under which conditions</td>
<td>All natural and legal persons, in Contracting Parties and non-Contracting Parties.</td>
</tr>
<tr>
<td>Procedures by which users subscribe to the Model/System</td>
<td>Immediate step: Through a revised SMTA with information recorded in the database Easy-SMTA. Second step: Through a New SMTA, based on a revision of, or a Protocol to the Treaty. AND Supported by centralized registration with public access to non-confidential information.</td>
</tr>
<tr>
<td>The scope of subscription, for example, whether on a crop-by-crop basis, or covering all the crops to which the Subscription Model/System applies</td>
<td>To all plant genetic resources for food and agriculture, and not only the crops listed in Annex 1 to the Treaty, if there will be a revision of the Treaty; and to all crops of Annex I, if there is no revision of the Treaty. OR On a crop-by-crop basis for the crops covered under Annex 1, or for the crops covered under a revision of the Treaty. OR Allow the subscriber to contract on a crop-by-crop basis, or alternatively for all crops.</td>
</tr>
<tr>
<td>Whether access under the Subscription Model/System is unlimited, or, for example, whether there should be a limit on the number of samples available to a single user, per year</td>
<td>As a matter of principle, unlimited access. In practice, rules of procedure to make the Model/System operational might apply, including recognition of providers’ real capacity to respond to requests of large numbers of accessions.</td>
</tr>
<tr>
<td>Rights and obligations in the case of transfer of materials to (a) other subscribers, and (b) non-subscribers of the Model/System</td>
<td>Transfers to other subscribers should be under the same conditions as those binding the first recipient. [Transfers to non-subscribers should require [ subscription and] acceptance of the SMTA.]</td>
</tr>
</tbody>
</table>
| The trigger for payments, which could, for example, be annual payments, or payment on commercialization of certain products, or a combination of the two | For subscribers: annual payments based on sales of current products.  
OR  
Combination of two complementary payments: annual payments based on turnover, and payments on products commercialized under patent protection.  
FOR CONSIDERATION DURING THE DEVELOPMENT OF THE SECOND STEP:  
The possibility to have, for non-subscribers, an access fee as well as payment on commercialization on products derived from the accession. |
| Possible differentiation of payment levels according to type of protection asserted (for example, patents, PVP, technological protection, etc.) | No differentiation on the basis of the restriction on a product.  
OR  
Differentiation between [(1) products available without restriction to others for further research, breeding and training; (2) products with restricted access to others for further research, breeding and training; and (3) products not protected by IPRs]]  
| The possibility of establishing different payment rates for different crops | Differentiation by crop, taking into account the different profit margins for individual crops, to be accommodated for in a practical and simple way, if such a practical and simple way is possible.  
| The possibility of establishing different sets of obligations for different categories of users, for example, based on company turn-over, or for non-profit organizations | Different possible sets of obligations  
No monetary benefit-sharing obligations for entities with an annual turnover on seed sales below USD XXX.  
AND/OR  
No monetary benefit-sharing payments, where the annual benefit-sharing obligation would be less than USD XXX.  
AND/OR  
No monetary benefit-sharing obligations for non-profit organizations.  
OR  
No differentiation  
Exchanges between small-scale farmers [in developing countries] will be exempted from [the use the SMTA] [monetary benefit-sharing obligations]. |
| The period of validity of the subscription; procedures for renewal and termination; and residual transitional obligations | Period of subscription at least 10 years with option of renewal. Clear rules needed for residual transitional provisions, including future rights and obligations for using material accessed from the Multilateral System, for up to 10 years, depending on type of crops. Cancellation fee in case of termination before the end of the subscription period. |
Appendix 3

Elements that should be considered, in order to improve the SMTA, and make it more user-friendly

<table>
<thead>
<tr>
<th>Questions to be addressed</th>
<th>Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether voluntary payments should continue to be an option, and for which products</td>
<td>• Remove Article 6.8.</td>
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<tr>
<td></td>
<td>OR</td>
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<td></td>
<td>• Retain Article 6.8, and make it mandatory [at a lower rate]</td>
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<td>OR</td>
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<td></td>
<td>• Retain the option of voluntary payments under Article 6.8</td>
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<tr>
<td>The possible relationship between payment rates under a subscription model/system—whether</td>
<td>• Article 6.7 rate to be [ten] times the rate of Article 6.11, and</td>
</tr>
<tr>
<td>or not it is implemented under Article 6.11—and Articles 6.7/6.8</td>
<td>Article 6.8 rate to be [five] times the rate of Article 6.11</td>
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<td></td>
<td>OR</td>
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<td></td>
<td>• Article 6.7 rate to be at a substantially higher rate than Article</td>
</tr>
<tr>
<td></td>
<td>6.11</td>
</tr>
<tr>
<td>Other changes to improve clarity and ease of use</td>
<td>Previous work by the <em>Ad Hoc</em> Technical Advisory Committee on the</td>
</tr>
<tr>
<td></td>
<td>the SMTA Multilateral System should be taken into account.</td>
</tr>
<tr>
<td>Possible introduction of a minimum incorporation threshold</td>
<td>There are, as yet, no elaborated positions, or consensus on this matter.</td>
</tr>
</tbody>
</table>
Appendix 4

Submissions received from Members of the Working Group, regional groups, and stakeholders

http://planttreaty.org/sites/default/files/3wg_submissions.pdf
Appendix 5

List of participants

MEMBERS

AFRICA

Ms Elizabeth MATOS
Président
Comité national des ressources phytogénétiques
Prédio CNIC-U.A.N.
Av. Revolução de Outubro
Box 10043 (BG)
Luanda, Angola
Phone: +244 222 325673
Email: lizmatos@netcabo.co.ao
liz.matos35@gmail.com

Mr John Wasswa MULUMBA
Curator Entebbe Botanic Gardens
National Agricultural Research Organization (NARO)
Plot 2-4 Barkeley Road
Entebbe, Uganda
Phone: +256 414320638
Fax: +256 414321070
Email: jwmulumba@yahoo.com

Mr Amar TAHIRI
Office National de Sécurité Sanitaire des produits Alimentaires (ONSSA)
Ministère de l'agriculture et de la pêche maritime
BP 1308 Rabat, Maroc
Phone: +212 537771085/+212 6 62 60 25 07
GSM: +212 6 73 99 78 09
Fax: +212 5 37 77 98 52
Email: amar.tahiri@gmail.com

Mr Kudzai KUSENA
Curator
Genetic Resources and Biotechnology Institute
Fifth Street Extension
PO Box CY 550
Causeway, Harare, Zimbabwe
Phone: +263 4 704531 - 702519 - 704531
Cell: +263 712630037
Fax: +263 4 700339
Email: kudzaikusena@yahoo.com

ASIA

Mr Muhamad SABRAN
Senior Researcher
ICABIOGRAD
Centre for Biotechnology and Genetic Resources
Ministry of Agriculture
JL. TentaraPelajar no. 3a
Bogor 16111, Indonesia
Phone: +62 2178831114
Fax: +62 2518338820
Email: msbran23@yahoo.com

Mr Nestor ALTOVEROS
Associate Professor
Crop Science Cluster
University of the Philippines
College, Laguna, Philippines
Phone: +63 495760045
Fax: +63 495363438
Email: ncaltoveros@yahoo.com

Mr Eng Siang LIM
Advisor/Consultant
Ministry of Agriculture and Agrobased Industry (MOA)
No. 28, Persiaran Perdana
Putrajaya, Malaysia
Phone: +603 99701206
Fax: +603 88888548
Email: eslim_choi@yahoo.com

Mr Akio YAMAMOTO
Director
Unit of Sustainable Use of Biological Diversity Environment Policy Division
Ministry of Agriculture, Forestry and Fisheries
1-2-1 Kasumigaseki, Chiyodaku
Tokyo, Japan
Phone: +81 335028458
Fax: +81 335916640
Email: akio_yamamoto@nm.maff.go.jp

Mr Bert VISser
Director
Centre for Genetic Resources
Droevendaalsesteeg, 1
Wageningen, The Netherlands
Phone: +31 317480993
Fax: +31 317418094
Email: bert.visser@wur.nl

Mr Thomas MEIER
Senior Advisor
Division of Biological Diversity and Biopatents
Federal Ministry of Food and Agriculture
Rochusstr. 1
Bonn, Germany
Phone: +49 228 99 529 4078
Fax: +49 228 99 529 4332
Email: thomas.meier@bmel.bund.de

Mr François BURGAUD
Directeur des Relations Extérieures
Groupement National Interprofessionnel des Semences et Plantes (GNIS)
44 rue du Louvre  
75001 Paris, **France**  
Phone: +33 1.42.33.76.94  
Email: Francois.burgaud@gnis.fr

**Ms Elisabeth KOREN**  
Senior Adviser  
Ministry of Agriculture and Food  
PO Box 8007  
Dep NO 0030  
Oslo, **Norway**  
Phone: +47 22 24 91 32  
Fax: ++47 22 24 95 55  
Email: elisabeth.koren@lmd.dep.no

**M. François PYTHOUD**  
Responsable  
Secteur Agriculture durable internationale  
Office fédéral de l’agriculture OFAG  
Mattenhofstrasse 5  
CH 3003 Berne, **Switzerland**  
Phone: +41 31 3234445  
Fax: +41 31 3222634 - 3237164  
Email: francois.pythoud@blw.admin.ch

**Latin America and the Caribbean**

**Sr. Modesto FERNÁNDEZ DÍAZ-SILVERA**  
Funcionario  
Dirección de Medio Ambiente  
Ministerio de Ciencia, Tecnología y Medio Ambiente  
Linea N 8, Vedado  
Ciudad de La Habana, **Cuba**  
Phone: +537 8355566  
E-mail: modesto@citma.cu

**Sr. José Francisco MONTENEGRO VALLS**  
Agronomist  
EMBRAPA Genetic Resources and Biotechnology/Cenargen  
Parque Estação Biológica/PqEB  
Cx.Postal 02372 - CEP 70770-917  
Brasília, DF - **Brazil**  
Phone: +61 3448 4644  
Fax: +61 3340 3624  
E-mail: jose.valls@embrapa.br

**Sr. José Alberto YAU QUINTERO**  
Director del Programa de Semilla  
Villa de las Fuentes N° 2, calle segunda, cada D-55  
apartado el Dorado, **Panamá**  
Phone: +507 260-1671 / 317-0519 / 317-0510  
E-mail: vau_55@yahoo.com
Sr. Roger Alberto BECERRA GALLARDO
Especialista en Acceso a Recursos Genéticos
SDRIA-DGIA-INIA
Sede Central
Lima, Perú
Phone: +51 968414378
Email: dpirrgg@inia.gob.pe

Mr Javad MOZAFARI
Professor, Plant Biotechnology;
National Plant Gene-Bank of Iran (NPGBI)
Seed and Plant Improvement Institute (SPII)
Agricultural Research and Education Organization (AREO)
Sh. Fahmideh BLVD,
Karaj, Iran
Phone: +98-2632701260
Cell.: +98-9123763457
Email: jmozafar@yahoo.com

Mr Ali CHEHADE
Research Engineer
Department of Plant Biotechnology (PGR Unit)
Institut de Recherches Agronomiques Libanais (IRAL)
P.O Box 287
Zahlé, Lebanon
Phone: +961 8 900037
Fax: +961 8 900077
Email: alichehade@hotmail.com

Dr Fawzi AL-SHEYAB
Director-General
National Center for Agricultural Research and Extension (NCARE)
P.O. Box 639
Baqa'a, Jordan
Phone number: +962 795289581
Fax: +962 64726099
Email: fawzi@ncare.gov.jo

Ms Felicitas KATEPA-MUPONDWA
Director, Research Development & Technology Transfer
Charlottetown, Kentville& St. John’s Research Centres
Atlantic and Coastal Directorate
Science and Technology Branch
Agriculture and Agri-Food Canada
440 University Avenue, Charlottetown,
Prince Edward Island, Canada C1A 4N6
Phone: +1-902-370-1399
Cell: +1-902-393-9489
E-mail: Felicitas.Katepa-Mupondwa@agr.gc.ca

Mr Michael Ryan
Director
Productivity Unit, Research and Innovation Branch
Agricultural Policy Division

SOUTH WEST PACIFIC
Department of Agriculture
18 Marcus Clarke Street
GPO Box 858 Canberra ACT 2601 Australia
Phone +61 2 6272 4425
E-mail: michael.ryan@agriculture.gov.au

Ms Valerie S. TUIA
Genetic Resources Coordinator
Secretariat of the Pacific Community (SPC)
SPC Suva Regional Office
Private Mail Bag
Suva, Fiji
Phone: +679 337 0733
Fax: +679 337 0021
Email: ValerieT@spc.int
OBSERVERS

CIVIL SOCIETY ORGANIZATIONS

Berne Declaration
Mr François MEIENBERG
Déclaration de Berne
Erklärung von Bern
Zürich, Switzerland
Phone: +41 442777004
Fax: +41 442777001
Email: food@evb.ch

Third World Network
Mr Edward HAMMOND
Advisor
131 Jalan Macalister
Penang, Malaysia
Phone: +1 3253472829
Email: eh@pricklyresearch.com

La Via Campesina
Mr Guy KASTLER
Cazalens, 81
Brens, France
Phone: +33 0563417286
Email: guy.kastler@wanadoo.fr

FARMERS’ ORGANIZATIONS

SEED INDUSTRY

Ms Anke VAN DEN HURK
Deputy Director
International Seed Federation - Plantum
Vossenburchkade 68
Gouda, The Netherlands
Phone: +31 182688668
Fax: +31 182688667
Email: a.vandenhurk@plantum.nl

CGIAR CONSORTIUM

Mr Thomas NICKSON
International Policy Lead
Monsanto Law
800 North Lindbergh Bvd
St. Louis, Missouri, USA
Phone: +1 3146942179
Fax: +1 3146941622
Email: thomas.nickson@monsanto.com

Mr Michael HALEWOOD
Senior Scientist
CGIAR Research Programme on Climate Change
Agriculture and Food Security
Bioversity International
Via dei Tre Denari, 472/a
00057 Maccarese (Fiumicino)
Rome, Italy
Phone: (39) 066118294
Fax: (39) 0661979661
Email: M.Halewood@cgiar.org
Mr Rodrigo SARA  
Legal Officer  
CGIAR Consortium  
Agropolis, 34394 France  
Montpellier, France  
Phone: +33 (0)4 67 04 36 45  
Email: R.Sara@cgiar.org

OBSERVERS FROM CONTRACTING PARTIES

EUROPEAN COMMISSION
Mr Thomas WEBER  
Sector Plant Reproductive Material  
Unit E2 Plant Health  
Health and Food Safety DG (DG Sante)  
Office B232 4/22 - BE-1040 Brussels, Belgium  
Tel: +32-2-2957616  
Fax: +32-2-2960951  
Email: Thomas.Weber@ec.europa.eu

FRANCE
Mme Patricia LARBOURET  
Policy Officer  
Biodiversity and Land Use Unit  
General Directorate for Agricultural, Agrifood and Regional Policy  
Ministry of Agriculture  
3, rue Barbet de Jouy,  
75349 Paris, France  
Phone: +33 149555907  
Email: patricia.larbouret@agriculture.gouv.fr

SILENT OBSERVERS

ARGENTINA
Sra. Carla PASCALE MEDINA  
Asesora,  
Secretaría de Agricultura, Ganadería y Pesca  
Ministerio de Agricultura, Ganadería y Pesca  
Av. Paseo Colón 922. PB Of 21  
Buenos Aires, Argentina  
Phone: +54 11 4349 2680  
Email: cPasca@magyp.ogb.ar  
carlapascale@yahoo.com.ar
Lic. Cristián AMARILLA  
Director Nacional de Coordinación Política  
Dirección Nacional de Coordinación Política  
Ministerio de Agricultura, Ganadería y Pesca  
Av. Paseo Colón, 982  
Buenos Aires, Argentina  
Phone: +54 11 4349 2375  
Email: cristina.a.amarilla@gmail.com

Secretario Ana Julia GUTIÉRREZ TELLERÍA  
Dirección General de Asuntos Ambientales  
Ministerio de Relaciones Exteriores y Culto  
Calle Esmeralda 1212, piso 14 Capital Federal  
Buenos Aires, Argentina  
Phone: +54 11 4819 7414 / +54 11 4819 7413  
Email: zti@mrecic.gov.ar

Mr Dave ELLIS  
Research Program on Conserving Biodiversity for the Future  
Genetic Resources - Genebank  
International Potato Center  
Apartado 1558, Lima 12, Peru/Avenida La Molina 1895, Lima, Peru  
Phone: +51 1 317 5337 or +51 1 349 6017 ext 3056  
Fax: +51 1 317 5326  
Email: d.ellis@cgiar.org

Mr Jarett ABRAMSON  
Intellectual Property Counsel  
CIMMYT (International Maize and Wheat Improvement Center)  
Carretera México Veracruz Km. 45 Col. El Batán  
Texcoco, Edo. de México 56237  
Tel: Office +(52)(55) 5804-2004 x 1197  
E-mail: j.abramson@cgiar.org

Mr Remy BITOUN  
Head, Public-Private Engagement Office  
International Rice Research Institute  
FF Hill Building  
College, Los Baños, Laguna  
Philippines  
Phone: +63 (2) 580-5600, local 2847  
Email: c.enalbes@irri.org

Mr Filipe Geraldo de M. TEIXEIRA  
Lead Council Germplasm Legal Compliance - Global  
Lead Counsel Germplasm Legal & IP - LATAM  
Syngenta Proteção de Cultivos Ltda.  
Av. das Nações Unidas, 18001 - 4º andar  
São Paulo – SP - 04795-900,  
Brazil  
Phone +55 11 5643-6315  
Mobile +55 11 975824610  
Email: filipe.teixeira@syngenta.com
Mr Worku Damena YIFRU
Senior Legal Officer
Secretariat of the Convention on Biological Diversity
United Nations Environment Programme
413 Saint-Jacques St., Suite 800,
Montreal, Quebec, H2Y 1N9, Canada
Phone: +1 514 287 7006
Fax: +1 514 288 6588
Email: worku.yifru@cbd.int

Mr Dominic MUYLDERMANS
Senior Legal Consultant IGO Affairs
CropLife International aisbl
avenue Louise 326, box 35
B-1050 Brussels, Belgium
Phone: +32 2 541 16 66
Cell: +32 475 76 66 23
Email: dominic.muyldermans@croplife.org

Mr Selim GUVENER
Compliance and intellectual Assets Manager
International Potato Center (CIP)
Avenida La Molina 1895
La Molina, Lima 12, Peru
Phone: +51 1 349 6017 ext 1038
Email: s.guvener@cgiar.org

Mr Pierre DU PLESSIS
CRIAA SA-DA
PO Box 23118
Windhoek, Namibia
Email: pierre.sadc@gmail.com

Mr Morten WALLOE TVEDT
Senior Research Fellow
Fridtjof Nansen Institute
P.O. Box 326, 1326 Lysaker, Norway
Phone: +47 6711925 / 90673230
Email: mwtf@fni.no

Mr André DALLAGNOL
Articulação Nacional de Agroecologia
Asesor jurídico
NGO Terra de Direitos
Email: andrehdl@terradedireitos.org.br

Mr Marciano TOLEDO DA SILVA
Coordination of Agro-biodiversity
Movement of small farmers (Movimento dos pequenos agricultores – MPA)
Quadra, 03, conjunto A, Casa 23
Candidogândia, Brasília DF
Phone: +55 61 3301 42 11
Email: mpabras@mpabrasil.org.br
Marciano71@yahoo.com
Mr Brad KURTZ  
Senior Research Manager  
Global Crop Biodiversity  
Dupont-Pioneer  
United States of America  
Email: bradley.kurtz@pioneer.com

Mr Filipe Geraldo de M. Teixeira  
Lead Counsel Germplasm Legal Compliance - Global Syngenta Proteção de Cultivos Ltda.  
Av. das Nações Unidas, 18001 - 4º andar  
São Paulo – SP, 04795-900, Brazil  
Phone: +55 11 5643-6315  
Cell.: +55 11 975824610  
Email: filipe.teixeira@syngenta.com

SECRETARIAT

Mr Shakeel BHATTI  
Secretary  
Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), FAO  
Viale delle Terme di Caracalla  
Rome, Italy  
Phone: +39 0657053441  
Fax: +39 0657056347  
Email: shakeel.bhatti@fao.org

Mr Álvaro TOLEDO CHÁVARRI  
Technical Officer  
Phone: +39 0657054497  
Email: alvaro.toledo@fao.org

Mr Tobias KIENE  
Technical Officer  
Phone: +39 0657055586  
Email: tobias.kiene@fao.org

Mr Francisco LÓPEZ MARTÍN  
Technical Officer  
Phone: +39 0657056343  
Email: francisco.lopez@fao.org

Ms Annick VAN HOUTTE  
Senior Legal Officer  
Food and Agriculture Organization  
Viale delle Terme di Caracalla  
Rome, Italy  
Phone: +39 0657054287  
Email: annick.vanhoutte@fao.org
Mr Clive STANNARD  
Senior Consultant  
Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)  
Phone: +39 3334334009  
Email: clive@stannard.info

Ms Nina MOELLER  
Consultant  
Secretariat of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)  
Email: nina.isabella.moeller@gmail.com

FAO REPRESENTATION IN BRAZIL

Mr Alan Jorge BOJANIC HELBINGEN  
FAO Representative  
Eixo Monumental Via S-1  
SetorSudoeste/AcessoRua G  
Campus do INMET - bloco 7  
Brasília  
Tel: +55-61-30382258  
Fax: +55-61-33432543  
E-mail: FAO-BR@fao.org

HOST GOVERNMENT

MINISTRY OF EXTERNAL RELATIONS

Mr José Raphael LOPES MENDES DE AZEREDO  
Head, Department of Environment and Special Affairs  
Esplanada dos Ministérios, bloco H  
Brasília, Brazil  
Phone: +55 (61) 2030-9201/9202  
Fax: +55 (61) 3411-9199  
Email: raphael.azeredo@itamaraty.gov.br

Mr Thiago Medeiros DA CUNHA CAVALCANTI  
Secretary  
Esplanada dos Ministérios, bloco H  
Brasília, Brazil  
Phone: +55 (61) 2030-8448  
Email: thiago.cavalcanti@itamaraty.gov.br

MINISTRY OF AGRICULTURE, LIVESTOCK AND FOOD SUPPLY

Mr Helcio CAMPOS BOTELHO  
Director, Secretariat of Agricultural Development and Cooperatives  
Esplanada dos Ministérios - Bloco D  
Brasília, Brazil
Ms Andressa BEIG JORDÃO
Esplanada dos Ministérios - Bloco D
Brasília, Brazil
Phone: +55 (61) 3218-2919
Email: andressa.beig@agricultura.gov.br

Mr Fabricio SANTANA SANTOS
Esplanada dos Ministérios - Bloco D
Brasília, Brazil
Phone: +55 (61) 3218-2549
Email: fabricio.santos@agricultura.gov.br

Ms Ana Carolina BELISARIO
Esplanada dos Ministérios - Bloco D
Brasília, Brazil
Phone: +55 (61) 3218-2828
Email: ana.belisario@agricultura.gov.br

EMBRAPA

Maria Jose AMSTALDEN SAMPAIO
Embrapa
Coordenação de Políticas Globais/Global Policies Coordination
Secretaria de Relações Internacionais/ International Relations Secretariat
Parque Estação Biológica - PqEB.
Brasília, Brazil
Phone: +55 (61) 3448-4449/4553
Email: zeze.sampaio@embrapa.br

Marcelo Henrique AGUIAR DE FREITAS
Embrapa
Coordenação de Políticas Globais/Global Policies Coordination
Secretaria de Relações Internacionais/ International Relations Secretariat
Parque Estação Biológica - PqEB.
Brasília, Brazil
Phone: +55 (61) 3448-4593
Email: marcelo.freitas@embrapa.br

Monica CIBELE AMANCIO
Embrapa
Assessoria Jurídica/Legal Service
Parque Estação Biológica - PqEB.
Brasília, Brazil
Phone: +55 (61) 3448-1899
Email: monica.amancio@embrapa.br

MINISTRY OF Agrarian Development

Ms Carolina RIZZI STARR
Environmental Consultant
Ministry of Agrarian Development,
International and Commercial Promotion Advisory
Phone: + 55 61 2020 0126
Fax: + 55 61 2020 0128
Email: carolina.starr@consultor.gov.br